

# Confidentiality Agreement

Between \_\_\_\_\_ (“Company”) and  
\_\_\_\_\_ (“Recipient”)

This Confidentiality Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 2015, by and between \_\_\_\_\_ (“Company”), a \_\_\_\_\_ corporation having its principal offices at \_\_\_\_\_ and \_\_\_\_\_ (“Recipient”), a \_\_\_\_\_ [insert entity type], with offices located at \_\_\_\_\_. In particular, Company intends to disclose Confidential Information (as defined below) that includes but is not limited to \_\_\_\_\_. Before disclosing Confidential Information the parties desire to enter into an agreement setting forth appropriate terms and conditions concerning the use and disclosure of such Confidential Information. Therefore, for and in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

**1. Confidential Information Defined.** For purposes of this Agreement, “Confidential Information” means all data, reports, interpretations, forecasts, agreements, records and all other information, whether written, oral or otherwise, containing or otherwise reflecting information concerning Company, its affiliates and subsidiaries, which is not available to the general public and which Company or its agent (including any member of its management) provides to Recipient, including but not limited to any information obtained by meeting with representatives or personnel of Company or its subsidiaries. “Confidential Information” also means any and all information disclosed by Company to Recipient relating to Company’s business or technology that Company designates as confidential or that, under the circumstances surrounding disclosure, ought to be treated as confidential, regardless whether Company provides such information to Recipient in tangible form or it is retained in the intangible memory of Recipient. The Recipient acknowledges and agrees that all Confidential Information is of important commercial and competitive value to Company, and has been maintained as confidential information and/or confidential trade secrets. Confidential Information includes, for example and without limitation:

**2. Exclusions.** The restrictions relating to Confidential Information shall not apply to:

a) Information of a non-confidential nature

- which was already in the Recipient’s possession prior to the date hereof which was not acquired or obtained from Company or members of its management;
- b) Information which is obtained by Recipient from a third person who, insofar as is known to Recipient: (i) is not prohibited from transmitting the information to Recipient by a contractual, legal, or fiduciary obligation to or on behalf of Company and (ii) has not obtained such information wrongfully;
- c) Recipient and Company’s relationship;
- d) Information which is or becomes generally available to the public other than as a result of disclosure by Recipient or any of its Representatives in violation of a contractual, legal or fiduciary obligation of the Recipient or its Representatives to Company; and
- e) Information that is approved for release in writing by Company.

**3. Disclosure Compelled.** In the event that Recipient is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or other process) to disclose any Confidential Information, Recipient shall provide Company with immediate written notice of any such request or requirement so that Company may seek an appropriate protective order, or seek with the Recipient’s cooperation to narrow the request or demand, or waive Recipient’s compliance with the provisions of

this Agreement. Or, failing the entry of a protective order or the receipt of a waiver hereunder, if Recipient is, in the opinion of its counsel, compelled to disclose Confidential Information, Recipient may disclose only that portion of the Confidential Information which its counsel advises in writing that Recipient is compelled to disclose, and Recipient will exercise its best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. In any event, the Recipient will not oppose action by Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

**4. Confidential Information is Exclusive Property of Company.** The Recipient shall not use any Confidential Information for any purpose other than evaluating the desirability of entering into a business relationship with Company. Recipient acknowledges and agrees that all Confidential Information is the exclusive property of Company. Accordingly, Recipient expressly agrees it will not sell, transfer, or otherwise disclose or make available Confidential Information to any other person or entity except as expressly permitted herein, without first obtaining Company's express written consent and the written acceptance by such other person or entity of a contract expressly incorporating the terms and conditions of this Agreement. Recipient acknowledges and agrees that no claim of lien, security interest, or other encumbrance of any type shall be created, placed, or deemed to exist with respect to Confidential Information.

**5. Security Measures Required of Recipient.** Recipient assumes responsibility for assuring that all Confidential Information shall be utilized, maintained, and stored with appropriate security measures adequate to avoid unauthorized use, misappropriation, theft, or disclosure to unauthorized persons. Recipient further acknowledges and agrees that Company shall have the right to obtain from Recipient possession of all Confidential Information immediately upon demand, which right shall not be impaired by reason of any dispute or controversy that may

arise or hereafter exist between or among any of Company, Recipient, or any other person or entity. Recipient acknowledges and agrees it shall have no right to retain any copies of any Confidential Information after delivery of all the goods or performance of all the services required under any contract with Company unless expressly agreed in writing by Company.

**6. Disclosure for Representatives.** Recipient may disclose Confidential Information only (i) to Recipients' directors, officers, employees, agents, financial advisors, and representatives (collectively, "Representatives") who are informed of the confidential nature of the information and who have agreed to hold the Confidential Information in confidence as provided in this Agreement; (ii) to representatives of any regulatory or examining authority having jurisdiction over Recipient; or (iii) pursuant to subpoena or other legal process or as otherwise required by law, subject to Company's right where appropriate to seek protective measures to limit unnecessary public disclosure of Confidential Information.

**7. Remedies.** Recipient acknowledges and agrees that a breach or threatened breach of this Agreement will result in immediate and irreparable harm to Company that cannot be adequately remedied by monetary or other damages. Accordingly, Recipient agrees that in the event of a breach or threatened breach of this Agreement, Company may obtain from a court of competent jurisdiction an injunction or other equitable remedy (without bond or requirement for proof of immediate and irreparable harm) to strictly enforce this Agreement.

**8. Termination; Survival of Rights and Obligations.** Upon written notice from one party to the other, this Agreement and the parties' rights and obligations hereunder may be terminated solely as to yet undisclosed Confidential Information; provided, however, that this Agreement and the parties' rights and obligations hereunder shall survive and remain in full force and effect with respect to all information, Confidential Information or otherwise, disclosed prior to the receipt of such written notice.

**9. Complete Agreement.** This Agreement contains the complete and exclusive agreement of the parties concerning the subject matter set forth herein, and all prior discussions, agreements, and statements regarding such subject matter are merged into this Agreement. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver or modification is sought.

**10. Assignment.** Neither party may assign or transfer its interests in or obligations under this Agreement without the written consent of the other party; provided however, that Company may assign its rights hereunder to its successor.

**11. Notices.** Any notice permitted or required under this Agreement must be delivered in writing. Notices delivered by United States certified or registered mail that is properly addressed with postage prepaid shall be deemed delivered on the third business day after mailing. Notices delivered by fax, email, courier, or hand delivery to an authorized representative of the party to which addressed shall be deemed delivered on the date of actual delivery; provided, however, that if such actual delivery occurs after three p.m. on a business day (where delivery occurs) or on a Saturday, Sunday, or legal holiday (where delivery occurs), then the notice will be deemed delivered on the next business day that is not a legal holiday (where delivery occurs). Notices will be delivered to each party at their respective addresses specified above or at such other address as specified in a subsequent notice delivered by that party. All notices will be

addressed to the attention of the party's primary business contact for this Agreement. Any notice to Company must also be delivered to its General Counsel at the company's address specified above or such other address as specified in a subsequent notice delivered by Company to Recipient.

**12. Choice of Law; Venue.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas, (without regard to conflicts of laws provisions of any jurisdiction).

**13. Waiver.** Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or any other rights conferred upon or held by such party.

**14. Severability.** The finding by any court of competent jurisdiction that any provision of this Agreement or part thereof is unenforceable shall not affect the enforceability of the remaining provisions of this Agreement.

**15. Attorney's Fees.** If legal proceedings are instituted between the parties regarding their respective rights and obligations under this Agreement, the prevailing party shall be entitled to recover their reasonable attorney's fees and expenses incurred to prosecute and defend their rights and obligations hereunder.

**16. Counterparts.** This Agreement may be executed in counterparts and delivered by facsimile, email or portable document format (pdf) transmission, each of which shall be considered an original, but all of which together shall constitute one and the same agreement.

\_\_\_\_\_ **[Company]**

\_\_\_\_\_ **[Recipient]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Printed name and title