

CITY AND COUNTY OF SAN FRANCISCO

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (Non City Suppliers)

This Confidentiality and Nondisclosure Agreement (the “Agreement”) is entered into this ____th day of _____, ____, (the “Effective Date”) by and between [Company Name], located at [Company Address] (“Disclosing Party”) and the City and County of San Francisco (“City”) (hereinafter jointly referred to as the “Parties”).

WHEREAS, the Disclosing Party and City wish to explore a potential business relationship in connection with which Disclosing Party may disclose its Confidential Information (as defined below) to the City (“Business Relationship”); and

WHEREAS, in order to conduct an assessment of the Disclosing Party’s cybersecurity measures, City has requested that Disclosing Party provide City certain information (“Cybersecurity Assessment”); and

WHEREAS, Disclosing Party is willing to provide to City access to its Confidential Information for such purpose provided that Disclosing Party has reasonable assurances that City will not disclose the Disclosing Party’s Confidential Information to third parties.

NOW therefore, the Parties agree as follows:

1. Definition of Confidential Information. “Confidential Information” refers to the Disclosing Party’s information, data or materials, regardless of whether it is in tangible form, that is disclosed or otherwise made available by or on behalf of the Disclosing Party to the City as part of the Cybersecurity Assessment and that is designated by the Disclosing Party as “Confidential,” “Proprietary” or some similar designation, including but not limited to, the Disclosing Party’s cybersecurity measures which may include, but is not limited to, the Service Organization Control (SOC) 2, Type II Report or CAIQ-Lite Report.

2. Nondisclosure of Confidential Information.

(a) **Use.** City agrees not to use any Confidential Information disclosed to it by Disclosing Party for any purpose other than to carry out discussions concerning, and the undertaking of the Business Relationship. City will not disclose any Confidential Information to parties other than the City’s Chief Information Security Officer, his or her designee, or agents designated by the City who need to know the information in order to evaluate the suitability of the Disclosing Party for the Business Relationship.

(b) **Exclusions.** Notwithstanding the above, City shall not have liability to Disclosing Party with regard to any Confidential Information that: (i) at the time of disclosure, is available to the general public; (ii) at a later date, becomes available to the general public through no fault of City, and then only after such later date; (iii) is disclosed to City without restriction on disclosure by a third party who had the lawful right to disclose such information; (iv) was

independently developed by City without the use of any Confidential Information; or (v) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body.

(c) The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the City's right to independently develop or acquire products without use of the other Party's Confidential Information. This sub-paragraph shall not be deemed to grant to the City a license under the Disclosing Party's copyrights or patents.

(d) **Survival of Confidentiality Obligation.** Notwithstanding the return or destruction, or elimination of access to the Confidential Information as set forth in Section 4, the confidentiality obligations for all Parties shall remain in effect for one (1) year after the expiration of the Term of this Agreement (Section 5).

3. Compliance with Court Order or Public Disclosure Laws. In the event that disclosure of Confidential Information is mandated by a court order, City shall immediately notify Disclosing Party and shall take all reasonable steps to enable and permit Disclosing Party to seek a protective order or take other appropriate action. City will also, at no cost or expense to Disclosing Party, cooperate in Disclosing Party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If, in the absence of a protective order, City is required as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only the part of the Confidential Information required by law to be disclosed (in which case, where practicable prior to such disclosure, City will advise and consult with Disclosing Party and its counsel as to such disclosure). Nothing in this Agreement shall require City to take any action, or to refuse to release information where to do so would violate applicable law.

4. Return of the Disclosing Party's Confidential Information. Any materials or documents containing Confidential Information that have been furnished by Disclosing Party to City in connection with the Business Relationship will be promptly returned to Disclosing Party, accompanied by all copies of such documentation or certification of destruction of such Confidential Information, within thirty (30) days following the earlier of: (a) termination of discussions with the Disclosing Party for evaluation of a Business Relationship (b) a written request from Disclosing Party; or (c) the end of the term of this Confidentiality and Nondisclosure Agreement.

5. Term. This Agreement shall be effective from the Effective Date and shall continue for two (2) months, provided however, that either Party may terminate the Agreement by giving the other Party ten (10) business days' notice in writing of its intention to terminate this Agreement. Termination shall not abrogate either Party's obligation hereunder for Confidential Information received prior to the date of termination.

6. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (a) such provision shall be excluded from this Agreement; (b) the balance

of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

7. Remedies. It is understood and agreed that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement and the Disclosing Party shall be entitled to seek injunctive relief (preliminary or otherwise) as a remedy for any such breach or threatened breach without the necessity of proving actual damages. Such remedy shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or equity.

8. Attorneys' Fees and Expenses. In the event of the breach or default by any Party in the performance of its covenants and undertakings hereunder, each Party shall bear their own costs of enforcement, specifically including without limitation reasonable attorneys' and experts' fees and expenses, court costs and the costs of enforcing any orders or judgments.

9. Governing Law; Jurisdiction. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California. Each of the Parties hereto consents to the exclusive jurisdiction and venue of the courts of San Francisco, California.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

11. Entire Agreement. This Agreement embodies the entire understanding between the Parties respecting the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the Parties respecting the use and disclosure of the City's Confidential Information. This Agreement has been negotiated by the Parties and their respective attorneys, and the language of this Agreement shall not be construed for or against either Party. The headings are provided for the purpose of reference and convenience and are not intend to affect the meaning of the contents or scope of this Agreement.

12. No Further Agreements Hereunder. Neither Party nor any parent, subsidiary or affiliate (including Affiliates) thereof, shall be under any obligation to enter into any further agreements with the other signatory hereto or its parents, subsidiaries or affiliates of any nature whatsoever as a result of this Agreement. The Parties shall be free at all times to hold negotiations or enter into agreements with any other persons whatsoever (including with respect to project under discussion by the Parties hereto) in addition to or in lieu of the discussions hereunder and any such activities shall not be a breach of this Agreement or any obligations owed to the other Party hereunder. With respect to any further agreements or business arrangements with the other Party, its parents, subsidiaries or affiliates (including Affiliates), each Party reserves the right, in its sole discretion, to decline, retract or reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties and to terminate all further discussions and negotiations.

13. Independent Contractors. The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.

14. Notices. Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the Party to be notified at such Party's address as set forth on the signature page, as subsequently modified by written notice.

15. Incorporation of Recitals. The recitals set forth on page 1 of this Agreement are substantive terms of this Agreement and are hereby fully incorporated herein by this reference.

16. Non-waiver. Any failure by either Party to enforce performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

17. Section Headings. The section headings contained in this Agreement are for convenience of reference only and are not intended to define the scope of any provision of this Agreement.

PARTY SIGNATURES TO THE AGREEMENT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative(s) as of the date first set forth above.

CITY AND COUNTY OF SAN FRANCISCO, [DEPARTMENT NAME]

DISCLOSING PARTY

Signature: _____

Signature: _____

Name _____
(print)

Name: _____
(print)

Title: _____

Title: _____

Address: [Department Address]
San Francisco, CA 94102

[Company Name]
Address: [Company Address]

**APPROVED AS TO FORM on May 1, 2021:
(Effective May 1, 2021 – April 30, 2022)**

**DENNIS J. HERRERA
City Attorney**

**By: Elaine M. O’Neil
Deputy City Attorney**