

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement") is made and entered into between COMPANY, for itself and its parent, subsidiaries and affiliates ("Company"), and "Participant" identified below. The parties wish to exchange Confidential Information (as defined below in Section 2) for the following purpose(s): (a) to evaluate whether to enter into a contemplated business transaction; and (b) if the parties enter into an agreement related to such business transaction, to fulfill each party's confidentiality obligations to the extent the terms set forth below are incorporated therein (the "Purpose"). The parties have entered into this Agreement to protect the confidentiality of information in accordance with the following terms:

1. The Effective Date of this Agreement is the date the last party below signs.

2. In connection with the Purpose, a party may disclose certain information it considers confidential and/or proprietary ("Confidential Information") to the other party including, but not limited to, ~~tangible~~ <sup>tangible</sup>, intangible, oral, visual, electronic, present, or future information, ~~however~~ <sup>howsoever</sup> and whenever acquired including, but not limited to, by post, fax, e-mail, by text message (SMS) or by visual inspection during any tours of the Discloser's or its affiliates' facilities or premises, such information to include, without limitation: (a) trade secrets (whether or not subject to or protected by copyright, patent, or trademark (registered or unregistered)); (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; and (d) business information, including operations, planning, marketing interests, and products; (e) the terms of any agreement entered into between the parties and the discussions, negotiations and proposals related thereto.

3. The party receiving Confidential Information (a "Recipient") will only have a duty to protect Confidential Information disclosed to it by the other party ("Discloser"): (a) if it is clearly and conspicuously marked as "confidential" or with a similar designation; (b) if it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; or (c) if it is disclosed in a manner in which the Discloser reasonably communicated, or the Recipient should reasonably have understood under the circumstances, including without limitation those described in Section 2 above, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used.

4. A Recipient will use the Confidential Information only for the Purpose ~~described~~ <sup>described</sup> above. A Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own information of a similar nature to protect the Confidential Information and to prevent: (a) any use of Confidential Information in violation of this agreement; and/or (b) communication of Confidential Information to any unauthorized third parties. Confidential Information may only be disseminated to employees, <sup>representatives,</sup> officers or directors (collectively, "Authorized Personnel") of Recipient with a need to know and who have first signed an agreement with either of the parties containing confidentially provisions substantially similar to those set forth herein. A Recipient will be liable as primary obligor for any breaches of this Agreement notwithstanding that such breaches were committed by Authorized Personnel (with or without Recipient's knowledge).

5. Each party agrees that it shall not do the following, except with the advanced review and written approval of the other party: (a) issue or release any articles, advertising, publicity or other matter relating to this Agreement (including the fact that a meeting or discussion has taken place between the parties) or mentioning or implying the name of the other party; or (b) make copies of documents containing Confidential Information. <sup>including but not limited to the Texas Public Information Act, Chapter 552 Tx. Govt Code,</sup>

6. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that: (a) the Recipient can demonstrate was already in the Recipient's actual possession or knowledge and which the Recipient lawfully acquired other than from the Discloser was; (b) is or becomes publicly available through no fault, action, omission or intervention of the Recipient; (c) is received by the Recipient from a third party without a duty of confidentiality (express or implied) owed to the Discloser; (d) is independently developed by the Recipient without a breach of this Agreement; (e) is disclosed by the Recipient with the Discloser's prior written approval; or (f) is required to be disclosed by operation of law, court order or other governmental demand ("Process"); provided that (i) the Recipient shall immediately notify the Discloser of such Process; and (ii) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has: (a) requested protection from the legal or governmental authority requiring the Process and such request has been denied, (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (c) taken no action to protect its interest in the Confidential Information within ~~40~~ <sup>10</sup> business days after receipt of notice from the Recipient of its obligation to produce or disclose Confidential Information in response to the Process. <sup>10 (10 is state law under Public Information Act)</sup>

7. EACH DISCLOSER WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE ITS CONFIDENTIAL INFORMATION. NO OTHER WARRANTIES ARE MADE. ALL CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER IS PROVIDED "AS IS".

8. This Agreement shall remain in effect until it is terminated by either party with thirty (30) days prior written notice. Notwithstanding the foregoing, this Agreement shall survive with respect to Confidential Information that is disclosed before the effective date of termination.

9. Unless the parties otherwise agree in writing, a Recipient's duty to protect Confidential Information expires five (5) years from the date of disclosure. A Recipient, upon Discloser's written request, will promptly return all Confidential Information received from the Discloser, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed. Regardless of whether the Confidential Information is returned or destroyed, the Recipient may retain an archival copy of the Discloser's Confidential Information in the possession of outside counsel of its own choosing for use solely in the event a dispute arises hereunder and only in connection with such dispute.

10. This Agreement imposes no obligation on a party to exchange Confidential Information, proceed with any business opportunity, or purchase, sell, license, transfer or otherwise make use of any technology, services or products.

11. No party acquires any intellectual property rights under this Agreement (including, but not limited to, patent, copyright, and trademark rights) except the limited rights necessary to carry out the Purpose as set forth in this Agreement.

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12. Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the Injured party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available to it.

13. This Agreement does not create any agency or partnership relationship. This Agreement will not be assignable or transferable by Participant without the prior written consent of Company. Company may assign or transfer this Agreement in its sole discretion.

14. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the agreement when a duly authorized representative of each party has signed the counterpart.

15. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements, and all contemporaneous oral communications. All additions or modifications to this Agreement must be made in writing and must be signed by the parties. Any failure to enforce a provision of this Agreement shall not constitute a waiver thereof or of any other provision.

16. This Agreement shall be governed by the laws of the State of Texas, without reference to conflict of laws principles. The exclusive venue for any dispute relating to this Agreement shall be in the state or federal courts within Ellis County, Texas.

COMPANY: \_\_\_\_\_

PARTICIPANT:

Signature: \_\_\_\_\_

Signature: Chris Dick

Name: \_\_\_\_\_

Name: Chris Dick

Title: \_\_\_\_\_

Title: City Manager

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

Date: 7/13/16