Attachment K

**NONDISCLOSURE AGREEMENT**

**between the New York State Workers’ Compensation Board and**

**(Vendor Name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THIS AGREEMENT** is between the New York State Workers’ Compensation Board (“Board”), having its principal place of business at 328 State Street, Schenectady, NY 12305, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Contractor to the Board (“Contractor”).

**NOW THEREFORE,** for and in consideration of the engagement of Contractor to perform services set forth in contract C140392, Forensic Accounting Services, for the Board, Contractor agrees to the following:

1. The Contractor, its officers, agents, and employees shall treat all workers’ compensation documents and information that is obtained from the Board as confidential information to the extent required by the laws of the State of New York and the United States and any regulations promulgated hereunder. Unauthorized disclosure of personal, confidential, and/or medical information may result in civil and/or criminal penalties under New York State and Federal laws.

Workers’ Compensation Law (WCL) §110-a prohibits any oral description of any Board record as well as the dissemination, release, disclosure, duplication, or publication of Board claim files except in certain limited situations as set forth therein. Pursuant to WCL §110-a(5), any person found in violation of this statute may be subject to criminal and civil prosecution and fines, and any such violation may form the basis for termination of the contractual arrangement between the Contractor and the Board.

All individually identifiable information relating to any claimant, employer, or insurance carrier shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees without the prior written approval of the Executive Director of the Workers’ Compensation Board or his or her designee.

The use of information obtained by the Contractor in the performance of its duties to the Board shall be limited to purposes directly connected with such duties. The Contractor agrees that its officers, agents, and employees shall not disclose, show, or otherwise make available any portion of the materials or their contents to anyone other than its officers, agents, and employees in connection with the performance of its duties to the Board. Unless prohibited by law, the Contractor shall advise the Board of all requests made to the Contractor for information described in this Agreement within twenty-four (24) hours of receipt of such request.

2. All proprietary information (whether oral, visual, written, electronic or in any other form) of which Contractor becomes aware as the result of the performance of services for the Board shall be deemed to be “Confidential Information.” Such Confidential Information shall be used by Contractor solely for the performance of services for the Board pursuant to the Contract. Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered Confidential Information:

(a) Information that is previously rightfully known to the Contractor without restriction on disclosure;

(b) Information that becomes, from no act or failure to act on the part of the Contractor, generally known in the relevant industry or is in the public domain; and

(c) Information that is independently developed by Contractor without use of information of the Board or the State of New York (“State”)

3. In the event that Contractor is required to disclose Confidential Information of the Board by law, regulation or order of a competent authority, Contractor shall, unless prohibited by law, give the Board not less than fifteen (15) business days advance written notice of any such requirement in order that the Board may seek a restraining order or similar equitable relief or protection which the Board may deem necessary to protect the subject Confidential Information; and, if still required, such disclosure shall be permitted only to the extent required to comply therewith and Contractor shall request, upon disclosure, such authority to protect the confidentiality of such Confidential Information by protective order or similar restriction against further disclosure.

4. Except as specifically permitted in this Nondisclosure Agreement, Contractor shall not, at any time, in any fashion, form or manner, either directly, indirectly or accidentally, divulge, disclose, communicate or use, either during or subsequent to its engagement with the Board, any Confidential Information received, obtained, acquired, directly, indirectly or accidentally, or developed relating to the services it provides to the Board and the State. Contractor further agrees not to divulge information or methods of accessing State data to any person not authorized by the Board to obtain such information and/or data.

5. Contractor agrees that any Confidential Information received from the onset of its activities at the Board shall be provided only to those individuals having a “need to know” such Confidential Information.

6. Unless prohibited by law, Contractor shall immediately refer any request for information relating to the performance of services for the Board, regardless of the source, to the Board to be handled in accordance with applicable federal and State laws.

7. Contractor shall not use the Confidential Information of the Board or the State for purposes unrelated to the performance of services for the Board pursuant to this Contract, including but not limited to preparing a bid in relation to the competitive procurement of goods or services by the Board or the State.

8. Contractor agrees to be bound by applicable federal and State laws governing confidentiality and/or privacy of information.

9. Contractor agrees not to issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding its engagement without the advance written approval of the Board.

10. Contractor agrees that all Confidential Information in its possession obtained as a result of its performance of services for the Board is at all times the sole property of the Board. Contractor shall have an affirmative duty to turn over to the Board all reports, notes, memoranda, notebooks, drawings, and other information, containing Confidential Information, made, received, compiled by or delivered to Contractor relating to the provision of services to the Board, regardless of the source of said information, upon termination of its engagement with the Board.

11. Contractor shall not attach or load any additional hardware or software to the State equipment unless authorized by the Board. Contractor also agrees to use only those access rights authorized for its use by the Board to access New York State confidential or proprietary data.

12. Contractor shall access only those directories in the Board’s computer information systems as are expressly made available to Contractor by the Board.

13. Contractor agrees to take no actions which intrude upon, disrupt or deny services to the Board’s computer information systems, unless directed by the Board’s Systems Administrator or his or her designee.

14. If Contractor is provided with a Board-established e-mail account, Contractor agrees to use the Board e-mail account established by the Board for the Contractor for all Board-related communications and identify itself as “Contractor to the NYS Workers’ Compensation Board.”

15. Contractor agrees not to use Board or State-provided equipment to engage in non-Board related work or communications.

16. Contractor understands that if it breaches, or threatens to breach this Agreement, in addition to the termination rights and remedies provided for under the Contract, the Board and the State of New York shall have the right to obtain injunctive relief to prevent such breach. Contractor acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information identified in this Agreement.

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**SIGNATURE PAGE**

**IN WITNESS WHEREOF,** Contractor has caused this Nondisclosure Agreement to be signed as of the date set forth below.

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

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

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

\*\*INCLUDE APPROPRIATE ACKNOWLEDGMENT\*\*

(ACKNOWLEDGMENT OF INDIVIDUAL)

STATE OF NEW YORK)

SS

COUNTY OF )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_, before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

(ACKNOWLEDGMENT OF FIRM OR PARTNERSHIP)

STATE OF NEW YORK)

SS

COUNTY OF )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known and known to me to be a member of the firm of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the person described in and who executed the foregoing instrument in the firm name of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and he duly acknowledged to me that he executed the same as and for the act and deed of said firm.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

(ACKNOWLEDGMENT OF CORPORATION)

STATE OF NEW YORK)

SS

COUNTY OF )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that he is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the corporation described in and which executed the above instruments; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public