

**RFP 2023-35 EXHIBIT A**  
**South Dakota Science and Technology Authority**

**CONFIDENTIALITY AGREEMENT**

**THIS CONFIDENTIALITY AGREEMENT** (this “Agreement”) is entered into as of the \_\_\_\_ day of December, 2023, by and between the undersigned “Proposer” and the South Dakota Science and Technology Authority (“SDSTA”).

**WHEREAS**, Proposer desires to submit a proposal in response to SDSTA RFP 2023-35 relating to rebranding for SDSTA and its various divisions (the “Proposal”);

**WHEREAS**, it will be necessary for Proposer to have access to SDSTA’s new logo, website designs, and similar and related information (the “Confidential Information”) in order to submit the Proposal.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants and agreements stated below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Definitions.** For the purposes of this Agreement, the following terms have the following meanings:

A. “Confidential Information” has the meaning set out above in the Recitals. Notwithstanding the foregoing and for the purposes of this Agreement, information shall not be deemed to be Confidential if Proposer can prove that such information:

- (a) was publicly available at the time Proposer acquired the information from SDSTA;
- (b) has become publicly available other than by Proposer’s breach of this Agreement, but the obligation of confidentiality shall cease only after the date on which such information has become publicly available;
- (c) was known by Proposer prior to Proposer acquiring the information from SDSTA; or
- (d) was rightfully acquired by Proposer from a source other than SDSTA or SDSTA’s affiliates, directors, employees, agents, or representatives, provided that such source is not prohibited from transmitting such information pursuant to any contractual, fiduciary, or legal obligation of which Proposer was or reasonably should have been aware.

B. “Person” shall mean any individual or legal entity.

C. "Representatives" means, as to any Person, such Person's affiliates, and its and their respective directors, officers, employees, managing members, general partners, agents and consultants (including attorneys, financial advisors and accountants) who have an absolute need to access the Confidential Information in order to submit the Proposal, who are informed of the confidential nature of such information, and who shall agree to be bound by the obligations of confidentiality set forth in this Agreement.

**2. Obligations of Confidentiality.** Proposer shall keep the Confidential Information confidential. Proposer shall disclose the Confidential Information to only its Representatives that need to know such information. Proposer shall be responsible for any breach of confidentiality by its Representatives, including those Representatives who, subsequent to obtaining the Confidential Information become former Representatives of Proposer. Proposer shall take, at its sole cost and expense, all reasonable measures, including but not limited to court proceedings, to restrain its Representatives from unauthorized disclosure or use of the Confidential Information.

Except for disclosure to its Representatives under the conditions noted above, Proposer shall retain the Confidential Information in secret, shall not utilize the Confidential Information for the benefit of Proposer or any third party, and shall not divulge, furnish, or make accessible the Confidential Information to any person or third party. Proposer shall use the Confidential Information solely and exclusively for the purpose of carrying preparing the Proposal and related discussions and negotiations.

Proposer's obligations respecting the Confidential Information disclosed shall remain in effect until the earlier of (a) the Confidential Information is made public by SDSTA in its sole and exclusive discretion or (b) a period of three (3) years from the date of the last disclosure of Confidential Information.

**3. Compelled Disclosure.** In the event Proposer or anyone to whom Proposer transmits the Confidential Information becomes legally compelled to disclose any Confidential Information, Proposer or anyone to whom Proposer transmits the Confidential Information shall provide SDSTA, to the extent permitted by applicable law, with prompt notice so that SDSTA may seek a protective order or other appropriate remedy. In the event such a protective order or other remedy is not obtained, Proposer or anyone to whom Proposer transmits the Confidential Information shall furnish only that portion of the Confidential Information which in the opinion of Proposer's counsel is legally required.

**4. Return of Confidential Information.** The Parties acknowledge and agree that Proposer shall acquire no ownership or proprietary rights in or to any information disclosed hereunder, whether Confidential Information or otherwise, as a result of said disclosure. Whenever requested by SDSTA, Proposer shall immediately return all Confidential Information to SDSTA, including, without limitation, all Confidential Information provided by Proposer to its Representatives. Furthermore, Proposer shall destroy all Confidential Information, except for one copy which may be retained by Proposer solely for the purpose of determining its continuing obligations under this Agreement, or as otherwise required by law.

**5. Disclaimer of Other Relationships.** This Agreement shall not create a relationship of employment, agency, partnership, or joint venture, or a license between the Parties.

**6. Equitable Remedies.** Each party recognizes and agrees that the other parties may suffer irreparable damage as a result of any breach of this Agreement. Each party agrees that if another is injured by a breach or a threatened breach of this Agreement, the allegedly injured party shall have the ability to seek the remedy of a restraining order or other appropriate equitable relief to enforce this Agreement in addition to all other remedies provided by law.

**7. Waiver.** None of the provisions of this Agreement shall be considered waived by any party unless such waiver is given in writing to the other parties. A written waiver shall operate only as to the specific term or condition waived, and no written waiver shall be deemed to be a continuing waiver unless specifically stated.

**8. “Open Meetings” and “Open Record” Laws.** The terms of this Agreement are subject to the applicable terms of any “Open Meeting” or “Open Record” laws of the State of South Dakota which are applicable to SDSTA.

**9. Entire Agreement; Modification.** This instrument sets forth the entire agreement between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements between the parties relating to its subject matter. Modification or amendment of any provision of this Agreement shall not be valid unless made in writing and signed by the parties.

**10. Severability.** If any provision of this Agreement, or the application thereof to any Person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provision as applied to other Persons, places or circumstances shall remain in full force and effect.

**11. Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the non-assigning parties. Any purported assignment without such consent shall be void and unenforceable. Any successor entity of any party to this Agreement shall be entitled to the benefits of this Agreement, whether or not this Agreement is assigned to such successor entity.

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**12. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without regard to conflict of law principles.

**IN WITNESS WHEREOF**, authorized representatives of the parties hereto have executed this Agreement effective the day and year first above written.

**Proposer**

\_\_\_\_\_  
(Proposer Name)

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

Its: \_\_\_\_\_

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

**South Dakota Science and  
Technology Authority**

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

Its: \_\_\_\_\_

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