

## Site Uptime Network Information Exchange Agreement

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This Agreement is made by and between the Uptime Institute, Inc., (*Institute*) a New Mexico corporation and \_\_\_\_\_ (Participant).

Participant and the *Institute* hereby agree that it may be necessary to provide and receive certain information in conjunction with the *Institute's* Site Uptime Network® (*Network*) which is considered by the *Institute*, and/or the Participant, and/or other *Network* participants to be confidential.

Such information may specifically include, but is not limited to abnormal incidents, vendor and product performance data, technical drawings and specifications, proposed projects, infrastructure management processes, and like data related to site reliability and environmental infrastructure performance (Information). The *Institute* and the Participant hereby agree to disclose and receive such Information subject to the following terms and conditions:

1. Each party agrees to protect Information of the other party (including other *Network* participant Information) from distribution, disclosure or dissemination to anyone except:
  - a. employees of the receiving party with a need to know such Information in conjunction with their job duties;
  - b. as authorized herein; or
  - c. as authorized in writing by the original disclosing party.

Each party will use the same standard of care to protect such Information of the other as it uses to protect its own similar confidential information.

2. All such Information shall be in writing or other tangible form and shall be treated as confidential whether or not marked with a confidential legend.
3. Neither the *Institute* nor the Participant shall have an obligation to protect any portion of Information which:
  - a. is made publicly available by the disclosing party, is made privately available outside the restrictions of the *Network* by the disclosing party, or is lawfully obtained by a nonparty to this Agreement;
  - b. is lawfully obtained by the receiving party from any source other than the disclosing party; or
  - c. is previously known to the receiving party without an obligation to keep it confidential.
4. Neither the *Institute* nor Participant shall make copies of Information received from the other party or from other *Network* participants other than is necessary for use under the terms of this Agreement, and each such copy will be marked with the same confidential legend as may appear on the original(s).

5. The *Institute* may disclose Information received from the Participant to other participants in the *Network* after receiving written agreement from each such participant to be bound by this same Agreement.
6. The parties agree not to identify each other or any other owner of Information disclosed hereunder in any advertising or publicity without the prior written permission of the other.
7. This Agreement shall be effective immediately upon signing and shall terminate on **December 31, 2012**.
8. No license to the other party under any patent, trademark, or copyright is either granted or implied by the disclosing of Information to that party.
9. This Agreement shall be construed in accordance with the laws of the State of New Mexico.
10. This Agreement constitutes the entire agreement between The *Institute* and the Participant and may not be modified or amended other than by a written instrument executed by both parties and also agreed to by all other Participants in the *Network*. The parties hereunder represent they have read this Agreement, understand it and agree to be bound by its terms and conditions. There are no understandings, express or implied, which are not stated herein.

(Company) Uptime Institute, Inc.

By (Principal) Alasdair Meldrum

Signed \_\_\_\_\_

Title \_\_\_\_\_ Programme Director

Date \_\_\_\_\_

