

Mayor's Office of Contract Services
Criminal Court Abusive Partner Intervention Program ("APIP") Demonstration
Project
ATTACHMENT NDA
NON-DISCLOSURE AGREEMENT
E-PIN: 00220D0002

This Non-Disclosure Agreement (the "**Agreement**") is entered into by and between the City of New York, acting by and through its Mayor's Office of Criminal Justice (the "**City**" or "**MOCJ**"), and _____ [Vendor Name and State of Incorporation] ("**Recipient**") (each, a "**party**" and collectively, the "**parties**").

BACKGROUND

Recipient desires to provide the City with a proposal for the purpose of enabling the City to evaluate its services and enter into a potential business relationship.

Recipient will gain access to the City's Confidential Information (as defined below in Section 1 (DISCLOSURE OF CONFIDENTIAL INFORMATION)) in the course of its performance under the proposal.

The City desires to participate in the proposal in order to evaluate Recipient's services, subject to Recipient's agreement to protect its Confidential Information in accordance with this Agreement.

In consideration of being granted the opportunity to provide the proposal, and for other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **CONFIDENTIALITY**

(a) **Disclosure of Confidential Information.** The City may disclose Confidential Information to Recipient, either orally, visually, electronically, in writing, or other tangible form. As used in this Agreement, "**Confidential Information**" means all non-public information, including curricula, worksheets, workbooks, facilitation guides, video vignettes, policies and procedures, processes, techniques, technologies, designs, and any other confidential or proprietary information that has been classified, marked or announced as confidential or proprietary, or which, because of the circumstances of disclosure or the nature of the information itself, would be reasonably understood to be confidential and proprietary.

(b) **Permitted Use.** Recipient shall use the Confidential Information solely as required to provide the proposal to the City. Recipient shall not, directly or indirectly, use any Confidential Information for any other use or purpose. Recipient may not reproduce or make any copies of Confidential Information without MOCJ's prior written consent, except as required to perform its obligations under the proposal.

2. **RESTRICTIONS ON DISCLOSURE.**

(a) Recipient shall not disclose the Confidential Information, without MOCJ's prior written consent, to any person, entity, or organization, except to Recipient's partners, principals, employees, officers, agents, subcontractors, directors and advisors (including accountants, attorneys and consultants) who need to know the Confidential Information in order to complete the proposal (collectively, "**Representatives**"). Without limiting the generality of the foregoing, Recipient shall

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ensure that Representatives that will have access to the Confidential Information comply with all of the obligations contained in this Agreement, and Recipient shall cause each Representative to be bound by written obligations substantially similar to those in this Agreement. Recipient will be liable for the disclosure of Confidential Information by its Representatives.

(b) Degree of Care. Recipient shall use the same degree of care to protect the Confidential Information from disclosure that it uses to protect its own highly confidential information from unauthorized disclosure, but in no event may Recipient use less than a commercially reasonable standard of care. Recipient shall notify MOCJ in writing promptly upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will use commercially reasonable efforts to cooperate with the City to regain possession of all Confidential Information and to prevent any further disclosure or unauthorized use.

(c) Exceptions. This Section 2 (RESTRICTIONS ON DISCLOSURE) does not apply to Confidential Information to the extent that Recipient can demonstrate or establish by written evidence that: **(1)** the Confidential Information became part of the public domain other than through actions that constitute a breach of this Agreement or fault on the part of Recipient; **(2)** the Confidential Information was lawfully obtained by Recipient from a source other than the City free of any obligation to keep it confidential; **(3)** Recipient developed such information independently of and without reference to any Confidential Information of the City; **(4)** MOCJ expressly authorized disclosure of the Confidential Information by Recipient in writing; or **(5)** the Confidential Information is required to be disclosed pursuant to law, regulation, judicial or administrative order, or request by a governmental or other entity authorized by law to make such request; provided, however, that Recipient shall comply with Section 4 (RESPONSE TO LEGAL PROCESS) below. Recipient will bear the burden of proving any of the foregoing conditions exist.

3. MATERIALS.

(a) Ownership. The City will retain all right, title and interest in and to Confidential Information. Neither this Agreement nor any disclosure of Confidential Information will be deemed to grant Recipient any license or other intellectual property right. All materials including documents, drawings, models, apparatus, sketches, designs, curricula, worksheets, workbooks, facilitation guides, video vignettes, audits, reports and lists furnished to Recipient by the City, and any tangible embodiments of the City's Confidential Information created by Recipient, including any and all derivative forms, copies, record bearing media, summaries, and notes of the contents thereof, will remain the property of the City.

(b) Return. Upon the earlier of the request of the City or the Term (as defined below in Section 7 (TERM AND TERMINATION)), Recipient shall cease using and promptly return to the City or arrange for the destruction of all tangible copies of any Confidential Information then in Recipient's possession or under Recipient's control. If Recipient destroys Confidential Information, Recipient agrees to dispose of the Confidential Information in such a manner that the destroyed information cannot be read or reconstructed after its destruction. With respect to Confidential Information communicated through email or which has been scanned or otherwise stored electronically, Recipient will make commercially reasonable efforts to delete such information from its active storage medium. Upon the written request of the City, Recipient shall certify in writing that Recipient has complied with the obligations set forth in this Section 3(b). Recipient may retain

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Confidential Information to the extent it is backed up on its disaster recovery system, cannot be expunged without considerable effort, and is not readily available to an end user, with such retained information remaining subject to this Agreement.

4. **RESPONSE TO LEGAL PROCESS.** If Recipient (or any party to whom it transmits Confidential Information whether or not in compliance with this Agreement) is requested, pursuant to subpoena or other legal or regulatory process, to disclose any Confidential Information, to the extent permitted by law, Recipient shall provide the City with prompt notice so that the City may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If a protective order or other remedy is not obtained, Recipient will disclose Confidential Information only to the extent required by applicable law, regulation or court order. If the City waives compliance with the provisions of this Agreement, Recipient (or such other person) shall coordinate with the City in an effort to limit the nature and scope of such disclosure.

5. **DISCLAIMER. RECIPIENT ACKNOWLEDGES AND AGREES THAT ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS-IS", WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. THE CITY MAKES NO WARRANTY REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY CONFIDENTIAL INFORMATION.**

6. **RECIPIENT INFORMATION.** The City does not wish to receive or anticipate receiving any confidential or proprietary information from Recipient, and the City assumes no obligation, either express or implied, with respect to any information disclosed by Recipient.

7. **TERM AND TERMINATION.** The term of this Agreement begins on the date that it is signed by the last party to sign it and will continue for a period of sixty (60) days (the "Term"). Only the City may terminate this Agreement during the Term. Recipient's obligations and the City's rights under this Agreement will continue to survive: **(A)** with respect to trade secrets, for so long as they remain trade secrets; **(B)** with respect to personally identifiable information, information the disclosure of which may create a risk to public safety or to the security of the City's IT systems, until the City notifies Recipient in writing that the information is no longer confidential or may otherwise be disclosed; and **(C)** with respect other information that is protected from disclosure by law, for so long as the applicable laws restrict its disclosure. For all other Confidential Information, Recipient's obligations and the City's rights under this Agreement will continue until the date that is sixty days after the date on which this Agreement is terminated.

8. **GENERAL PROVISIONS.**

(a) **Governing Law; Venue; Jurisdiction; Jury Waiver.** The laws of the State of New York, without reference to its choice of law principles, govern this Agreement and any claims arising out of or relating to this Agreement, its negotiation, execution, performance or breach. All disputes and controversies arising out of or relating to this Agreement, its negotiation, execution, performance or breach must be resolved in the state and federal courts in the City, County and State of New York, and each party irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of such disputes and waives all objections thereto. To the fullest extent permitted by law, each party irrevocably waives its right to a jury in any litigation arising out of or relating to this

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Agreement, its negotiation, execution, performance or breach.

(b) Injunctive Relief. Recipient acknowledges that the remedy at law for any breach of this Agreement will be inadequate and that the damages resulting from such breach are not readily susceptible to being measured in monetary terms. Accordingly, in the event of a breach or threatened breach by Recipient of the terms of this Agreement, the City will be entitled to immediate injunctive relief and may obtain an order restraining any threatened or further breach, in addition to any and all remedies available at law. Nothing herein may be construed as prohibiting the City from pursuing any other remedies available to the City for such breach or threatened breach, including the recovery of damages from Recipient.

(c) Notices and Inquiries. For a notice under this Agreement to be valid, it must be sent by electronic mail (e-mail) and personal delivery, registered or certified mail (in each case return receipt requested), or nationally recognized overnight courier (e.g., FedEx or UPS), in each case with all fees and postage prepaid. All notices permitted or required under this Agreement will be effective upon receipt, and a notice will be deemed to be received when email acknowledgment is returned and/or delivered in person or signed for by the receiving party as indicated by the signed delivery receipt. If the receiving party refuses to accept delivery, or if delivery is impossible because of a change in address for which no notice was given, notice will be deemed to be received upon the rejection or inability to deliver. If a notice is received after 5:00 p.m. at the receiving party's location, or on a day other than a Business Day (as defined below), notice will be deemed to be received on the following Business Day. The notice must also be addressed to the receiving party at the email addresses and address listed below for the receiving party or to any other address designated by the receiving party in a notice that meets the requirements of this Section 9(c). All inquiries regarding this Agreement, including those relating to the substance of any materials provided thereunder, must be submitted via e-mail and shall be responded to in kind.

If to MOCJ: Ilana Turko
Senior Counsel
Mayor's Office of Criminal Justice
1 Centre Street, 1012 N
New York, NY 10007

Email: mocjprocurements@cityhall.nyc.gov

If to Recipient: _____

Email: _____

(d) Assignment. Recipient may not assign or otherwise transfer its rights under this Agreement, including by operation of law, without the prior written consent of the City. The City

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may assign this Agreement at any time.

(e) Amendments. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties.

(f) Miscellaneous. This Agreement will be construed and interpreted in a neutral manner. No rule of construction or interpretation will apply against any particular party based on a contention that the Agreement was drafted by one of the parties. The headings in this Agreement are solely for convenience of reference and will not affect its interpretation. This Agreement does not create any third-party beneficiary rights. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute the same agreement. A fully signed copy of this Agreement made by reliable means (e.g., a photocopy, facsimile or electronic image) will be considered an original. An electronic reproduction of this Agreement will be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by each party in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction will likewise be admissible in evidence. If any provision in this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions in the Agreement shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of its invalidity, illegality or unenforceability. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the waiving party, and no delay or failure to exercise or enforce any right or remedy hereunder will constitute a waiver of that right or remedy. Express waiver of any right or remedy in a particular instance will not constitute a waiver of that right or remedy in any other instance, or a waiver of any other right or remedy. Unless otherwise indicated, all references to a section of this Agreement are inclusive of all subsections. The word “**including**” is a term of expansion, not limitation. As used in this Agreement, “**Business Day**” means Monday through Friday, except for New Year’s Day, Martin Luther King’s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, and Christmas Day. Unless otherwise indicated, all references to a day are references to a calendar day and all references to a time of day are references to the time in New York, NY.

(g) Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.

(h) Representations. Recipient represents that it has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder, that the execution and delivery of this Agreement will not conflict with or violate any provision of its charter, by-laws or other governing documents, and that each party has taken all necessary steps to execute this Agreement.

The party is signing this Agreement as of the date set forth below its authorized signature.

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RECIPIENT
[Vendor Information]

By: _____

Name: _____

Title: _____

Date: _____