



DELAWARE DEPARTMENT OF STATE
Townsend Building
401 Federal Street
Dover, Delaware 19904

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidential and Non-Disclosure Agreement ("Agreement") is entered into by and between the Delaware Department of State (DOS) and _____ ("Recipient"). Whenever used in this Agreement, the term Recipient will mean a Contractor, Vendor, Agency, School District, and or Individual.

Recipient acknowledges that DOS has certain confidential or sensitive information and or material. Recipient requires access to this information and or material for purposes specified herein. DOS agrees to release this information to Recipient for those purposes pursuant to the terms and conditions contained in this Agreement. Recipient agrees to the terms and conditions herein.

NOW THEREFORE, in consideration of the above premises and the promises contained herein, the parties agree as follows:

1. Whenever used in this Agreement, the term "Confidential Information" will mean (i) information exempt from disclosure to the public or other unauthorized persons; or (ii) information related to the DOS's network, its architecture and network security unless otherwise identified as non-confidential at the time of disclosure; or (iii) any other information which DOS has identified to Recipient in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or (iv) information which would ordinarily be considered confidential or proprietary in the light of the circumstances surrounding disclosure. Confidential Information may take the form of (but is not limited to) plans, calculations, charts, concepts, know-how, inventions, licensed technology, design sheets, design data, diagrams, system design, materials, hardware, manuals, drawings, processes, schematics, specifications, instructions, explanations, research, test procedures and results, equipment, identity and descriptions of components or materials used, or any other material or information supplied by or on behalf of DOS or that is disclosed to or becomes known by Recipient as a result of its dealings with DOS. Confidential Information may be tangible or intangible, electronic, microfilm, tape, and or disk form. Confidential Information may also include information disclosed to a party by third parties at the direction of DOS. DOS's failure to expressly identify Confidential Information as such shall not in any way lessen or negate Recipient's obligation to keep such information confidential in accordance with this Agreement.
2. Notwithstanding the foregoing, the term "Confidential Information", shall not be construed to include information that is (i) is or becomes readily available in public records or documents, other than as a result of a disclosure by Recipient or other entity acting on behalf of Recipient, or (ii) which can be documented to have been known by Recipient prior to its disclosure by DOS, or (iii) which is disclosed pursuant to applicable law, judicial action, or government regulations.
3. The Recipient acknowledges that the Confidential Information is confidential and proprietary information of DOS and that its protection is essential to the security and mission of DOS. The purpose this agreement is to enable DOS to make disclosure of the Confidential Information to the Recipient while still maintaining rights in the and control over the Confidential Information. The purpose is also to preserve confidentiality of the Confidential Information and to prevent is unauthorized disclosure. It is understood that this agreement does not grant Recipient an express or implied license or an option on a license or any other right to or interests in the Confidential Information.

4. The Recipient shall, and require its employees, officers, independent contractors, and subcontractors and any other entities acting on its behalf (collectively "Affiliates") to:
 - a. Copy, reproduce, or use Confidential Information only for the purpose described herein and not for any other purpose unless specifically authorized to do so in writing by DOS; and
 - b. Not permit any other person to use or disclose the Confidential Information for any purpose other than those expressly authorized by this Agreement; and
 - c. Disclose such Confidential Information only to those of it Affiliates who require knowledge of the same for the purpose described in herein; provided such Affiliates are obligated to maintain the confidentiality of the Confidential Information and otherwise comply with the terms of this Agreement; and
 - d. Implement physical, electronic, and managerial safeguards to prevent unauthorized access to or use of Confidential Information, including without limitation, providing Affiliates a copy of the terms of this Agreement. Such restrictions will be at least as stringent as those applied by the Recipient to its own most valuable confidential and proprietary information.
5. The acts or omissions of Recipient's Affiliates with respect to the Confidential Information shall be deemed to be acts or omissions of Recipient.
6. Recipient will not remove, obscure, and or alter any confidentiality and or trade secret notation from the Confidential Information without DOS's prior written authorization.
7. Confidential Information will remain the exclusive property of DOS; upon completion of the project described in Section 1, or whenever requested by DOS, Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized by DOS in writing will be returned to DOS.
8. Recipient agrees that the breach of the terms of this Agreement would cause irreparable damage to DOS. Therefore, Recipient agrees that if it should breach its obligations hereunder, Recipient will defend, indemnify, and hold DOS harmless from actual damages from losses that result from its breach, including attorneys' fees and costs. Also, DOS has the right to seek an order to restrain Recipient from breaching this agreement. If DOS does seek such an order, Recipient agrees at this time to waive any claim or defense that DOS has an adequate remedy at law or in damages.
9. This Agreement sets forth the entire agreement of the parties with respect to the use and disclosure of the Confidential Information and may be modified only by a writing signed by both parties. This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Delaware, without regards to its conflicts of laws principles. Each Party irrevocably consents to the jurisdiction of the courts of the State of Delaware, in connection with any action to enforce the provisions of this Agreement or arising under or by reason of this Agreement.
10. Term. The Term of this Agreement shall be three years from the date of the last signature, provided however, the obligations of confidentiality shall continue and survive this Agreement.

Signed on behalf of the **State of Delaware, Department of State**

 BY DATE

 TITLE

Signed on behalf of _____ (the Recipient)

 BY DATE

 TITLE