

NONDISCLOSURE AGREEMENT

This nondisclosure agreement (“Agreement”) is between _____ (“the Vendor”) on the one hand and, on the other, _____ as well as the Indiana Office of Technology (collectively “the State”).

WHEREAS, the Vendor intends to bid on a project (the “Project”) to do the following for the State:

WHEREAS, the State maintains confidential security policies and standards as a part of its Information Security Framework that are intended to protect the State’s information systems and the data contained on them (the “Confidential Information”);

WHEREAS, the public disclosure of the Confidential Information would adversely affect the State’s ability to protect its information systems and the data contained on them, and the Confidential Information is therefore exempt from disclosure under the Indiana Access to Public Records Act, Ind. Code § 5-14-3-4(b);

WHEREAS, the Vendor will be required to meet or exceed the requirements that are described in the Confidential Information if the Project is awarded to it by the State, and thus, the Vendor needs to have access to the Confidential Information in order to prepare its bid;

AND WHEREAS, the State would like to share the Confidential Information with the Vendor in confidence for the sole purpose of allowing the Vendor to prepare its bid.

NOW THEREFORE, in consideration of the covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Vendor hereby agrees as follows:

1. CONFIDENTIAL NATURE OF THE CONFIDENTIAL INFORMATION. The Vendor agrees that the Confidential Information is confidential and exempt from disclosure under the Indiana Access to Public Records Act, Ind. Code § 5-14-3-4(b). The Vendor further agrees that the Confidential Information (A) will be kept confidential by it, (B) will be used by it solely for the purposes of preparing its bid for the Project, (C) will only be provided to a limited number of its agents and employees who have a need to know of the Confidential Information for that purpose, and (D) will not be made available to any other person for any other purpose whatsoever, except as described below in Paragraph 2. The Vendor further agrees that it will be responsible for any breach of this Agreement by its agents or employees.

2. LIMITED DISCLOSURE. The Vendor agrees that it will not disclose the Confidential Information without the State’s prior written consent, unless – in the opinion of the Vendor’s counsel – such disclosure is required by law. In such a situation, the Vendor will give notice to the State at least ten (10) business days prior to any disclosure and articulate the reasons for its proposed disclosure and the nature of its proposed disclosure. The Vendor agrees to cooperate in

the State's efforts to obtain an appropriate protective order or other reasonable assurance that the Confidential Information will be accorded confidential treatment.

3. RETURN OF THE CONFIDENTIAL INFORMATION. Upon completion of the bidding process, the Vendor will return all copies of the Confidential Information that were furnished to it and will instruct its agents and employees to destroy any notes or analyses which are derived from or contain information related to the Confidential Information, and will confirm such destruction in writing to the State.

4. WAIVER. No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

5. REMEDIES. The Vendor agrees that money damages will not be a sufficient remedy for any violation of the terms hereof and that, accordingly, the State will be entitled to specific performance and injunctive relief as remedies for any such violation. In the event that the State prevails in any proceeding to enforce the terms of this Agreement, the Vendor agrees to reimburse the State for its costs and legal fees. These remedies will not be exclusive remedies but will be in addition to any others.

6. CHOICE OF LAW/CHOICE OF FORUM. This Agreement shall be governed by Indiana law without reference to conflict-of-law principles. Any proceeding relating to this Agreement must be resolved exclusively in the U.S. District Court for the Southern District of Indiana or in the state courts of Marion County, Indiana. The Vendor consents to personal jurisdiction in the State of Indiana.

7. NOTICE. Any notice, request, or other communication required to be made under this Agreement shall be in writing and shall be delivered personally or shall be sent by electronic mail. Any such notice shall be deemed given when so delivered personally or sent by electronic mail to the addresses set forth below:

For the State:

Agency Representative Name & Title: _____

Agency Name: _____

Agency Address Line 1: _____

Agency Address Line 2: _____

Agency Address Line 3: _____

Agency Representative Email Address: _____

and

Hemant Jain, Interim Chief Information Security Officer
Indiana Office of Technology
100 N. Senate Avenue, N551
Indianapolis, IN 46204
hjain@iot.in.gov

For the Vendor:

Vendor Representative Name & Title: _____

Vendor Name: _____

Vendor Address Line 1: _____

Vendor Address Line 2: _____

Vendor Address Line 3: _____

Vendor Representative Email Address: _____

8. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect. The parties shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provision with a valid, legal, and enforceable provision, the effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provision.

9. AMENDMENT. This Agreement may be amended or modified only by a separate written agreement, executed by both the Vendor and the State.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding – express or implied, oral, or written – between the parties with respect to the subject matter discussed herein. It supersedes any and all prior agreements, discussions and understandings – express or implied, oral or written – between the Vendor and the State.

IN WITNESS WHEREOF, the Vendor has signed this Agreement on the date indicated below. The representative of Vendor who signs on behalf of the Vendor below represents that he or she has the authority to sign on the Vendor’s behalf and to legally bind the Vendor to the terms and conditions of this Agreement.

Vendor: _____

Name of Vendor Representative

Title

Date