

# **NONDISCLOSURE AGREEMENT (NDA)**

## **FOR PROPRIETARY INFORMATION**

**Note: You are entering into a legally binding agreement.**

THIS AGREEMENT is entered into and made effective as of this [date] of [Month, Year] by and between [Company] and [Consultant Name] concerning proprietary information which either party may furnish to the other relating to [Project Name] (hereinafter "Proprietary Information").

In consideration of the mutual promises made herein, the parties intending to be legally bound agree as follows:

1. Proprietary or Confidential Information of a disclosing party shall not be posted on the GovFlex.com (formerly GovProp.com) platform.
2. Proprietary Information of a disclosing party is that information which it has not released publicly and considered to be confidential and is deemed to include each party and its subsidiaries and/or affiliated companies' business, projects, business plans, performance, sales, contractual and special marketing information, clients/customers, strategies, trade secrets, operations, records, finances, assets, technology and data (or those of its clients/customers and their clients/customers), and all information or material that has or could have commercial value or other utility in the business or prospective business of the Disclosing Party. Confidential Information also includes all information of which unauthorized disclosure could be detrimental to the interests of the Disclosing Party whether or not Disclosing Party identifies such information as Confidential Information. All Proprietary Information furnished hereunder by either party to the other which is in tangible form shall be clearly marked with a "proprietary," "confidential" or similar legend, and if it cannot reasonably be so marked written notice shall be given to the receiving party at the time it is furnished advising that it is to be treated as Proprietary Information. In the event Proprietary Information is furnished other than in tangible form, the disclosing party shall inform the receiving party of its proprietary nature at the time it is furnished.
3. Title or the right to possess Proprietary Information as between the parties shall, except as otherwise provided herein, remain in the disclosing party. Neither party shall furnish to the other party any Proprietary Information of the other Party which it does not have, the right to furnish.
4. All Proprietary Information furnished by either party to the other party under this Agreement shall be used by the receiving party solely for above stated purpose, and disclosure by the receiving party shall be limited to its employees who are directly involved in such activity or have a need to know. The receiving party with the same care and discretion shall treat proprietary Information as the receiving party uses to protect its own proprietary or confidential information.

5. To facilitate information exchange, disclosure of some Proprietary Information may be made through the GovFlex.com platform. However, both client and consultant shall at their own expense, indemnify, defend and hold GPSI harmless from and against any and all third-party legal actions, claims, costs, court costs, fees (including reasonable attorneys' fees), damages, liabilities and expenses to the extent such claim arises solely and directly out (a) the Agreement, (b) or willful misconduct; or (c) infringement obligation. Consultant shall be solely liable to, and defend and hold GPSI harmless from, and against any and all legal actions, claims, costs, court costs, fees (including reasonable attorneys' fees), damages, liabilities and expenses to the with respect to Consultant's indemnity obligations, Consultant's actions, negligence, willful misconduct or infringement.
6. Each party will keep in confidence and protect Proprietary Information from disclosure to third parties and restrict its use as provided in this Agreement. Proprietary Information will not be copied, in whole or in part, except as necessary for performance as authorized hereunder. The receiving party will mark each copy, including its storage media, with all notices, which appear on the original. Each party will inform its employees or consultants of their obligations under this Agreement and instruct them so as to ensure such obligations are met.
7. Each party agrees to comply with all export laws and regulations of the United States applicable to any Proprietary Information disclosed hereunder.
8. Neither party shall be restricted from disclosing Proprietary Information of the other party pursuant to a judicial or governmental order, provided, that any such disclosure shall be made only to the extent so ordered, and provided further, that the party receiving an order provide prompt written notice to the disclosing party so that the disclosing party may seek an appropriate protective order.
9. The obligations and limitations set forth herein regarding the Proprietary Information shall not apply to information, which is:
  - (a) at any time in the public domain other than by a breach of this Agreement on the part of the receiving party; or
  - (b) at any time rightfully received from a third party which has the right to and transmits it to the receiving party without any obligations of confidentiality; or
  - (c) rightfully known to the receiving party without any limitation on use or disclosure prior to receipt of the same from the disclosing party; or
  - (d) independently developed by personnel of the receiving party who have not had access to Proprietary Information received from the disclosing party; or
  - (e) generally made available to third parties by the disclosing party without any restriction concerning use or disclosure.

10. Either party may terminate the use of its Proprietary Information by the receiving party at any time without any liability for such termination, but the obligations of the parties set forth herein regarding use and disclosure of Proprietary Information shall not terminate until five (5) years after the effective date hereof, after which period the duties of the receiving party with respect to Proprietary Information it has received from the other party shall be governed solely by copyright and patent laws, except in the case of software, for which the obligations shall continue until the occurrence of any circumstances listed in the preceding paragraph.
11. Consultant agrees to promptly cease using and shall return or destroy (and certify destruction of) (i) all Proprietary Information, which Consultant receives, and (ii) all copies stored in any computer memory or storage medium, when it no longer has need thereof for the purposes stated herein or upon request of the furnishing party, whichever occurs first.
12. This NDA Agreement is not intended to and shall not be construed as creating a joint venture, partnership or other form of business association between the parties, nor as establishing a license grant of any kind from either party to the other except to use Proprietary Information for the purposes set forth in this Agreement.
13. The failure of either party to enforce any right resulting from breach of any provision of this Agreement by the other party shall not be deemed a waiver of any right relating to a subsequent breach of such provision or of any right hereunder.
14. This NDA shall be construed and governed by the laws of the Commonwealth of Virginia and any applicable Federal Acquisition Regulations.
15. This NDA states the entire agreement and supersedes all prior agreements, written or oral, between the parties with respect to the subject matter hereof and may not be amended except in writing signed by the duly authorized representatives of the respective parties.
16. Any other agreements between the parties relating to different subject matters shall not be affected by this Agreement.

**GovFlex.com Customer User**

**By:** [Company User Name]  
**Title:** [Company User Title]  
**Date:** [Date]  
**Company:** [Company Name]

**GovFlex.com Consultant User**

**By:** [Consultant User eSignature]  
**Name:** [consultant user Name]  
**Title:** [Consultant User Title]  
**Date:** [Date]