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**This Agreement** is dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2016, and made by and between [Name/address of State Agency or Department] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”) and [Name/address of Recipient] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Recipient”).

# RECITALS:

1. Owner possesses Confidential Information that is nonpublic, confidential, and proprietary, which Owner is willing to disclose to Recipient on the terms and conditions set forth below; and
2. Recipient, for valuable consideration the sufficiency of which is hereby acknowledged, agrees to the following terms and conditions in accepting the Confidential Information, and to use the Confidential Information solely for the purpose of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Permitted Purpose”).

# NOW IT IS AGREED AS FOLLOWS:

1. “Confidential Information” means any and all nonpublic information relating to the current and future operations and services of Owner, including but not limited to, planning, specifications, concepts, technical information, techniques, drawings, sketches, models, know-how, data, databases, electronic information, emails, processes, designs, photographs, apparatus, equipment, specifications, software programs, source code, software documentation, manuals, and formulae. The parties further agree that Confidential Information shall also include information received by Recipient prior to the execution of this Agreement and that would otherwise qualify as Confidential Information as provided herein. Confidential Information does not include information that:
2. Is lawfully within the public domain other than through disclosure or default by the Recipient;
3. Was lawfully obtained from a third party who was legally in possession of the information, and who is authorized in writing by Owner to disclose it;
4. Was independently developed by Recipient without the use of the Confidential Information, or any derivative works, and without the use of knowledge learned from accessing the Confidential Information; or
5. Is subject to the requirements of the California Public Records Act (“CPRA”) or otherwise required to be disclosed by order of a court, administrative agency or other governmental body with competent jurisdiction provided that Recipient notifies Owner within three (3) business days of receipt of such an order so that Owner may, in its sole discretion, seek a protective order from a court of competent jurisdiction preventing or restricting disclosure. Recipient will not oppose any action instituted by Owner but will instead cooperate with Owner to obtain an appropriate protective order.
6. Was ordered to be publicly released by court order or by the lawful order of a governmental agency.
7. Recipient undertakes for a period of five (5) years from the date of this Agreement:
8. To protect the secrecy of all Confidential Information that it may acquire in any manner by, at a minimum, implementing reasonable, industry-standard controls to maintain its confidentiality and to prevent unauthorized disclosures;
9. To prevent the Confidential Information from falling into the public domain or into the possession of unauthorized individuals or entities.
10. To use the Confidential Information exclusively for the Permitted Purpose, unless Recipient first obtains the written consent of Owner;
11. Not to disclose such Confidential Information whether verbally or in writing, except to authorized representatives of Recipient who need to have access to the Confidential Information in order to effectuate the Permitted Purpose;
12. To inform any third party to whom Recipient discloses Confidential Information that it is confidential, and obtain their written agreement to keep it confidential on the same terms as this Agreement;
13. To return Confidential Information immediately upon Owner’s request or when no longer required for the purposes of this Agreement, or to destroy all copies of the Confidential Information maintained in hard copy, electronic media, or in any other form whatsoever, as requested by Owner; and
14. To notify Owner immediately upon learning of any unauthorized disclosure by someone or some entity to which the Recipient has disclosed the Confidential Information, and to cooperate with Owner in enforcing Owner’s legal right to protect the Confidential Information.
15. **Indemnification:** Recipient agree to indemnify, defend and save harmless the Owner, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys’ fees), and losses arising in any way as a result of a violation of this Agreement or acts or omissions of Recipient or any of Recipient’s affiliates, agents, subcontractors, employees, or representatives. Such defense and payment will be conditioned upon the following:
16. Owner will notify Recipient of any such claim in writing and tender the defense thereof within a reasonable time; and
17. Recipient will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys’ fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, [Name of state agency or department] of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
18. **Severability:** The parties hereto agree that if any provision of this Agreement is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Agreement shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
19. **Assignment:** This Agreement shall not be assignable by the Recipient in whole or in part without the written consent of Owner. In the event Owner approves an assignment in writing, Recipient remains jointly and severally liable for the obligations set forth in this Agreement.
20. **Waiver of Rights:** Any action or inaction by Owner or the failure of Owner on any occasion, to enforce any right or provision of this Feedback Agreement shall not be construed to be a waiver by Owner of its rights hereunder and shall not prevent Owner from enforcing such provision or right on any future occasion. The rights and remedies of Owner hereunder are cumulative and are in addition to any other rights or remedies that Owner may have in law or equity.
21. **Survival:** This Agreement shall govern all communications between the parties. Recipient understands that its obligations under Paragraph 2 shall survive the termination of any relationship between Recipient and Owner. Upon termination of any relationship between the Parties, Recipient will promptly deliver to Owner all documents and other materials furnished to Recipient by Owner, and will certify in writing that any remaining Confidential Information of Owner or derivative works thereof have been destroyed and removed from the possession of Recipient. Notwithstanding the foregoing, the Recipient shall be entitled to retain in its legal department a confidential file containing one (1) archival copy of all such information strictly for purposes of monitoring of its ongoing obligations under this Agreement and its compliance therewith.
22. **No License**: No license, either express or implied, is granted hereby to Recipient, with respect to the Confidential Information other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. Recipient agrees that Confidential Information is and will remain the sole property of Owner.
23. **No Intellectual Property Rights in Confidential Information.** Recipient will not apply for or obtain any intellectual property protection in any of the Confidential Information or related derivative works. All intellectual property rights relating to any materials of any kind developed by Recipient using the Confidential Information, and all rights in any derivative works, belong exclusively to Owner.
24. **No Liability or Warranties**: IN NO EVENT SHALL [NAME OF STATE AGENCY OR DEPARTMENT] BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. [NAME OF STATE AGENCY OR DEPARTMENT] EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PERMISSION TO USE THE MATERIAL IS GRANTED "AS IS." Requester assumes all responsibility for investigating and avoiding any possible infringement of copyright laws or reproduction rights, and any and all other third party intellectual property rights, that may arise from the reproduction or publishing of the Material and/or derivative works.
25. **Entire Agreement; Duplicate Originals**: This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
26. Modification by Subsequent Agreement: This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.
27. **Applicable Law:** This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of California, and venue for any action to enforce the terms of this Agreement will be in Sacramento County, California.
28. **Declaratory Relief:** Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, in addition to any other rights and remedies it may have, Owner shall be entitled to obtain declaratory relief from a court of competent jurisdiction preventing or restricting the disclosure or use of the Confidential Information, or any other breach of this Agreement.

Recipient Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[State Agency/Department] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_