

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“**Agreement**”) is entered into as of __, 2006 by and between the __ Independent School District, a school district organized under the laws of the State of _____ and having its principal administrative offices at include address here (“__ **ISD**”) and the name of business/institution here, a state agency having its principal place of business at include address here (“**Receiving Party**”).

RECITALS

__ ISD has disclosed and desires to disclose to the Receiving Party certain confidential and proprietary information relating to __ ISD operations for the purpose of _____ as required by law.

__ ISD has acknowledged the need, and the Receiving Party has agreed, to protect the confidentiality of such information and the parties are entering into this Agreement in order to memorialize such understanding and agreement.

AGREEMENT

THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Definition of Confidential Information. For purposes of this Agreement, the term “**Confidential Information**” means information or data in any form or medium, tangible or intangible, used in or relating to the properties, activities, or operations of __ ISD which is actually disclosed by or on behalf of __ ISD to the Receiving Party, whether before or after the date of this Agreement, whether orally or in writing, and whether human or machine readable, including, without limitation:

(a) information of a technical nature such as trade secrets, patents, product specifications, data, datasets, results of tests conducted pursuant to this Agreement, any interim and final reports, passwords, output reports, know-how, formulas, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, innovations, improvements, past, current and planned research and development, computer software and programs (including object code and source code), and database technologies, systems, structures and architectures;

(b) (b) information of an operational nature, such as strategies, forecasts, unpublished financial information, curriculum, student information, budgets, projections, information and data concerning costs, price lists, operational plans, or information regarding suppliers, dealers;

(c) information regarding personnel and human resources such as organizational structure, salary, personnel training techniques and materials, and employees' qualifications;

(d) Information protected by the provisions of The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and related applicable federal and state privacy laws, regulations, rules and requirements regarding the protection and security of non-public personal, medical and financial information;

(e) Information the disclosure of which is prohibited by the Federal Educational and Privacy Rights Act, 28 USC 1232(g) (“FERPA”), including, without limitation, education records of students, and any personally identifiable information contained therein (other than directory information);

(f) information generated or derived by the Receiving Party or its officers, directors, partners, employees, affiliates, agents and representatives (collectively, its "**Representatives**") that contains, reflects or is derived from any of the information described above; and

(g) any other information obtained from __ ISD which is not known to the public.

"**Confidential Information**" shall not include information published or available to the public through no fault of the Receiving Party; information received by the Receiving Party from parties not connected with __ ISD without the breach of any obligation of confidentiality; or information of a general nature not pertaining to either party.

2. Obligation of Confidentiality. The Receiving Party agrees to receive and hold Confidential Information, whether transmitted orally, in writing or in any other form, and whether prepared by a party or its Representatives, in strict confidence, and to use the Confidential Information solely for the purpose of [evaluating a possible agreement between __ ISD and Receiving Party] OR [facilitating __ ISD’s use of Receiving Party’s products and services]. The Receiving Party shall take all such action as may be necessary to comply with HIPAA, FERPA, the Texas Public Information Act (“TPIA”), as well as with any other applicable statutory provisions, and with the rules and regulations promulgated under all of the foregoing, to the extent that they may require __ ISD to maintain the confidentiality of the Confidential Information. Except as essential to Receiving Party’s obligations to __ ISD, Receiving Party shall not copy any of the Confidential Information, nor shall Receiving Party remove any Confidential Information or proprietary property or documents from __ ISD premises without written authorization of __ ISD. The Receiving Party acknowledges its understanding that any unauthorized disclosure of Confidential Information may violate FERPA and HIPAA, and may result in penalties and other damages. The Receiving Party further agrees that all Confidential Information will be kept strictly confidential by it and its Representatives and shall not be disclosed to any third party without the prior written consent of __ ISD; provided, however, that any of such information may be disclosed to a Receiving Party’s Representatives who need to know such information for the purpose of [evaluating a possible agreement between __ ISD and Receiving Party] OR [facilitating __ ISD’s use of Receiving Party’s products and services] (it being understood that, prior to disclosure to a Representative, such Representatives shall have been informed of the confidential nature of such information and shall have agreed in writing to treat such information

confidentially). The Receiving Party agrees to be responsible for any breach of this Agreement by any third party to whom the Receiving Party has provided Confidential Information, or any portion thereof. If the Receiving Party or any third party to whom the Receiving Party has provided Confidential Information becomes legally compelled (by oral question, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process or by rule, regulation or other applicable law) to disclose any Confidential Information, the Receiving Party shall promptly notify __ ISD of such requirement before any disclosure is made so that __ ISD may seek a protective order or other appropriate remedy or may waive compliance with the terms of this Agreement. The Receiving Party shall fully cooperate with __ ISD if __ ISD decides to seek a protective order. If such protective order or other remedy is not obtained, or if __ ISD waives compliance with the provisions hereof, the Receiving Party agrees that only that portion of the Confidential Information which it is legally required to disclose (as advised by a written opinion of the Receiving Party's counsel) will be disclosed, and the Receiving Party agrees to exercise its best efforts to obtain assurance that the Confidential Information will be treated confidentially upon disclosure. Except as may be required by law, __ ISD has no obligation to segregate Confidential Information from any other information conveyed to the Receiving Party.

3. Non-Solicitation. The Receiving Party agrees that, during the term of this Agreement, and for a two-year period following the expiration of this Agreement, the Receiving Party shall not solicit any employees of __ ISD to become employees of the Receiving Party or its affiliated entities.

4. __ ISD Property. The Confidential Information disclosed to the Receiving Party shall remain the property of __ ISD, and no license or assignment, by implication, estoppel or otherwise, is granted by __ ISD to the Receiving Party to make, have made, use, or sell any product or service using the Confidential Information, nor is a license granted to Receiving Party under any patent, patent application, utility model, copyright, trade secret, trademark, service mark or any other similar industrial or intellectual property right. At no time and under no circumstances shall the Receiving Party reverse-engineer, decompile or disassemble any part of the Confidential Information.

5. Return of Confidential Information. Upon notification by __ ISD to the Receiving Party, the Receiving Party shall send to __ ISD all of __ ISD's Confidential Information, and all copies thereof in its possession or under its control, as well as any copies in the possession or under the control of its Representatives or any third party to whom it has released Confidential Information, and any other written material containing or reflecting Confidential Information. Receiving Party shall return the Confidential Information in the format designated by __ ISD, as soon as commercially reasonable, but in no event later than 15 days after the request. Receiving Party will not retain any copies, extracts or other reproductions in whole or in part of such written material and will permanently delete and destroy all Confidential Information or materials containing Confidential Information that is stored electronically on equipment owned by the Receiving Party or under its control. Return of Confidential Information does not affect the Receiving Party's obligation to hold the Confidential Information in confidence. The return and destruction of the Confidential Information shall be certified in writing by an

authorized officer supervising such return and destruction. Notwithstanding the return or destruction of any Confidential Information, the Receiving Party shall continue to be bound by its obligations of confidentiality and other obligations hereunder.

6. Injunctive and Other Relief.

(a) Because of the unique nature of the Confidential Information, a violation of this Agreement would cause irreparable harm to __ ISD for which monetary compensation would be inadequate. In addition to other remedies available, __ ISD shall be entitled to seek specific performance of the Receiving Party's obligations under this Agreement, as well as injunctive relief to restrain any continuing or further breach by the Receiving Party without the necessity of proving any actual damages sustained by __ ISD, and without the requirement of bond or security. The prevailing party shall be entitled, in any action relating to this Agreement, to recover all costs and expenses, including attorneys' fees incurred because of any legal action arising in relation to this Agreement.

(b) If the Receiving Party violates this Agreement, in addition to the remedies provided by Section 6(a), __ ISD will have the right to immediately terminate any or all agreements between __ ISD and the Receiving Party, and to receive reimbursement of all amounts paid to the Receiving Party.

(c) The Receiving Party acknowledges its understanding that a violation of this Agreement may result in a legal cause of action for violation of an individual's civil rights, in addition to state or federal criminal penalties. Among other matters, a breach of this Agreement may constitute a "Breach of Computer Security" as defined in the Texas Penal Code, Chapter 33.02B, which is a Class A misdemeanor under Texas law.

7. Confidentiality of Relationship. Unless otherwise required by law, without the prior written consent of __ ISD, neither the Receiving Party nor its Representatives shall use the name of __ ISD or otherwise refer to or identify __ ISD in any publicity, advertising or information disseminated to the general public for any purpose whatsoever.

8. Governing Law. This Agreement shall be governed by the laws of the State of Texas, excluding choice of law and conflicts of law principles which direct the application of the laws of a different state.

9. Construction. The captions in this Agreement are inserted for convenience and shall not be considered in the interpretation of this Agreement. The rule of construction that contracts are to be construed strictly against the drafter is expressly made inapplicable to this Agreement. Pronouns used in this Agreement shall be construed to include the masculine, feminine, neuter, singular or plural as the identity of the antecedent may require.

10. Amendment; Waiver. This Agreement may not be amended, modified or terminated, in whole or in part, except by an instrument in writing duly executed by both parties. No waiver of any of the terms of this Agreement will be effective unless set forth

in writing signed by the party against whom it is sought to be enforced. No waiver of any provision of this Agreement shall constitute a waiver of any of further breach of that provision or of any other provision of this Agreement.

11. No Business Relationship. Nothing in this Agreement shall be construed to place the parties in the relationship of joint venturers, partners, associates, principal and agent or any other form of business relationship without a separate agreement to that effect which has been signed by both parties.

12. Assignment. This Agreement and the rights and obligations of either party under this Agreement may be assigned or transferred only upon the prior written approval of the other parties hereto. The rights and obligations of the parties hereto will inure to the benefit of, will be binding upon, and will be enforceable by the parties hereto, their Representatives and their successors and permitted assigns.

13. Notices. Any notice or other communication provided for herein as given to a party hereto shall be in writing, shall refer to this Agreement by parties and date, and shall be delivered by registered mail, return receipt required, postage prepaid to the person listed below or his successor.

If to _____:

If to __ ISD:

14. Term. This Agreement will continue in full force and effect for so long as __ ISD continues to provide Confidential Information to the Receiving Party and for as long as information disclosed remains confidential. Notwithstanding the return or destruction of any Confidential Information, the Receiving Party shall continue to be bound by its obligations of confidentiality and other obligations hereunder.

15. Severability. If any provision of this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and

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For Example Purposes Only. Seek professional counsel before modification or use.

the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

16. Entire Agreement. This Agreement contains the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior negotiation and agreements.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the date set forth above.

__INDEPENDENT SCHOOL DISTRICT

Name: _____
Title: _____
Date: _____

NAME OF BUSINESS/INSTITUTION

Name: _____
Title: _____
Date: _____