Attachment 14: Sample Confidentiality Agreement

This document is provided to vendors as a sample Mutual NonDisclosure Agreement they will be asked to sign in order to be granted access to State agency equipment, networks, facilities or data.

Agreement between [Company Name] (hereinafter [Company abbreviation]) a [state] corporation, having a principal place of business at [Company Address] and [Agency]
(hereinafter "[Agency abbreviation]") having a place of business at [Agency Address],

WHEREAS, [Company Abbreviation] and [Agency abbreviation] intend to exchange proprietary information relating to [Company Abbreviation] and [Agency abbreviation]'s work and methods (hereinafter "Confidential Information"),

WHEREAS, the party disclosing or transmitting Confidential Information is the "disclosing party" and the party receiving such Confidential Information is the "receiving party".

THEREFORE, the parties agree as follows:

1. Confidential Information means nonpublic information that the disclosing party designates as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential. Confidential Information includes without limitation, information relating to the disclosing party's software or hardware products which may include source code, data files, documentation, specifications, databases, networks, system design, file layouts, development methods, and any system or data security related information. Confidential information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine-readable.

2. Confidential Information shall remain the property of the disclosing party. Receiving party will return all originals, copies and summaries of the Confidential Information at the request of the disclosing party, or certify in writing to disclosing party that all such Confidential Information has been destroyed.

3. The receiving party shall hold Confidential Information in strictest confidence, and shall use the Confidential Information only for the purposes of this Agreement and disclose the Confidential Information only to its employees or consultants who have a need to know and who have agreed to abide by the terms of this Agreement prior to disclosure. Receiving party shall take reasonable security precautions, at least as great as precautions it takes to protect its own confidential information, to preserve the confidentiality of the Confidential Information. Further, receiving party agrees to notify disclosing party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by receiving party, or its employees or consultants, and will cooperate with disclosing party in every reasonable way to help disclosing party regain possession of the Confidential Information and prevent its further unauthorized disclosure or use.

4. These restrictions on the use or disclosure of Confidential Information shall not apply to information

   (i) independently developed by the receiving party, provided that such information is not derived from any data which has been provided by and identified as Confidential Information by the disclosing party; or

(ii)   lawfully received from another source without breach of this Agreement; or

(iii)   which is or becomes generally available to the public without breach of this Agreement by the receiving party; or

(iv)   which at the time of disclosure was known to the receiving party; or

(v)   is disclosed to unaffiliated third parties without restriction by the disclosing party; or

(vi)   is disclosed pursuant to law, judicial order, or government regulations so long as the party subject to the law, order, or regulation promptly notifies the other party prior to disclosure and cooperates with the other party in the event that the party owning the Confidential Information elects to contest and/or avoid such judicial or governmental disclosure, whether by seeking a protective order or otherwise.

5.   Notwithstanding any other provisions of this Agreement, the receiving party agrees not to export directly or indirectly, any U.S. source technical data acquired from the disclosing party or any products utilizing such data unless such export is in compliance with the United States Export Laws and Regulations.

6.   It is expressly understood and agreed that this Agreement does not grant to either party any exclusive privileges or rights and that either party can contract with third parties for the procurement of comparable products and services.

7.   Neither party shall, without first obtaining written consent of the other, use any trademark or trade name of the other or refer to the subject matter of this Agreement in any promotional activity or otherwise with respect to this Agreement or the parties' activities pursuant to this Agreement, nor disclose to others any specific information about the subject matter of this Agreement.

8.   Neither this Agreement, nor any rights hereunder in whole or in part shall be assignable or otherwise transferable by either party and the obligations contained in this Agreement shall survive and continue after termination of this Agreement.

9.   Each party agrees that (a) the other will be irreparably harmed by the release of its Confidential Information and (b) the injured party would not have an adequate remedy at law in the event of an actual or threatened violation of this Agreement. Accordingly, each party agrees that in the event of an actual or threatened violation of this
Agreement by one party, the other shall be entitled to an appropriate decree of specific performance for any violation(s) or breach(es) by the receiving party, its employees, agents and/or representatives without the necessity of demonstrating actual damages or that monetary damages would not afford and adequate remedy.

10.   This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous oral or written agreements or understandings between the parties on such subject matter. This Agreement may be modified only in writing signed by a duly authorized representative of the parties.

11. This Agreement, along with any and all obligations assumed by each party hereto, shall terminate automatically four (4) years from the date of its execution. Upon termination of the Agreement, Confidential Information shall be returned to the disclosing party unless the disclosing party shall provide to the receiving party its written instructions for disposition.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, and shall benefit and be binding upon the parties hereto, their respective successors and assigns. Any actions arising under this Agreement shall be brought only in the state or federal courts of New York, and neither party shall commence any judicial proceedings elsewhere even though personal jurisdiction may be proper in other jurisdictions. The parties submit to the personal jurisdiction of the federal and state courts of New York.

13. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain in full force an effect.

[Agency Name]   [Company Name]

By: _____   By: _____
            (Signature)   (Signature)

_____   _____
          (Printed Name)   (Printed Name)

Title: _____   Title: _____

Date: _____   Date: _____