

# MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (the "Agreement") dated \_\_\_\_\_ (the "Effective Date"), is between **Savant Energy Services**, a corporation having a place of business at PO Box 3031, Bellaire, Texas 77402, ("Supplier") and \_\_\_\_\_, a corporation having a place of business at \_\_\_\_\_ ("Company"). Company and Supplier are often collectively referred to as the "Parties" or individually as a "Party".

The Parties desire to engage in discussions regarding setup and use of review of the \_\_\_\_\_, (the "Subject").

In connection with those discussions, it may be necessary or desirable for each Party (the "Disclosing Party") to provide the other Party (the "Receiving Party") with information relating to the business of the Disclosing Party, which the Disclosing Party regards as Confidential Data (as defined below). The commitments to confidentiality contained in this Agreement are a condition to each Party's willingness to engage in the contemplated business discussions.

*The Parties agree as follows:*

1. **Definition of Confidential Data. "Confidential Data"** means any information or data (whether oral, written, electronic or otherwise) of or related to the Disclosing Party, or the respective businesses of the Disclosing Party, which is conveyed or communicated by the Disclosing Party to the Receiving Party and is not generally known or readily available to third parties. Confidential Data includes, but is not limited to, commercial, contractual and financial information, know-how, designs, reports, technical specifications, pricing information, marketing information, inventions and ideas, and other data relating to the Subject.
2. **Mutual Obligations of Nonuse.** Each Party shall use the other Party's Confidential Data only for the strictly limited purposes of the internal evaluation of the possible business relationship.
3. **Mutual Obligations of Confidentiality.** In consideration of the disclosure of Confidential Data, the Receiving Party agrees that the Confidential Data shall be kept strictly confidential and shall not be sold, traded, published or otherwise disclosed, in whole or in part, to anyone in any manner whatsoever, including by means of photocopy, reproduction, or electronic dissemination, without the Disclosing Party's prior written consent, except as provided in Section 4 below. In addition, the Receiving Party shall protect the Confidential Data with the same degree of care, but no less than a reasonable degree of care, which the Receiving Party uses to prevent the unauthorized use, dissemination or publication of its own confidential data and trade secrets.
4. **Permitted Disclosures.**
  - 4.1 The Receiving Party may disclose the Confidential Data without the Disclosing Party's prior written consent only to the extent the Receiving Party is able to establish that such information:
    - (a) is already known to the Receiving Party at the time of disclosure by the Disclosing Party;
    - (b) is already in the possession of the public or becomes available to the public other than through the act or omission of the Receiving Party;
    - (c) is acquired independently from a third party that represents that it has the right to disseminate such information at the time it is acquired by the Receiving Party; or
    - (d) is independently developed by the Receiving Party without reference to, or reliance upon, the Confidential Data provided by the Disclosing Party under this Agreement.

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4.2 The Receiving Party may disclose the Confidential Data without the Disclosing Party's prior written consent to an Affiliated Company (as defined below), provided that the Receiving Party guarantees the adherence of such Affiliated Company to the terms of this Agreement and provided, further, that such disclosure is on a "need to know" basis. "Affiliated Company" shall mean any company or legal entity which:

- (a) controls a Party either directly or indirectly; or
- (b) is controlled directly or indirectly by such Party; or
- (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such Party.

"Control" means the right to exercise fifty percent (50%) or more of the voting rights in the appointment of the directors of a company, or, in the case of a non-incorporated entity, the right to determine the outcome of any vote taken by the highest ranking decision making body of such entity.

4.3 The Receiving Party shall be entitled to disclose the Confidential Data without the Disclosing Party's prior written consent to the following persons who have a clear need to know in order to evaluate the potential business relationship:

- (a) employees, officers and directors of the Receiving Party;
- (b) employees, officers and directors of an Affiliated Company;
- (c) any professional consultant or agent retained by the Receiving Party for the purpose of evaluating the Confidential Data; or
- (d) any bank financing Receiving Party's participation in the potential business relationship including any professional consultant retained by such bank for the purpose of evaluating the Confidential Data.

Any disclosure to persons identified in sub-sections (a) and (b) above shall be made only after such persons have been apprised of this Agreement and the Receiving Party's obligations under this Agreement. Any disclosure to persons identified in sub-sections (c), (d), and (e) above shall be made only after obtaining an undertaking of confidentiality, in the same form and content as this Agreement, from each such person.

### 5. **NON-CIRCUMVENTION**

**CONTACTS** Parties have a legitimate, protectable business interest in their clients, vendors, third party services or other service providers, producers, sellers, buyers, brokers, dealers, distributors, financial institutions, technology owners, developers or manufacturers, contacts, and relationships ("Contacts"). Parties will gain special knowledge of and familiarity with each other's capabilities and protected Contacts. Parties understand that each have spent a great deal of time, resources and money developing its relationships with such Contacts and Parties mutually warrant and represent that they will at no time disclose any Contact names or information of the other party to third parties without the written consent of the other party.

5.1 **NON-CIRCUMVENTION** During the term of this Agreement, and for 3 years after termination of this Agreement, Company hereby irrevocably agrees, and guarantees Company shall not, directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate SAVANT's interest, or the interest or relationship between SAVANT and its Contacts, to change, increase or avoid directly or indirectly payment of established or to be established compensation, revenue shares, fees, commissions, or any other form of remuneration in kind or otherwise, or continuance of pre-established relationship or intervene in non-contracted relationship with such Contacts, with or through intermediaries, other third

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parties, legal counsel, or initiate buy/sell relationships, or transactional relationships that by-pass SAVANT with any such Contacts revealed or introduced by SAVANT to Company in connection with and including but not limited to any contemplated, actual or proposed, on-going or future "transaction" or "project", follow up, repeat, extended or renegotiated transaction, regardless of the success of the transaction or project. Company hereby confirms that the identities of, and relationships with such Contacts are currently the property of SAVANT and shall remain so for the duration of this Agreement and 3 years after termination or expiration of this Agreement.

- 5.2 In the event of circumvention by Company, whether direct and/or indirect, SAVANT shall be entitled to a legal monetary compensation equal to the maximum service it should realize from such a transaction, plus any and all expenses, including any and all legal fees incurred in lieu of the recovery of such compensation and any possible punitive damages.
- 5.3 By signature below and execution of this Agreement, Company, its affiliates and assignees, confirm that any corporation, organization, firm, company, subsidiary or future newly formed corporation, organization, firm, company, subsidiary, of which Company is a party to, employee of, member of, or otherwise, which would benefit financially from any Services provided by SAVANT, is bound by this Agreement.
6. **Term and Termination.** This Agreement is valid for a term of five years after the Effective Date.
7. **Return of Confidential Information.** All Confidential Data disclosed by a Party under this Agreement is and shall remain the property of the Disclosing Party. The Disclosing Party may demand the return of the Confidential Data at any time upon giving written notice to the Receiving Party. Within thirty (30) days of receipt of such notice, the Receiving Party shall return all of the original Confidential Data and shall destroy any copies or reproductions (both written and electronic) in its possession and in the possession of persons to whom it was disclosed pursuant to Section 4, except that the legal department or outside counsel of the Receiving Party may retain one complete set of such materials for the sole purpose of monitoring its obligations under this Agreement.
8. **Legally Compelled Disclosures.** If the Receiving Party is required under applicable law or by a governmental order, decree, regulation or rule to disclose any of the Confidential Data, or the fact that such information has been made available to the Receiving Party, or that discussions or negotiations between the Parties are taking place, the Receiving Party shall provide the Disclosing Party with prompt written notice so that the Disclosing Party may seek a protective order or other appropriate remedy or waive, to the extent necessary, compliance with the provisions of this Agreement, prior to the Disclosing Party's disclosure.
9. **No Representation or Warranty.** The Disclosing Party makes no representations or warranties, express or implied, as to the quality, accuracy or completeness of the Confidential Data disclosed hereunder, and the Receiving Party expressly acknowledges the inherent risk of error in the acquisition, processing and interpretation of geological and geophysical data and the risk of error in the assumptions which are used in any economic analysis. The Disclosing Party, its Affiliated Companies, their officers, directors and employees shall have no liability whatsoever with respect to the use of or reliance upon the Confidential Data by the Receiving Party.
10. **Damage and Relief.** The Receiving Party acknowledges and agrees that Disclosing Party may not have an adequate remedy at law and may be harmed in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the Receiving Party agrees that Disclosing Party may be entitled to seek injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which Disclosing Party may be entitled, at law or in equity. Notwithstanding the foregoing, neither Party shall be liable in an action initiated by one against the other for special, indirect, or consequential damages resulting from or



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arising out of this Agreement, including, without limitation, loss of profit or business interruptions, however same may be caused.

11. **No Right or License.** The Parties recognize and agree that the Disclosing Party may not be able to disclose some of the Confidential Data that it has in its possession, or that disclosure of such Confidential Data may be conditioned upon obtaining the consent of third parties. The Disclosing Party may, at its sole discretion, seek to obtain such consent. In the event of any disclosure by the Disclosing Party of Confidential Data that it did not have a right to disclose and there is a claim for damages, breach of contract, or other similar claim, the Disclosing Party shall defend, indemnify and hold the Receiving Party harmless from such claim(s). Except for the limited right to use granted in Section 2, no right to use the Confidential Data is granted and the Disclosing Party shall have no liability other than that stated under this Agreement with respect to the Receiving Party's use of any information or data, whether confidential or otherwise, furnished by the Disclosing Party under this Agreement, and no license, either express or implied, under any patent, copyright, trade secret or other intellectual property rights is granted.
12. **Relationship of the Parties.** No agency, partnership, fiduciary relationship, joint venture or other joint relation is created between the Parties by this Agreement. Neither Party has the authority to bind the other Party or to incur any obligation on its behalf.
13. **No Obligation to Proceed.** Unless otherwise expressly stated in writing, any prior or future proposals or offers made in the course of the Parties' discussions are implicitly subject to all necessary management and government approvals and may be withdrawn by either at any time. The Parties are under no obligation to proceed with the possible business relationship. Any agreement to have a business relationship between the Parties will exist only when such agreement is in writing, has received all necessary corporate approvals, and has been duly executed by authorized representatives of the Parties.
14. **No Publicity.** Except as authorized by both Parties in writing, neither Party shall publicly announce or disclose the existence of this Agreement or its terms or conditions, or advertise or release any publicity regarding this Agreement.
15. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas excepting any law or rule thereof which would apply the laws of any other jurisdiction.
16. **General.**
  - 16.1 This Agreement may only be amended by a written document signed by both Parties.
  - 16.2 No waiver of any provision of this Agreement, or of a breach hereof, shall be effective unless it is in writing and signed by authorized representatives of both Parties. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of a subsequent breach.
  - 16.3 All provisions of this Agreement are severable, and the unenforceability or invalidity of any of them shall not affect the validity or enforceability of the remaining provisions of this Agreement.
  - 16.4 This Agreement constitutes the entire understanding between the Parties and supersedes all previous understandings, agreements, communications and representations, whether written or oral, concerning the subject matter of this Agreement, except that any information or data exchanged prior to the Effective Date that qualifies as Confidential Data shall be afforded protection as Confidential Data according to the terms of this Agreement.
  - 16.5 The facsimile transmission of any signed original of this Agreement, and transmission or re-transmission of any signed facsimile transmission, shall be the same as delivery of an original. The Parties will confirm facsimile transmitted signatures by signing an original Agreement for delivery between the signing Parties.



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The Parties have authorized their representatives to execute and deliver this Agreement as of the Effective Date:

_____	Savant Energy Services
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____