CONTRACTOR AGREEMENT
BY AND BETWEEN
MAYOR AND CITY COUNCIL OF BALTIMORE
AND
ENTITY NAME

THIS CONTRACTOR AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2023, by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland, acting by and through the Baltimore City Health Department (the "City") and **ENTITY NAME** (the "Contractor").

RECITALS

WHEREAS, the City wishes to engage the services of the Contractor and the Contractor has agreed to provide the services described herein; and

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PURPOSE:

1.1. The purpose of this Agreement is for the Contractor to _____ ("Project").

2. SCOPE OF SERVICES:

2.1. The Contractor shall provide services as described in the scope of services which is attached hereto at **Exhibit A** and made part of this Agreement.

3. PROFESSIONAL RESPONSIBILITY:

3.1. The Contractor shall exercise independent professional judgment and shall assume professional responsibility for all services provided hereunder.

3.2. The Contractor warrants that the Contractor is authorized by law to engage in the performance of the services of this Agreement. The Contractor warrants that the Contractor has secured all required licenses and certifications to provide services under this Agreement.

4. TERM:

4.1. The term ("Term") of this Agreement will commence on _____ and end on _____, unless otherwised terminated earlier pursuant to the terms of this Agreement.

5. COMPENSATION:

5.1. Reimbursement.

5.1.1. The Contractor shall provide the services agreed to in this Agreement as identified in **Exhibit A** for a total cost (including fees and expenses) not to exceed _____**Dollars ($**_____**)**. The Contractor shall be reimbursed according to the budget in **Exhibit A**, attached hereto and incorporated herein. The Contractor agrees that all expenditures are to be made in accordance with the terms and conditions of the funding source identified in **Exhibit B**, attached hereto and incorporated herein.

5.1.2. Payment in excess of the amount set forth above will not be made unless there is a mutually agreed upon change in the scope of services which requires an increase in the total Project cost. Such an increase in the total Project cost will only occur through a written amendment to this Agreement, which is approved by the parties.

5.2. Payment.

5.2.1. The Contractor shall submit invoices monthly to the City for work performed under this Agreement. Each invoice shall show the services performed and expenses, if any, related to work performed up until the time of invoice submission. Expenses shall include transportation (train, air, taxi, mileage, tolls, and parking), lodging, meals, reproduction costs, and miscellaneous expenses to the extent allowable by the City according to the requirements of its Administrative Manual. Invoices will be structured in a format that is approved by the City.

5.2.2. City shall make its best efforts to pay the Contractor for approved invoices within thirty (30) days of receipt of the invoices for work satisfactorily performed by the Contractor. Under no circumstances shall the City be required to pay any interest or additional charges of any kind whatsoever.

6. INSURANCE:

6.1. The Contractor shall procure and maintain the following specified insurance coverage during the entire life of this Agreement, including extensions thereof.

6.1.1. Professional Liability, Errors, and Omissions Insurance, at a limit of not less than Three Million Dollars ($3,000,000) per occurrence in the event that service delivered pursuant to this Agreement, either directly or indirectly, involves professional services. If coverage is purchased on a "claims made" basis, the Contractor 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 required in the event the services performed, pursuant to this Agreement, either directly or indirectly, involve or require professional services.

6.1.2. Technology Liability, Errors, and Omissions Insurance – not applicable.

6.1.3. Cyber Liability Insurance including but not limited to Network Privacy, Technology, Security, Web-Media Services, Breach Containment, Technology Extortion, and Data Restoration, at a limit of not less than One Million Dollars ($1,000,000) per occurrence with an aggregate limit of One Million Dollars ($1,000,000) is required. If coverage is purchased on a "claims made" basis, the Contractor 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 required in the event the services performed, pursuant to this Agreement, either directly or indirectly, involve or require technology related services.

6.1.4. Workers' Compensation coverage as required by the State of Maryland or other applicable State's law.

6.1.5. Commercial General Liability Insurance, at a limit of not less than One Million Dollars ($1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, including products and completed operations coverage. For those policies with aggregate limits, a minimum limit of One Million Dollars ($1,000,000) is required. Such insurance shall include contractual liability insurance.

6.1.6. Business Automobile Liability at limits of not less than One Million Dollars ($1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages. The insurance shall apply to any owned, non-owned, leased or hired automobiles used in the performance of this Agreement.

6.2. The Contractor's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

6.3. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, employees, or agents shall not contribute with the Contractor's insurance or benefit the Contractor in any way.

6.4. Required insurance coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except by the reduction of the applicable aggregate limit 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.

6.5. Unless otherwise approved by the City, insurance is to be placed with insurers with a Best's rating of no less than A:VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII and said insurers must be licensed/approved to do business in the State of Maryland.

6.6. The Mayor and City Council of Baltimore, its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insured as respects to liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.

6.7. The Contractor shall furnish to the City a "Certificate of Insurance", with a copy of the additional insured endorsement as verification that coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.

6.8. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance or complete copies as required shall be a default by the Contractor under this Agreement.

6.9. Notwithstanding anything to the contrary in any applicable insurance policy, the Contractor expressly warrants, attests and certifies that there are no carve outs or exclusions to the policy coverage and limitations stated herein, except as required by law.

7. INDEMNIFICATION:

7.1. The Contractor shall indemnify, defend and hold harmless the City, its elected/appointed officials, employees, and agents from any and all claims, demands, liabilities, losses, damages, fines, fees, penalties, costs, expenses, suits, and actions, including attorneys' fees and court costs, connected therewith, brought against the City, its elected/appointed officials, employees, and agents, arising as a result of: (a) breach of the Contractor's representations, warranties, covenants, or agreements under this Agreement; (b) the Contractor's violation or breach of any federal, state, local, or common law, regulation, law, rule, ordinance, or code, whether presently known or unknown; (c) breach of the Contractor's confidential obligations, including data security and privacy obligations; (d) any claim that the intellectual property provided by the Contractor within the scope of this Agreement infringes any patent, copyright, trademark, license or other intellectual property right; and (e) any direct or indirect, willful, negligent, tortious, intentional, or reckless action, error, or omission of the Contractor, its officers, directors, employees, agents, or volunteers in connection with the performance of this Agreement, whether such claims are based upon contract, warranty, tort, strict liability or otherwise. This requirement shall be included in all subcontractor or subconsultant agreements.

7.2. The City shall have the right to control the defense of all such claims, lawsuits, and other proceedings. In no event shall the Contractor settle any such claim, lawsuit or proceeding without City's prior written approval. In the event of any liability claim against the Contractor, its officers, directors, employees, agents, or volunteers, the Contractor shall not seek to join the City, its elected/appointed officials, employees, or agents in such action or hold such responsible in any way for legal protection of the Contractor.

7.3. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.

8. TERMINATION:

8.1. Termination for Cause. If the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the representations, warranties, covenants, terms or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement, provided the Contractor has failed to cure such violation within ten (10) days after receiving written notification from the City. The Contractor will receive compensation for actual services performed and actual expenses incurred for any approved invoices related to work completed prior to such termination pursuant to the terms of this Agreement. Notwithstanding the above, the Contractor shall not be relieved of liability to City for damages sustained by the City by virtue of any breach of this Agreement.

8.2. Termination for Convenience. The City shall have the right to terminate this Agreement at any time during the Term of this Agreement, for any reason, including without limitation, its own convenience, upon thirty (30) days prior written notice to the Contractor. If this Agreement is so terminated and the Contractor shall not have been in default, the Contractor will be compensated for all work accomplished, but not yet paid for, in accordance with the provisions of this Agreement. The Contractor will not receive any further payments under this Agreement.

8.3. Appropriations. The payment of invoices and any amounts due the Contractor under this Agreement is contingent upon the proper appropriation of funds by the Baltimore City Council in accordance with the Baltimore City Charter and Code. If funds are not appropriated for payment under this Agreement, the City may terminate this Agreement without the assessment of any charges, fees or financial penalties against the City by providing written notice of intent to terminate to the Contractor. The Contractor shall not begin any additional work or services related to this Agreement upon receipt of notification of intent to terminate by the City.

9. RETENTION OF RECORDS:

9.1. The Contractor shall retain and maintain all records and documents relating to this Agreement for a minimum of three (3) year**s** from the date of final payment under this Agreement or pursuant to any applicable statute of limitations, whichever is longer, except in cases where unresolved audit questions require retention for a longer period as determined by the City. The Contractor shall make such records and documents available for inspection and audit at any time to authorized representatives of the City, and if applicable to state and/or federal government authorized representatives. If the Contractor should cease to exist, custody of all records related to this Agreement will be transferred to the City.

10. AUDITS:

10.1. At any time during business hours and as often as the City may deem necessary, there shall be made available to the City for examination, the Contractor's records with respect to matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, records of personnel, conditions of

employment and other data relating to matters covered by this Agreement.

11. INFRINGEMENT PROTECTIONS:

11.1. The Contractor represents and warrants to the City that any concepts, idea, studies, models, presentations, graphics, images, maps, guides, photos, printed materials, reports, brochures, operating manuals, designs, data, electronic files, software, processes, plans, procedures and other materials prepared or used by the Contractor in performance of services under this Agreement (the "Property") do not infringe or otherwise violate any intellectual property right of others, including patent, copyright, trademark, or trade secret.

11.2. The Contractor agrees to defend at its expense any action brought against the City to the extent based on a claim that the Property violates an intellectual property right. The Contractor will pay any costs and damages finally awarded against the City in such action that are attributable to such claim, provided that the City promptly notifies the Contractor in writing of the claim (provided, however, that the failure to so notify shall not relieve the Contractor of its indemnification obligations), allows the Contractor to control the defense, provides the Contractor with the information and assistance necessary for the defense and/or settlement of the claim, and does not agree to any settlement without the Contractor's prior written consent. In no event shall the Contractor agree to any settlements related to this Agreement without first receiving the City's written consent.

11.3. Should the Property become, or in the Contractor's opinion be likely to become, the subject of any intellectual property claim, the City may at its sole option direct the Contractor to (i) procure for the City the right to continue using the Property, (ii) replace or modify the Property so as to make it non-violating, or, if (i) and (ii) are not commercially reasonable, (iii) terminate this Agreement and the City shall be entitled an equitable adjustment in accordance with the Agreement.

12. WORK FOR HIRE:

12.1. To the extent any graphics, images, maps, guides, photos, printed materials, brochures, operating manuals, designs, data, processes, plans, procedures and information prepared by the Contractor in performance of services under this Agreement include material subject to copyright protection, such materials have been specifically commissioned by the City and they shall be deemed "work for hire" as such term is defined under U.S. copyright law. The Contractor shall secure a "work for hire" agreement on behalf of the City for any subcontractor who provides materials for this Agreement.

12.2. To the extent any of the materials may not, by operation of law, be a work made for hire in accordance with the terms of this Agreement, the Contractor hereby assigns to the City all right, title, and interest in and to any intellectual property, and the City shall have the right to obtain and hold in its own name any copyrights, registrations, and other proprietary rights which may be available.

12.3. In the event this Section is not applicable, the Contractor agrees to grant the City a perpetual enterprise license to the materials produced, prepared, generated, or created in accordance with this Agreement.

13. CONFIDENTIALITY:

13.1. The Contractor agrees that any confidential information received from the City or its personnel in the furtherance of this Agreement shall remain strictly confidential and shall not be made available to any individual or organization without the prior written approval of City or pursuant to applicable federal, state, or local laws. The provisions of this Section shall remain binding upon the Contractor after the expiration or earlier termination of this Agreement.

13.2. The Contractor shall comply with all applicable federal and state confidentiality requirements regarding personal information, including Md. Code Ann. State Gov. §10-1301 et seq.

13.3. The Contractor shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal information disclosed to the Contractor by the City or other government agencies and which are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction.

13.4. If the Contractor becomes aware of any unauthorized access to, disclosure of, use of, or damage to the confidential information, the Contractor shall within forty-eight (48) hours notify the City of all facts known to it concerning such unauthorized access, disclosure, use, or damage. Additionally, the Contractor shall use diligent efforts to remedy such breach of security or unauthorized access that is caused by or attributed to the Contractor or its officers, directors, employees, subcontractors, agents, or volunteers in a timely manner, be responsible for any remedial measures required by statute, assist and cooperate with the City in any litigation against third parties that the City undertakes to protect the security and integrity of the confidential information, and deliver to the City, if requested, the root cause assessment and future incident mitigation plan with regard to any such breach of security or unauthorized access. The Contractor shall comply with all applicable U.S. and international laws governing or relating to privacy, data security and the handling of data security breaches.

13.5. The Contractor shall comply with all applicable federal and state confidentiality requirements regarding the collection, maintenance, use and disclosure of health information. This includes, where appropriate, (1) the Health Insurance Portability and Accountability (HIPAA) Act of 1996 (42 U.S.C. § 1320d et seq. and implementing regulations at 45 CFR parts 160 and 164) as amended, (2) the Confidentiality of Alcohol and Drug Abuse Patient Records (42 U.S.C. 290dd-2, as implemented at 42 C.F.R. part 2) as amended; and (3) the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General § 4-301 et seq.) as amended.

13.6. If applicable, the parties have executed the attached Business Associate Agreement intending the effective date thereof to be the Effective Date of this Agreement, attached hereto as **Exhibit C** 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.

13.7. As applies to Baltimore Infants and Toddlers Program records and School Health Suite records, the Contractor shall comply with all applicable federal and state confidentiality requirements regarding the collection, maintenance, use and disclosure of information from education records in accordance with the Family Educational Rights and Privacy Act (20 U.S.C. §1232g and 34 CFR Part 99) and policies on School Health Suite records of the Baltimore City School Board available through the Baltimore City Public Schools Family Handbook and Directory available through the website http://www.baltimoreCityschools.org/ or the Baltimore City Public Schools Office of Legal Counsel 410-984-2000.

14. PUBLICATION:

14.1. Prior to any advertising, publicity, or promotional materials initiated by the Contractor relating to the services under this Agreement, the Contractor shall obtain prior written approval regarding such promotional materials from the City before such materials can be released. Materials shall be presented to the City for prior written approval and shall be returned to the Contractor in a timely manner. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

15. MODIFICATIONS AND AMENDMENTS:

15.1. Any and all modifications, alterations, or amendments to the provisions of this Agreement must be by means of a written amendment that refers to and incorporates this Agreement, is duly executed by an authorized representative of each party. No modifications, alterations, or amendments of this Agreement are valid and enforceable unless the above requirements have been satisfied.

16. COMPLIANCE WITH LAWS:

16.1. The Contractor hereby represents, warrants, covenants, and agrees that:

16.1.1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

16.1.2. The Contractor's name in this Agreement is its full legal name;

16.1.3. It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;

16.1.4. The execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body (if applicable);

16.2. During the Term, it will comply with all federal, state and local laws, ordinances, rules

and regulations, including interim expenditure and annual report requirements, and applicable codes of ethics pertaining to or regulating the services to be performed pursuant to this Agreement, including those now in effect and hereafter adopted;

16.2.1. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of the Contractor's knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of the Contractor; and

16.2.2. It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.

16.3. The Contractor's violation of the above representations and warranties shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Contractor.

17. CRIMINAL BACKGROUND CHECKS:

17.1. The Contractor covenants and agrees that it and its subcontractors will conduct a criminal background check of all of its employees, agents, and volunteers prior to commencing work under this Agreement. All costs of the criminal background check shall be borne by Contractor or its subcontractors. As applicable pursuant to Md. Code Ann. Family Law Article, §5-550 et seq., the Contractor and its subcontractors shall obtain criminal history records checks of employees, agents, and volunteers who shall provide services to minors under this Agreement. In any case where a criminal record is reported, the Contractor and its subcontractors shall be responsible for taking immediate and appropriate action to protect the safety and welfare of any and all persons (especially minors, seniors, and people with disabilities or mental illness) having contact with that individual.

17.2. If any of the services of the Contractor under this Agreement occur on the grounds of a public or nonpublic school, the Contractor shall comply with the Md. Code Ann. Criminal Procedure Article, § 11-722 that states that a person who enters a contract with a county board of education or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registered child sex offender.

18. DISPUTES:

18.1. The City shall in all cases, determine the amount or quantity, quality, and acceptability of the work and expenses which are to be paid 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 Contractor thereunder. To prevent disputes and litigation where the Contractor is not satisfied with the decision of the City, the Contractor shall submit the claim to the head of the City agency (or his/her designee), who will decide any dispute between the Contractor and the City, and the head of the City agency's determination, decision and/or estimate shall be a condition precedent to the right of the Contractor to receive any monies under this Agreement, and is subject to review on the record by a court of competent jurisdiction.

19. CITY REQUIREMENTS:

19.1. Nondiscrimination.

19.1.1. The Contractor shall operate under this Agreement so that no person otherwise qualified is denied employment or other benefits on the grounds of race, color, religion, ancestry, national origin, ethnicity, sex, age, marital status, sexual orientation, gender identity or expression, disability, genetic information or other unlawful forms of discrimination except where a particular occupation or position reasonably requires consideration of these attributes as an essential qualification for the position. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

19.1.2. The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. The Contractor shall provide equal opportunity for subcontractors to participate in all of its public sector and private sector subcontracting opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace, such as those specified in Article 5, Subtitle 28 of the Baltimore City Code, as amended from time to time. The Contractor understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

19.1.3. Upon the City's request, and only after the filing of a complaint against the Contractor pursuant to Article 5, Subtitle 29, of the Baltimore City Code, as amended from time to time, the Contractor agrees to provide the City, within 60 calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Contractor has used in the past four (4) years on any of its contracts that were undertaken with the Baltimore City Market Area as defined in Article 5, §28-1(d) of the Baltimore City Code, as amended from time to time, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Commercial Non-Discrimination Policy, as contained in Article 5, Subtitle 29, of the Baltimore City Code as amended from time to time. The Contractor understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, and other sanctions.

19.2. MBE/WBE. The requirements of the Baltimore City Code, Article 5, Subtitle 28 (pertaining to Minority and Women's Business Enterprise), as amended, are hereby incorporated by reference into this Agreement. If applicable, failure of the Contractor to comply with this subtitle shall constitute a material breach of this Agreement and shall entitle the City to terminate this Agreement immediately upon delivery of written

notice of termination to the Contractor. The Contractor will make good faith efforts to utilize minority and women's business enterprises and maintain records reasonably necessary for monitoring compliance with this subtitle. *(See Art. 5, § 28-54, Baltimore City Code)*

19.3. Local Hiring. Article 5, Subtitle 27 of the Baltimore City Code, as amended (the "Local Hiring Law") and its rules and regulations apply to every contract for more than $300,000 made by the City, or on its behalf, with any person. The Local Hiring Law also applies to every agreement authorizing assistance valued at more than $5,000,000 to a City-subsidized project. Please visit www.oedworks.com for detailed on the requirements of the law. If applicable, the Local Hiring Law and the Local Hiring Rules and Regulations shall be attached hereto as **Exhibit D** and incorporated herein.

19.4. Conflict of Interest. No elected official of the City, nor other officer, employee or agent of the City who exercises any functions or responsibilities in connection with this Agreement, shall have any personal interest, direct or indirect, in this Agreement. By executing this Agreement, the Contractor 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 Contractor agrees to refrain from entering into all such practices or agreements during the Term of this Agreement (and any extensions thereto) that could give rise to a conflict of interest. Furthermore, the Contractor 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 a conflict of interest and will continue to do so during the Term of this Agreement and any extensions thereto.

19.5. Unfair Labor Practices. Notwithstanding any other provisions in instant Agreement, the Contractor shall comply with the terms of the Board of Estimates of Baltimore City Resolution dated June 29, 1994 (if applicable) which states as follows:

19.5.1. Contractors, contractors, subcontractors, their agents and employees may not engage in unfair labor practices as defined under the National Labor Relations Act and applicable federal regulations and state laws.

19.5.2. Contractors, contractors, subcontractors, and their agents may not threaten, harass, intimidate or in any way impede persons employed by them who on their own time exercise their rights to associate, speak, organize, or petition governmental officials with their grievance.

19.5.3. If the Board determines that a Contractor, contractor, subcontractor, or their agents have violated the policy set forth in this Resolution said Contractor, contractor, or subcontractor will be disqualified from bidding on City contracts, and if they are currently completing contracts, they will be found in default of their contracts.

19.6. No Dumping. The Contractor's violation of any provision of City Health Title 7 {"Waste Control"}, Subtitle 6 {"Prohibited Disposal"}, constitutes a breach of this Agreement; and the City may determine, in its discretion, whether the violation is a material breach warranting termination of this Agreement.

20. STATE REQUIREMENTS:

20.1. **Political Contribution Disclosure.** The Contractor 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 Contractor 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.

21. MISCELLANEOUS PROVISIONS:

21.1. No Waiver. A party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

21.2. Severability. Each provision of this Agreement shall be deemed to be a separate, severable, and independently enforceable provision. The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of this Agreement, which shall remain in full force and effect.

21.3. Governance.

21.3.1. This Agreement is made in the State of Maryland and shall be governed by the laws of the State of Maryland, including the applicable statute of limitations, without regard to the conflict of law rules.

21.3.2. The legal venue of this Agreement and any disputes arising from it shall be settled in Baltimore City, Maryland. The Contractor hereby irrevocably waives any objections and any right to immunity on the ground of venue or the convenience of the forum, or to the jurisdiction of such courts or from the execution of judgments resulting therefrom.

21.4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective personal and legal representatives, successors, guardians, heirs and permitted assigns of the parties hereto and all persons claiming by and through them.

21.5. Agency. Nothing herein contained shall be construed to constitute any party the agent, servant or employee of the other party, except as specifically provided in this Agreement. No party has the authority to act as an agent of the other party except as specifically provided in this Agreement.

21.6. Notice.

21.6.1. All notices, requests, claims, demands and other communications required or permitted under this Agreement (collectively, "Notices") shall be in writing and be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing to the following:

FOR THE CITY: _____

FOR THE CONTRACTOR: _____

_____	_____
_____	_____
_____	_____

21.6.2. All Notices shall be effective upon receipt by the party to which notice is given.

21.7. Payment to the City. Any payment(s) to the City or any of its Departments, Agencies, Boards or Commissions due under the terms of this Agreement or arising incident thereto shall be made to the Director of Finance and be mailed or delivered to: Director of Finance c/o Bureau of Revenue Collections Abel Wolman Municipal Building 200 N. Holliday Street Baltimore, MD 21202. Wiring instructions may be obtained from the Bureau of Treasury Management.

21.8. Non-Hiring of Officials and Employees. The Contractor agrees that no official or employee of the City, whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement, shall during the pendency and terms of this Agreement and while serving as an official or employee of the City become or be an employee of the Contractor or any entity that is a subcontractor of the Contractor on this Agreement.

21.9. 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.

21.10. 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.

21.11. Multiple Copies. This Agreement may be executed in any number of copies and each such copy shall be deemed an original.

21.12. Recitals. The recitals are hereby incorporated as part of this Agreement.

21.13. Survival. The representations, warranties, covenants promises and agreements contained in this Agreement shall survive the execution and consummation of this Agreement, and shall continue until the applicable statute of limitations shall have barred any claims thereon.

21.14. Interpretation. In the event of an ambiguity or question as to the meaning of any provision of this Agreement, or a conflict, or inconsistency between similar terms, conditions, or language between or within this Agreement and the provisions of any exhibit or schedule attached hereto or any document referred to herein, the interpretation placed thereon by the City shall be final and binding on the parties hereto, provided that any such interpretation shall not be unreasonable.

21.15. Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

21.16. Independent Contractor.

21.16.1. It is agreed by the parties that at all times and for all purposes hereunder that the Contractor is not an employee of the City. No statement contained in this Agreement shall be construed so as to find the Contractor or any of its employees, subcontractors, servants, or agents to be employees of the City, and they shall be entitled to none of the rights, privileges, or benefits of employees of the City.

21.16.2. The Contractor warrants that individual(s) performing work under this Agreement shall be employee(s) of the Contractor for all purposes, including but not limited to unemployment insurance, tax withholdings, workers' compensation coverage as required by applicable federal and state law.

21.17. Contingent Fee Prohibition. The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

21.18. Assignability/Subcontracting. The Contractor shall not assign, transfer, or subcontract any part of this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.

21.19. Further Assurances. Each party shall cooperate with the other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations or as may be reasonably necessary or helpful to give effect to this Agreement. Furthermore, the Contractor agrees to comply with the City's Electronic Communications Policy and will execute the Acknowledgment of Electronic Communications Policy (AM-118-1-1) prior to commencing any work pursuant to this Agreement, if applicable.

21.20. Force Majeure. Neither party will be liable for its non-performance or delayed performance if caused by a "Force Majeure" which means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties may modify this Agreement in accordance with the requirements herein.

21.21. Entire Agreement. 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. The parties do not intend to sign this Agreement under seal and hereby agree to impose the standard statute of limitations on this Agreement.

21.22. Pre-existing Regulations. Any procurement regulations approved by the Board of Estimates of Baltimore City that are in effect on the date of execution of this Agreement are applicable to this Agreement.

[Signature Page Follows]

The parties hereto have executed this Agreement on the day and year first above written.

MAYOR AND CITY COUNCIL OF BALTIMORE

By:_____
Name: Letitia Dzirasa, M.D.
Title: Commissioner of Health

(ENTITY NAME)

By:_____(Seal)
Name: _____
Title:_____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

_____
Assistant/Chief Solicitor

APPROVED BY THE BOARD OF ESTIMATES

_____
Clerk Date

EXHIBIT A

SCOPE OF SERVICES
AND
BUDGET

(See attached.)

EXHIBIT B

FUNDING SOURCE IDENTIFICATION

City: Mayor and City Council of Baltimore, through its Baltimore City Health Department
Contractor: _____

Source of Funding:	**Federal – ARPA**	**Federal - FEMA**	**Federal/State/ City**
Name of Awarding Agency:	U.S. Department of Treasury	U.S. Department of Homeland Security, Federal Emergency Management Agency	
Award Title:	American Rescue Plan Act ("ARPA") – Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds	Covid-19 Disaster (FEMA-4491-DRMD) – Public Assistance	
Assistance Listing Number:	21.027	97.036	
City Award Identification Number:			
Term of Contract:			
Contract Amount:	$	$	$
City Account Number:	Fund ID: _____ Grant/Special Fund ID: ___ Cost Center:____ Spend Category:_____	Fund ID: _____ Grant/Special Fund ID: ___ Cost Center:____ Spend Category:_____	

1. The Contractor acknowledges that the funding of the Contract/Agreement which this Exhibit is attached to is from federal, state, and/or City funds. The identification of the source of funding is indicated above. As applicable, the Contractor 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. With respect to any conflict between the funding source requirements, the terms of the Agreement/Contract, or the provisions of state law, and except as otherwise required under federal, state, or city law or regulation, the more stringent requirement shall control.
3. As applicable, the Contractor shall comply with the assurances and certifications, which are attached hereto and incorporated herein.
4. The Contractor 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, the State, or the Federal government.

GENERAL REQUIREMENTS OF FEDERAL FUNDING SOURCE:

1. **Remedies.**
   a. Standard. Contracts for more than the simplified acquisition threshold, currently set at $250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provides for such sanction and penalties

as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.

b. Compliance. The parties shall comply with the administrative, contractual, or legal remedies in the Agreement for when the Contractor violates or breaches the contract terms and shall comply with the applicable sanctions and penalties as appropriate in the Agreement.

2. **Termination for Cause and Convenience.**
   a. Standard. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
   b. Compliance. The parties shall comply with the termination for cause provision and the termination for convenience provision in the Agreement.

3. **Equal Employment Opportunity.**
   a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
   b. Compliance. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

      During the performance of this contract, the contractor agrees as follows:

      (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

      Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

      (2)The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

      (3)The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee

who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4)The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5)The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6)The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7)In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8)The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. **Davis-Bacon Act.** (If the Davis-Bacon Act is not applicable, the Contractor and its subcontractors shall comply with the City's Prevailing Wage statute at Article 5, Subtitle 25, of the City Code).
    a. Standard. All prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II, ¶ D. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
    b. Compliance. Insertion of the following suggested language:

        Compliance with the Davis-Bacon Act.

        a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

        b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

        c. Additionally, contractors are required to pay wages not less than once a week.

5. **Contract Work Hours and Safety Standards Act.**

a. Standard. Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

b. Compliance. Insertion of the following suggested language:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The federal awarding agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

6. **Rights to Inventions Made Under a Contract or Agreement.**

a. Standard. If the federal awarding agency award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non- Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency. See 2 C.F.R. Part 200, Appendix II, ¶ F.
b. Compliance. The parties shall comply with the above Standard. if applicable.

7. **Clean Air Act and the Federal Water Pollution Control Act.**
   a. Standard. If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 -1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
   b. Compliance. Insertion of the following suggested language:

Clean Air Act

1. The contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 -1387). Violations must be reported to the federal funding agency and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

2. The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the federal awarding agency.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the federal awarding agency.

8. **Debarment and Suspension.**

a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and federal awarding agency's regulations on debarment and suspension. See 2 C.F.R. Part 200, Appendix II, ¶ H.
b. Compliance. Insertion of the following suggested language:

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. **Byrd Anti-Lobbying Amendment.**

a. Standard. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. See 2 C.F.R. Part 200, Appendix II, ¶ I.
b. Compliance. Insertion of the following suggested language and certification:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

10. **Procurement of Recovered Materials.**
a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision

of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II, ¶ J; and 2 C.F.R. § 200.323.

b. Compliance. Insertion of the following suggested language:

(i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired —

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website.

(iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.**

a. Standard. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) procure or obtain; (2) extend or renew a contract to procure or obtain; or (3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology of any system. See 2 C.F.R. Part 200, Appendix II, ¶ K; and 2 C.F.R. § 200.216.

b. Compliance. The Contractor agrees to comply with Public Law 115-232, section 889, and 2 C.F.R. § 200.216.

12. **Domestic Preferences for Procurements.**

a. Standard. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete; glass, including optical fiber; and lumber. See 2 C.F.R. Part 200, Appendix II, ¶ L; and 2 C.F.R. § 200.322.

b. Compliance. The Contractor agrees to comply with 2 C.F.R. § 200.322.

13. **Copeland Anti-Kickback Act.**

a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on

Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

b. Compliance. Insertion of the following suggested language:

Compliance with the Copeland "Anti-Kickback" Act.

a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal awarding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

14. **Access to Records.**

a. Standard. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non–Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non–Federal entity's personnel for the purpose of interview and discussion related to such documents. See 2 C.F.R. § 200.337.

b. Compliance. Insertion of the following suggested language:

i. The Contractor agrees to provide the Federal awarding agency, Inspectors General, the Comptroller of the United States, or any of their authorized representatives access to any documents, papers, or other records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

ii. The Contractor agrees to permit any of the foregoing parties to reproduce by means whatsoever or to copy excerpts and transcriptions as reasonably needed.

iii. The Contractor agrees to provide the Federal awarding agency Administrator or his/her authorized representatives access to construction or work sites pertaining to the work being completed under the Agreement.

iv. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal awarding agency Administrator or the Comptroller General of the United States.

15. **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.** (If applicable, the Contractor shall comply with the requirements for Minority and Women's Business Enterprises and Small Local Business Enterprises at the Baltimore City Code, Article 5, Subtitle 28 for this Standard).

a. Standard. The Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. See 2 C.F.R. § 200.321.
b. Compliance. The Contractor shall comply with the above Standard. if applicable.

16. **Copyright and Data Rights.**
    a. Standard. The City is required by 2 C.F.R. § 200.315 to provide certain licenses with respect to copyright and data to the federal awarding agency.
    b. Compliance. Insertion of the following language:
    c. "License and Delivery of Works Subject to Copyright and Data Rights." The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, are written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor shall deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable to the City.

17. **Conflicts of Interest.**
    a. Standard. The Contractor must take all necessary affirmative steps to prevent conflicts of interest as required by 2 C.F.R. § 200.318.
    b. Compliance. The Contractor must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor.

(Specific Assurances and Certifications begin on next page.)

SPECIFIC ASSURANCES AND CERTIFICATIONS
A. ASSURANCES

In performing its responsibilities under this Contract, the Contractor hereby assures that it will fully comply with the following provisions as applicable:

1. Shall comply with the requirements of section 602 and 603 of the Social Security Act, regulations adopted by the U.S. Department of Treasury pursuant to sections 602(f) and 603(f) of the Act, Coronavirus State and Local Fiscal Recovery Funds Final Rule, codified at 31 CFR Part 35, U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Fund Award Terms and Conditions, and guidance issued by Treasury regarding the foregoing, all of which are expressly incorporated herein by reference.

2. Shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

3. Is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles. (Increasing Seat Belt Use in the United States – Executive Order 13043, 62 FR 19217 (Apr. 18, 1997)).

4. Is encouraged to adopt and enforce policies that ban text messaging while driving, and to establish workplace safety policies to decrease accidents caused by distracted drivers (Reducing Text Messaging While Driving – Executive Order 13513, 74 FR 51225 (Oct. 6, 2009)).

5. Shall comply with all applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including but not limited to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, which are incorporated herein by reference.

6. Shall comply with all other applicable Federal, State, and City laws, executive orders, regulations and policies governing this Agreement.

B. CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS.

As required by Executive Orders 12549 and 12689, the undersigned, on behalf of the Contractor, certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. CERTIFICATION REGARDING LOBBYING.

As required by Section 1352, Title 31 of the United States Code, and implemented for persons entering into a grant or cooperative agreement over $100,000, the undersigned, on behalf of the Contractor, certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the

undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statement, apply to this certification and disclosure, if any.

3. CERTIFICATION OF NON-DELINQUENCY OF FEDERAL DEBT.

The undersigned, on behalf of the Contractor, certifies to the best of his or her knowledge and belief that the Contractor is not delinquent in the repayment of any Federal debt as required by 28 U.S.C.S. § 3201.

The undersigned of the Contractor further provides assurance that it will include the language of the above certifications in all subawards/subcontracts and that all subrecipients shall certify and disclose accordingly.

As the duly authorized representative of the Contractor, I hereby certify that the Contractor will comply with the above certifications.

_____ _____

Signature of Authorized Representative Date

_____

Name and Title:

AWARD TERMS AND CONDITIONS

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS STATE FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.

a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with sections 602(c) and 603(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.

b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024.

3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury, as it relates to this award.

4. Maintenance of and Access to Records

a. Recipient shall maintain records and financial documents sufficient to evidence compliance with sections 602(c) and 603(c), Treasury's regulations implementing those sections, and guidance regarding the eligible uses of funds.

b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.

c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.

8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

a. Recipient agrees to comply with the requirements of sections 602 and 603 of the Act, regulations adopted by Treasury pursuant to sections 602(f) and 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award, include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with sections 602 and 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of sections 602(c) or 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in sections 602(e) and 603(e) of the Act.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.

a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.

b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

   i. A member of Congress or a representative of a committee of Congress;

   ii. An Inspector General;

   iii. The Government Accountability Office;

   iv. A Treasury employee responsible for contract or grant oversight or management;

   v. An authorized official of the Department of Justice or other law enforcement agency;

   vi. A court or grand jury; or

   vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

EXHIBIT C
Baltimore City Health Department
Business Associate Agreement

This Business Associate Agreement (the "Agreement") is made as of the _____ day of _____ 2023 by and 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 (the Department) and _____(Contractor).

WHEREAS, the City and the Contractor 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 Contractor may have access to health information protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

WHEREAS, HIPAA requires that a Contractor 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

1.1. 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.

1.2. Specific definitions:

1.2.1. "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).

1.2.2. "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 CONTRACTOR.

1.2.3. "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.

1.2.4. "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.

1.2.5. "HIPAA Regulations" mean the Privacy, Security, Breach Notification, and Enforcement Regulations at 45 C.F.R. Parts 160 and 164.

1.2.6. "MCMRA" means the Maryland Confidentiality of Medical Records Act, Md. Code Ann., Health-General, §4-301 et seq. as amended from time to time.

1.2.7. Protected Health Information or "PHI" shall generally have the same meaning as the term "protected health information" at 45 C.F.R. § 160.103.

1.2.8. "Secretary" means the Secretary of the Department of Health and Human Services or his designee.

1.2.9. "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 CONTRACTOR

2.1. Contractor may only use or disclose PHI as necessary to perform the services set forth in the Primary Contract or as required by law.

2.2. Contractor agrees to make uses and disclosures and requests for PHI consistent with the Department's policies and procedures regarding minimum necessary use of PHI.

2.3. Contractor 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.

2.4. Contractor 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). Contractor 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. Contractor 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.

2.5. Except as otherwise limited in this Agreement, Contractor may disclose PHI for the proper management and administration, or legal responsibilities of the Contractor, provided that disclosures are Required By Law, or Contractor 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 Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

2.6. The Contractor 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 Contractor for its performance pursuant to the Primary Contract.

2.7. The Contractor shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

2.8. The Contractor 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 Contractor involved has been paid out of pocket in full as provided in §13405(a)(2) of the HITECH Act.

2.9. If the Contractor uses or maintains an electronic health record with respect to the PHI of an individual, the Contractor shall provide a copy of such information in an electronic format as provided in §13405(e) of the HITECH Act.

3. DUTIES OF CONTRACTOR RELATIVE TO PHI

3.1. Contractor agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as required by law.

3.2. Contractor agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.

3.3. Contractor 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.

3.4. Contractor 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.

3.5. If the use or disclosure amounts to a breach of Unsecured PHI, the Contractor shall ensure its report:

3.5.1. 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 3.5.1., Contractor 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 Contractor has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;

3.5.2. includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;

3.5.3. is in substantially the same form as the ATTACHMENT hereto; and

3.5.4. 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:

3.5.4.1. a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

3.5.4.2. 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);

3.5.4.3. any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;

3.5.4.4. A brief description of what the Department and the Contractor are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and

3.5.4.5. 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.

3.6. To the extent permitted by the Primary Contract, Contractor may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Contractor agree to the same restrictions, conditions, and requirements that apply to the Contractor with respect to such information. Contractor must enter into Business Associate Agreements with subcontractors as required by HIPAA.

3.7. Contractor 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.

3.8. Contractor 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.

3.9. Contractor 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.

3.10. To the extent the Contractor 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).

3.11. Contractor 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.

3.12. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement.

4. TERM AND TERMINATION

4.1. 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 4. of this subsection.

4.2. Upon the Department’s knowledge of a material breach by Contractor, the Department will either:

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

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

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

4.3. Effect of Termination.

4.3.1. Upon termination of this Agreement for any reason, the Contractor 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 Contractor on behalf of the Department that the

Contractor still maintains in any form. Contractor 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 Contractor.

4.3.2. If the Contractor believes that returning or destroying the PHI is infeasible, the Contractor 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 Contractor 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 Contractor maintains the PHI.

4.3.3. Should Contractor 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.

4.4. The obligations of Contractor under this Section shall survive the termination of this Agreement.

4.5. If Contractor breaches any of the covenants and assurance in this Agreement, the Department will suffer irreparable harm. Consequently, Contractor agrees that the Department may enjoin and restrain Contractor 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 Contractor's breach. These remedies are in addition to and do not supersede any action for damages and/or any other remedy.

4.6. 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

5.1. 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

6.1. 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 CONTRACTOR:**
_____	_____
_____	_____
_____	_____
_____	_____

7. COMPLIANCE WITH STATE LAW

7.1. The Contractor 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 Contractor shall comply with the more restrictive protection requirement.

8. MISCELLANEOUS

8.1. 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.

8.2. 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.

8.3. Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the HIPAA Regulations.

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

8.5. 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.

8.6. 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.

8.7. 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.

8.8. 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.

8.9. 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.

8.10. 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.

8.11. 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.

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.

MAYOR AND CITY COUNCIL OF BALTIMORE

By:_____
Name: Letitia Dzirasa, M..D.
Title: Commissioner of Health

(ENTITY 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 3.5.3. 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 _____) (Contractor).

Contractor hereby notifies Department that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Contractor 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 Contractor 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 D

THE LOCAL HIRING LAW
AND THE LOCAL HIRING RULES AND REGULATIONS

Attach if applicable