



## Mutual Non-Disclosure Agreement

This **Agreement** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between:

- (1) \_\_\_\_\_ with offices located at \_\_\_\_\_, and
- (2) Texas Windstorm Insurance Association with offices located at 4800 Southwest Pkwy., Building One, Suite 200, Austin, Texas 78735 ("TWIA").

### RECITALS:

- (A) At meetings between our representatives to explore the possibility of business opportunities of mutual interest we may each need to disclose to the other proprietary information relating to our products, processes and commercial activities.
- (B) In order to protect our respective proprietary interests in the information we each disclose and in order to avoid misunderstanding, we wish to set out the terms and conditions on which the information is disclosed.
- (C) Notwithstanding any provision herein to the contrary, the parties hereby acknowledge and agree that TWIA is subject to the Texas Public Information Act, Tex. Government Code §552.001 *et seq.* ("Public Information Act") and must comply with the provisions of Texas law including the Public Information Act.

**IN CONSIDERATION OF THE MUTUAL PROMISES HEREINAFTER CONTAINED IT IS HEREBY AGREED** as follows:

1. In this Agreement the term "Confidential Information" shall mean any information (including this Agreement) in any form emanating, directly or indirectly, from a party to this Agreement and shall include any compilation of otherwise public information in a form not publicly known.
2. The term "Confidential Information" does not include information which:
  - (i) is publicly known at the time of its disclosure;
  - (ii) after disclosure to the recipient, has become publicly known other than through breach of this Agreement;
  - (iii) the recipient can show was known to it, other than under a subsisting obligation of confidentiality or restricted use, prior to the disclosure by the other party;
  - (iv) is required to be disclosed by the recipient by a court's order after all available legal remedies to maintain the information in secret have been exhausted at the expense of disclosing party;
  - (v) the recipient can show was made available to it by a third party who had a right to do so and has not imposed on the recipient any subsisting obligation of confidentiality or restricted use in respect thereof.
3. Except as provided by Texas law, including, without limitation, the Public Information Act, each party agrees that it will not at any time disclose to any third party (including without limitation



any holding, subsidiary or associated company) any Confidential Information, which it receives from the other, (including the fact that discussions between the parties is taking place) and it shall use such Confidential Information only for the purpose of considering and evaluating the business opportunities under discussion between the parties.

4. Each party may disclose the Confidential Information which it receives from the other only to such of its officers and employees as need to know for the purposes of considering and evaluating the said business opportunities. Each party shall ensure that such officers and employees are bound by equivalent obligations in respect of the Confidential Information to those set out in this Agreement and shall use its best endeavours to ensure that they abide by such obligations. Each party shall be fully responsible for any unauthorised disclosure or use of the Confidential Information by its officers and employees.
5. Any documents, printed or written material, designs, drawings, models, samples, computer software or other tangible items supplied by one party to the other in the course of their discussions of the said business opportunities shall be returned promptly at the request of the party which supplied them together with any copies thereof.
6. Disclosure of any information under this Agreement shall not be construed as granting, directly or by implication, any license under any patent, patent application or copyright, or any other intellectual property rights; nor shall this Agreement be construed as creating any agency or partnership relationship between the parties.
7. Each party agrees with the other that it will not develop software from the Confidential Information supplied by the other hereunder; nor market or otherwise use the Confidential Information other than for the purposes of this Agreement provided that this restriction shall not prohibit either party from independently developing any software provided it does not use any Confidential Information belonging to the other.
8. This Agreement shall be subject to the laws of the State of Texas and all disputes arising in connection herewith shall be submitted to the non-exclusive jurisdiction and venue of the courts located in Austin, Texas. Any litigation involving this Agreement must be brought in a District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division.
9. This Agreement shall govern all transfers of Confidential Information between the parties that are made during the period from the date hereof to either the date on which: (i) either party receives from the other written notice that subsequent transfers shall not be so governed; or (ii) an agreement for the provision of products and or services is entered into between the parties, whichever occurs first. The obligations of the parties under this Agreement with respect to Confidential Information it has received shall continue for a period of five (5) years after termination of this Agreement.
10. This Agreement shall take effect on the date set out on the first page of this Agreement.
11. The parties agree that unauthorized disclosure of Confidential Information would cause irreparable harm to the company who owns the Confidential Information and will not object to a party seeking injunctive relief to stop any such disclosure.



12. Each party agrees that in the event a third party requests disclosure of any Confidential Information either under the Public Information Act or separate legal action, each party will pay for its own legal costs associated with the request should a party seek to prevent the disclosure.
  
13. This Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof and supersedes all other agreements relating to the subject matter hereof. There are no agreements, understandings, specific restrictions, warranties or representations relating to said subject matter between the parties other than those set forth herein or herein provided. This Agreement may only be amended or modified by the mutual written agreement of the parties. In the event that any one or more of the provisions of this Agreement or any word, phrase, clause, sentence, or other portion thereof shall be deemed to be illegal or unenforceable for any reason, such provision or portion thereof shall be modified or deleted in such manner so as to make this Agreement as modified legal and enforceable to the fullest extent permitted under applicable law. This Agreement may be executed in two or more counterparts, each of which will take effect as an original, and all of which shall evidence one and the same Agreement. This Agreement is nonassignable.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized corporate officers as of the day and year first above written.

SIGNED for and on behalf of

SIGNED for and on behalf of TWIA

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

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

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

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

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

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