

**ATTACHMENT J (DOCUMENT SECURITY NOTICE)**

**FAIRFAX COUNTY WATER AUTHORITY**

**DOCUMENT SECURITY LICENSE AND NONDISCLOSURE AGREEMENT**

THIS LICENSE AND NONDISCLOSURE AGREEMENT, made on this \_\_\_\_\_ (the "Effective Date"), by and between the Fairfax County Water Authority, 8570 Executive Park Avenue, Fairfax, VA 22031, and hereinafter called "Fairfax Water," and \_\_\_\_\_

Applicant Name and Address

and hereinafter called "Licensee," recites and provides as follows:

Recitals

Fairfax Water owns and holds proprietary rights to the Confidential Information (as defined below). Fairfax Water wishes to grant the Licensee a non-transferrable, non-exclusive, limited and revocable license to use the Confidential Information in connection with Licensee's performance of the Services (as defined below), and Licensee wishes to accept such a license, all on the terms and in accordance with the conditions set forth in this Agreement.

Agreement

**NOW THEREFORE**, in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

**Section 1 - Definitions:**

**"Confidential Information"** means and includes all documents, electronic and other materials and records (regardless of form or format) provided by Fairfax Water to the Licensee in connection with the Licensee's performance of the Services including, but not limited to employee census data for Life Insurance, Accidental Death & Dismemberment Insurance, spreadsheets, tabular lists, and metadata. Certain items of Confidential Information are identified on RFP 24-007 – Attachment List to this Agreement.

**"Services"** means the proposed services provided by either the prime and/or subcontractor Offeror(s) related services that are the subject of Fairfax Water's RFP 24-007.

**Section 2 – Grant of License:**

Subject to the terms and conditions set forth in this Agreement, Fairfax Water hereby grants to the Licensee, and the Licensee hereby accepts, a non-transferable, non-exclusive, limited and revocable license to use the Confidential Information during the Term (as defined in Section 7 below) for the sole purpose of performing the Services. The Licensee shall not assign, sell, sublease, transfer or otherwise convey this Agreement, the license granted hereunder, or any other right or obligation hereunder, unless authorized in advance and in writing by Fairfax Water to do so.

**Section 3 – Confidentiality and Restrictions on Use:**

- A. The Licensee hereby covenants and agrees that, except as otherwise expressly permitted herein: (a) the Licensee will only use the Confidential Information for performance of the Services and not for its own benefit or for any other purpose; (b), Confidential Information will maintained by the Licensee as confidential and only be disclosed on a "need-to-know" basis to individuals who have been apprised of the

confidential nature of the information, who are employees, consultants, or subcontractors of the Licensee, and who are bound to the Licensee by obligations of confidentiality that are no less restrictive than those contained herein (such individuals, employees, consultants, and/or subcontractors to be sometimes collectively referred to herein as the "Authorized Representatives"), (c) the Licensee will handle and protect the Confidential Information using the same internal security procedures and degree of care regarding confidentiality as similar information belonging to the Licensee (but not less than reasonable care); (d) the Licensee will not disclose, publish, or provide access to the Confidential Information to any person, firm, corporation, or other organization without the prior written consent of Fairfax Water.

#### **Section 4 – Ownership and Rights to Use Confidential Information:**

- A. The Confidential Information, and all intellectual property rights embodied in such Confidential Information, will remain the property of Fairfax Water. This Agreement and the disclosure of the Confidential Information to the Licensee hereunder (a) creates only a limited and revocable license to use such information solely for the performance of the Services by the Licensee; (b) will not be construed as granting or conferring any express or implied right, license, or authority in or to Fairfax Water's other proprietary information, except the limited right to use Confidential Information as authorized by this Agreement; and (c) will not grant or create any express or implied right, license, conveyance, or authority in or to any of Fairfax Water's patents, copyrights, trademarks, trade secrets, or other intellectual property rights.
- B. Notwithstanding any provision hereof to the contrary, the Licensee may disclose Confidential Information if and to the extent required of it by applicable judicial or other governmental order, provided that the Licensee first provides reasonable notice to Fairfax Water prior to such disclosure and the Licensee complies with any applicable protective order or equivalent.
- C. The Licensee will require its employees, consultants, and subcontractors to sign a copy of the Fairfax Water Document Security License and Non-Disclosure Agreement prior to dissemination of any Confidential Information to such employees, consultants, and subcontractors. The Licensee will submit originals of each such signed Agreement to Fairfax Water promptly following execution thereof.
- D. Record Keeping

Licensee and its employees, consultants, and subcontractors must maintain a list of all entities to which the Confidential Information is disseminated, in accordance with sections 2 and 3 of this clause. This list must include at a minimum: (1) name of federal, state, or local government, entity, utility, or firm to which the Confidential Information has been disseminated; (2) the name of the individual at the entity or firm who is responsible for protecting the Confidential Information, with access strictly controlled and limited to those individuals having a legitimate business need to know such information; (3) contact information for the named individual and (4) a description of the Confidential Information provided. Once "as-built" drawings are submitted, the Licensee must collect all lists maintained in accordance with this clause, including those maintained by any subcontractors or suppliers, and submit them to Fairfax Water's Resident Engineer in Charge of Design and/or Construction.



immediately upon receipt by the Licensee of Fairfax Water's notice of termination. Upon the expiration of the Term or other termination of this Agreement, the Licensee immediately will cease using the Confidential Information for any purpose and will, at Fairfax Water's option and written request: (a) promptly return all originals, copies, reproductions and summaries of the Confidential Information, and notes made therefrom; or (b) certify destruction of the same in a secure manner so as to make inadvertent recovery impossible and intentional recovery impractical.

**Section 9 – NO WARRANTY; DISCLAIMER OF LIABILITY; WAIVER OF CLAIMS:**

- A. FAIRFAX WATER MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND, STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONFIDENTIAL INFORMATION, THE CONFIDENTIAL INFORMATION'S CONTENT, ACCURACY, COMPLETENESS, PERFORMANCE, THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR THIRD-PARTY RIGHTS, OR THE RESULTS TO BE OBTAINED FROM QUERIES OR USE OF THE CONFIDENTIAL INFORMATION, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. ALL CONFIDENTIAL INFORMATION IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'.
- B. Neither Fairfax Water nor any of its members, officers, employees or authorized representatives will in any event be liable for any damage, claim, or loss of any kind arising from or in connection with the license granted herein or the Licensee's use of the Confidential Information. THE LICENSEE ACKNOWLEDGES AND AGREES THAT IT WILL HAVE NO REMEDY AT LAW OR IN EQUITY AGAINST FAIRFAX WATER OR ANY OF ITS MEMBERS, OFFICERS, EMPLOYEES OR AUTHORIZED REPRESENTATIVES IN THE EVENT THAT ALL OR ANY PORTION OF THE CONFIDENTIAL INFORMATION IS INACCURATE, INCOMPLETE OR OTHERWISE DEFECTIVE IN ANY WAY AND HEREBY KNOWINGLY AND INTENTIONALLY WAIVES ANY CLAIM IT HAS OR MAY IN THE FUTURE HAVE AGAINST FAIRFAX WATER, ITS MEMBERS, OFFICERS, EMPLOYEES, OR REPRESENTATIVES BASED UPON ANY OR ALL OF THE FOREGOING GROUNDS.
- C. This Section 9 will survive the expiration of the Term or other termination of the Agreement.

**Section 10 – Interpretation of Confidential Information:**

The Confidential Information has been developed and is maintained by Fairfax Water solely for and in connection with its operations and activities. The use or interpretation of the Confidential Information by Licensee or the Authorized Representatives is their sole responsibility. Fairfax Water does not provide interpretation services with respect to the Confidential Information.

**Section 11 - Injunction Remedy and Attorneys' Fees; Exclusive Jurisdiction and Venue**

The parties hereby acknowledge and agree that monetary damages will not be a sufficient remedy in the event of any unauthorized disclosure or use of Confidential Information and that, as such, Fairfax Water will be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. The Licensee agrees that the exclusive jurisdiction and venue for any action relating to or arising from this Agreement, or the enforcement of any rights thereunder, is either the Circuit Court of Fairfax County, or the United States District Court for the Eastern District of Virginia (Alexandria Division), and Licensee hereby waives any and all objections to jurisdiction or venue in those courts. The Licensee hereby waives any requirement for the posting of a bond or other security by Fairfax Water in connection with any such proceeding.

In the event that any suit or action is filed to enforce any rights arising from or relating to this Agreement, then the prevailing party in any such action or suit shall be entitled to recover its reasonable attorneys' fees and litigation expenses (including but not limited to expert witness fees and other usual and customary expenses incurred by trial counsel in commercial litigation), as well as all court costs.

**Section 12 - Hardware and Software:**

The Licensee, at its own expense, shall provide all necessary hardware, software and equipment needed to access and use the Confidential Information.

**Section 13 - Governing Law:**

This Agreement, its construction, and all rights, remedies and causes of action arising from or relating to it, including any that may be asserted in any action or suit referred to in Section 11 of this Agreement, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles.

**Section 14 - Entire Agreement:**

This Agreement (including the Appendix) constitutes the entire agreement between the parties regarding its subject matter, and merges all prior discussions between them regarding the Confidential Information and the license granted hereunder. This Agreement may not be modified except by a later written agreement signed by both parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together will constitute one and the same original instrument. No provision of this Agreement shall be deemed waived by any act or acquiescence on the part of either party unless expressly agreed to in writing and signed by an authorized representative thereof. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Each of the parties, by signing below, represents to the other party that it, he or she has the authority to bind the named person or entity to this Agreement.

**Section 15 – Waiver of Jury Trial:**

The parties hereby waive any right they may have to a trial by jury in connection with the resolution of any action or suit arising from or relating to this Agreement, including any action or suit referred to in Section 11 of this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties have caused this Agreement to be executed by their duly authorized representatives, in duplicate copies, each of which shall constitute an original, and effective as of the Effective Date set forth in the first paragraph above.

**FAIRFAX COUNTY WATER AUTHORITY**

By: Elizabeth B. Dooley, CPPO, CPPB

Title: Procurement Manager

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

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

Applicant's Name and Address

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

Authorized Agent Name: \_\_\_\_\_

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

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

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