

## CONSULTANT CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, made on \_\_\_\_\_, is between the State of New York ("State"), acting by and through the New York State Office of Information Technology Services ("ITS"), having its principal place of business at State Capitol, Empire State Plaza, Albany, New York 12220-0062, and \_\_\_\_\_ ("Consultant"), an employee or subcontractor of \_\_\_\_\_. ("Contractor") with its principal place of business at \_\_\_\_\_. This Agreement is signed in relation to the provision by Consultant of services to the ITS Office of \_\_\_\_\_ (hereinafter "Engagement").

**1. Definitions.** For the purposes of this Agreement, the following terms shall be defined as follows:

**I. Confidential Information**

"Confidential Information" shall be defined to include any information that ITS or the State, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or source of information (e.g., ITS, other state agencies, state employees, electronic systems, or third party contractors) provides to Consultant, or which Consultant obtains, discovers, derives or otherwise becomes aware of as a result of the Engagement other than:

- (a) information that is previously rightfully known to Consultant without restriction on disclosure;
- (b) information that is or becomes, from no act or failure to act on the part of the Consultant, generally known in the relevant industry or in the public domain; or
- (c) information that is independently developed by Consultant without the use of Confidential Information.

**II. Authorized Person**

"Authorized Person" shall be defined as a person authorized by ITS as having a need to receive, possess, store, access, view and/or use Confidential Information for an Authorized Use.

**III. Authorized Use**

"Authorized Use" shall be defined as the use of Confidential Information by Consultant or Authorized Persons, solely for the purpose of performing the Engagement.

**IV. Electronic Information**

"Electronic Information" shall be defined as information or data produced or stored by electronic, digital, or similar means.

**2. Term**

Consultant's obligations under this Agreement shall commence upon the execution of this Agreement or the start of the Engagement, whichever occurs first, and shall survive the duration of engagement, in perpetuity.

**3. Duty to Protect Confidential Information**

Consultant agrees not to disclose Confidential Information to any outside party without the prior express written permission of ITS, except as provided in this Agreement. In addition, Consultant shall safeguard all

Confidential Information from unauthorized access, loss, theft, destruction, and the like. Consultant shall notify ITS immediately upon becoming aware that confidential information is in the possession of or has been disclosed to an unauthorized person or entity.

Consultant also agrees to promptly report any activities by any individual or entity that the Consultant suspects may compromise the availability, integrity, security or privacy of any Confidential Information.

#### **4. Press Releases**

Consultant shall not issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding his/her Engagement - nor shall Consultant authorize or permit any other person or entity to do so - without the prior express written permission of ITS. Consultant shall immediately refer any media requests or other requests for information to ITS.

#### **5. Use Restriction**

Consultant shall not receive, possess, store, access, view and/or use Confidential Information for any purpose other than an Authorized Use. Consultant shall not permit unauthorized persons or entities to gain access to Confidential Information and shall not divulge methods of accessing Confidential Information to unauthorized persons.

#### **6. Security Obligations Regarding Confidential Information**

Consultant agrees to comply with the following security obligations as well as any other such obligations conveyed to him/her during the course of the Engagement:

- a. Unless otherwise authorized by ITS, Confidential Information may NOT be stored on personal (non-ITS) computing or other electronic or mobile storage devices, or taken or removed in any form from ITS.
- b. Consultant shall comply with all federal and State laws.
- c. Consultant shall comply with all ITS policies and procedures including but not limited to those that provide for accessing, protecting and preserving State assets.
- d. Consultant shall take no action to intrude upon, disrupt or deny services to ITS.
- e. Consultant shall use only those access rights granted by ITS.

#### **7. Certification by Consultant of Return of Confidential Information, Electronic Information and Tangible Property**

Upon termination of the Engagement, Consultant shall return all Confidential Information stored on any format to ITS, or destroy any Confidential Information that Consultant possesses in a format that cannot be returned. Further, Contractor agrees to submit to ITS on Contractor's letterhead a "CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION, ELECTRONIC INFORMATION, AND TANGIBLE PROPERTY" certifying that all copies of Confidential Information, electronic property and tangible property belonging to the State of New York or ITS have been returned, or if necessary destroyed, using the form provided in Appendix A.

## 8. Termination

Consultant's Authorized Use of Confidential Information shall terminate automatically upon: (a) breach of this Agreement as determined solely by ITS, (b) completion or termination of Consultant's Engagement, or, (c) termination of Contractor's State contract, whichever occurs first

## 9. Compliance

Should Consultant breach this Agreement, the State shall have all equitable and legal rights (including the right to obtain injunctive relief) to seek redress for such breach, prevent further breaches and to be fully compensated (including litigation costs and reasonable attorney's fees) for losses or damages resulting from such breach. Consultant acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy available to ITS.

## 10. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

**IN WITNESS WHEREOF**, Consultant has signed this Agreement as of the date set forth below.

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Date

### Acknowledgment for Consultant Confidentiality & Non-Disclosure Agreement

STATE OF NEW YORK	}	
	}	Scilicet
COUNTY OF ALBANY	}	
<p>On the ____th day of _____ in the year 201_, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the foregoing Consultant Confidentiality &amp; Non-Disclosure Agreement (instrument) and acknowledged to me that he executed the same in his capacity, and that by his signature on the he executed the foregoing instrument in his name and on his own behalf.</p>		
<p>_____ Notary Public Registration No.</p>		

**CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL  
INFORMATION, ELECTRONIC INFORMATION, AND TANGIBLE PROPERTY BY  
CONSULTANT PURSUANT TO CONSULTANT CONFIDENTIALITY & NON-  
DISCLOSURE AGREEMENT DATED \_\_\_\_\_**

---

---

---

---

---

---

---

Date

Notary Public  
Registration No.