Mutual Non-Disclosure Agreement

BETWEEN

Commonwealth of Pennsylvania Department of Military Affairs d/b/a Pennsylvania National Guard

AND

XXXXX Corporation/Agency

Whereas:

1. The Pennsylvania National Guard Defensive Cyber Operations Team (hereinafter called PA-DCOE), being a subpart of the Pennsylvania National Guard, an agency of the Commonwealth of Pennsylvania and operating pursuant to the Title 51 Pa.C.S.A.

2. XXXXX Corporation/Agency Corporation being a…..Name, Address

3. PA-DCOE possesses certain skills, tactics, techniques and procedures and other confidential information pertaining to certain cyber operations and the administration thereof and is further defined in this Agreement and in which PA-DCOE desires to share and/or use to aid XXXXX Corporation/Agency pursuant to The Pennsylvania Cyber Incident Response Plan 2017 and the directions of the Governor of Pennsylvania.

4. XXXXX Corporation/Agency possesses certain confidential information, cyber infrastructure information, privacy information and other confidential information pertaining to the Agency’s function and is further defined in this Agreement and in which the Agency desires to share with the PA-DCOE pursuant to Pennsylvania Cyber Incident Response Plan 2017 and the

directions of the Governor of the Commonwealth of Pennsylvania.

Based upon the mutual promises contained in this Agreement, the sufficiency of which is

hereby acknowledged the Parties agree as follows:

1. Definitions.

a. Disclosing Party. A Party to this Agreement, including directors, officers, employees,

agents, or representatives that disclose Confidential Information to the Receiving Party.

b. Receiving Party. A Party to this Agreement, including directors, officers, employees,

agents or representatives that receives Confidential Information from the Disclosing Party.

c. Transaction. The proposed business purpose or governmental action that the parties

are contemplating and which is defined by a separate agreement or memo of understanding

(either written or oral) and which has given rise to the need to share the Confidential

Information. Transaction may also be referred to as purpose of the Agreement.

d. Confidential Information. Confidential Information is any data or information that is

proprietary to the Disclosing Party and not generally known to the public, whether in tangible or

intangible form, whenever and however disclosed, including, but not limited to:

i. any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies;

ii. plans for products or services, and customer or supplier lists;

iii. any scientific or technical information, invention, design, process, procedure,

formula, improvement, technology or method;

iv. any concepts, reports, data, know-how, tactics, techniques, procedures, works-in progress, designs, development tools, specifications, computer software, source code, object

code, flow charts, databases, inventions, information and trade secrets;

v. any internal data, user id’s, passwords, configuration settings, infrastructure

design, non-public employee information, personal identifiable information, or any other data

maintained by the Disclosing Party to fulfill its Commonwealth function;

vi. any other information that should reasonably be recognized as confidential

information of the Disclosing Party. Confidential Information need not be novel, unique,

patentable, copyrightable or constitute a trade secret in order to be designated Confidential

Information.

2. Use of Information. The Receiving Party agrees:

a. To use the Confidential Information solely in connection with the current or

contemplated business relationship between the parties and not for any purpose other than as

authorized by this Agreement without the prior written consent of an authorized representative of

the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential

Information is granted to the Receiving Party hereunder. Title to the Confidential Information

will remain solely in the Disclosing Party.

b. That all use of Confidential Information by the Receiving Party shall be for the

benefit of the Disclosing Party and any modifications and improvements thereof by the

Receiving Party shall be the sole property of the Disclosing Party.

c. That the Receiving Party shall not use or adopt the Confidential Information as its

own or use it in its operations unless consent is expressly given to the Receiving Party by the

Disclosing Party.

d. That the Parties aspire to maintain the proprietary status and confidential nature of

their Confidential Information. The Parties shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information. Further, a Receiving Party shall not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein) unless a written consent is obtained from the Disclosing Party.

e. The Parties are aware that each may have pursued independent research of its own in the area to which the Information relates and may have independent knowledge of some of the

Confidential Information the other party may disclose.

f. All information shared between the parties will be transferred, maintained and stored in accordance with all applicable federal and Commonwealth laws governing the transfer and/or disclosure of personal information.

3. Disclosure of Confidential Information. From time to time, Disclosing Party may disclose

Confidential Information to the Receiving Party. The Receiving Party will:

a. limit disclosure of any Confidential Information to only those within its control and that have executed a similar non-disclosure or similar confidentiality documents and have a need to know such Confidential Information in connection with the current or contemplated business relationship between the Parties. The PA-DCOE considers intelligence analysts, law enforcement specialists and other such persons found in a cyber fusion intelligence center as persons with a ‘need to know’;

b. advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement.

c. The Recipient shall be under no obligation with respect to any information:

i. Which is, at the time of disclosure, available to the general public; or which becomes, at a later date, available to the general public through no fault of Recipient and then only after the later date;

ii. Which Recipient can demonstrate was in its possession before receipt of the

Information from Discloser, a fact which can be proven by written records or competent evidence;

iii. Which was developed independently by Recipient without reference to the

Information provided by Discloser;

iv. Which is disclosed to Recipient without restriction on disclosure by a third party who has the lawful right to disclose such information, or;

v. Which is required to be disclosed to comply with applicable laws or government regulations, provided that prior written notice is given to the Discloser of such required disclosure and the Recipient takes lawful actions to avoid and/or minimize the degree of such disclosure.

vi. Which is pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the

Confidential Information; provided in the case of a broad regulatory request with respect to the

Receiving Party’s business (not targeted at Disclosing Party), the Receiving Party may promptly comply with such request provided the Receiving Party give (if permitted by such regulator) the

Disclosing Party prompt notice of such disclosure. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving

Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

d. From time to time the Receiving Party may disclose Confidential Information to the Disclosing Party. This information may include tactics, techniques, and procedures utilized by the PA-DCOE. Receiving Party agrees to treat this Confidential Information in the same manner as other Confidential Information described in this agreement.

4. Term. This Agreement shall remain in effect for a two-year term (subject to a one year written extension if the parties are still discussing and considering the Transaction at the end of the second year). Notwithstanding the foregoing, the parties’ duty to hold in confidence

Confidential Information that was disclosed during the term shall remain in effect indefinitely.

5. Remedies. Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the

Confidential Information would destroy or diminish the value of such information. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential

Information would be impossible to calculate. Therefore, both parties hereby agree that the

Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any

Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys’ fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney’s fees and expenses.

6. Return of Confidential Information. Receiving Party shall immediately return and redeliver to the other all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials (“Notes”) (and all copies of any of the foregoing, including “copies” that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of:

a. the completion or termination of the dealings between the parties contemplated hereunder;

b. the termination of this Agreement; or,

c. at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party’s option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction). Each party shall be responsible for any breach of this Agreement by any of their respective Representatives.

7. Notice of Breach. Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its

Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing

Party regain possession of Confidential Information and prevent its further unauthorized use.

8. No Binding Agreement for Transaction. The parties agree that neither party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this

Agreement, except for the matters specifically agreed to herein. The parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to a Transaction at any time. This Agreement does not create a joint venture or partnership between the parties. If a

Transaction goes forward, the non-disclosure provisions of any applicable transaction documents entered into between the parties (or their respective affiliates) for the Transaction shall supersede this Agreement. In the event such provision is not provided for in said transaction documents, this Agreement shall control.

9. Warranty. Each party warrants that it has the right to make the disclosures under this

Agreement. NO OTHER WARRANTIES ARE MADE BY EITHER PARTY UNDER

THIS AGREEMENT WHATSOEVER. The parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by either party as the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. Neither

Party hereto shall have any liability to the other party or to the other party’s Representatives resulting from any use of the Confidential Information except with respect to disclosure of such

Confidential Information in violation of this Agreement.

10. Miscellaneous.

a. This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

b. The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of Pennsylvania applicable to contracts made and to be wholly performed within such Commonwealth, without giving effect to any conflict of laws provisions thereof. The Federal and Commonwealth courts located in Harrisburg, Pennsylvania shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

c. Any failure by either party to enforce the other party’s strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

d. Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

e. Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

f. This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

g. The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either party from: (i) developing, making or marketing products or services that are or may be competitive with the products or services of the other; or (ii) providing products or services to others who compete with the other.

h. Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

i. It is expressly understood and agreed that in the execution of this Agreement, no party waives nor shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

j. The interpretation and validity of this Agreement and the rights of the parties shall be governed by the laws of the Commonwealth of Pennsylvania. Any action brought to enforce this Agreement shall be brought in Pennsylvania.

k. The parties agree that Information furnished hereunder shall not be disclosed contrary to the laws and regulations of the United Commonwealths of America, Commonwealth of Pennsylvania. Further, the parties agree that Receiving Party may be subject to Pennsylvania and or federal sunshine laws requiring disclosure of information. Receiving Party shall notify Disclosing Party within five business days of a request for information it has received to allow Disclosing Party to seek a protective order from the appropriate jurisdiction.

l. The Parties shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

PA-DCOE, Pennsylvania National Guard

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Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

XXXXX Corporation/Agency

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Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name

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Title