

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is made and entered into as of the ____ day of _____, 201__ (“Effective Date”), by and between the University of Dayton, having a principal place of business at 300 College Park Drive, Dayton, OH 45469 (the “University”), and _____ (the “Vendor”). For purposes of this Agreement, the University and Vendor are collectively referred to as “parties,” and each individually as a “party.”

WHEREAS, the University is exploring, with multiple service providers, the possibility of entering into a long-term collaborative relationship where the selected service provider would assume portions of the University’s business services and/or functions of its Facilities Management organization (the “Project”);

WHEREAS, Vendor desires that the University consider selecting it as a service provider for the Project;

WHEREAS, the parties desire the ability to explore fully a potential relationship between them for the Project, but in so doing, both parties desire to keep confidential the details of their discussions as well as information they have shared and will share with each other in furtherance of assessing the Project;

WHEREAS, the University desires that the mere fact of the Project’s existence be kept strictly confidential unless and until the University decides to make that fact public (in which case such publicity shall be managed by the University); and

WHEREAS, this Agreement sets forth the terms and restrictions that will apply to confidential and/or proprietary information exchanged by and between the parties.

NOW, THEREFORE, the parties hereto agree as follows:

- 1.0** For purposes of this Agreement, “Disclosing Party” can mean either the University or Vendor, and “Recipient” can mean either the University or Vendor.
- 2.0** For purposes of this Agreement, “Confidential Information” means any information of a confidential and/or proprietary nature first disclosed to the Recipient by the Disclosing Party in connection with discussions between the parties regarding the Project on, before or after the Effective Date, which information is either: (a) in documents or other tangible materials clearly marked CONFIDENTIAL or the like at the time of disclosure or otherwise communicated to be confidential; or (b) provided orally or in any other intangible form, if at the time of first disclosure the Disclosing Party tells the Recipient that the information is confidentially; or (c) although not marked “CONFIDENTIAL” or verbally described to be confidential, Recipient reasonably should know the information is confidential and not generally known to the public. Confidential Information may be information and documents; in written or oral form; factual, interpretive or strategic; analyses, compilations, studies, records or data prepared by a party or a party’s representatives; or information or documents that reflect or otherwise are generated from Confidential Information. Confidential Information shall also include the fact that the parties are considering the Project, until such date such fact is made public by the University.

- 3.0** “Confidential Information” shall not mean or include, and the parties shall have no obligations with respect to, information which: (a) is already known to the Recipient at the time of its disclosure by the Disclosing Party, through no wrongful act of the Recipient; (b) is, or becomes, publicly known, through publication, inspection of a product or otherwise, and through no wrongful act of Recipient; (c) is or has been independently developed by or for the Recipient; (d) is received by the Recipient from a third party without similar restrictions as to non-disclosure and without breach of this Agreement; (e) is approved for release by written authorization of the Disclosing Party; or (f) is disclosed by the Recipient upon receipt of a legal opinion from counsel that such disclosure is required pursuant to the lawful requirement or request of a governmental agency or disclosure is otherwise required by operation of law (provided, however, that the Recipient shall notify and cooperate with Disclosing Party regarding such required disclosure as set forth in Section 6.0).
- 4.0** The Recipient shall not disclose to any other person, firm or corporation, other than its employees, directors, agents, or representatives, including without limitation, attorneys, accountants, appraisers and financial advisors, who have a “need to know” for purposes of completing any assessment of the Project (collectively, “representatives”) any of the Confidential Information received from the Disclosing Party hereunder, by using the same degree of care to avoid disclosure of such Confidential Information as Recipient employs with respect to its own proprietary and confidential information of like kind. The Recipient further agrees to inform its representatives of the confidential nature of the Confidential Information and take reasonable steps to ensure its representatives will abide by the terms of this Agreement.
- 5.0** The Confidential Information shall be and remain the property of the Disclosing Party and will be returned to the Disclosing Party immediately, upon written request, or destroyed, at the Disclosing Party’s option. That portion of the Disclosing Party’s Confidential Information which consists of analyses, compilations, studies or other documents or records prepared by the Recipient, or its representatives, shall be held by the Recipient and kept confidential and subject to the terms of this Agreement, or shall be destroyed.
- 6.0** In the event that the Recipient is requested to disclose all or any part of the Confidential Information received hereunder, the Recipient agrees to immediately notify the Disclosing Party of the existence, terms, and circumstances surrounding such a request. If any court or regulatory order or other service of legal process or open records statute requires the Recipient to disclose information covered by its confidentiality obligation, then such party will provide the Disclosing Party with prompt notice of any such order or process so that the Disclosing Party may attempt to prevent such order of disclosure, and the parties shall also work together to ensure that any such required disclosure is carried out pursuant to a protective order (or other similar protection) to prevent further disclosure of the Confidential Information.

- 7.0** Vendor shall not make use of this Agreement, or the University's name or that of any member of the University's staff, for publicity or advertising purposes without prior written approval of the University.
- 8.0** The confidentiality requirements of this Agreement shall continue to apply even if Vendor is not selected by the University to perform the Project.
- 9.0** The parties agree that irreparable harm may result if Vendor fails to abide by the confidentiality requirements set forth in the agreement. In the event of a breach by Vendor of the confidentiality requirements of this Agreement, the University shall have the right to seek injunctive and/or other preliminary or equitable relief, without having to prove actual damages or to post a bond. Such relief shall be in addition to any other remedies and damages available to the University.
- 10.0** This Agreement and any performance hereunder shall be interpreted in accordance with and shall be governed by the laws of the State of Ohio, without giving effect to the principles of conflict of laws thereof.
- 11.0** This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the confidential nature of materials exchanged as part of assessing, discussing or otherwise exploring the Project and supersedes all previous communications, both oral and written, representations and understandings between the parties with respect to the subject matter of this Agreement. If any provisions of this Agreement are held to be invalid or unenforceable, they are to that extent to be deemed omitted and the remaining provisions of this Agreement will remain in full force and effect.
- 12.0** No amendment, modification, and/or discharge of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized officers or representatives. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will become a binding agreement when one or more of the counterparts have been signed by each of the parties hereto and delivered to the other parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date first above written.

University of Dayton

Vendor: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____