

CITY OF TACOMA
CONFIDENTIALITY AGREEMENT

This Confidentiality and Non-Disclosure Agreement (this "Agreement") is entered into as of this ____ day of _____, 20__ (the "Effective Date"), by and between **City of Tacoma (CITY)**, and NAME AND BUSINESS ENTITY STATUS OF OTHER PARTY HERE, ("Recipient").

Whereas, CITY and Recipient anticipate exchanging information in connection with the interview stage of the selection process specified in City of Tacoma's SAP S4 HANA RISE and Cloud Service SI RFP ("Project") and

Whereas, CITY is only willing to disclose and release such information to Recipient on a confidential basis and only in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived hereunder, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **"Confidential Information"**. The Parties expressly acknowledge and agree that to accomplish the objectives of the Project, information of a confidential, proprietary and/or systems security sensitive nature may be disclosed between them. This information specifically includes DESCRIBE all data or information to be provided to Recipient in connection with the Project.... For purposes of this Agreement, such information shall be deemed **"Confidential Information"** and shall include (a) in the case of written and/or electronic information, all data, documents, records and materials marked or otherwise identified as "confidential" or "proprietary," (b) in the case of oral disclosures, information identified at the time of disclosure as confidential and/or proprietary and confirmed in writing as such by CITY within ten (10) calendar days of the disclosure to Recipient, and/or (c) that should reasonably have been understood by the Recipient because of legends or other markings (e.g. marked confidential), the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to CITY.

"Confidential Information" shall not include information that: (i) was known to the Recipient without breach of any contractual, fiduciary or other obligations prior to disclosure by CITY; (ii) is part of the public domain on the date of disclosure; (iii) can be demonstrated to have been independently developed by Recipient without reference to the Confidential Information, or (iv) is required to be disclosed by operation of law, or pursuant to order of a governmental agency with jurisdiction.

2. **Permissible Use of Confidential Information**. Recipient expressly agrees to:

A. Use the Confidential Information for the **sole** purpose of presenting the scope of work and accomplishing the objectives of the Project and Discloser's authorized activities in connection therewith;

B. Restrict access to the Confidential Information solely to Recipient's managers, employees, and sub-consultants with an express need to know; AND

C. Hold in confidence and protect the Confidential Information from disclosure to anyone not authorized to receive, view or use said information, which duty shall include taking reasonable precautions, but in no event less than due care, to prevent disclosure,

publication, reproduction or dissemination of the Confidential Information to anyone not authorized to receive or view same.

3. Prohibited Use. Recipient shall **not** use any Confidential Information disclosed by CITY, whether such disclosure is intentional or unintentional, for:

- A. Its own or any third party's commercial advantage or benefit without the prior written approval of an authorized CITY representative in each instance;
- B. For any marketing purposes not expressly contemplated by the Project; and/or
- C. In violation of commercial and/or ethical standards applicable to Recipient's industry.

4. Term: This Agreement terminates the earlier of three (3) years after the Effective Date or termination by CITY upon thirty (30) days' written notice thereof. The obligations of Recipient with respect to Confidential Information received prior to termination of this Agreement, as well as CITY's remedies hereunder, will survive said termination for a period of twenty-four (24) months.

5. No Ownership or License. Disclosure of Confidential Information by CITY hereunder shall not grant the Recipient any right or license to use the Confidential Information except as expressly set forth herein. Upon request, Recipient shall return all Confidential Information, including all copies thereof in whatever form, to CITY within ten (10) days following receipt of such request or shall destroy such information and copies and promptly provide CITY with written certification of such destruction.

6. Breach and Remedies. The Parties agree that the Confidential Information is a unique and valuable asset of CITY and that CITY will be irreparably damaged if Recipient breaches the terms of this Agreement. Without limiting CITY's right to damages for breach of this Agreement, the Parties further agree that in the event of any breach or threatened breach of this Agreement, CITY shall be entitled (in addition to any and all other remedies) to injunctive relief, specific performance and other equitable remedies without proof of monetary damages or the inadequacy of other remedies, and without necessity of posting a bond or other security.

7. No commitment for future business relationship(s) or contract(s). Nothing in this Agreement nor the furnishing of Confidential Information pursuant hereto shall be construed in any way as an offer or as obligating either Party to enter into any further agreement, negotiation or transaction with the other or to refrain from entering into an agreement, negotiation or transaction with any other person, including without limitation any person engaged in the same or similar line of business as the other Party hereto.

8. No Warranties. The Parties agree that no warranties of any kind are given with respect to the Confidential Information disclosed or exchanged hereunder.

9. Waiver. Failure by CITY to enforce or exercise any provision, right or option contained in this Agreement will not be construed as a present or future waiver of such provision, right or option.

10. Governing Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Washington. Each Party hereby irrevocably consents to the jurisdiction

and venue of any state or federal court located in Pierce County, Washington, with regard to any legal or equitable action or proceeding relating to this Agreement.

11. Integration and Severability. This Agreement represents the entire understanding between the Parties regarding the subject matter hereof, and the terms and conditions of this Agreement supersede the terms of any prior agreements or understandings, express or implied, written or oral. The provisions of this Agreement are to be considered as severable, and in the event that any provision is held to be invalid or unenforceable, the Parties intend that the remaining provisions will remain in full force and effect to the extent possible and in keeping with the intent of the Parties.

IN WITNESS WHEREOF, the Parties accept and agree to the above terms and conditions and by their signature below represent and warrant their authority to execute this Agreement.

Recipient

City of Tacoma

NAME OF OTHER PARTY

By: _____

By: _____

Printed Name:

Printed Name:

Title:

Title: _____

Approved as to Form:

Deputy City Attorney