**TEXAS DEPARTMENT OF INFORMATION RESOURCES**

**Non-Disclosure Agreement**

**FY 2023 – 2024 texas.gov payment services digital data room**

This Non-Disclosure Agreement (“**NDA**”) is entered into as of the date of its execution by the undersigned recipient (“**Receiving Party**”).

WHEREAS, the Department of Information Resources (“DIR”) is the owner of certain Confidential Information (as defined below); and

WHEREAS, Receiving Party is a potential respondent to the Texas.gov Payment Services Request for Offers (the “RFO”), which is a competitive procurement process; and

WHEREAS, DIR has created a digital data room containing Confidential Information which may assist Receiving Party to prepare its potential response to the RFO; and

WHEREAS, Receiving Party wishes to receive, under the terms and conditions of this NDA, access to the Confidential Information contained in the digital data room.

NOW, THEREFORE, in consideration of DIR sharing Confidential Information with Receiving Party, Receiving Party acknowledges and agrees as follows:

* 1. **Confidential Information.**
  2. “**Confidential Information**” shall mean all topics, data, documents, correspondence, strategies, and all other information contained in the digital data room, regardless of whether such information is marked confidential, restricted, or proprietary.
  3. Confidential Information shall not include information Receiving Party can demonstrate (i) is, at the time of disclosure to it, in the public domain, (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of Receiving Party, (iii) is in the possession of Receiving Party at the time of disclosure to it without any obligation of confidentiality, (iv) is received without obligation of confidentiality from a third party having a lawful right to disclose such information, or (v) is independently developed by Receiving Party without reference to Confidential Information.
  4. **Receiving Party's Duties.**
  5. Receiving Party acknowledges that its access to and use of the digital data room and all Confidential Information contained therein is provided to Receiving Party solely in its capacity as a potential respondent to the RFO. Receiving Party shall access and use such Confidential Information solely for the purpose of preparing its response to the RFO, and shall not use such Confidential Information, directly or indirectly, for any other purpose.
  6. During the term of this NDA and at all times thereafter, Receiving Party shall not disclose, and shall maintain the confidentiality of, all Confidential Information. Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosing to third parties Confidential Information as Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of Receiving Party’s information of a similar nature, but not less than reasonable care.
  7. Receiving Party shall not use or make any copies of Confidential Information except as contemplated by this NDA, and shall not sell, assign, alter, transfer, lease, or otherwise dispose of Confidential Information to third parties or commercially exploit such information. Receiving party shall not access, use, or transmit Confidential Information outside the continental United States.
  8. Receiving Party shall not be considered to have breached its obligations under this NDA for disclosing Confidential Information as required to satisfy any law, including the Texas Public Information Act (Chapter 552 of the Government Code), or other legal, accounting, or regulatory requirement of a competent government body, provided that, promptly upon receiving any such request and to the extent that it may legally do so, Receiving Party advises DIR of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that DIR may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.
  9. Receiving Party shall (i) promptly (but no later than three business days) notify DIR of any known possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA, (ii) subject to any legal duty or obligation, including Receiving Party’s duties under the Texas Public Information Act, reasonably cooperate with DIR in any investigation or litigation deemed necessary by DIR to protect its rights to Confidential Information and (iv) promptly use commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA. Receiving Party shall bear its own costs in complying with this subsection.
  10. Receiving Party shall require all its employees, contractors, agents, consultants, and other personnel to whom it allows access to Confidential Information (collectively, “Receiving Party Personnel”) to be bound by the terms of this NDA to the same extent as if Receiving Party Personnel were parties hereto, and Receiving Party shall be responsible for any breach of this NDA by any Receiving Party Personnel.
  11. Receiving Party acknowledges that its failure to comply with any obligation under this NDA, including its unauthorized disclosure of Confidential Information, will result in immediate, irreparable harm for which monetary compensation will be inadequate, and DIR will be entitled to immediate injunctive relief in addition to any other remedies available at law or in equity.
  12. **Termination.**

The obligation to maintain confidentiality, the restrictions on use, disclosure, duplication, protection and security of Confidential Information and indemnification for breach thereof by Receiving Party shall survive the rescission, termination, or completion of this NDA, and remain in full force and effect until such Confidential Information is destroyed by DIR or, through no fault of Receiving Party, becomes part of the public domain.

* 1. **General Provisions.**
  2. This NDA shall be governed by and construed, in accordance with the laws of the State of Texas, without giving effect to the principles of conflicts of laws.
  3. Nothing in this NDA nor any disclosure made hereunder shall be deemed to grant to Receiving Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Confidential Information.
  4. Receiving Party understands that failure to comply with the terms of the NDA may subject Receiving Party to disciplinary action and criminal and civil penalties under law.

IN WITNESS WHEREOF, Receiving Party has executed this NDA as of the date set forth above.

**RECEIVING PARTY**

**Entity Name:**

**By: Date:**

**(Signature of Authorized Person)**

**Name of Authorized Person:**