

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



**NON-DISCLOSURE AND CONFIDENTIALITY
AGREEMENT**

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (“***Agreement***”) is made and entered into as of the ____ day of [INSERT MONTH AND YEAR] (“***Effective Date***”) by and between **THE DISTRICT OF COLUMBIA**, a municipal corporation, by and through the Department of General Services, (“***Department***” or the “***District***”), and [INSERT CONTRACTOR] (the “***Recipient***”).

WITNESSETH:

WHEREAS, the ***Recipient*** and the Department have entered into or may enter into a contract for the provision of goods or services (the “***Contract***”) and ***Recipient*** may assign or has assigned certain Vendors and Subcontractors (as defined in this Agreement) to the Department pursuant to the Contract;

WHEREAS, the Department and ***Recipient***, for their mutual benefit and pursuant to a working relationship which has been or may be established, anticipate that the Department may disclose or deliver to ***Recipient***, whether or not prepared by and for the District, information not part of public domain, which includes but is not limited to, components, parts, information, drawings, data, sketches, plans programs, specifications, techniques, processes, software, inventions, documents, project proposals and other materials, both written and oral, of a secret, confidential or proprietary nature, whether or not designated or marked as such, and whether owned by the District or a third party (including any information, finding or analysis prepared by ***Recipient***), including without limitation any and all information relating to marketing, finance, invoices and payment documentation, including third party payment information or documentation, forecasts, invention, research, design or development of information systems and any supportive or incidental subsystems, and any and all subject matter claimed in or disclosed by any patent application prepared or filed by or behalf of by the Department, in any jurisdiction, and any amendments or supplements thereto (collectively, “***Proprietary Information***”);

WHEREAS, the District desires to assure that the confidentiality of all Proprietary Information is maintained;

WHEREAS, the ***Recipient***, ***Recipient’s*** staff, Subcontractors, and Vendors assigned to the Department shall be bound by the terms of the Agreement and ***Recipient*** shall require execution of this agreement by its assigned staff, Subcontractors and Vendors as a condition of their assignment to the Department;

WHEREAS, the Recipient acknowledges that non-compliance with the terms of this Agreement by the Recipient, its staff, Subcontractors, or Vendors, may serve as the basis for removal of Recipient's staff and Subcontractors assigned to the Contract and/or the termination of the Contract between the Recipient and the Department; and

WHEREAS, failure of Recipient's Vendors to keep District's Information and Proprietary Information confidential, may serve as the basis for removal of Recipient's Vendors assisting with the delivery of goods and services provided pursuant to the Contract and/or termination of the Contract between Recipient and the Department.

NOW, THEREFORE, for and in consideration of the foregoing premises, and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Recipient hereby agree as follows:

1. **Recitals.** The above recitals are incorporated herein by reference.

2. **Information to Remain Confidential and Use of Information.**

2.1 Recipient and the Department agree that any and all Proprietary Information will be used for Recipient's own internal use in connection with the provision of "Services" under the Contract and subject to Section 5 below will be kept confidential, and shall not be disclosed to anyone without the prior written consent of the Department, except as required by law or legal process, other than those persons: (i) bound by the provisions of this Agreement; and (ii) who need access to such Proprietary Information in order to provide the Service under the provisions of the Contract. In addition, Recipient and the Department agree that any and all aforementioned documents and information provided by the Department to Recipient or prepared by and for the Department, including findings and analysis prepared by Recipient and any personal identifiable information of any individual disclosed by the Department to Recipient (the "Information"), to the extent the same is not part of the public domain, shall not be disclosed and shall be subject to the provisions of this Agreement.

2.2 It is agreed that all Information and Proprietary Information will be kept confidential, and shall not be disclosed to anyone without (i) prior written consent of the Department; (ii) by first binding the individual and/or entity in writing to a NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT to protect the confidentiality of such Information or Proprietary Information; (iii) the Recipient understands and agrees that no Information or Proprietary Information is exempt under this paragraph; and (iv) a copy of such executed NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT is provided to the Department and as such, the binding and signed agreement is on record with the Department.

2.3 Recipient agrees to comply with any limitations on use and the provisions pertaining to the protection of personal identifiable information contained in the Privacy Act of 1974

(5 U.S.C. 552a), as amended, as it pertains to the Information or Proprietary Information. Once **Recipient** has been given access to certain personal identifiable information contained in the Information or Proprietary Information, **Recipient** shall maintain, manage and store such personal identifiable information in a secure and reasonable manner using industry standards of security, technology and practices, in order to protect against the loss, misuse or alteration of such data. **Recipient** will implement and will maintain reasonable security policy(s), procedures and practices appropriate to the nature of such personal identifiable information collected, used, managed, stored and disposed of by **Recipient** to protect such data from unauthorized access, destruction, use, modification, or disclosure. **Recipient** agrees to ensure that such data and any subset of such data shall be accessible only by those authorized by Paragraph 2.1 of this Agreement. In the event that **Recipient's** access to the personal identifiable information contained in the Information or Proprietary Information results in any inquiry, investigation or enforcement proceeding brought by or before any federal, state or local governmental agency, or a private cause of action is brought by any person(s) whose personal identifiable information was disclosed or used, in violation of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the **Recipient**, and its successors or assigns shall indemnify, and hold harmless the District against any and all claims, damages, demands, losses, liabilities, costs and expenses, including reasonable attorney's fees and related expenses. If **Recipient** breaches the obligations contained herein, then the District shall have the unilateral right and option to terminate the **Recipient's** access to such data contained in the Information or Proprietary Information without due notice, in addition to any remedies it otherwise might have.

3. ***Title of all Property.*** Title to all property received by **Recipient** from the Department, including all Information, shall remain at all times the sole property of the Department, and this Agreement shall not be construed to grant to **Recipient** any patents, licenses or similar rights to such property and Proprietary Information disclosed to **Recipient** hereunder.
4. ***Return of Copies.*** **Recipient** shall, upon request of the Department, return to the Department all documents, drawings and other tangible materials, including all Information and Proprietary Information and all manifestation thereof, delivered to **Recipient** or prepared by **Recipient** on behalf of the Department, and all copies and reproductions thereof. **Recipient** may retain a copy of information received, developed, or otherwise relating to this Agreement in order to comply with its contractual obligations. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will generally not be within the requirement for the return of information as contemplated by this paragraph, except if required by the Department at its sole discretion.
5. ***Compliance with Laws.*** Notwithstanding the other terms of this Agreement, **Recipient** is authorized by the Department to disclose all or any portion of the report and related data prepared as part of **Recipient's** Services for the Department as may be required by statute,

government regulation, legal process, or judicial decree.

- 6. Recipient's Use of Third Parties.** *The District acknowledges and agrees that in connection with the exchange of information contemplated by this Agreement, Recipient, in its discretion or at the District's direction, may utilize the services of third parties ("Subcontractors") within and outside of the United States to complete the services under the Contract provided that the use of any such Subcontractor shall be subject to the District's approval which shall not be unreasonably withheld. The District also acknowledges and agrees that such Subcontractors, as well as Recipient-controlled parties, member firms of Recipient, and other third party service providers (collectively, "Vendors") may have access to confidential information from offshore locations, and that the Recipient uses Vendors within and outside of the United States to provide at Recipient's direction administrative or clerical services to Recipient. These Subcontractors and Vendors may in the performance of such services have access to the District's Information and Proprietary Information, and in any such event, Recipient shall provide advance notice to the District of providing any such Subcontractor or Vendor access to the District's Information and Proprietary Information, which shall be subject to the District's approval, and which shall not be unreasonably withheld. Recipient agrees to require execution of a NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT by any Subcontractors' assigned staff as a condition of their receipt of the District's Information or Proprietary Information. Recipient represents to the District that with respect to each Vendor, Recipient has technical, legal and/or other safeguards, measures and controls in place to protect Information and Proprietary Information of the District from unauthorized disclosure or use. Recipient shall be responsible to the District and held liable in accordance with the terms of this Agreement for Recipient-controlled, member firms or Subcontractor's failure to comply with the terms of this Agreement and for Vendor's failure to keep confidential any and all District Information and Proprietary Information.*
- 7. Enforcement Upon Breach.** *Any breach by Recipient or its Subcontractors or Vendors including but not limited to any of its present and former employees, successors, administrator, executors, assignees, non-employees, consultants, advisors and any other persons of any of the Recipient's obligations under this Agreement may result in irreparable harm to the Department and the District for which damages and other legal remedies may be inadequate. In seeking enforcement of any of these obligations, the Department and the District may be entitled (in addition to other remedies) to seek preliminary and permanent injunctive and other equitable relief to prevent, discontinue and/or restrain the breach of this Agreement.*
- 8. Partial Invalidity.** *If any provision of this Agreement is held to be invalid or unenforceable, by any competent court of jurisdiction or governing authority, then such provision shall be construed and limited to the extent necessary, or severed if necessary, by such competent court of jurisdiction or governing authority, in order to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall not be affected thereby.*
- 9. Dispute.** *In any dispute over whether information or matter is Proprietary Information hereunder, it shall be the burden of Recipient to show both that such contested information or matter is not Proprietary Information within the meaning of this Agreement, and that it*

does not constitute a trade secret under the Uniform Trade Secrets Act or successor or similar law in effect in the District of Columbia.

- 10. No Waiver.** *No delay or omission by either party in exercising any rights under this Agreement will operate as a waiver of that or any other right thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any other right, power, or privilege hereunder.*
- 11. Governing Law.** *This Agreement is governed by and will be construed in accordance with the laws of the District of Columbia.*
- 12. Jurisdiction and Venue.** *All Parties hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction and the laying of venue of the Superior Court of the District of Columbia and of the United States Court for the District of Columbia for any actions, suits, or proceedings arising out of or relating to this Agreement.*
- 13. Amendment.** *This Agreement is in addition to any prior written agreement between **Recipient** and the District relating to the subject matter of this Agreement; in the event of any disparity or conflict between the provisions of such agreements, the provisions of this Agreement shall control. This Agreement may not be modified, in whole or in part, except by an agreement in writing signed by the Department and the **Recipient**. **Recipient's** Vendors and Subcontractors shall execute copies of any such subsequent amendment upon agreement and execution by the Department and the **Recipient**.*
- 13. Binding Effect.** *This Agreement shall be binding upon and will inure to the benefit of the parties hereto and their respective employees, successors, administrator, executors, assignees, non-employees, consultants, advisors and all other persons.*
- 14. Indemnification.** *The **Recipient** shall indemnify, hold harmless, and upon request by the District, defend the District, its officers, invitees and employees ("Indemnitees"), against all damages, liability, claims, losses, and expense, including, without limitation, reasonable attorneys' fees and litigation costs, incurred by any of the Indemnitees and arising out of or relating to any breach of this Agreement by **Recipient** or its Vendors or Subcontractors.*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

**District of Columbia, a municipal corporation,
by and through the Department of General Services**

By: _____

Signature

George G. Lewis, CPPO

DGS Chief Procurement Officer |

Date: _____

Title

RECIPIENT

By: _____

Signature

Printed Name

Date: _____

Title