THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made as of this       day of      , 201     , by and between the South Carolina Department of Administration (“Admin”) and       (“Recipient”).

In connection with the limited purpose of       [***state the purpose for which the Confidential Information will be disclosed to the receiving party and/or the purpose for which the receiving party will be given access to Admin’s systems and applications containing Confidential Information and/or reference the contract name and number***] (the “Approved Purpose”), Admin may disclose to the Recipient, or allow the Recipient to access, certain Confidential Information, as defined below.

“Confidential Information" is defined as all data, information, documents, reports, records, metadata, software, forms, and other materials furnished, disclosed, or made accessible by Admin to the Recipient, either directly or indirectly, in connection with the Approved Purpose.

Confidential Information includes, but is not limited to, the following:

(a) All computer network systems of Admin; network architecture; any and all information concerning Admin’s current, future or proposed applications, including unpublished computer code (both source code and object code), drawings, specifications, notebook entries, technical notes and graphs, computer printouts, technical memoranda and correspondence, product development agreements and related agreements;

(b) Personal information such as social security numbers, credit card numbers, dates of birth; any information that identifies an individual (by name, signature, address, telephone number, or other unique identifier) or that can be used to authenticate that individual such as passwords or PINs, biometric data, unique identification numbers, answers to security questions, or other personal identifiers;

(c) Confidential or proprietary information, software, and materials of third parties with which, or with whom, Admin conducts business.

(d) If the Approved Purpose described above involves the performance of an audit by Recipient or by its contractor, the existence of the audit, Admin involvement with the audit, the results of the audit, and any analysis or reports created by or for Recipient using such information are also deemed Confidential Information.

In consideration of the promises and mutual covenants herein, the parties agree as follows:

1. Recipient’s Responsibilities. Recipient shall maintain the Confidential Information in accordance with the following additional terms and conditions:

1. Recipient shall not disclose Confidential Information to any third party without the express written authorization of Admin.
2. Recipient shall take all necessary steps to protect Confidential Information. Recipient may disclose Confidential Information only to its employees, agents, consultants and contractors on a need-to-know basis and only if such employees, agents, consultants and contractors have executed written confidentiality agreements with Recipient in a form substantially the same as this Non-Disclosure Agreement. Recipient agrees that it shall not make copies of the Confidential Information in whole or in part, except as necessary for the Approved Purpose described above.
3. Recipient agrees to immediately notify Admin, in writing, of any misuse, misappropriation, or unauthorized release of the Confidential Information or violation of this Agreement that may come to Recipient’s attention.
4. Any oral discussions between Admin and Recipient, which relate to the Confidential Information, shall be kept secret and confidential by Recipient and are deemed to be Confidential Information.
5. If Recipient receives a governmental, judicial, or administrative order, subpoena, discovery request, or other request for disclosure of Confidential Information, Recipient will immediately notify Admin, in writing. Recipient agrees, to the extent practicable, to cooperate with efforts by Admin to seek a protective order or similar relief. In the event that any Confidential Information is ordered produced in an action or proceeding, the Confidential Information shall not lose its confidential status through such use, and the Recipient shall take all reasonable and necessary steps to protect the Confidential Information’s confidentiality during such use, to the extent possible.

2. Term. Recipient’s duty to hold in confidence Confidential Information disclosed under this Agreement shall remain in effect indefinitely or until Admin sends Recipient written notice releasing it from its confidentiality obligations under this Agreement.

3. Termination. Admin may terminate this Agreement and/or access to Admin’s Confidential Information at any time for any reason and without liability of any kind, if (i) Recipient’s engagement with Admin terminates, or (ii) Admin suspects any violation of the terms of this Agreement. The Recipient’s obligation to keep Confidential Information confidential, as required by the terms herein, shall survive termination of this Agreement.

4. Exclusions. Notwithstanding the foregoing, the obligations of confidentiality under this Agreement shall not apply to Confidential Information that: (a) is already known to Recipient at the time it is disclosed to Recipient; (b) has been independently developed by Recipient; (c) becomes, or has become publicly known, through no wrongful act of Recipient; (d) has been, or is, received by Recipient from a third party without a restriction on disclosure; or (e) is required by law, court or administrative order to be disclosed.

In addition, the obligations of confidentiality under this Agreement do not apply to public information intended or required for sharing with the public. Examples of public information include, but are not limited to, information provided on State web sites, information for public distribution, and meeting agendas and minutes of public bodies.

5. Employees and Contractors of Recipient. Recipient shall cause its employees and contractors who are exposed to Confidential Information to comply with this Agreement, and Recipient accepts responsibility for the acts or omissions of its employees and contractors with respect to this Agreement.

6. Standard of Care. Recipient hereby agrees to hold all Confidential Information in strict confidence and to adopt or establish operating procedures and physical security measures that are necessary to protect Confidential Information from unauthorized disclosure or inadvertent release. Recipient will take reasonable measures to avoid unauthorized disclosure or use of Confidential Information, including, at a minimum, those measures it takes to protect its own proprietary and confidential information.

7. No Implied Waiver; Modification; Amendment. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing in a document that specifically refers to this Agreement, and such document is signed by both parties.

8. Entire Agreement; Severability. This Agreement constitutes the full and complete understanding and agreement of the parties hereto with respect to the subject matter covered herein and supersedes all prior and contemporaneous oral or written understandings and agreements with respect thereto. In the event that any provision of this Agreement may be held to be invalid or unenforceable for any reason, it is hereby agreed that said invalidity or unenforceability shall not affect the other provisions of this Agreement, and that the remaining terms and conditions or provisions thereof shall remain in full force and effect, and that any court of competent jurisdiction may so modify the objectionable provision or provisions to make it valid, reasonable, and enforceable.

9. Governing Law; Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the state of South Carolina, excluding its conflict of laws provisions, and the parties consent and submit to the jurisdiction and venue of the state courts located in the state of South Carolina, Richland County.

10. Survival of Rights and Obligations; Assignment. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, provided that Recipient may not subcontract or assign its work performed in furtherance of the Approved Purpose nor may it assign its obligations relating to Admin’s Confidential Information without the prior express written consent of Admin. Any assignment by Recipient without such consent shall be null and void and a material breach of this Agreement.

11. Equitable Relief. Recipient recognizes that Admin may suffer irreparable harm if Confidential Information or any portion thereof is disclosed or used in an unauthorized manner, and, accordingly, the parties agree that Admin may seek to enjoin such disclosure as well as pursue any other remedies available at law or in equity.

12. Indemnity. Recipient agrees it will indemnify and hold harmless Admin from all losses, damages, causes of action and attorneys’ fees incurred by Admin from the breach of this Agreement by Recipient.

13. Return of Confidential Information. Recipient will promptly return, or certify destruction of (when applicable), all material embodying Confidential Information (in any form and whatever media including, without limitation, all originals, copies, notes, summaries, drawings, excerpts or derivative information deriving therefrom) upon the earlier of (i) the completion of the Approved Purpose, (ii) termination of this Agreement, or (iii) Admin’s written request.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the later date set forth below.

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|  |  | South Carolina Department of Administration |
| Recipient’s Name |  |  |
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|  |  |  |
| Recipient’s Address |  | Address |
|  |  |  |
|  |  | Columbia, SC |
| City, State, Zip Code |  |  |
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| --- | --- | --- | --- | --- |
| By: |  |  | By: |  |
|  |  |  |  |  |
| Title: |  |  | Title: |  |
|  |  |  |  |  |
| Date: |  |  | Date: |  |