

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”), effective [_____], is made by and among the U.S. Small Business Administration (“SBA”), _____ [insert name of SBA lender] (“Lender”), and _____ [insert name of Independent Consultant to Lender] (“Consultant”) under 13 CFR § 120.1060, as amended from time to time.

SBA has issued to Lender a report, dated [_____] (“Report”) and a Corrective Action letter, dated [_____] (“Corrective Action Letter”). Lender has entered into a written agreement with Consultant to provide consulting services to Lender. Consultant will assist Lender with correcting deficiencies identified in the Report and the Corrective Action Letter (the “Findings”). Lender and Consultant have requested that Consultant have access to the Report and the Correction Action Letter for the sole and limited purpose (“Purpose”) of correcting the Findings to SBA’s satisfaction.

SBA approves Lender’s request conditioned upon the following:

1. Consultant and Lender agree that the Report, the Corrective Action Letter and any information contained therein or attached thereto and any related supplemental information provided by SBA or Lender (collectively, “Confidential Information”) is and will remain the property of SBA; is privileged and confidential; and any release of Confidential Information to any person not contemplated by this Agreement is subject to SBA prior written approval.
2. Consultant represents and warrants that it has a legitimate need to know Confidential Information in order to facilitate the Purpose. Consultant shall access Confidential Information only as contemplated by this Agreement and only during the term of this Agreement, and shall not copy or transmit it. Lender and Consultant agree to take reasonable precautions to preserve the confidentiality of Confidential Information, and to maintain such other safeguards and internal controls as are necessary and appropriate, including but not limited to encryption of Confidential Information.
3. Lender shall encrypt Confidential Information and either (i) copy it to a removable encrypted digital storage device transported to Consultant via hand delivery or certified registered mail requiring signature by Consultant; or (ii) transmit it to Consultant via encrypted email. The encrypted data shall only be accessible via a password or cipher key communicated verbally by Lender to Consultant. The encryption methods used by Lender shall be commercially reasonable and properly implemented. Lender and Consultant shall use commercially reasonable and effective, up-to-date computer security measures such as anti-virus and firewall software. Lender also may allow Consultant to access Confidential Information at Lender’s principal place of business under its supervision.
4. Consultant will review and use Confidential Information solely for the Purpose and not for any other purpose, including but not limited to any commercial or other purpose not contemplated by this Agreement.
5. If any party is requested or required in any legal proceeding to disclose Confidential Information, such party will provide SBA with prompt written notice, unless such notice is prohibited by law. Such party will not disclose Confidential Information without SBA’s prior written consent or without a legally binding, valid and enforceable order from a court or adjudicatory or legislative body with jurisdiction over the subject matter and the parties.
6. Consultant shall destroy originals and copies of notes, drafts, memorandum, documents or other writings (electronic or otherwise) referencing Confidential Information prior to termination of this Agreement.
7. In the event of a breach or threatened breach of this Agreement by any party, irreparable and uncertain damages may occur to SBA. In addition to pursuing any remedies provided by law and without prejudice to any rights to judicial relief it may otherwise have, SBA may seek equitable relief, including an injunction or an order of specific performance of this Agreement without proof of actual damage. The parties agree that they will not oppose the granting of such relief on the basis that SBA has an adequate remedy at law. In the event that any party has knowledge of any breach of this Agreement, it shall promptly give written notice to SBA.

8. The parties agree to be individually and jointly liable to SBA for any breaches of this Agreement. Lender agrees to take, at its sole expense, all necessary measures (including without limitation the initiation of litigation) to prevent Consultant from unauthorized disclosure or use of the Confidential Information.
9. SBA has not waived, and shall not be deemed to waive, any rights or remedies available to SBA under applicable statutes, regulations, SBA Standard Operating Procedures, notices, forms, or written agreements.
10. Lender and Consultant individually and on behalf of themselves and their assigns, owners, members, affiliates, subsidiaries, directors, officers, partners, agents, predecessors and successors in interest, agree to indemnify and hold SBA and its officials, employees, officers, agents, representatives, assigns and attorneys (collectively, "SBA Representatives") harmless from and against any and all third-party claims, demands, rights or causes of action, liens, and all other liabilities whatsoever asserted against the SBA or SBA Representatives arising out of or related to this Agreement, regardless of (i) when such claims accrued or may accrue; and (ii) when such claims were or may be filed.
11. This Agreement shall be governed by the Small Business Act, as amended, 15 U.S.C. § 631 et seq., 13 CFR Part 120, and federal law, except that, where applicable federal law does not exist, the laws of the State of New York shall control, notwithstanding its conflict of laws principles.
12. This Agreement contains the entire agreement of the parties with respect to the Confidential Information and supersedes any prior agreements.
13. This Agreement may be amended only upon written agreement of the parties. The parties may not assign their rights, duties or obligations under this Agreement without SBA's prior written consent.
14. Consultant agrees that misappropriation or use of Confidential Information for any purpose other than the Purpose shall constitute a violation of 18 U.S.C. § 641 and shall be subject to criminal penalties set forth in the statute.
15. This Agreement will terminate upon the earlier of (i) six months after the effective date, or (ii) SBA's written notice to Lender and Consultant that the Agreement will terminate in 48 hours after the date notice is given. Notwithstanding the foregoing, the parties may mutually agree in writing to renew or extend this Agreement. The confidentiality terms and conditions of this Agreement shall survive the termination of this Agreement.
16. Notices to SBA required by this Agreement shall be delivered by hand or sent by first class mail to SBA's Director of the Office of Credit Risk Management, [insert address].

_____ [Name of Lender]

By: _____
 Name: _____ Date: _____
 Title: _____

_____ [Name of Consultant]

By: _____
 Name: _____ Date: _____
 Title: _____

SBA Office of Credit Risk Management

By: _____
 Name: _____ Date: _____
 Title: _____