**ATTACHMENT DD, F1 - NON-DISCLOSURE AGREEMENT – OFFEROR**

This Non- Disclosure Agreement (the “Agreement”) is made this \_\_\_ day of \_\_\_\_\_\_\_\_ 20\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "the OFFEROR ") and the State of Maryland (hereinafter referred to as “the State").

OFFEROR warrants and represents that it intends to submit a Proposal in response to RFP #OTHS/EBT-14-001-S for Electronic Benefits Transfer System. In order for the OFFEROR to submit a Proposal, it will be necessary for the State to provide the OFFEROR with access to certain confidential information including, but not limited, to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. All such information provided by the State shall be considered Confidential Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as “Confidential Information”. As a condition for its receipt and access to the Confidential Information described above, the OFFEROR agrees as follows:

1. OFFEROR will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received except in connection with the preparation of its Proposal.
2. Each employee or agent of the OFFEROR who receives or has access to the Confidential Information shall execute a copy of this Agreement and the OFFEROR shall provide originals of such executed Agreements to the State. Each employee or agent of the OFFEROR who signs this Agreement shall be subject to the same terms, conditions, requirements and liabilities set forth herein that are applicable to the OFFEROR.
3. OFFEROR shall return the Confidential Information to the State within five business days of the State’s Notice of recommended award. If the OFFEROR does not submit a Proposal, the OFFEROR shall return the Confidential Information to Keosha Hall, Department of Human Resources on or before the due date for Proposals.
4. OFFEROR acknowledges that the disclosure of the Confidential Information may cause irreparable harm to the State and agrees that the State may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. The State’s rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the OFFEROR’S failure to comply with the requirements of this Agreement. The OFFEROR consents to personal jurisdiction in the Maryland State Courts.
5. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys’ fees and disbursements) that are attributable, in whole or in part to any failure by the OFFEROR or any employee or agent of the OFFEROR to comply with the requirements of this Agreement, OFFEROR and such employees and agents of OFFEROR shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
6. This Agreement shall be governed by the laws of the State of Maryland.
7. OFFEROR acknowledges that pursuant to Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland, a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than $20,000 and/or imprisonment not exceeding 5 years or both. OFFEROR further acknowledges that this Agreement is a statement made in connection with a procurement contract.
8. The individual signing below warrants and represents that they are fully authorized to bind the OFFEROR to the terms and conditions specified in this Agreement. If signed below by an individual employee or agent of the OFFEROR under Section 2 of this Agreement, such individual acknowledges that a failure to comply with the requirements specified in this Agreement may result in personal liability.

OFFEROR: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ADDRESS:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **ATTACHMENT DD, F2 - NON-DISCLOSURE AGREEMENT - CONTRACTOR**

**THIS NON-DISCLOSURE AGREEMENT** (“Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between the State of Maryland ("the State"), acting by and through its Agency Name (the “Agency”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”), a corporation with its principal business office located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and its principal office in Maryland located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**RECITALS**

**WHEREAS,** the Contractor has been awarded a Contract (the “Agreement”) Electronic Benefits Transfer System RFP No. OTHS/EBT-14-001-S dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “RFP); and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State to provide the Contractor and the Contractor’s employees and agents (collectively the “Contractor’s Personnel”) with access to certain confidential information regarding \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Confidential Information”).

**NOW, THEREFORE,** in consideration of being given access to the Confidential Information in connection with the RFP and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the RFP or who will otherwise have a role in performing any aspect of the RFP, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor’s Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor’s Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State or such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State’s rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages from the Contractor and the Contractor’s Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys’ fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor’s Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
9. Contractor and each of the Contractor’s Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
11. This Agreement shall be governed by the laws of the State of Maryland;
12. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
13. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
14. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
15. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures; and
16. The Recitals are not merely prefatory but are an integral part hereof.

**Contractor/ Contractor’s Personnel:** **Agency Name:**

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

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

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

**EXHIBIT A**

*CONTRACTOR’S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Printed Name and Addressof Employee or Agent |    | Signature |  | Date |
|  |  |  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |
|  |  |  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |
|  |  |  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |
|  |  |  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |
|  |  |  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |