



# MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between  
Huntsville Utilities, 112 Spragins Street, Huntsville, AL 35801 and \_\_\_\_\_.

**Whereas**, the parties wish to hold shared information for the Huntsville Utilities Request for Proposal and (collectively, the "Purpose");

**Whereas**, both parties may disclose Confidential Information, as defined herein, in the course of these discussions;

**Whereas**, both parties desire to protect the Confidential Information which may be disclosed between them.

## IT IS AGREED:

- 1. Confidential Information.** "Confidential Information" means any and all non-public information disclosed by either party to the other for the Purpose, including, without limitation, all technical information about either party's products or services, product specifications, pricing, marketing, marketing plans and strategy, information about the Huntsville Utilities' system, RFP responses, Bidder lists, other business or financial information or plans of either party, and all trade secrets of either party. The Confidential Information may be transmitted orally, in writing or electronically. Notwithstanding the foregoing, "Confidential Information" shall not include, (i) any information that is in the public domain other than due to a breach of this Agreement, (ii) any information in the possession of the Recipient prior to disclosure by the Discloser hereunder, or (iii) any information independently developed by the Recipient without reliance the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information hereunder, and "Recipient" means either party that receives it.
- 2. Protection.** For three (3) years after the date of disclosure, the Recipient shall keep all Confidential Information of the Discloser confidential, provided that trade secret information shall be maintained in confidence until the longer of (i) three years from the date of disclosure; or (ii) until the information is no longer a trade secret under applicable law. Except as provided in Section 3, the Recipient shall not, directly or indirectly, disclose the Confidential Information to any third party, and the Recipient shall take reasonable care to protect the Discloser's Confidential Information. The Recipient shall not make any copies of any tangible documentation or materials provided hereunder, except to the extent necessary for the Purpose. The Recipient shall not use the Confidential Information of the Discloser for any reason other than for the Purpose.
- 3. Permitted Disclosures.** The Recipient may only disclose the Confidential Information provided hereunder to its employees, agents, consultants and contractors who are directly involved in the Purpose and whom the Recipient has legally bound to comply with reasonable confidentiality obligations. The Recipient may also disclose Confidential information to the extent it is obliged to do so under applicable laws, so long as it gives the Discloser reasonable notice to enable the Discloser to take protective steps.
- 4. Return.** Upon the written request of the Discloser, the Recipient shall either (i) return all Confidential Information (including all copies) to the Discloser; or (ii) destroy all Confidential Information (including all copies) and provide written certification of their destruction to the Discloser.



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5. **Term.** This Agreement shall commence on the Effective Date and shall continue for three (3) years after the Effective Date. The provisions of this Agreement that are applicable to circumstances occurring after termination or expiration shall survive such termination or expiration.
6. **Warranty.** Both parties represent and warrant that they have the right to engage in the discussions and to disclose all information disclosed in the discussions. Notwithstanding the above, the Discloser does not make any representation or warranty as to the accuracy or completeness of the Confidential Information.
7. **No Obligations.** Neither party is under any obligation to disclose Confidential Information. Nothing in this Agreement obligates either party (i) to offer for sale any product or service using or incorporating the Confidential Information it discloses; or (ii) to purchase any product or service from the other party.
8. **Ownership.** All rights in the Confidential Information disclosed remain the property of the Discloser. The Recipient does not acquire any intellectual property rights to the Discloser's Confidential Information.
9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties related to the subject matter hereof, and it supersedes any and all prior agreements, understanding or other communications, whether written or oral, formal or informal, between them. No consent, waiver, alteration, amendment, or modification shall be binding unless in writing and signed by both parties.
10. **Assignment.** Neither party may assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other party.
11. **Governing Law.** The governing law under this agreement shall be that of the State of Alabama. Any action brought by either party pursuant to this agreement shall be brought in the Circuit Court of Madison County, Alabama.
12. **Injunctive Relief.** Both parties acknowledge that a breach of this Agreement can cause the Discloser to suffer irreparable harm. IF ANY SUCH BREACH OCCURS OR IS THREATENED, THE DISCLOSER MAY SEEK INJUNCTIVE RELIEF, SPECIFIC PERFORMANCE AND OTHER EQUITABLE REMEDIES (IN ADDITION TO ANY AND ALL OTHER REMEDIES AT LAW) WITHOUT PROOF OF MONETARY DAMAGES OR THE INADEQUACY OF OTHER REMEDIES, AND THE RECIPIENT WAIVES ITS RIGHT TO ALL SUCH DEFENSES.
13. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.



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IN WITNESS WHEREOF, the parties hereto have duly executed this Confidentiality Agreement as of the date first written above.

### HUNTSVILLE UTILITIES

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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