

Non-Disclosure Agreement (Non-Standard)

This Non-Disclosure Agreement ("Agreement") is between County of Orange ("County") and Microsoft Corporation and its affiliates ("Microsoft") as indicated in the signature block below. The County and Microsoft may be referred to individually as "Party" or collectively as "Parties." "We," "us" and "our" refer to both of the Parties signing below and the Parties' respective affiliates.

COMPANY AND ITS AFFILIATES or INDIVIDUAL: County of Orange, a political subdivision of the State of California	MICROSOFT CORPORATION AND ITS AFFILIATES
Address: 333 W. Santa Ana Blvd.	One Microsoft Way Redmond, WA 98052-6399
Santa Ana, CA 92701	
USA	USA
Sign:	
Print Name: Charles Eckstrom	Print Name:
Print Title: Interim Chief Information Officer	Print Title:
Signature Date:	Signature Date:

Expiration Date of this Agreement: This Agreement expires one hundred and eighty (180) days from the later of the two signature dates above, unless an earlier date is stated in the limited purpose that follows.

Limited Purpose: Application of this Agreement is limited to the following transaction or other interaction between the parties:
 Participation in the County of Orange HRS Data Analytics Project – Phase I and development of the associated Enterprise-wide Business Intelligence Platform.

Corporate and External Legal Affairs (CELA) Contact: **Charlie Bingham (CELA)**

1. The purpose of this Agreement. This Agreement allows us to disclose Confidential Information (defined below) to each other, to our own affiliates and to the other's affiliates, under the following terms. An "affiliate" is any legal entity that one of us owns, that owns one of us or that is under common control with one of us. "Control" and "own" mean possessing a 50% or greater interest in an entity or the right to direct the management of the entity. Additionally we may disclose the other's Confidential Information to our respective Representatives (as defined herein below) only if those Representatives are required to have the Confidential Information for the purposes in this Agreement. Before doing so, each Party must ensure that affiliates and Representatives are required to protect the Confidential Information on terms consistent with this Agreement.

2. Confidential information.



original for their files and return the other to you. Then, address the second original to:

NDA, CRM 124/Records
Microsoft Corporation
1 Microsoft Way
Redmond, WA 98052-6399

IEAID:243659

- a. **What is included.** "Confidential Information" is non-public information, know-how and trade secrets in any form that:
- A. Are designated in writing as "confidential" at the time of their disclosure and include: (1) corporate financial records or corporate proprietary information (e.g. trade secrets) exempted under the California Public Records Act, California Government Code Sections 6250, *et seq.*; or (2) information that a reasonable person knows or reasonably should understand to be confidential, and is treated confidential by the disclosing party.
 - B. The County's sensitive security information, or technical data, programs, software (including configuration or source codes), technical information, screen shots, customer information, employee records, computer network, architectural or engineering information, exploitable data, information protected by privacy law, or other information that is treated as confidential by the County, or is prohibited from being disclosed for any reason pursuant to law, statute, regulation, ordinance, or contract.
- b. **What is not included.** The following types of information, however marked, are not Confidential Information. Information that:
- Is, or becomes, publicly available without a breach of this Agreement or through no fault of the recipient of the information;
 - Is or becomes lawfully known to the recipient of the information without an obligation to keep it confidential;
 - Is received from another source who can disclose it lawfully;
 - Is independently developed;
 - Is a comment or suggestion one of the Parties volunteers about the other's business, products or services;
 - Is in the recipient's possession before receipt from the discloser of the information;
 - Is disclosed by the recipient with the discloser's prior written approval; or
 - Is disclosed by court order or under operation of applicable law including, but not limited to, the California Public Records Act, California Government Code Sections 6250, *et seq.*

3. Treatment of Confidential Information.

- a. **In general.** Subject to the other terms of this Agreement, each of us agrees:
- Except as required under any court order or law including, but not limited to, the California Public Records Act and Ralph M. Brown Act (California Government Code section 54950 *et seq.*), subpoena, or any other legally permitted or required disclosure, the Parties agree not to disclose the other's Confidential Information to third parties except to those employees of a recipient who are required to have the information for the purposes in this Agreement, Representatives (defined below), and except as otherwise allowed in this Agreement; and
 - The Parties will use and disclose the other's Confidential Information only for purposes of evaluating and engaging in an actual or potential business relationship with each other.
- b. **Security precautions.** Each Party agrees:
- To take reasonable steps to protect the other Party's Confidential Information. These steps must be at least as protective as those we take to protect our own Confidential Information of a similar nature;
 - To notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and



- To cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

c. Sharing Confidential Information with affiliates and Representatives.

- For the purposes of this Agreement, a "Representative" is an employee, contractor, vendor, service provider, advisor or consultant of a Party or a Party's respective affiliates including, but not limited to, Science Applications International Corporation ("SAIC") and Atos Governmental IT Outsourcing Services, LLC ("Atos") and each of their respective employees, affiliates, and subcontractors.
- Each Party may disclose the other's Confidential Information to its Representatives (who may then disclose that Confidential Information to other of its Representatives) only if those Representatives are required to have the Confidential Information for the purposes in this Agreement. Before doing so, each Party must ensure that affiliates and Representatives are required to protect the Confidential Information on terms consistent with this Agreement.
- Neither Party is required to restrict work assignments of Representatives who have had access to Confidential Information. Each Party acknowledges that they cannot control the incoming information the other Party will disclose in the course of the business relationship between the Parties, or what each Party's Representatives will remember, even without notes or other aids. Each Party agrees that use of information in its Representatives' unaided memories in the development or deployment of the Parties' respective products or services does not create liability for that Party under this Agreement or trade secret law. Both Parties mutually agree to limit what each Party discloses to the other accordingly.

- d. Disclosing Confidential Information if required to by law.** Each Party may disclose the other's Confidential Information if required to comply with a court order, law, or other government demand that has the force of law including, but not limited to, the California Public Records Act, California Government Code section 6250 *et seq.* If a Party is required to disclose the other Party's Confidential Information pursuant to applicable law, statute, or regulation, or court order, that Party will give to the other written notice of the order or request mandating disclosure of the Confidential Information in order to provide a reasonable opportunity for the other Party to object to such disclosure of its Confidential Information and seek a protective order or appropriate remedy. If, in the absence of a protective order, the recipient determines that it is required to disclose such information, it may disclose without breach of this Agreement only Confidential Information specifically required and only to the extent compelled to do so.

By entering into this Agreement, Microsoft expressly acknowledges that the County is a government entity subject to the California Public Records Act. If the County receives a request pursuant to the California Public Records Act for Confidential Information that Microsoft has designated as "confidential" in writing, the County will notify Microsoft of the request, so that Microsoft can seek protection from disclosure by a court of competent jurisdiction. Notwithstanding any other provisions of this Agreement, the County may in its discretion disclose Microsoft's Confidential Information in the County's possession without breach of this Agreement if the County notifies Microsoft of the pending California Public Records Act request and Microsoft fails to seek and obtain protection from disclosure by a court of competent jurisdiction.

- 4. Length of Confidential Information obligations.** Except as permitted above and unless otherwise required by applicable law or court order, neither Party will use or disclose the other's Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period. This duty to withhold Confidential Information survives any expiration or termination of this Agreement as provided herein.

5. General rights and obligations.



- a. **Law that applies; jurisdiction and venue.** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflicts of law provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding California Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- b. **Compliance with law.** Each of us will comply with all export laws that apply to Confidential Information.
- c. **Waiver.** Any delay or failure of either of us to exercise a right or remedy will not result in a waiver of that, or any other, right or remedy.
- d. **Money damages insufficient.** Each of us acknowledges that money damages may not be sufficient compensation for a breach of this Agreement. Each of us agrees that the other may seek court orders to stop Confidential Information from becoming public in breach of this Agreement.
- e. **Transfers of this Agreement.** If one of us transfers this Agreement, we will not disclose the other's Confidential Information to the transferee without the other's consent.
- f. **Enforceability.** If any provision of this Agreement is unenforceable, the parties (or, if we cannot agree, a court) will revise it so that it can be enforced. Even if no revision is possible, the rest of this Agreement will remain in place.
- g. **Entire agreement.** This Agreement does not grant any implied intellectual property licenses to Confidential Information, except as stated above. We may have contracts with each other covering other specific aspects of our relationship ("other contracts"). The other contract may include commitments about Confidential Information, either within it or by referencing another non-disclosure agreement. If so, those obligations remain in place for purposes of that other contract. With this exception, this is the entire agreement between us regarding Confidential Information. It replaces all other agreements and understandings regarding Confidential Information. We can only change this Agreement with a signed document that states that it is changing this Agreement.

