

## CONSULTING SERVICES AGREEMENT

This consulting services agreement is dated as of April 22, 2020, and is between the FEDERAL RESERVE BANK OF NEW YORK, a corporation organized under the laws of the United States ("Bank"), and PFM FINANCIAL ADVISORS LLC, a limited liability company organized under the laws of Delaware ("Consultant").

The Bank selected the Consultant through a competitive process to advise the Bank with respect to the Municipal Liquidity Facility (the "Facility") based on the Consultant's experience and the skills of its employees, as well as the Consultant's assurances that it can effectively advise the Bank within the short timeframe outlined in the Bank's request for proposal ("RFP"). The Bank therefore desires to engage the Consultant, and the Consultant is willing to be engaged by the Bank, to perform those services on the terms and subject to the conditions of this agreement.

1. **Services.** The Consultant shall perform the following services (each, a "Service" and, collectively, "Services"):
  - a. Advise the Bank with respect to program design for administration of the Facility, working, as necessary, in conjunction with the Bank's legal advisers;
  - b. Assist the Bank in developing procedures for operation of the Facility; and
  - c. Working with the Bank and other service providers engaged by the Bank in connection with the Facility to help ensure operational readiness of the Facility, which is targeted for mid-May 2020.

The Consultant shall perform the Services through the later of the operational readiness of the Facility, which is targeted for mid-May 2020, or September 30, 2020. The Bank retains all final decision-making authority with respect to the design, setup, and operations of the Facility.

2. **Deliverables.** The Consultant shall be responsible for providing to the Bank the deliverables delineated in Exhibit A to this agreement (each, a "Deliverable" and, collectively, "Deliverables") within the general timeframes identified in Exhibit A, subject to modifications required by the Bank and with the goal of making the Facility operationally ready by mid-May 2020. As part of the Deliverables, the Consultant shall be responsible for establishing verification processes and procedures, including identification of relevant information sources, based on the Bank's eligibility criteria for the Facility and within the general timeframe identified in Exhibit A.
3. **Engagement Logistics & Security Practices.** The Consultant shall perform the Services remotely and shall use its own computing and storage devices to do so. The Consultant shall cooperate with the Bank in its information security review of the Consultant.
4. **Secure Communication.** If required by the Bank, the parties shall send written communications about the Services and transmit files, including any Deliverables, using Intralinks, Zixmail, or another Bank-approved secure communication technology. The parties may communicate about the administration of this agreement by regular electronic mail as long as those communications do not include details about the Facility or the Services.

5. Key Personnel of Consultant. The Services shall be performed by the following team ("Key Personnel"):

Resource Name	Title	Contact Information
	(e.g. Project Manager)	
	Co-Engagement Manager	
	Co-Engagement Manager	
	Core Implementation Team Member	
	Core Implementation Team Member	
	Core Implementation Team Member	
	Supplemental Team Leader	
	Supplemental Team Leader	

Except when Key Personnel become unavailable for reasons beyond the Consultant's reasonable control, including, for example, illness, death, or termination of employment without prior notice, the Consultant shall not replace Key Personnel unless it first gives prior written notice to the Bank and identifies substitute personnel with appropriate skills and experience to perform the responsibilities of the Key Personnel they are replacing. The Bank shall have the opportunity, at its request, to review the resume of any individual to be assigned as a replacement for Key Personnel and to object to the assignment of any individual the Bank finds unacceptable for the tasks to be performed. The Consultant acknowledges and agrees that the loss of Key Personnel does not excuse the Consultant's performance of the Services and completion of the Deliverables as described in this agreement.

6. Workforce Inclusion. The Consultant shall use good faith-efforts to ensure, to the maximum extent possible, the fair inclusion of women and minorities in the Consultant's workforce. The Consultant will maintain sufficient documentation that permits the Bank to determine whether or not the Consultant has made a good-faith effort in this regard. The Consultant understands that the Bank's Diversity & Inclusion Office may make a determination about whether the Consultant has made the required good-faith effort and may recommend termination of this agreement if the Bank's Diversity & Inclusion Office determines that the required good-faith effort has not been made. The Bank shall notify the Consultant of such recommendation, and the Consultant shall devise a plan to make such good faith-efforts that is acceptable to the Bank. If the Consultant has not proceeded diligently to execute the plan within six months thereafter or such other time and manner accepted by the Bank, the Bank may proceed to terminate this agreement based on that recommendation. Any termination of this agreement by the Bank pursuant to this section will be without cost or penalty to the Bank (except payment for services rendered prior to the effective date of the termination) notwithstanding any other provision of this agreement to the contrary. Furthermore, any termination pursuant to this section will not be deemed a termination for breach of this agreement by the Consultant.

The Consultant's contact for notices from the Bank's Diversity & Inclusion Office is  
Chief Talent Officer,

## 7. Conflicts of Interest

- a. General Policies. The Consultant shall abide by its internal code of conduct, conflict-of-interest, and ethical wall policies and procedures. The Consultant shall promptly after signing this agreement provide the Bank with copies of the Consultant's code of conduct, conflict-of-interest policy, and ethical wall policy. The Consultant represents that such policies and procedures are designed to, among other things:
  1. identify any material conflicts of interest between the Consultant and the Bank or the Facility;
  2. require reporting of any conflicts of interest between the Consultant and the Bank or the Facility that develop during the term of this agreement; and
  3. prevent the use by the Consultant of Confidential Information (defined in section 14) to enter into a trade or transaction.

The Consultant shall log potential conflicts of interest and disclose them to the Bank as they arise and, at the request of the Bank, the Consultant will recuse itself from decisions relating to any portion of the performance of the Services if the Bank determines that a conflict of interest exists that cannot be adequately addressed. The Consultant shall provide the records of such logs (or copies of such records) to the Bank prior to destruction of the records under the Consultant's normal record retention policy.

- b. Specific Prohibitions. The Consultant shall not use Confidential Information in connection with any trade or other transaction for the Consultant's own account or for the account of any other client of the Consultant.
  - c. Ethical Wall. The Consultant shall institute an information barrier that is designed, at a minimum, to ensure that (a) personnel assigned to perform the Services are adequately segregated from personnel that perform work for entities eligible to participate in the Facility ("Eligible Issuers"), and (b) any Confidential Information relating to the Services or the Facility is not shared with personnel involved in the Consultant's other business activities, including work for Eligible Issuers ("Ethical Wall"). Each person assigned to perform the Services shall be required to acknowledge, in writing, the measures taken to prevent conflicts of interest and the related information barrier protocols. The Consultant's compliance department and chief compliance officer shall administer and oversee the effective application of these measures and protocols, including by conducting periodic reviews of e-mail surveillance of all persons with access to Confidential Information and periodic reviews of access permissions for network systems and folders containing Confidential Information. The Consultant shall provide the records of such reviews (or copies of such records) to the Bank prior to destruction of the records under the Consultant's normal record retention policy. The Bank may conduct reviews or audits of the Consultant's Ethical Wall policies and procedures for the purposes of evaluating the Consultant's compliance with its obligations under this agreement.
8. Fees & Expenses. The engagement, including all Services and Deliverables, is to be performed by the Consultant for a fixed fee of \$700,000. No overtime charges or other amounts are to be



charged to the Bank regardless of the actual time Consultant spent performing Services. The Bank shall not pay the Consultant for any out-of-pocket expenses the Consultant might incur.

9. **Payment.** Any amounts due from the Bank to the Consultant under this agreement will be payable upon the Consultant's completion of the setup and activation of the application portal. Payments will be made in United States dollars within 30 days of the Bank's receipt of a proper invoice from the Consultant, except that the Bank has no obligation to make payments to the Consultant under this agreement until the Bank receives a properly completed W-9, Supplier Profile Form, and Payment Authorization. If the Bank disputes all or a portion of any invoice, the Bank shall notify the Consultant in writing within 60 days of the Bank's receipt of invoice of the specific reason for, and amount of, the dispute and pay the undisputed amount. The Consultant and the Bank shall work together in good faith to resolve the dispute. Each party shall act promptly to implement the resolution of any payment dispute. Such resolution may include having the Consultant issue a corrected invoice or credit memo or similar acknowledgment for amounts not to be paid.
10. **Ownership of Work Product.**
  - a. **Bank Owns All Work Product.** "Work Product" means all Deliverables and all materials (including, for example, drafts, working papers, planning documents, and design documents) created by the Consultant exclusively in connection with the performance of Services, except that Work Product does not include Consultant Materials. "Consultant Materials" means preexisting material (including, without limitation, functioning or dynamic financial models), general information, methodologies, processes, and know-how of the Consultant created, developed, licensed, or otherwise acquired by the Consultant prior to the date of this agreement or during the term of this agreement but outside the scope of the Services. Work Product is the exclusive property of the Bank from the time it is created. All Work Product is work made for hire to the full extent such designation is permitted under applicable law. Consultant Materials used in or with the Work Product remain the property of the Consultant subject to a nonexclusive license to the Bank to the extent such third-party licenses are permissible. The Consultant grants the Bank a nonexclusive, fully paid, perpetual, worldwide license to use, publish, distribute, modify, and create derivative works from any Consultant Material used in or with any Deliverable or other Work Product.
  - b. **Assignment by the Consultant.** The Consultant hereby assigns to the Bank the entire right, title, and interest for the entire world in and to all Work Product (including all patents, trademarks, copyrights, and other intellectual property rights in work completed and work in process) created by any individual assigned by the Consultant to perform Services while the individual is assigned to perform Services, including, without limitation, writings, formulas, designs, reports, software, processes, architecture, models, drawings, photographs, and inventions or improvements made, conceived, or reduced to practice or authorized by the Consultant or any individuals performing Services for the Consultant, whether created or conceived solely or jointly with others, in relation to the Services or using information, materials, or facilities of the Bank.
  - c. **Infringement Indemnity.** The Consultant shall defend, indemnify, and hold the Bank and its officers, employees, directors, and agents harmless from all claims, liability, cost, loss, damage, penalties, and expense (including fees of attorneys and other professional advisors) arising out of or resulting from any suit, claim, proceeding, or investigation asserted or undertaken against the Bank or any of its officers, employees, directors, or

agents, alleging that any of the Work Product or Services infringe a patent, trademark, copyright, or other proprietary right or constitute misuse of a trade secret or confidential information belonging to a third party. The Consultant shall defend at the Consultant's own expense any such suit, claim, proceeding, or investigation. The Bank shall be entitled, at the Bank's option, to control or participate in the investigation and defense of any such suit, claim, or proceeding. If the Bank's use of any Work Product or Services is enjoined, the Consultant shall, at its own expense, exercise due diligence to accomplish the following remedies:

- i. Obtain for the Bank the right to continue to use such Work Product or Service; or
- ii. Modify the Work Product or the Services so that they are not infringing and yet perform in accordance with the Bank's specifications or requirements; or
- iii. Substitute other noninfringing material or services that are acceptable to the Bank.

11. Compliance with Law. The Consultant shall at all times comply in all material respects with all federal, state, and local laws and regulations applicable to Consultant pursuant to this agreement and the performance of Services. The Consultant shall maintain, and shall cause its personnel to maintain, any authorization, license, or permit required by law for the Consultant to operate its business and for the Consultant and its personnel to perform the Services. The Consultant shall notify the Bank promptly if any required authorization, license, or permit is terminated for any reason.

12. Warranties.

- a. Authority. The Consultant represents and warrants to the Bank as of the date of this agreement that the Consultant (a) is duly organized, validly existing, and in good standing under the laws of the state in which it was formed, (b) is authorized to do business in the state of New York and in each state where Services are to be performed, (c) has the legal right and the power and authority to enter into and perform all of its obligations under this agreement, and (d) has all licenses, permits, and authorizations required by any law, rule, or regulation applicable to market, sell, and perform services for its customers generally.
  - b. Performance. The Consultant warrants that the Consultant shall at all times use its best efforts to perform the Services and complete Deliverables diligently and in a professional manner with a level of care and technical skill commensurate with the requirements of the Services and the Deliverables as described in this agreement. The Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all Services and Deliverables furnished under this agreement.
13. Term & Termination. The term of this agreement commences as of the date of this agreement and continues through the successful completion of Services by the Consultant, unless earlier terminated pursuant to this section. The Bank may terminate this agreement at any time for any reason or no reason upon written notice to the Consultant and subject to payment in accordance with Section 9 hereof; such termination will be effective as of the date and time specified in that notice.

14. Confidentiality. The Consultant continues to be bound by the terms and conditions set forth in the Federal Reserve Bank of New York nondisclosure agreement dated April 14, 2020, signed by the Consultant (the "NDA") with respect to 2020 COVID-19 response facilities. Information, data, and know-how provided by the Bank to the Consultant under this agreement that is Confidential Information as defined in the NDA is subject to the terms and conditions of that NDA, other than the second sentence of section 15 of the NDA, which is hereby amended to delete that sentence.
15. Information Handling and Storage. The Consultant shall not process or store Confidential Information or allow Confidential Information to be accessed outside the United States without the express written consent of the Bank.
16. Miscellaneous.
- a. Choice of Law. This agreement and any claims arising out of or in connection with it are to be governed by the laws of the United States and, in the absence of controlling federal law, the laws of New York even if applicable conflict-of-law rules indicate the laws of a different jurisdiction should govern. The parties agree that all claims litigated under this agreement are to be initiated in the U.S. District Court for the Southern District of New York, and each party consents to the personal jurisdiction of that court.
- Amendment. No amendment or modification of this agreement will be effective unless it is in writing and signed by each party. An exchange of electronic mail is not effective to amend or modify this agreement.
- b. No Waiver. No failure or delay by either party to exercise any right or remedy it may have under this agreement waives that right or remedy. A waiver by one party of the other's compliance with any provision of this agreement is limited to the particular instance and circumstances for which it is given, unless the waiver expressly provides otherwise.
- c. Nonexclusive. This agreement is nonexclusive. The Bank may use other service providers to perform services similar to the Services. The Bank may engage the Consultant to provide certain administrative agent services in connection with the Facility under a separate contract in the future but has no obligation to do so.
17. Relationship of the Parties. This Agreement does not create, and is not to be interpreted to create, any agency, partnership, joint venture, or other similar relationship between the Consultant and the Bank. Each party acknowledges it has no express or implied authority to assume or create any obligation on behalf of the other party. Neither the Consultant nor the Bank nor any of its respective employees, officers, directors, contractors, or agents may hold out the Consultant (or any of the Consultant's employees, officers, directors, contractors, or agents) as the other party's agent, employee, or representative.

The parties are signing this agreement as of the date stated in the introductory clause.

*[Signature page follows]*



**PFM FINANCIAL ADVISORS LLC**

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Title: Managing Director\_\_\_\_\_

Date: 4/22/2020\_\_\_\_\_

**FEDERAL RESERVE BANK OF NEW YORK**

By

Name:

Title: First Vice President and COO\_\_\_\_\_

Date: 4/22/2020\_\_\_\_\_

Approved as to form

Legal Function

Date: 4/22/2020\_\_\_\_\_

*[Signature page to Consulting Services Agreement]*

# Exhibit A

## Project Deliverables and Timeline

Task/Deliverables		Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7	Day 8	Day 9	Day 10
Program Structuring	Kick-off: Determination of responsibilities among advisory team members (legal and financial), establish protocols for interaction with FRBNY										
	Develop loan processing flow chart										
	Develop loan application and required documentation										
	Establish application portal (legal or 3rd party vendor)										
Prepare FAQs	Prepare FAQs										
	Familiarize portfolio management procedures, including reporting requirements										
	Develop protocols for outreach to potential borrowers										
	Develop loan database management program										
Dry-run and test system	Dry-run and test system										
	Identify and establish contact with related parties (e.g., ratings agencies)										
Lending											
Establish schedule for reviewing applications											