

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (the “Agreement”) is entered into on the _____ day of _____, 200__ and effective as of the _____ day of _____, 200__ (the “Effective Date”), by and between the Indiana Builders Association (“IBA”) and _____ (“Contractor”). (IBA and Contractor may be collectively referred to as “Parties” or singly as “Party”).

WHEREAS, the IBA has been selected by the Community Development Department of the Indiana Housing and Community Development Authority (“IHCDA”) to administer the Home Energy Conservation Program (“Program”) for low-income individuals under the American Recovery and Reinvestment Act (“ARRA”);

WHEREAS, as part of the IBA’s administration of the Program, confidential information will be disclosed to the Contractor that is required to be kept confidential pursuant to the Program;

WHEREAS, Contractor agrees that confidential information of participants of the Program (“Participants”) will be disclosed to it while performing services for IBA (“Services”);

WHEREAS, Contractor agrees that this confidential information is essential to perform services to the IBA and Participants under the Program; and

WHEREAS, the IBA and Contractor desire to set forth in writing the terms and conditions of their agreement with respect to the confidential information;

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Confidential Information.** “Confidential Information” as used in this Agreement means any individually identifiable information, whether oral or written, about the participants who receive services and/or assistance from the IBA or any other grantees, and/or any sub-recipients of the IHCDA, including but not limited to the names, addresses, social security numbers, financial information, dates of birth, credit information or the Participants involvement in the Program.
2. **Non-Disclosure of Confidential Information.** Contractor shall not disclose any Confidential Information to anyone, with the exception of the IBA, IHCDA or other federal, state and local governmental agencies (including their employees and representatives). Only to the extent it is necessary to Contractor’s performance of Services in Participant’s home may it disclose Confidential Information to other individuals involved with the Program, provided those individuals have executed and are subject to the terms of a Non-Disclosure and Confidentiality Agreement with the IBA. This must occur prior to Contractor sharing the Confidential Information with any other individuals.

3. **Use of Confidential Information.** The use of the Confidential Information disclosed to Contractor shall be strictly limited to accomplish the Contractor's duties and providing Services under the Program and may not be used by Contractor for its own purpose or benefit.
4. **Compliance with Applicable Laws.** Contractor shall ensure that all Confidential Information is handled and maintained in a confidential manner in compliance with the requirements of all applicable state or federal laws, rules, and regulations, including, but not limited to, those relating to the release of Social Security numbers in I.C. § 4-1-10 and the notice of security breach provisions in I.C. §4-1-11.
5. **Compliance with IBA Policies.** Through the execution of this Agreement, the Contractor represents that it has reviewed the IBA's policies and procedures regarding the disclosure of Confidential Information and agrees to comply with the same.
6. **Application to Contractor's Employees and Subcontractors.** To the extent Contractor's employees, agents, subcontractors, subcontractor's employees or others performing work for Contractor require access to a Participant's Confidential Information, Contractor shall require these individuals to each sign a Non-Disclosure and Confidentiality Agreement provided by the IBA and submit a copy of the same to IBA.
7. **Violation.** Any violation of the terms of this Agreement is subject to the penalties imposed by applicable federal, state and local laws regarding disclosure of Confidential Information. In the event Contractor improperly discloses Confidential Information, Contractor must report the unauthorized disclosure to the IBA immediately.
8. **Indemnification, Hold Harmless and Defense.** Contractor shall indemnify, defend and hold the IBA, IHCDA and the State of Indiana and their employees, agents, officers and officials, harmless from any and all actions, liabilities, injuries, claims, suits, losses, damages, judgments, causes of action, costs, or expenses (including reasonable attorneys' fees, court costs and out-of-pocket expenses) which they may sustain, incur, or be required to pay by reason of any disclosure of Confidential Information by Contractor, its employees, subcontractors, agents or representatives.
9. **Waiver.** No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by an authorized representative of the Party making the waiver. The failure of either Party in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

10. **Modification of Agreement.** This Agreement may not be amended except in writing and must be signed by authorized representatives of both Parties.
11. **Governing Law.** Indiana law shall govern the interpretation and implementation of this Agreement and the resolution of any dispute between the parties regarding the effect of the Agreement. Each Party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the State of Indiana serving the county of Marion, and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or forum not convenient or otherwise) to the exercise of such jurisdiction over it by any such courts.
12. **Severability.** Should any clause, portion or paragraph of this Agreement be unenforceable or invalid for any reason, such unenforceability or invalidity will not affect the enforceability or validity of the remainder of this Agreement, and any court and/or arbitrator having jurisdiction is specifically authorized and encouraged by the Parties to hold inviolate all portions of this Agreement that are valid and enforceable without consideration of any invalid or unenforceable portions hereof.
13. **Remedies.** In the event of a breach or threatened breach by Contractor of its obligations and covenants under this Agreement, the IBA shall be entitled to injunctive relief against Contractor; provided, however, nothing herein shall be interpreted as prohibiting the IBA from pursuing any and all other rights or remedies that it may have against Contractor, including monetary damages and reasonable attorneys' fees and other costs of investigation, litigation and/or arbitration IBA may incur in connection with a breach or threatened or potential breach of this Agreement.
14. **Attorney Fees.** In any arbitration and/or litigation arising from or relating to this Agreement, the IBA is entitled to recover from Contractor all costs and expenses, including attorney's fees incurred in the course of such proceedings.

The undersigned acknowledges that it has read the Agreement and is executing it with an understanding of its provisions.

Signature

Printed Name

Date Signed

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