

## ATTACHMENT D

### CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made between the State of Wisconsin Department of Justice (hereafter, the State, the DOJ or the Department) and \_\_\_\_\_ (hereafter the Contractor or \_\_\_\_\_).

The parties agree:

1. **Purpose:** This confidentiality agreement applies to the Contractor, any employee or agent of the Contractor, as well as all subcontractors, their employees, and agents. The purpose of this agreement is to protect the confidentiality of all information viewed or exchanged in relation to this contract and the work performed in accordance with the contract.
2. **Definition:** "Confidential Information" means any of the following:
  - a. Any disclosure that any State employee or agent makes to Contractor, regardless of form;
  - b. All information that is restricted or prohibited from disclosure by state or federal law; or
  - c. Personally Identifiable Information.
3. **Exclusive permitted use of confidential information:** Contractor may use Confidential Information only to carry out its obligations under the Contract, and may not use it for any other purpose.
4. **Dissemination of information:** Contractor will further disseminate Confidential Information only to its employees, agents, and/or subcontractors, all of whom shall be bound to signed disclosure restrictions no less protective than those provided in this Agreement. Each Contractor employee, contracted personnel, or subcontractor's employee who will have access to the State's information will be required to sign this Confidentiality Agreement before providing any Services. All such disclosure restrictions shall identify the State as an intended beneficiary of the non-disclosure provisions of the agreement.
5. **Duration of duty:** Contractor shall be bound to its non-disclosure obligations in perpetuity.
6. **Duty of care:** Contractor will protect all Confidential Information using a high degree of care. This standard exceeds the duty of "ordinary care." It requires the Contractor to exercise the highest degree of care consistent with performance of its duties under the Contract.
7. **Notification:** The Contractor shall notify the DOJ immediately if a Confidential Information breach is detected. In addition, the Contractor shall notify the DOJ immediately upon discovery of an information security incident affecting the staff or IT equipment that leverages attack vectors such as: external/removable media; denial of service; web or email impersonation; or improper usage, loss, or theft of equipment.
8. **Compelled disclosure:** Contractor may disclose Confidential Information to the extent that such Confidential Information:
  - a. is required to be disclosed pursuant to Wisconsin law, including public records provisions, or
  - b. if Contractor is legally compelled under applicable law, regulation, or by a competent governmental, administrative or regulatory authority, or in a proceeding before a court,

arbitrator or administrative agency to disclose any Confidential Information, Contractor will promptly notify the State of such legal compulsion, and will delay disclosure, if and to the extent permitted or practicable, until the State has had a reasonable opportunity to seek a protective order or other appropriate remedy. If the State does not seek or receive a protective order or other remedy, Contractor will disclose only that Confidential Information of the State which its counsel advises is legally required to be disclosed. Contractor's counsel shall consult with the State in determining what disclosures are required.

9. **Information ownership:** Confidential Information remains the State's property.
10. **Information retention:** When Contractor no longer needs, and is no longer required to retain Confidential Information, Contractor will promptly return or destroy by confidence-protective means, all material containing Confidential Information and, if requested, will provide written assurance that no copies, notes or other material containing Confidential Information remains in Contractor's possession. The provisions of this paragraph are subordinate to, and do not supersede, any applicable provision of Wisconsin law, State document retention requirements, or departmental document retention requirements.
11. **Conflicting laws:** No provision of this document shall require the State to perform any act, permit any act, or acquiesce in any act that conflicts with, or is prohibited by, any legal duty of the State.
12. **Injunctive relief:** Contractor acknowledges that the Confidential Information is a valuable, special, and unique asset of the State and that monetary damages will not be a sufficient remedy should Contractor breach this Agreement. Therefore, the State shall be entitled to seek an injunction from a court of competent jurisdiction for the purpose of ending or preventing any existing or anticipated breach of this Confidentiality Agreement, in addition to its other remedies at law.

*Indemnification:* In the event of a breach of this Confidentiality Agreement by Contractor, Contractor shall indemnify, defend and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its Subcontractors, employees and agents including, but not limited to, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section and, with respect to Personally Identifiable Information, the costs of monitoring the credit of all persons whose Personally Identifiable Information was disclosed.

*Equitable Relief:* The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

13. **Modification only in writing:** All additions or modifications to this Confidentiality Agreement must be in writing and signed by an authorized representative of each party.
14. **No waiver by forbearance:** No failure or delay in exercising any right under this Confidentiality Agreement will operate as a waiver of any term or condition hereunder.
15. **Severability:** If any of the provisions of this Confidentiality Agreement are held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions may be

limited or eliminated only to the minimum extent necessary so that this Confidentiality Agreement otherwise remains in full force and effect.

16. **Notice:** Notice required by this Confidentiality Agreement shall be delivered to the other party as specified here:

State: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. **Entire Agreement:** This Confidentiality Agreement constitutes the entire agreement between the parties concerning its subject matter.

18. **Governing law:** This Confidentiality Agreement is governed by the laws of the State of Wisconsin, excluding its conflicts of law rules.

19. **Venue:** Any litigation arising out of this Confidentiality Agreement shall be venued in Dane County, Wisconsin.

**State of Wisconsin  
Department of Justice**

**Contractor**

Company Name: \_\_\_\_\_

Signature:\_\_\_\_\_

Signature: \_\_\_\_\_

Name:\_\_\_\_\_

Name: \_\_\_\_\_

Title:\_\_\_\_\_

Title\_\_\_\_\_

Date:\_\_\_\_\_

Date: \_\_\_\_\_