

## **SERVICES AGREEMENT**

This Services Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 202\_\_ (the "Effective Date") by and between **Greater Baybrook Alliance, Inc.**, a Maryland not-for-profit corporation ("GBA") and the Service Provider, a \_\_\_\_\_ company ("Service Provider"). The Service Provider and Greater Baybrook Alliance may be referred to herein as a "Party" or collectively as the "Parties".

**WHEREAS**, Service Provider is experienced in providing architectural and engineering services to organizations in connection with a wide variety of projects.

**WHEREAS**, Greater Baybrook Alliance is a non profit community development organization serving the neighborhoods of Brooklyn, Brooklyn Park and Curtis Bay.

**WHEREAS**, Greater Baybrook Alliance desires to obtain services for its own benefit, and Service Provider is willing to provide such services as may be specifically agreed to by Greater Baybrook Alliance, in accordance with this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and benefits contained herein, the parties hereto agree as follows:

### **DEFINITIONS**

- A. Architectural Services - Any professional or creative work that is performed in connection with the design and supervision of construction or landscaping, and that requires architectural education, training and experience. Architectural services includes consultation, research, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, and electrical engineers and other consultants. Architectural services does not include construction inspection services or services provided in connection with an energy performance contract.
- B. Award - The decision by a procurement agency to execute a purchase agreement or contract after all necessary approvals have been obtained.
- C. Board- The governing body which oversees Greater Baybrook Alliance, Inc., a Maryland non-profit.
- D. Code- Annotated Code of Maryland.
- E. "Deliverables" shall mean all Intellectual Property that Service Provider or its subcontractors create for delivery to Greater Baybrook Alliance as a result of the Services, if applicable.
- F. Engineering Services - Any professional or creative work that is performed in connection with utilities, structures, buildings, machines, equipment,

and processes, and that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences. Engineering services includes consultation, investigation, evaluation, planning, design, and inspection of construction for the purpose of interpreting and assuring compliance with specifications and design within the scope of inspection services. Engineering services does not include the inspection of construction not requiring engineering training or services provided in connection with an energy performance contract.

- G. “Intellectual Property” shall mean all ideas, concepts, inventions, improvements, modifications, enhancements, works of authorship as defined under Title 17 of the United States Code, documentation, software source code, software program code in object or other format, including but not limited to all scripts, configuration files, application program interfaces, libraries, classes, plug ins, modules, documentation, help files, training files, instructions, flowcharts, all electronic files related or arising therefrom, in native electronic file format, creative works, know-how, and information whether or not patentable and whether or not such matter is ever in fact patented.
- H. “Personal Information” means any nonpublic information, in written or electronic form, capable of individually identifying a natural person that is received from, or on behalf of, Greater Baybrook Alliance by Service Provider in its performance of the Services.
- I. “Service Provider Technology” means , if applicable, software, programs, applications, services, reports, manuals and any and all materials or other Intellectual Property of Service Provider that either pre-existed the date of the applicable SOW or that were developed independently of the performance of the Services, or created by Service Provider or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.
- J. “Trade Secrets” shall include, but not be limited to, those items defined in Md. Ann. Code, Comm. Law § 11-1201(e) and all proprietary documentation, software, software source code, know-how and information relating to the past, present or future business of a third party or plans therefore that are disclosed to a Party, which Party maintains in confidence and does not disclose to third parties without restrictions on use or further disclosure.

1. **Representations**. Service Provider represents and warrants that it is a ***[insert type of entity (awardee)]***, organized under and pursuant to the laws of the State of Maryland. Service Provider further represents and warrants that it is engaged in the business of providing professional services and that it will provide personnel that

possess the appropriate skills and expertise to perform the Services under the applicable SOW (defined below). Service Provider further represents and warrants that, as of the Effective Date, it has the legal authority to enter into this Agreement. Service Provider further represents and warrants that as of the Effective Date of the applicable SOW, there shall be no legal bar on its ability to enter into such SOW with Greater Baybrook Alliance or to provide the Services set forth therein. Service Provider further represents and warrants that entering into the applicable SOW shall not result in a breach of any other contract between Service Provider and a third party that will have a material adverse effect on the provision of the Services therein.

## 2. **Covered Services.**

(a) During the term of this Agreement, Greater Baybrook Alliance may request services from Service Provider pursuant to and in accordance with separate statements of work, substantially in the form in **Exhibit A** annexed hereto and made a part hereof. Service Provider agrees to provide the services described in an executed Scope of Work (an "SOW"; such services, the "Services"). Each specific engagement for Services between Greater Baybrook Alliance and Service Provider shall be as described in the applicable SOW. Each SOW shall be evidenced by an SOW signed by both Parties setting out the Services to be provided by Service Provider and, if applicable, the Deliverables to be delivered by Service Provider to Greater Baybrook Alliance. Each SOW constitutes a separate agreement between the Parties thereto, and shall specifically reference the estimated hours and fees, project objectives, timetable, Deliverables (if applicable), Greater Baybrook Alliance engagement key contact and other terms and conditions that may be unique to the SOW. Each SOW shall specifically reference this Agreement and be subject to the terms and conditions of this Agreement, unless otherwise specified in the SOW in accordance with Section 16. Service Provider represents that the Services will be performed hereunder in a professional manner, consistent with generally accepted industry standards and practices.

(b) The Services may include advice and recommendations, but Service Provider will not make any decisions on behalf of Greater Baybrook Alliance in connection with the implementation of such advice and recommendations. In connection with the performance of the Services, Service Provider shall be entitled to rely on all decisions and approvals of Greater Baybrook Alliance.

3. **SOW Key Contact/Accountable Executive.** During the term of this Agreement, each Party shall identify an accountable executive for each SOW who will serve as the primary contact for the other Party and ensure the particular SOW is managed in accordance with the terms of this Agreement and the applicable SOW. Wherever a Party's approval is required under the applicable SOW, such Party will only give that approval through this individual or a duly authorized delegate that has been designated in writing. Each Party agrees that it will not rely on the apparent or ostensible authority of any other personnel in relation to such approval under the applicable SOW. Each Party will ensure that its respective Engagement Key Contact is the single point of contact for such Party for this Agreement (except as delegated to an

authorized delegate), has the authority and will be given the responsibility to carry out the respective Party's obligations under the applicable SOW.

#### **4. Compensation and Expenses.**

(a) In consideration of Service Provider's performance of its Services under an SOW, Greater Baybrook Alliance shall pay Service Provider in accordance with such SOW through the term or effective date of termination of such SOW. The fees for all Services provided under an SOW will be specified in such SOW for each SOW. Any modification to the fee schedule must be approved in writing by the Parties in advance of the performance of any Services which may be impacted by such a change.

(b) Service Provider will charge for all reasonable direct travel expenses including coach airfare, car rentals, and lodging. Meals cannot be reimbursed. Expenses will be documented and charged without markup and will not exceed 5% of the professional fees or such different amount set forth in the SOW.

(c) All fees and expenses will be billed monthly with payment due net sixty (60) days from receipt of invoice.

(d) All fees and expenses shall be billed in accordance with a payment schedule provided to Greater Baybrook Alliance within two weeks of the service contract award notification. The payment schedule will be included as an addendum to the contract and will directly align with the SOW outlined in the Service Provider's RFP response. No Services may be provided without an authorized Greater Baybrook Alliance. Any difference in price from the price set forth in such SOW must be authorized in writing by the Greater Baybrook Alliance Project Manager in advance of rendering Services.

(e) Invoices: Invoices shall be sent directly to the Greater Baybrook Alliance's Executive Director by email, copying the assigned Project Manager, with a copy sent by mail to 3430 2nd Street Baltimore, MD 21225. Discounts, if any, shall be taken from date of receipt of invoice or date the actual services were rendered, whichever is later.

(f) Payment Terms: Disputed Charges. Greater Baybrook Alliance may withhold payment of any portion of an invoice which it disputes in good faith; provided, however, that notwithstanding any other provision in this Agreement or any SOW, in no event will Greater Baybrook Alliance be entitled at any one time to withhold, deduct, set-off, or off-set a total amount greater than one month's fees without regard for the reason of such withholding, deduction, set-off or off-set.

i. No later than 30 days after the date on which such withheld fees or expenses are due, Greater Baybrook Alliance will provide the Service Provider with a statement specifying the portion of Fees or expenses being withheld and a reasonably detailed explanation of the reasons for withholding such Fees or expenses.

ii. Whenever Greater Baybrook Alliance withholds payment of a disputed portion of any invoice, the Parties will negotiate expeditiously and in good faith to resolve any such disputes. Greater Baybrook Alliance will pay all outstanding amounts as agreed in the dispute resolution process within 60 days following the conclusion of such process.

iii. Payment disputes will not affect Service Provider's requirement to provide the Services in accordance with this Agreement, subject to Service Provider's Termination rights as applicable in this Agreement.

iv. Neither the failure to dispute any fee or amounts prior to payment, the failure to withhold any amount nor the payment of amounts over the maximum under this Section will constitute, operate or be construed as a waiver of any right Greater Baybrook Alliance may otherwise have to dispute any fee or amount or recover any amount previously paid.

5. **Commitment of Service Provider.** Service Provider will assign a team of personnel to be dedicated to each project for the duration of the engagement to the extent set forth in the applicable SOW; provided that Service Provider may substitute personnel with comparable qualifications in the event of disability, illness, grave personal circumstances, or resignation, termination, or other severance of association. Each SOW shall specify a Service Provider Engagement Leader and a Greater Baybrook Alliance Project Manager. In addition, other personnel may be assigned on an as needed basis, depending on the nature and scope of the SOW and upon the written approval of both Parties. Should Greater Baybrook Alliance seek to remove/replace an individual member of the Service Provider team for performance-related reasons, as determined in its reasonable discretion, the Service Provider Engagement Leader will be notified by the Greater Baybrook Alliance Project Manager in writing, providing the basis of such reasons, and they will work collaboratively to implement a mutually agreeable transition of the resource in question.

6. **Independent Contractor.**

(a) The Service Provider and Greater Baybrook Alliance are independent contractors and neither Party is, nor shall be considered to be, nor shall purport to act as, the other's agent, partner, fiduciary, joint venturer or representative. It is also understood and agreed that in no event shall any employee, agent, or subcontractor of the Service Provider be considered an employee of Greater Baybrook Alliance within the meaning or the application of any Federal, state, or local laws or regulations, including without limitation, laws or regulations covering unemployment taxes, worker's compensation, occupational health and safety, labor or taxes of any kind. In addition, Greater Baybrook Alliance will not be required to make any contributions whatsoever for worker's compensation, unemployment insurance, income tax or other similar employment-related benefits payments in respect of any amounts paid to the Service Provider.

(b) Service Provider and its personnel shall have no right, or make any claim under pension disability, death benefit or other plans or benefit program sponsored or maintained by Greater Baybrook Alliance with respect to the time any personnel of Service Provider spends performing services for Greater Baybrook Alliance. The Service Provider shall be responsible for withholding of payment of all federal, state, and local income taxes and unemployment taxes, with respect to any amount paid hereunder. Service Provider will pay for any employee benefits, including worker's compensation, pension and welfare benefits, unemployment insurance, and other similar employment-related benefits payments, and make withholding and provision for income tax in respect to the personnel of Service Provider, in conformity with any applicable statutory requirements with respect to any amount to be paid to Service Provider hereunder.

(c) Service Provider will be responsible for obtaining all necessary licenses and permits required by laws or regulations applicable to the Service Provider in its performance of the Services.

7. **Employee Screenings.** At the expense of the Service Provider, and prior to the provision of any Services, all Service Provider personnel providing services at any Greater Baybrook Alliance site must undergo a pre-employment screening process including: (i) Criminal background check, (ii) Comprehensive drug screen, (iii) INS form I-9 verified to establish identity and work authorization, and (iv) Influenza vaccine.

8. **Non-Solicitation.** During the term of this Agreement, subject to the termination provision set forth below in this Section 8, and for a period of one (1) year following the termination of services hereunder, Greater Baybrook Alliance agrees not to directly or indirectly solicit or accept for employment, any employee of Service Provider who has been engaged in providing services pursuant to this Agreement or any SOW. Similarly, during the term of this Agreement and for a period of one (1) year following termination, the Service Provider agrees not to directly or indirectly solicit, or accept for employment any employee of Greater Baybrook Alliance who has been involved in connection with the Service Provider's Services. This provision shall not restrict the right of either Service Provider or Greater Baybrook Alliance to solicit or recruit generally in the media. This provision can be waived upon the mutual written agreement of the Parties.

9. **Confidentiality.** During the term of and in connection with this Agreement or any SOW, each party to an SOW (the "receiving Party") acknowledges that it may come into possession of, be exposed to or obtain access to proprietary and confidential information from the other party to an SOW (the "disclosing Party"). Confidential Information includes, but is not limited to, all business, financial, and strategic information, personnel information, quality improvement information, utilization management information, risk management information, operational policies or procedures, patient data or information, medical records, promotional and marketing programs, business plans, product specifications, manufacturing processes and operations, information about techniques, analytical methodology, safety, testing data and results, future market and product plans, billing and financial data, computer

passwords/access rights, trade secrets, intellectual property, ideas and other information of a technical, scientific, or economic nature, information pertaining to discussions or negotiations of the parties to an SOW, and any information that is clearly marked "Confidential" and received by a receiving Party from the disclosing Party (the "Confidential Information"). The receiving Party agrees to maintain the confidentiality of the Confidential Information and agrees that without the disclosing Party's consent, it will not disclose Confidential Information of the disclosing Party to anyone except in connection with the performance of the Services under this Agreement and only to those who have agreed to hold the Confidential Information of the disclosing Party in confidence subject to substantially similar obligations imposed upon the receiving Party under this Agreement. Each receiving Party shall use at least the same degree of care as it employs in maintaining in confidence its own Confidential Information of a similar nature, but in no event less than a reasonable degree of care. Each receiving Party may disclose the disclosing Party's Confidential Information to its subcontractors engaged in the performance of the Services (or, in the case of Greater Baybrook Alliance, to its contractors in connection with the SOW), provided that each such subcontractor (or in the case of Greater Baybrook Alliance, each such contractor) is subject to substantially similar obligations imposed upon the receiving Party under this Section. In addition, the terms of this Agreement supersede any previous non-disclosure agreements or any other preliminary representations or understandings that have been entered into by the Parties relating to the Services under this Agreement. Service Provider, however, may use and disclose any knowledge and ideas acquired in connection with the Services to the extent they are retained in the unaided memory of its personnel so long as Service Provider complies with its confidentiality obligations herein.

10. **Confidentiality; Internal Use:**

(a) **Exclusions From Confidentiality Obligations.** The obligation of non-disclosure and non-use of Confidential Information shall not apply to the following:

- i. Any information, which at the time of disclosure hereunder, is generally available to the public, except through breach of this Agreement;
- ii. Any information, which after disclosure hereunder, becomes generally available to the public, except through breach of this Agreement;
- iii. Any information that was in the possession of or already known to the receiving Party at the time of disclosure by the disclosing Party without any obligation of confidentiality with respect thereto;
- iv. Any information that becomes available to the receiving Party on a non-confidential basis from a third party that the receiving Party believes is not legally prohibited from disclosing such information to the receiving Party; or

v. Any information that is developed by the receiving Party independently of any disclosures made to the receiving Party.

(b) **Compelled Disclosure.** The receiving Party may disclose the disclosing Party's Confidential Information to the extent required by applicable law or regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining to this Agreement or an SOW, including without limitation, any applicable compulsory request, provided that with respect to compulsory requests in criminal, governmental or regulatory matters or in civil investigative proceedings, to the extent permitted by applicable law or regulation, the receiving Party provides prompt written notice of any such request to the disclosing Party. With respect to compulsory requests in civil actions, the receiving Party shall identify the third party requiring such disclosure so that the disclosing Party may seek a protective order or otherwise prevent or mitigate the effect of such compelled disclosure and the receiving Party shall reasonably cooperate with the disclosing Party in obtaining such protective order or other mitigation effort to limit such disclosure. If, in the absence of a protective order or receipt of a waiver by the disclosing Party, the receiving Party is nonetheless, upon the advice of counsel, legally required to disclose the disclosing Party's Confidential Information, the receiving Party may, without liability hereunder, disclose only that portion of the disclosing Party's Confidential Information which such counsel advises is legally required to be disclosed.

11. **Confidentiality: Obligations Relating to Breaches of Confidential Information.** Notwithstanding any other obligations under any applicable laws, including breach notification obligations under HIPAA, any applicable state laws, or this Agreement, and without limiting either Party's rights with respect of a breach of this Section, each party that is considered a receiving Party will:

(a) Promptly notify the disclosing Party of any unauthorized possession, loss, use or knowledge, or attempt thereof, of the disclosing Party's Confidential Information by any person or entity that may become known to the receiving Party;

(b) Promptly furnish to the disclosing Party information known to the receiving Party with respect to the unauthorized possession, loss, use or knowledge, or attempt thereof, and reasonably cooperate with the disclosing Party in the investigation of any such unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

(c) Promptly use commercially reasonable efforts to prevent a recurrence of any such unauthorized possession, loss, use or knowledge, or attempt thereof, of Confidential Information in the possession of the receiving Party.

(d) Notwithstanding anything herein to the contrary, to the extent the unauthorized act involves an actual or likely breach related to Personal Information of a Greater Baybrook Alliance employee or employees, in addition to its obligations under this Section in respect of such breach, Service Provider shall reasonably cooperate with



Greater Baybrook Alliance in respect of any legally required notifications to any regulatory or law enforcement agency, customer or employee of Greater Baybrook Alliance.

(e) Each Party will bear the cost it incurs as a result of compliance with this Section.

12. **Confidentiality: Use of Parties Names and Logos.** Each Party agrees that it will not use the names or logos or make any reference to the other party and/or any of its components in any press release, advertising, or publications of any kind, including, but not limited to, websites, brochures, letterhead, business cards, or office plaques, without the express written consent of the other Party.

13. **Term and Termination.** This Consulting Agreement shall commence on the Effective Date and shall continue until completion of the design to a level or percent proposed in the initial RFP or June 15th 2022 whichever comes first, and unless this Agreement is earlier terminated in accordance with the terms below. In the event of any termination of this Agreement, this Agreement shall continue to apply to all SOWs that are in existence at the effective date of such termination and under which the Services have not been completed. If any SOW is terminated pursuant to this Agreement, this Agreement shall continue to apply to all SOWs that have not been terminated.

(a) Either Party may terminate this Agreement, or either Party to any SOW may terminate such SOW, without cause or penalty, at any time by submitting a thirty (30) calendar day written termination notice to the other Party in accordance with the notice requirements contained in this Agreement. Greater Baybrook Alliance's payment obligation for the applicable Services under such termination notice shall be to pay for all contractually agreed upon services and expenses incurred as of the effective date of the termination of such SOW.

(b) Either Party to this Agreement may terminate this Agreement or either Party to an SOW may terminate such SOW, upon written notice to the other Party if the other Party materially breaches this Agreement or such SOW and fails to cure such material breach within thirty (30) days after written notice detailing the basis for such claim of material breach.

(c) **Effect of Termination or Expiration.** Upon notice of termination, during the pendency of termination, or upon anticipation of expiration, with respect to the applicable SOW, Service Provider and Greater Baybrook Alliance shall continue to perform its obligations thereunder consistent with the obligations of this Agreement and such SOW. Upon termination or expiration of this Agreement or the applicable SOW, neither party shall have any further obligation hereunder or thereunder except for obligations accruing prior to the date of termination or expiration, including payment of all undisputed outstanding amounts, and for the ongoing obligations set forth in the Survivability section of this Agreement. Greater Baybrook Alliance will retain ownership of all Greater Baybrook Alliance data including its Confidential Information and Service

Provider will destroy all Greater Baybrook Alliance data and Greater Baybrook Alliance's Confidential Information upon termination of the Agreement.

14. **Entire Agreement.** This Agreement together with the applicable SOW for the specific SOW contains the entire agreement of the parties hereto and thereto with respect to matters covered herein and therein and supersedes any and all oral or written representations, agreements and understandings with respect to such subject matter.

15. **Assignment.** This Agreement and each SOW shall be binding upon the respective Parties hereto and thereto and their respective permitted assigns and successors; provided, however, that, except as provided below, a Party's rights and obligations relating to this Agreement, any SOW, or the Services may not be assigned by such Party without the express written consent of the other party hereto or thereto. In the event of a merger or acquisition of a party, such consent shall not be unreasonably delayed or withheld.

16. **Construction.** The invalidity or unenforceability of any provision of this Agreement or any SOW shall not affect the validity or enforceability of any other provisions of this Agreement or such SOW, or of any other SOW. If any provision of this Agreement or any SOW is held invalid or unenforceable, such provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Service Provider and Greater Baybrook Alliance set forth in this Agreement or such SOW.

17. **Taxes.** Greater Baybrook Alliance represents that it is a not-for-profit entity that is exempt from taxation under section 501(c) (3) of the Internal Revenue Code. All invoices of Service Provider to Greater Baybrook Alliance shall exclude taxes which are excludable under Greater Baybrook Alliance's tax exempt status. Notwithstanding the foregoing, Greater Baybrook Alliance is responsible for any taxes imposed on the Services or on the engagement, including, sales, use and excise taxes imposed in connection with this Agreement or an SOW but will have no responsibility for Service Provider's franchise taxes, taxes based on Service Provider's net income or Service Provider's property. Service Provider shall be responsible for payment of all taxes applicable to its operations and hereby indemnifies and holds Greater Baybrook Alliance harmless against any claim or cost arising from the payment or nonpayment of such tax, provided that Greater Baybrook Alliance maintains its tax-exempt status. Greater Baybrook Alliance shall provide Service Provider with a copy of its tax-exempt certificate(s) upon Service Provider's reasonable request.

18. **Record Retention.** For the duration of this Agreement and at least as long as may otherwise be required by law, Service Provider will retain all records and supporting documentation sufficient to document the Services and the invoices for fees and expenses paid or payable by Greater Baybrook Alliance under this Agreement and any SOW.

19. **Access to Books and Records.** This Section is included herein because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to an SOW under this Agreement or an SOW under this Agreement. If that Section should not be found applicable to such SOW, then this Section shall be deemed not to be part of such SOW and shall be null and void. To the extent required by applicable law, Service Provider agrees that:

(a) Until the expiration of four (4) years after the furnishing of Services pursuant to an SOW for which the requirements of 42 C.F.R. § 420.302 apply, Service Provider shall make available upon written request of the Secretary of the Department of Health and Human Services (the "Secretary") or the United States Comptroller General or any of their duly authorized representatives, such SOW, and any books, documents and records of Service Provider that are necessary to verify the fees and expenses charged to Greater Baybrook Alliance for such Services under such SOW, and

(b) If Service Provider carries out any of its duties under such SOW through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period with an organization related to Service Provider, Service Provider shall require that such organization comply with the requirements of clause (i) with respect to such subcontract and such organization's books, documents, and records that are necessary to verify the fees and expenses charged to Greater Baybrook Alliance for its portion of the Services under such SOW.

20. **Compliance with Laws.** Each Party agrees that it will, and will require that its employees, agents, representatives and permitted subcontractors will comply in all material respects with, in the case of Service Provider, all laws applicable to its performance of Services and in the case of Greater Baybrook Alliance, in its/their performance of obligations under this Agreement. While performing Services at Greater Baybrook Alliance's premises, Service Provider will require that its employees, agents, representatives and permitted subcontractors will comply with all applicable Greater Baybrook Alliance policies or procedures provided that Service Provider has been made aware of such policies and procedures and they are provided in writing to the Service Provider upon request.

21. **Exclusion Warranty.** Service Provider represents and warrants that it and its personnel that perform Services are not as of the date of execution of the applicable) SOW are not currently, and have never been, excluded from participation in a Federal health care program (e.g. Medicare, Medicaid, CHAMPUS) and that it will notify Greater Baybrook Alliance immediately in the event Service Provider or any of the aforementioned are excluded at any time during the term of this Agreement such SOW. It is understood between the Parties that no patient referrals are expected, bargained for or required under this Agreement and no remuneration of any kind will be made by the Parties for patient referrals. Greater Baybrook Alliance may immediately terminate this Agreement or any SOW for convenience in accordance with Section 13(a) in the event that it reasonably determines that this Agreement or such SOW may violate applicable law.

22. **Fraud and Abuse.** It is understood and agreed that between the Parties to this Agreement and each SOW that no patient referrals are expected, bargained for or required under this Agreement or any SOW and no remuneration of any kind will be made for patient referrals.

23. **Compliance Reporting Requirement.** If during the course of an engagement, to the extent specified in the applicable SOW, Service Provider or its personnel becomes aware of any information which it reasonably believes could indicate that a relationship, bill, or a billing procedure could violate laws relating to billing (including fraud and abuse, or other inappropriate billing practice), Service Provider shall promptly, but in not less than thirty (30) days of learning of such information, notify the Greater Baybrook Alliance Board President and Chair of Governance by phone and in writing. Contact information will be provided at the time of contract signing. The purpose of this provision is to permit Greater Baybrook Alliance an opportunity to assess the information provided to it and to promptly take appropriate corrective action and to mitigate any potential damages.

24. **Non-Discrimination.** The Parties agree to make no distinction among personnel covered by this Agreement on the basis of race, color, creed, age, national origin, sex, marital status, handicap or any other class protected by law.

25. **Notices.**

Any notice or communication required or permitted to be made or given under this Agreement will be made or given in writing and shall be made or given by personal delivery, delivered by courier or a nationally recognized delivery service, or sent by United States certified or registered mail with all postage prepaid and return receipt requested, with a copy sent digitally to the listed email address. For snail mail, addressed to the other party as follows:

If to Greater Baybrook Alliance:

Greater Baybrook Alliance  
3430 2nd Street  
Baltimore, MD 21225  
Attn: Meredith Chaiken  
Email: meredith@greaterbaybrookalliance.org  
cc: Sarah@greaterbaybrookalliance.org

If to Service Provider:

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

Email: \_\_\_\_\_

Attn: \_\_\_\_\_

Or such other address or individual as may be designated by written notice by either party to the other party. Any notice or communication made or given as set forth in this Section will be conclusively deemed to have been given and effective when received or when receipt is first denied, which occurs earlier.

26. **Insurance.** Both parties agree to maintain at their own expense, a statutory workers compensation policy, commercial general liability insurance including blanket contractual liability coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate. Such insurance shall include the other party, its subsidiaries, and licensees as additional insureds with regard to acts or omissions of each respective party pursuant to their Services and/or obligations under this Agreement. Within thirty (30) days from the Effective Date of this Agreement, both Parties shall submit to the other party a certificate of insurance attested by a duly authorized representative of the insurance carrier or carriers, evidencing that the insurance required is in force and in effect and that such insurance may not be canceled or materially changed without a Party giving the other party at least thirty (30) days prior written notice.

27. **Indemnification.**

(a) Indemnification by Service Provider. Service Provider agrees to defend, indemnify and hold Greater Baybrook Alliance and its officers, directors, employees, agents, and Affiliates harmless from and against any and all claims, liabilities, obligations, judgments, causes of actions, costs and expenses (including reasonable attorneys' fees) relating to this Agreement, any SOW, or the Services ("Claims") asserted by third parties (in this case including the employees, Affiliates and subcontractors of Service Provider) solely:

i. for bodily injury, death or physical damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or willful misconduct of Service Provider, its employees, or its subcontractors (including its Affiliates retained as subcontractors) while engaged in the performance of Services;

ii. for claims of infringement of any patent known to Service Provider or copyright or any unauthorized use of any Trade Secret by Greater Baybrook Alliance's use of a Deliverable or Service Provider Technology.

(b) Remediation of Infringement Claims; Remedies. The Parties agree that the following provision shall only apply if there is any Deliverable or Service Provider Technology included in Service Provider's performance as contemplated by this Agreement. If Greater Baybrook Alliance's use of any such Deliverable or Service Provider Technology, or any portion thereof, is or is threatened to be enjoined as a result of an infringement Claim, Service Provider, at its option and expense, shall have the right to (1) procure for Greater Baybrook Alliance the continued use of such Deliverable or Service Provider Technology, (2) replace such Deliverable or Service

Provider Technology with a non-infringing Deliverable or Service Provider Technology, (3) modify such Deliverable or Service Provider Technology so it becomes non-infringing or, if after reasonable commercial effort to secure a solution described in (1) – (3), (4) refund the fees paid by Greater Baybrook Alliance to Service Provider for such infringing Deliverable or Service Provider Technology; provided that, if (2) or (3) is the option chosen by Service Provider, the replacement or modified Deliverable or Service Provider Technology contains in all material respects substantially the same functionality and usefulness as the infringing Deliverable/Service Provider Technology. Except with respect to the bad faith or willful misconduct of Service Provider, the right to indemnification under Section 27(a) and the provisions with respect to remediation of an infringement Claim provided above constitute the sole and exclusive remedy of the indemnified Parties, and the sole and exclusive obligation of Service Provider, relating to a claim that any of Service Provider's Deliverables, Service Provider Technology or Intellectual Property infringes any patent, copyright or other intellectual property right of a third party.

(c) Indemnification by Greater Baybrook Alliance. Greater Baybrook Alliance shall indemnify, defend and hold harmless Service Provider, its subsidiaries and subcontractors, and their respective personnel from all Claims of third parties (in this case including the employees, Affiliates, and contractors of Greater Baybrook Alliance) solely for bodily injury, death or physical damage to real or tangible personal property to the extent directly and proximately caused by the negligence or intentional misconduct of Greater Baybrook Alliance while Service Provider is engaged in the performance of the Services.

(d) Jointly caused damages. If in any Claim for which a Party owes indemnified Parties a duty to indemnify, defend and hold harmless there also is fault attributable to the indemnified Party or any entity or individual acting on behalf of an indemnified Party, the foregoing indemnification obligations shall be on a comparative fault basis and equitably apportioned among the indemnifying and indemnified Parties to reflect the relative fault of each in the cause of the Claim.

(e) Indemnification Conditions. As a condition to the foregoing indemnity obligations, the indemnified Party shall provide the indemnifying Party with prompt notice of any Claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying Party in connection with any such Claim; provided that the failure to give timely notice shall only reduce the Claim to the extent the failure to give timely notice prejudiced the Party that owed the duty of indemnification. The indemnifying Party shall be entitled to control the handling of any such Claim and to defend or settle any such Claim, in its sole discretion, with counsel of its own choosing; provided that the indemnifying Party may not admit wrongdoing on the part of the indemnified Party or obligate the indemnified Party to incur the obligation to pay any sum that is not indemnified hereunder by the indemnifying Party, without the written consent of the indemnified Party.

28. **Limitation of Liability; Limitation on Warranties.**

(a) EXCEPT AS PROVIDED IN SECTION 28(b), IN NO CASE SHALL EITHER PARTY TO AN SOW, ITS AFFILIATES, SUBSIDIARIES, SUBCONTRACTORS, AND THEIR RESPECTIVE PERSONNEL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, THOSE BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, OR STRICT TORT. SUCH EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE, DATA, GOODWILL, PROFITS, OPPORTUNITY COSTS, SAVINGS OR REVENUE, (WHETHER OR NOT DEEMED TO CONSTITUTE A DIRECT CLAIM), AND LOSS OF USE OF THE EQUIPMENT, SUBLICENSED SOFTWARE, LICENSED SOFTWARE, OR THE SYSTEM OF WHICH THEY ARE PART, OR ANY ASSOCIATED EQUIPMENT. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, SERVICE PROVIDER'S MAXIMUM LIABILITY FOR ANY CLAIM OR SERIES OF RELATED CLAIMS ARISING UNDER THIS AGREEMENT OR ANY SOW SHALL BE LIMITED TO FIVE (5) TIMES THE TOTAL CONTRACT VALUE; PROVIDED HOWEVER THIS LIMITATION ON LIABILITY WILL NOT APPLY TO CLAIMS AND LOSSES ARISING UNDER GREATER BAYBROOK ALLIANCE'S INDEMNIFICATION OBLIGATIONS UNDER THE INDEMNIFICATION SECTION OF THIS AGREEMENT.

(b) THE LIMITATIONS ON LIABILITY HEREIN WILL NOT APPLY TO CLAIMS (I) FOR WHICH A PARTY HAS AN EXPRESS INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT OR AN SOW, (II) RESULTING FROM THE RECKLESSNESS, BAD FAITH OR INTENTIONAL MISCONDUCT OF SUCH PARTY, ITS CONTRACTORS/SUBCONTRACTORS OR THEIR RESPECTIVE PERSONNEL; OR (III) TO THE EXTENT RESULTING FROM THE UNAUTHORIZED DISCLOSURE OR USE OF A PARTY'S CONFIDENTIAL INFORMATION BY THE OTHER PARTY OR ITS SUBCONTRACTORS IN BREACH OF A PARTY'S OBLIGATION WITH RESPECT TO CONFIDENTIAL INFORMATION IN SECTION 9. IN CIRCUMSTANCES WHERE ANY LIMITATION ON DAMAGES OR INDEMNIFICATION PROVISION HEREUNDER IS UNAVAILABLE, THE AGGREGATE LIABILITY OF EACH PARTY, ITS SUBSIDIARIES, AFFILIATES, AND SUBCONTRACTORS, AND THEIR RESPECTIVE PERSONNEL FOR ANY CLAIM SHALL NOT EXCEED AN AMOUNT THAT IS PROPORTIONAL TO THE RELATIVE FAULT THAT THEIR CONDUCT BEARS TO ALL OTHER CONDUCT GIVING RISE TO SUCH CLAIM.

29. **Governing Law/Choice of Forum/Waiver of Jury Trial.** In the event of a dispute arising under this Agreement or any SOW, the parties hereto and to any SOW expressly agree this Agreement and each SOW shall be deemed to have been made and shall be construed and all of the rights, powers and liabilities of the parties hereunder and thereunder shall be determined in accordance with the laws of the State of Maryland (without giving effect to the choice of law principles thereof) and the parties agree to the sole and exclusive jurisdiction of the courts of Maryland to enforce. THE PARTIES TO THIS AGREEMENT OR ANY SOW HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM RELATING TO THIS AGREEMENT, ANY SOW, OR THE SERVICES.

30. **Arbitration.** The Parties to this Agreement and the Parties to any SOW agree that in the event of any dispute or disagreement which arises out of or relates to this Agreement or any SOW (“Disputes”), a Party shall notify the other in writing. The Parties shall, using diligent efforts, attempt to resolve the Dispute in accordance with the following escalation process. Disputes shall first be referred to the Engagement Leaders for the applicable SOW. If they are unable to resolve the Dispute within fifteen (15) days of the notice of the Dispute, the Dispute will be escalated to an officer level within Greater Baybrook Alliance and a senior partner, principal, or managing director of Service Provider. If they are unable to resolve the Dispute to their mutual satisfaction within fifteen (15) additional days, then the Dispute shall be resolved by mediation and binding arbitration in the State of Maryland. For the avoidance of doubt, if Greater Baybrook Alliance disputes an invoice, the Parties shall follow the dispute resolution process in Section 4(f) of this Agreement, and any unresolved disputes shall be resolved by mediation and binding arbitration in the State of Maryland.

31. **Legal Costs.** The parties agree that in the event of judicial or other legal action to enforce or compel compliance with this Agreement, the party prevailing in such action shall be entitled to collect from the other party the cost of such action including reasonable attorney’s fees and reasonable costs resulting from the action.

32. **Force Majeure.** Neither the Service Provider nor Greater Baybrook Alliance shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order, or requirement of any governmental agency or authority.

33. **Other Terms. Limitation on Actions.** No action, regardless of form, arising under or relating to this Agreement, any SOW or the Services may be brought more than one year after the cause of action has accrued, except that an action for nonpayment may be brought not later than one year following the due date of the last payment owing to the entity bringing the action. **Amendments.** This Agreement and each SOW may not be changed other than by an agreement in writing signed by the parties thereto. **Conflicts.** In the event of any conflict between the terms of this Agreement and the terms of any SOW, the terms of this Agreement shall control. Notwithstanding the immediately preceding sentence, in the event that an SOW



expressly provides that certain provisions therein shall control over specified provisions of this Agreement, then, to the extent that such provisions of the SOW conflict with the specified provisions of this Agreement, such provisions of the SOW shall control, but only with respect to Services to be performed under such SOW. *Survivability.* If this Agreement or the applicable SOW expires or terminates for any reason, the parties hereto and the Parties thereto agree that all provisions which are intended by their nature to survive performance of the Services shall survive termination or expiration of this Agreement or such SOW. Each of the provisions of this Agreement or any SOW shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence) or otherwise, notwithstanding the failure of the essential purpose of any remedy. Any references herein to the term "including" shall be deemed to be followed by "without limitation." Any references herein to "days" shall mean calendar days unless otherwise specified. *Waiver.* The waiver or approval by any party of or under any term or condition of this Agreement or any SOW at any time shall not be deemed a waiver or approval unless provided in writing by an authorized representative of the waiving or approving party. No delay or omission by a party in enforcing its rights or remedies under this Agreement or any SOW shall impair such right or remedy or be deemed to be a waiver thereof. No waiver of any right or remedy under this Agreement or any SOW with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion. *Non-exclusivity.* Service Provider may (a) provide any services to any person or entity, and (b) develop for itself, or for others, any materials or processes, including those that may be similar to those produced as a result of the Services, provided that, Service Provider complies with its obligations of confidentiality set forth hereunder.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**SERVICE PROVIDER**

**Greater Baybrook Alliance, INC**

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

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

## **EXHIBIT A**

**Exhibit A will be the Consultant Proposed/Agreed Upon Scope of Work**

**EXHIBIT B**

**The GBA Request for Proposals**