

**Non-Disclosure Agreement between the Department of Housing and Urban Development
 (“HUD”) and External Party Granting Conditional Access to Controlled Unclassified
 Information (“Non-Disclosure Agreement”)**

Reference Solicitation Number: _____

Offeror Name [*company*]: _____ (“Offeror”)

I, _____, [*print name*] understand that for the purpose of the preparation of an offer in response to the above referenced solicitation solely on behalf of the above named Offeror, and not as an agent or representative of any other party, I may be granted access to controlled unclassified information (“CUI”), and, intending to be legally bound, hereby consent to this agreement as a condition to such access.

I also understand that:

- “Preparation of an offer,” as used in this agreement, may include: the preparation, in whole or in part, of an initial offer; consultation with or other contribution to the preparer(s) of such offer; discussions and negotiations concerning the offer after its submission; and preparation of, consultation on, and discussions and negotiations concerning, revisions to the initial offer.
- As used in this agreement and as defined in 32 CFR Part 2002, Controlled Unclassified Information (CUI) is information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy (LRGWP) requires or permits an agency to handle using safeguarding or dissemination controls. However, CUI does not include classified information [Information that Executive Order 13526, Classified National Security Information, December 29, 2009 (3 CFR, 2010 Comp., p. 298), any predecessor or successor order, or the Atomic Energy Act of 1954, as amended, requires agencies to mark with classified markings and protect against unauthorized disclosure] or information a non-executive branch entity possesses and maintains in its own systems that did not come from, or was not created or possessed by or for, an executive branch agency or an entity acting for an agency.
- The LRGWP may require or permit safeguarding or dissemination controls in three ways: (1) Requiring or permitting agencies to control or protect the information but providing no specific controls, which makes the information CUI Basic; (2) Requiring or permitting agencies to control or protect the information and providing specific controls for doing so, which makes the information CUI Specified; or (3) Requiring or permitting agencies to control the information and specifying only some of those controls, which makes the information CUI Specified, but with CUI Basic controls where the authority does not specify.
- CUI is not available to the general public.
- CUI may include:

- Government acquisition-sensitive information, including “source selection information” as defined at section 2.101 of the Federal Acquisition Regulation (48 CFR Chapter 1), contractor bid or proposal information, information contained in individual contracts that is not public information, and such contract information that is contained in Government databases;
 - Proprietary economic, financial, or business information (*e.g.*, salary information) provided to the Government by other parties (*e.g.*, other contractors) or belonging to HUD;
 - Personally identifiable information (PII) that includes, but is not limited to, social security numbers, names, dates of birth, places of birth, parents’ names, credit card numbers, applications for entitlements, and information relating to a person’s private financial, income, employment, and tax records; and
 - Any other information that the HUD contracting officer or other authorized HUD employee explicitly identifies as CUI.
- CUI may exist in different physical media (*e.g.*, paper, electronic file, audio or video disc) or be communicated orally, may be developed under or pre-exist a contract, and may be in its original form or a derivative form (*i.e.*, where the information has been included in contractor-generated work, or where it is discernible from materials incorporating or based upon such information).
 - Any unauthorized use, release, or disclosure on my part of CUI in violation of this agreement may result in the disqualification of the above-named offeror from consideration of award with respect to the above solicitation and may subject me and/or my employer to administrative, civil, or criminal remedies as may be authorized by law.
 - I attest that I am familiar, and will comply, with the standards for accessing, disseminating, handling, and safeguarding the information to which I am granted access as cited in this agreement and in accordance with 32 CFR Part 2002, applicable LRGWP, and with the guidance provided to me by HUD relative to the category of information.

Therefore, I agree that:

- I understand that the CUI to which I am granted access includes any CUI I create or use on behalf of or for the Government, CUI I receive from the Government to maintain, handle, transmit, or use (for research, in derivative documents, etc.), or CUI originating from another source (such as CUI generated for the Government by a contractor or research entity).
- Except as expressly authorized by the HUD contracting officer, I will not disclose any CUI to which I am granted access to anyone who, or anything that, is not granted such access pursuant to an applicable lawful Government purpose. I understand my responsibilities to protect and not disclose CUI except for, and to people with, an appropriate lawful Government purpose. To ascertain whether someone or something is authorized access, pursuant to an applicable lawful Government purpose, to CUI that is

under my control or in my possession, I will do so according to 32 CFR Part 2002, HUD guidance, and applicable LRGWP.

- I acknowledge that I have undergone training concerning the nature and protection of the CUI to which I have been provided access, including procedures to follow in ascertaining whether other people to whom I contemplate disclosing this information are approved to access it pursuant to an appropriate lawful Government purpose, and that I understand this training and these procedures.
- I will not seek access to any CUI that has not been provided to me or to which I am not authorized to have access.
- I am obligated to protect CUI to which I am granted access from unauthorized disclosure, in accordance with the terms of this agreement, 32 CFR Part 2002, HUD guidance, and the LRGWP applicable to the specific categories of CUI to which I am granted access.
- I shall promptly report to appropriate officials, in accordance with the guidance issued for the applicable category of CUI, any unauthorized disclosure that I have knowledge of whether or not I am personally involved. I also understand that my anonymity will be preserved to the extent possible when reporting such violations.
- Upon the completion of my involvement in the preparation of an offer in response to the above referenced solicitation, I will surrender and return all physical media provided to me, or which I have created (including personal documentation, *e.g.*, notes) during the period of my conditional access permitted by this agreement, that contain CUI in accordance with the direction provided to me by my company or the HUD contracting officer.
- I understand that all conditions and obligations imposed upon me by this agreement apply during the time I am granted access to CUI, and at all times thereafter while such information remains controlled. These conditions and obligations may no longer apply if I am explicitly released in writing by an authorized representative of HUD or the United States Government.
- Signing this agreement does not bar disclosures required by law or a court order provided that I use diligent reasonable efforts to limit disclosure and allow the United States Government to seek a protective order.
- If I violate the terms and conditions of this agreement, such violation may result in cancellation of my access to CUI, and, depending upon the LRGWP that governs the CUI, may result in civil and criminal sanctions.
- This agreement is made and intended for the benefit of the United States Government and may be enforced by the United States Government or the authorized non-Federal entity. By granting me access to CUI in this context, the United States Government may seek any remedy available to it to enforce this agreement, including, but not limited to, application for a court order prohibiting disclosure of CUI in breach of this agreement. I

understand that if I violate the terms and conditions of this agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the LRGWP applicable to the category of CUI involved, and neither the United States Government nor the non-Federal authorized entity have waived any statutory or common law evidentiary privileges or protections that they may assert in any administrative or court proceeding to protect any CUI to which I have been given access under the terms of this agreement.

- Each provision of this agreement is severable. If a court should find any provision of this agreement to be unenforceable, all other provisions shall remain in full force and effect.
- My execution of this agreement shall not nullify or affect in any manner any other secrecy or non-disclosure agreement(s) that I have executed or may execute with HUD, the United States Government, or any of its other departments or agencies.
- Signing this agreement does not bar disclosures as required by superseding authorities of existing or future LRGWP.

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling executive orders and statutory provisions are incorporated into this agreement and are controlling. Nothing in this agreement shall be construed to prohibit or restrict an employee or applicant for employment from making a lawful disclosure of information relating to any whistleblower protection.

I read this agreement carefully and my questions, if any, were answered. I acknowledge that HUD has made available to me any agency guidance, LRGWP, or other laws, regulations, or directives referenced in this agreement so that I may read them at this time, if I so choose.

I am *[check appropriate box]*:

☐ An employee of the Offeror named above.

☐ Under a contractual or other agreement with the Offeror *[describe, e.g., independent consultant]*:

[Company Name and address]

(Signature and Date)

Address: _____ Phone: _____