

**STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF _____
EXPERT WITNESS AGREEMENT**

THIS AGREEMENT is made this ____ day of _____, by and between _____ (the "Expert") and the Board of _____ (the " Board"), a unit of the Maryland Department of Health and Mental Hygiene (the "Department")

In consideration of the mutual promises and covenants herein contained, the parties agree to the following terms and conditions:

**ARTICLE I
CONFIDENTIAL RELATIONS**

The services to be performed under this Agreement shall be under the direction of the Board. Except as may be otherwise authorized from time to time by the Board, Expert's communications regarding the services to be performed under this Agreement, with the Board, members of the Board staff, State employees, other consultants, and other expert witnesses as may be designated by the Board's Counselor the Administrative Prosecutor shall be confidential and privileged. Expert shall be required to closely coordinate its efforts with the Board. certain State employees, and other consultants and expert witnesses as may be specifically designated by the Board.

The Expert agrees to keep information obtained in the course of this contract confidential in compliance any applicable State and federal confidentially requirements regarding collection, maintenance and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA, 42 U.S.C. § I 320d *et seq.* and implementing regulations at 45 C.F.R. Parts 160 and 164) and the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 *et seq.*). This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract.

This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Agency for information about its privacy practices in general or with respect to a particular individual, modifying such information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

ARTICLE II

SERVICES TO BE PERFORMED BY EXPERT

Working with and at the direction of the Board. Expert shall perform expert services including, but not limited to:

1. Review all of the reports and records provided in the matter of _____;
2. Provide a report in the form provided by the Board which fully explains the Expert's expert opinion, and basis for that opinion, on the following issues:
 - i. Whether there has been a violation of the standard of care pursuant to Md. Health Occ. Code Ann., §§ 19-311 (4), (5), (6), (7) and (21); and
 - ii. Whether there has been a violation of the Board's Code of Ethics, Code of Maryland Regulations 10.42.03.01 *et seq*; and
 - iii. What constitutes a "client" as defined by the Board's statutes and regulations.
3. Provide the Board with his/her current curriculum vitae and evidence of the Expert's expertise in the field of _____;
4. Provide testimony before the Board or a court of competent jurisdiction on the Expert's report; and
5. Maintain a good faith effort to assist the Board, Department, and Office of the Attorney General in fulfillment of the Contract. The Board unilaterally may make changes in the work within the scope of the contract.

ARTICLE III

DATA FURNISHED BY THE BOARD

Expert will advise the Board of information needed or desirable to perform its work. Expert will be furnished by the Board with such information as may reasonably be required for performance of its services and as is reasonably available to the Board or reasonably obtainable by the Board.

ARTICLE IV

TIME OF PERFORMANCE

This Agreement shall be deemed to be in effect for a period beginning _____ and, unless terminated under the provisions of this Agreement, shall remain in effect until _____ or such later date(s) as may be designated by the Procurement Officer or her authorized representative as necessary to complete Expert's services hereunder.

ARTICLE V
COMPENSATION

The basis of payment for all services performed by Expert shall be as follows:

1. Reimbursement for Expert's time engaged directly in the performance of the services shall be at the hourly rates of _____ (\$____) dollars per hour.

Said rates are inclusive of actual salaries, payroll burdens, overhead, profit and all other factors, except those reimbursable actual expenses allowed in accordance with paragraph 2 below, and shall be prorated for fractional hours of productive time expended.

2. Reimbursement for actual expenses incurred in the following performance of the services pursuant to the following schedule:
 - a) Travel costs shall be in accordance with applicable regulations of the State of Maryland.
 - b) Out-of-pocket costs attributable directly to the performance of the services shall be reimbursed at actual cost.
3. Payment to Expert shall be made monthly on the basis of certified invoices accompanied by supporting documents and affidavits as may be required. Invoices shall include the name and address of the Expert, the federal tax identification number of the payee, and an affirmative statement that the invoice is true and correct and that the amount has not yet been paid. Payment shall be made to the Expert no later than 30 days after the State's receipt of a proper invoice. Charges for late payment of invoices will be made only in accord with the provisions of Title IS, Subtitle I of the State Finance & Procurement Article, Annotated Code of Maryland.
4. It is estimated that the total cost to the Board for the performance of services under this Agreement will not exceed the amount set forth in Article V, Paragraph 5, below, as the total amount payable to the Expert, and the Expert will use its best effort to perform within this amount. If at any time Expert has reason to believe that this amount will not be sufficient to complete its performance of services or the total of its invoices will exceed this amount. Expert will notify the Board in writing to that effect, giving the revised estimate of the total amount required for the performance of required services under this Agreement.
6. The total amount payable to Expert for services to be performed under this Agreement shall not exceed _____ (\$____) dollars without the express written approval of the Board.

ARTICLE VI

KEY PERSONNEL

_____ is considered the key person performing work under this Agreement and will not be replaced without prior approval from the Board. Should she/he become unavailable during the term of the Agreement, the Board, at its option, may approve a replacement or terminate the Agreement.

ARTICLE VII

RECORDS

1. All records, including but not limited to reports, studies, estimates, charts, correspondence, and recommendations shall be considered the sole property of the Board and shall not be used by the Expert for any purpose other than use in fulfilling the terms of this Agreement unless expressly authorized to do so by the Board.
2. The Expert shall retain and maintain all records and documents in any way relating to this Agreement for three years after final payment by the State under this Agreement, or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit for authorized representatives of the State.

ARTICLE VIII

MODIFICATION OF AGREEMENT

Except as otherwise may be provided elsewhere in this Agreement, this Agreement may be amended only by written instrument signed by both the Board and Expert,

ARTICLE IX

APPLICABLE LAW

This Agreement shall be construed in accordance with the law of the State of Maryland, without regard to its conflict of law rules.

ARTICLE X

CONFLICT OF INTEREST

Expert agrees that during the life of this Agreement it shall not provide services to any other person, firm, partnership, corporation, or other entity in connection with the matters that are the subject of this Agreement without prior written approval of the Board.

ARTICLE XI

WAIVER

The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

ARTICLE XII

NON-ASSIGNABILITY

Expert shall not assign or subcontract any rights or duties under this Agreement without prior written consent of the Board.

ARTICLE XIII

PROCUREMENT OFFICER

The Procurement Officer for this Agreement shall be Sharon R. Gambrill, Director of Procurement, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 416B, Baltimore, Maryland, 21201.

ARTICLE XIV

DISPUTES

Disputes arising under this Agreement shall be governed by Title 15, Subtitle 2, State Finance & Procurement Article, Annotated Code of Maryland, and by COMAR 21.10. Pending resolution of a dispute, the Expert shall continue to perform this Agreement as directed by the Procurement Officer.

ARTICLE XV

TERMINATION

The Board may terminate this Agreement at any time in accordance with the termination provisions contained in COMAR 21.07.01.11A or 21.07.01.2A, as appropriate. The Expert shall not be reimbursed for any anticipatory profits that might have been earned subsequent to termination.

ARTICLE XVI

NON-HIRING OF EMPLOYEES

No official or employee of the State of Maryland, whose duties include matters relating to or affecting the subject matter of this Agreement shall during the term of this Agreement become or be an employee of the Expert or any entity that is a subcontractor on this Agreement.

ARTICLE XVII

NON-DISCRIMINATION IN EMPLOYMENT

The Expert shall comply with the non-discrimination provisions of federal and Maryland law.

ARTICLE XVIII

CONTINGENT FEE PROHIBITION

The Expert warrants that it has not paid any person or entity, other than a bona fide employee, agent or salesperson working for the Expert to solicit or secure this Agreement, and that it has not paid or agree to pay any person or other entity, other than a bona fide employee, agent or salesperson any fee or other consideration contingent on the making of this Agreement.

ARTICLE XIX

TERMINATION FOR NON-APPROPRIATION

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this Agreement shall be terminated automatically as of the beginning of the fiscal year for which funds are not available; provided, however, that this will not affect either the State's rights or the Expert's rights under any Termination clause in this Agreement. The Expert may not recover anticipatory profits or costs that might have been earned subsequent to termination. The State shall notify the Expert as soon as it has knowledge that funds may not be available for the continuation of this Agreement beyond the current fiscal year.

ARTICLE XX

DELAYS AND EXTENSIONS OF TIME

The Expert agrees to perform the work under this Agreement continuously and diligently. No charges or claims for damages shall be made by the Expert for any delays or hindrances from any cause whatsoever during the progress of any of the work specified in this Agreement.

ARTICLE XXI

SUSPENSION OF WORK

The Board unilaterally may order the Expert in writing to suspend, delay, or interrupt all of any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

ARTICLE XXII

PRE-EXISTING REGULATIONS

The regulations set forth in Title 21 of the Code of Maryland Regulations in effect on the date of execution of this Agreement are applicable to this Agreement.

ARTICLE XXIII

FINANCIAL DISCLOSURE

The Expert shall comply with the provisions of § 13-221 of the State Finance & Procurement Article, Annotated Code of Maryland, which require that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more from the State, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information, to include disclosure of beneficial ownership of the business.

ARTICLE XXIV

POLITICAL CONTRIBUTION DISCLOSURE

The Expert shall comply with the provisions of §§ 14-101 through 14-104 of the Election Law Article, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

ARTICLE XXV

COST AND PRICE CERTIFICATION

By submitting cost or price information the Expert certifies to the best of its knowledge that the information submitted is accurate, complete and current as of the date it is submitted. The price under this Agreement and any change order or modification thereto, shall be adjusted to exclude any significant price increases occurring because the Expert furnished cost or price information which was inaccurate, incomplete, or not current as of the date it is submitted.

ARTICLE XXVI

COMPLIANCE WITH LAWS

The Expert hereby represents and warrants that:

1. The Expert shall comply with all State of Maryland, federal, and local laws, regulations and ordinances applicable to its performance under this Agreement.
2. The Expert is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, and that it shall not become so in arrears during the term of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

WITNESS:

 Name of Expert Witness Typed
 Date: _____
 FEIN/SSN: _____

WITNESS:

 Rep from Board
 Title: _____
 Date: _____

Approved as to Form and Legal Sufficiency:

 Assistant Attorney General

Date: _____