MUTUAL NONDISCLOSURE AGREEM ENT

This Mutual Nondisclosure Agreement, effective as of April \_\_, 2016 ("Agreement"), is entered into between RoseASP.com, a California corporation, having a place of business at 11512 El Camino Real, Suite 310, San Diego, CA 92130 ("Company"), and the Kentucky Municipal Energy Agency of Louisville, Kentucky, a Kentucky public body politic and corporate, 450 S. 3rd Street, Louisville, KY 40202 ("KyMEA").

WHEREAS, KyMEA utilizes software, documentation, and related services in its business operations and in serving its customers; and

WHEREAS, KyMEA may disclose to Company information related to KyMEA employees or customers that is personal and confidential, proprietary and sensitive information pertaining to KyMEA's business, infrastructure, software, documentation, business strategies and direction, capabilities, and vulnerabilities; and for the purpose of Company's evaluating, reviewing and resolving any security problems or vulnerabilities found and proposing to assist KyMEA in protecting against or eliminating them; and

WHEREAS, Company may disclose to KyMEA proprietary information and trade secrets. NOW THEREFORE , in consideration of such disclosures, the parties agree that:

A. Neither party will, without the written consent of the other, disclose the confidential, proprietary information and/or trade secrets of the other party received hereunder to any other person other than those of its employees with a need to know, or allow any unauthorized access to or use of such information by others, nor will either party use the other party's confidential, proprietary information and/or trade secrets other than for the purposes of this Agreement. The parties hereto acknowledge and agree that all proprietary and/or trade secret information exchanged hereunder will be held in strict confidence by the receiving party, its officers and its employees, that such items will not be copied or reproduced either in whole or in part by any method whatsoever, unless agreed upon in writing by the disclosing party or required by law, or in the case of software, reverse engineered or decompiled, and that the receiving party will exert its best efforts to prevent the disclosure to others of such items provided to it. Each Party shall secure such information from unauthorized access, use, modification, disclosure, manipulation, or destruction. Each Party shall identify in writing any information that is to be subject to this agreement as "Confidential Draft" contemporaneously with its disclosure. Each of the Parties agrees that all of its employees to whom such information is disclosed shall be informed of and agree to be bound by the restrictions upon disclosure and use as contained in this Agreement.

B. "Confidential Information" means personal information, proprietary information, sensitive information, trade secret, or information protected by law, including all information disclosed for or related to the physical and cyber security review, incident response planning, and information technology controls review, and any other materials identified in writing as protected or confidential or reasonably understood to be exempt under the Kentucky Open Records Act. Each Party agrees to give the disclosing Party prompt notice of any request for information that may be subject to protection under this Agreement, but shall not be in breach of this Agreement if it determines, after consultation with its attorney, that any information must be disclosed under the applicable provisions of the Kentucky Open Records Act or any Opinion or Court Order requiring it's disclosure.

1. The terms " Confidential Information," "proprietary information," and "trade secrets" as used through this Agreement , shall not apply to information which;
	1. has been legally in the receiving party's possession prior to disclosure by the disclosing party; or
	2. has become part of the public domain through no fault of the receiving party; or
	3. has been developed subsequent to, and independent of, disclosure by the disclosing party; or
	4. has been released in writing by the disclosing party so that the receiving party may make public disclosure, or is otherwise deemed by the disclosing party to no longer be confidential.
2. Upon the request of the disclosing party, the receiving party shall return all Confidential, Information disclosed to it hereunder, including, but not limited to, written or descriptive material, drawings, operational data, blueprints, descriptions, or other papers or documents containing any proprietary information and/or trade secret information of the disclosing party, to the disclosing party, retaining no copies of the same, or destroy such proprietary information and/or trade secrets and so certify in writing to the other that such destruction has been effected .
3. In the event of a breach or threatened breach or intended breach of this Agreement by either party, the other party, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.
4. The receiving party shall indemnify the disclosing party from and against any loss, damage or injuries the disclosing party may suffer as a result of any breach of this Agreement by the receiving party. Such indemnity shall include, but not be limited to, losses, damages, injury or liability that the disclosing party may suffer as a result of the receiving party's breach of this Agreement, as well as any attorney fees, costs of suits, or costs of appeal, which may be awarded in any litigation by or against the disclosing party to recover monetary compensation for such loss, damage or injury or obtain injunctive relief from the receiving party's failure to perform as specified in this Agreement.
5. Nothing contained in this Agreement shall be construed to grant the receiving party any right or license under any intellectual property right of the disclosing party.
6. The parties declare that the provisions of this Agreement are severable. In the event of a judicial determination that any particular provision of this Agreement is invalid or unenforceable, the other provisions shall continue in full force and effect, as far as possible, as if the invalidated or unenforceable provision had not been made part of the Agreement. In the event of a judicial determination that this Agreement is unenforceable according to its terms, the Agreement shall be so construed, by limitation of scope or duration or otherwise, as to be enforceable, and shall be enforced as so construed, unless the provision declared invalid or unenforceable constitutes a material consideration for this Agreement and vitiates the benefit of the bargain.
7. This Agreement shall be in effect beginning on the date first written above, and shall continue in effect until terminated by either party hereunder. Upon termination, the parties hereto agree to maintain the confidentiality of such information for a period of five (5) years from the date of termination.
8. This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky, USA.

K. Company shall implement, maintain, and update reasonable security and breach investigation procedures and practices that are appropriate to the nature of the information disclosed to it by KyMEA, that include corrective action and breach investigation procedures and practices, that are reasonably designed to protect personal information from unauthorized access, use, modification, disclosure, manipulation, or destruction, and Company shall notify KyMEA in the most expedient time possible and without unreasonable delay, but within seventy-two (72) hours, after Company determines that there has been a security breach relating to personal information or Protected Health Information in its possession. Company shall be responsible for the cost of any required notification and investigation it must undertake. "Personal information" means an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one or more of the following data elements: (a) an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account; (b) a Social Security number; (c) a taxpayer identification number that incorporates a Social Security number; (d) or a driver's license number, state identification card number, or other individual identification number issued by an agency. "Reasonable security and breach investigation procedures and practices" means data security procedures and practices developed in good faith and set forth in a written security information policy.

L.The Receiving Party will not export, directly or indirectly, any technical data acquired from Owning Party or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining such license or approval.

M. Neither Party may assign this Agreement without the express written consent of the other Party.

IN WITNESS WHEREOF , and intending to be legally bound, the parties have executed this Agreement on the date and year first written above.

Kentucky Municipal Energy Agency RoseASP.com

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

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