

**Purchase College SUNY  
Wiring Project  
RFP # SU-020119**

**CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

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***Purchase College intends to issue RFP # SU-020119 which contains sensitive information regarding Purchase College security systems, data, and processes, the contents of which contain information the general release of which may pose a threat to the security of the State's assets. Purchase College is authorized to release this information only to those Contractors properly executing the following confidentiality and non-disclosure agreement:***

**THIS AGREEMENT** is hereby executed between the State of New York (State), acting by and through Purchase College, SUNY, having its principal place of business at 735 Anderson Hill Road, Purchase NY 10577 and \_\_\_\_\_, having a principal place of business at \_\_\_\_\_ (hereinafter "Contractor" or "Custodian"), executed by \_\_\_\_\_, an individual who is Contractor's Authorized Representative (hereinafter "Authorized Representative"), in relation to Request for Proposal Entitled "Network Cable Installation" Purchase College SUNY RFP # **SU-020119**," hereinafter "RFP".

**Certification & Affirmation**

The Authorized Representative, by signing this Agreement in the name and on behalf of the Contractor, subscribes and affirms the following:

1. that he/she is the authorized representative of a Contractor which is qualified to respond to the above referenced RFP;
2. that he/she is signing this Agreement on behalf of and as the act and deed of the Contractor named below intending to bind said Contractor to the representations made herein;
3. that the Contractor will comply with all requirements of this Agreement; and
4. that the Contractor will certify the return or destruction of Confidential Information received as specified in this Agreement.

**PART 1. DEFINITIONS**

**A. Confidential Information**

'Confidential Information' (hereinafter "Confidential Information") shall be defined to include:

1. all documents listed in the RFP as "Exhibit 3 – Additional Documentation to be Shared"; and
2. any information that Purchase College or the State, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or source of information (e.g., Purchase College, other state agencies, state employees, electronic systems, or third-party contractors) provides to Contractor, or which Contractor obtains, discovers, derives or otherwise becomes aware of solely as a result of this RFP other than:
  - (a) information that is previously rightfully known to the Contractor without restriction on disclosure;
  - (b) information that is or becomes, from no act or failure to act on the part of the Contractor, generally known in the relevant industry or in the public domain; and

- (c) Information that is independently developed by Contractor without the use of Confidential Information.

Title to all Confidential Information remains the property of the State. Confidential Information is provided an “as is” basis, and the State of New York makes no warranties, guarantees or representations of any kind express or implied, or arising by custom or trade usage, as to any matter whatsoever, without limitation, and specifically makes no implied warranty of fitness for any particular purpose or use, including but not limited to adequacy, accuracy, completeness or conformity to any representation, description, sample or model.

#### **B. Authorized Use**

“Authorized Use” shall be defined as the use of Confidential Information by Contractor, its employees, consultants and subcontractors, solely for the purpose of submitting a proposal to the RFP and, if awarded a Contract, performing the services as agreed to by the Parties, as now or hereafter modified or amended. Disclosure, display, use, duplication, storage or transmittal of Confidential Information, in any form, for any purpose other than that set forth in the engagement, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an “unauthorized use”.

#### **C. Authorized Person**

“Authorized Person” shall be defined as those persons within Contractor’s employ or control identified by Contractor to ITS as having a need to receive, possess, store, access, or view Confidential Information for an Authorized Use.

### **PART 2. CONFIDENTIALITY & NON-DISCLOSURE REQUIREMENTS**

#### **A. Duty to Protect Confidential Information**

Upon proper execution of this Agreement, Contractor will be granted a non-exclusive, non-transferable license to display, use, duplicate, store, and disclose Confidential Information only for an Authorized Use. Contractor shall safeguard all Confidential Information which is delivered from the State to the Contractor to insure its authorized use and to protect and prevent its unauthorized use or disclosure.

“Safeguard all Confidential Information” shall be defined as Contractor taking either one, or a combination of the following security measures, whichever standard is higher:

- (1) Where Contractor has established security procedures for its own confidential, sensitive business information which impose security requirements for the protection of its own trade secret, proprietary or confidential information, Contractor shall protect the Confidential Information using the same means; and/or
- (2) Where Contractor has not established such internal procedures, Contractor shall take the commercial measures defined below, to protect the Confidential Information.

#### **Commercial Measures to Protect Confidential Information**

For purposes of this Agreement, “commercial measures” shall be defined to include all of the following responsibilities to be undertaken by the Contractor. Contractor shall take all of the following “commercial measures” to protect the Confidential Information:

##### **I. Use Restriction**

Confidential Information shall only be received, possessed, stored, accessed and/or viewed by Authorized Persons.

##### **II. Access by Authorized Person(s)**

- a. Contractor shall be responsible for identifying those persons within its employ or control who have a need to receive, possess, store, access, or view Confidential Information for an authorized use (hereinafter “Authorized Person(s)").

- b. Contractor shall be required to take commercially reasonable steps to inform each Authorized Person of their individual obligation to protect the security of Confidential Information in accordance with the requirements of this Agreement.
- c. Contractor shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any Authorized Person until such person has agreed to comply with the required security obligations set forth below.

**III. Access by Subcontractors and Consultants**

- a. Contractor shall be responsible for identifying those consultants and subcontractors who have a need to receive, possess, store, access, or view Confidential Information for an authorized use.
- b. Contractor shall not permit Confidential Information to be received, possessed, stored, accessed, or viewed by any consultant or subcontractor until such entity's legal representative has been made aware of and has agreed to comply with the required security obligations of this Agreement.
- c. Consultants and subcontractors shall not be allowed to further disseminate or distribute Confidential Information, other than to provide access by Authorized Person(s) within consultant's or subcontractor's control and oversight.

**IV. Security Obligations Regarding Confidential Information**

Any person(s) who receive, possess, store, access, or view Confidential Information from either the Contractor or its approved Subcontractor or Consultant (hereinafter "Custodian") shall be subject to the following security obligations:

- a. Custodian is the SOLE entity authorized to duplicate, distribute or otherwise transmit Confidential Information.
- b. Custodian's legal representative must approve any process used to duplicate, distribute or otherwise transmit Confidential Information to Authorized Person(s), and may NOT approve or use any process which involves the use of any public internet or other non-secure medium.
- c. Unless otherwise authorized by Custodian's legal representative, Confidential Information may NOT be stored on personal (non-business) computing or other electronic devices, or taken or removed in any form outside of the physical premises of Custodian.
- d. Confidential Information may only be duplicated, distributed or otherwise transmitted "as is", without alteration of any kind. "Confidential" or "Copyright" notices, whether originally in physical or electronic medium, shall not be removed from and shall be duplicated on Confidential Information when such information is duplicated, distributed or otherwise transmitted pursuant to (b) above.
- e. Other than as set forth in (a-d), above, Confidential Information may not be duplicated, distributed, stored or otherwise transmitted or communicated to or by any person or system. Authorized Person(s) may not copy, re-duplicate, re-transmit or re-distribute Confidential Information, in any form, whether whole or in part, or in any medium, whether electronic or hard copy.
- f. Upon termination of employment, Authorized Person(s) shall be required to return Confidential Information to Custodian's legal representative, and/or to certify that all electronic, optical or other copies have been destroyed within any electronic storage or other medium.

**V. Chain of Custody**

Contractor shall be required to keep a record of all copies of the Confidential Information that have been made and distributed to those persons within the employ of Contractor, and to those consultants or subcontractors who have a need to access Confidential Information for such authorized use.

Those consultants or subcontractors which receive Confidential Information from the Contractor shall, as a condition of accessing such information, certify that such entity shall keep a record of

all copies of the Confidential Information that have been made and distributed to those persons within the employ of such entity, and that such entity will provide its written certification of compliance with the provisions of this Agreement to the Contractor as provided in paragraph VI, below.

## **VI. Certification by Contractor of Return of Confidential Information**

The Contractor and its Consultants and Subcontractors who have received Confidential Information shall certify the chain of custody of such information as follows:

### **1. Of Contractor:**

Upon Termination, Contractor shall independently certify, in writing its compliance with the terms of this Agreement, using the attached Certification of Return or Destruction of Confidential Information, and shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s), consultants and subcontractors to whom the Confidential Information was duplicated, distributed or transmitted,
- (ii) As to Authorized Person(s) within the internal employment or control of Contractor, that all copies of Confidential Information have either been returned to the State, or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage, and Contractor shall attach the certifications of its consultants and subcontractors.

### **2. Of Contractor's Consultants and Subcontractors:**

Upon Termination, such entity shall independently certify, in writing its compliance with the terms of this Agreement, using the attached Certification of Return or Destruction of Confidential Information, and shall specifically certify:

- (i) the documented chain of custody naming all Authorized Person(s) to whom the Confidential Information was duplicated, distributed or transmitted, and
- (ii) As to such Authorized Person(s) within the internal employment or control of such entity, that all copies of Confidential Information have either been returned to the State, or are certified by such person(s) as having been destroyed or permanently deleted from all forms of electronic storage.

## **Termination**

The license to use Confidential Information terminates automatically upon the happening of any of the following: (a) breach of this agreement; or, (b) completion of Contractor's work if awarded a Contract pursuant to the RFP; or (c) Non-award of a Contract pursuant to the RFP.

## **Compliance**

The failure of Contractor to furnish the required certification and comply with the terms of this Agreement will be deemed a breach of the Agreement and, if applicable, grounds for non-payment. Breach of this Agreement may be considered by the State as an issue of responsibility as to such entity in future contracting opportunities with the State.

In addition to the foregoing, if Contractor breaches or threatens to breach this Agreement, the State shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorney's fees) for losses or damages resulting from such breach. Contractor are deemed to acknowledge 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 Information.

## **Governing Laws**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or

unenforceable, the other provisions shall remain in full force and effect.

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally came \_\_\_\_\_, to me known, who, being duly sworn by me, did depose and say that he/she is the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of company) and that he/she has authority to sign on behalf of said company.

\_\_\_\_\_

Notary Public

**CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION  
BY CONTRACTOR.  
PURSUANT TO CONFIDENTIAL NON-DISCLOSURE AGREEMENT DATED \_\_\_\_\_**

Contractor, having a principal place of business at \_\_\_\_\_ (hereinafter \_\_\_\_\_), and having entered into a Confidential Non-Disclosure Agreement (NDA) with Purchase College, SUNY on \_\_\_\_\_ in relation to Request for Proposal Entitled "Network Cable Installation RFP # SU-02019 (RFP)", and having been provided by Purchase College, SUNY with Confidential Information in accordance with that NDA, now certifies on behalf of itself and all Authorized Persons provided Confidential Information under the RFP, as to the following:

- i. that the documented chain of custody, attached hereto, names all Authorized Person(s) to whom the Confidential Information, including all information contained within the documents listed in the RFP as "Exhibit 3 – Additional Documentation to be Shared"; was duplicated, distributed or transmitted, and
- ii. as to such Authorized Person(s), that the Confidential Information provided by the State has been returned to the State, and that all duplicates, regardless of format, have been destroyed or permanently deleted from all forms of electronic storage, and
- iii. Contractor has attached certifications of Authorized Person(s) to whom the Confidential Information was duplicated, distributed or transmitted, that all copies of Confidential Information have been returned to Contractor and that the Authorized Person has destroyed or permanently deleted all duplicates of Confidential Information from all forms of electronic storage.

This Certification is hereby executed by:

By:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

<b><u>CORPORATE ACKNOWLEDGMENT</u></b>	
STATE OF _____	}
	SS.:
COUNTY OF _____	}
<p>On the _____ day of _____, 201__, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that s/he maintains an office at _____, Town/City of _____, County of _____, State of _____; and further that s/he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, s/he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.</p>	
<p>_____ Notary Public</p>	