

Varner, et al. v. Atlas44, LLC, et al.
Case No. CV-2018-053074
Amended Verified Complaint

Exhibit 8

(Non-Disclosure Agreement - Exemplar)

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement is entered into this 15 day of June, 2015 ("*Effective Date*"), jointly and severally with Atlas44, LLC, and its affiliate companies, having their principal place of business at 8603 East Royal Palm Rd., Ste. 100, Scottsdale, AZ 85258 (collectively, "*Disclosing Party*") and [REDACTED] whose current address is located at [REDACTED] ("*Receiving Party*").

In consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

1. Confidential Information

(a) "*Confidential Information*" means any proprietary information that is disclosed by Disclosing Party to Receiving Party which relates to Disclosing Party's business (including without limitation, business plans, financial data, customer information, marketing plans, etc.), technology (including without limitation, technical drawings, designs, schematics, algorithms, technical data, product plans, research plans, software, etc.), products, services, trade secrets, know-how, formulas, processes, ideas, and inventions (whether or not patentable) and which should be reasonably understood by Receiving Party as the confidential or proprietary information of Disclosing Party.

(b) Confidential Information shall not include any information that Receiving Party can prove: (i) is or falls into the public domain without fault of Receiving Party; (ii) Receiving Party can show by written documentation was in its possession without any obligation of confidentiality prior to receipt thereof from Disclosing Party; or (iii) is obtained by Receiving Party from a third party without any obligation of confidentiality to Disclosing Party.

2. Nondisclosure Obligations

(a) Confidential Information of Disclosing Party shall be used by Receiving Party solely for the purpose of evaluating whether or not Receiving Party wishes to enter into a business transaction with Disclosing Party and shall not be used for any other purpose. Receiving Party shall hold Disclosing Party's Confidential Information in strictest confidence at all times in perpetuity and shall not use or disclose Disclosing Party's Confidential Information without the prior written consent of Disclosing Party, which consent may be withheld at Disclosing Party's sole discretion. Receiving Party shall take all reasonable measures to protect the Confidential Information of Disclosing Party from falling into the public domain or the possession of persons other than those persons authorized to have any such Confidential Information, which measures shall include the highest degree of care that Receiving Party utilizes to protect its own information of a similar nature, but in no event less than a reasonable degree of care.

(b) Nothing in this Agreement shall prohibit Receiving Party from disclosing Confidential Information of Disclosing Party if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding ("*Required Disclosure*"); provided that Receiving Party shall (i) give Disclosing Party prompt notice of such Required Disclosure prior to disclosure; (ii) cooperate with Disclosing Party in the event that it elects to contest such disclosure or seek a protective order with respect thereto, and/or (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

(c) Disclosing Party acknowledges to Receiving Party that Receiving Party may need to disclose Confidential Information to a limited number of persons or entities (i) who are employees or consultants of Receiving Party and (ii) with regard to whom Receiving Party has a good faith belief that such disclosure is essential and indispensable for review by Disclosing Party. Disclosing Party agrees that Receiving Party

may disclose Confidential Information to such employees or consultants provided they agree to comply with the terms of this Agreement.

(d) Without the prior written consent of the Disclosing Party, Receiving Party shall not make any release to the press or other public disclosures regarding the existence of this Agreement.

3. Term

This Agreement applies to disclosure of Confidential Information by the disclosing party to the receiving party during the term of the Agreement. The term of this Agreement shall perpetual or until such Confidential Information is no longer confidential as provided in Paragraph 1(b) above ("Term"). Either party may terminate this Agreement with or without cause upon prior written notice of 60 days. However, the confidentiality and non-compete obligations of the Receiving Party under this Agreement shall continue in perpetuity or until such Confidential Information is no longer confidential as provided in paragraph 1(b) above.

4. Trade Secret and Noncompetition

The Disclosing Party and the Receiving Party agree that Confidential Information constitutes a "trade secret" under applicable law. Receiving Party agrees not to compete directly or indirectly with the Disclosing Party or its affiliates with respect to the proprietary processes of the disclosing party's business described in the Confidential Information (the "Business"). In addition, Receiving Party agrees not to perform services or be employed by, or to serve as an independent contractor or consultant to any person or any entity which competes directly or indirectly using proprietary business processes substantially similar to that of the disclosing party.

5. General Provisions

(a) All Confidential Information of Disclosing Party is and shall remain the property of Disclosing Party. Any new or subsequent property, property rights, works, derivative works or business concepts (including without limitation, business plans, financial data, customer information, marketing plans, etc.), technology (including without limitation, technical drawings, designs, schematics, algorithms, technical data, product plans, research plans, software, etc.), products, services, trade secrets, know-how, formulas, processes, ideas, and inventions (whether or not patentable) and which relates to discussions and/or disclosure of Confidential Information shall be the property of Disclosing Party.

(b) Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise, either express, implied or by estoppel, to any Confidential Information of Disclosing Party, or under any patent, copyright, trademark or trade secret of Disclosing Party. Disclosing Party does not make any representation or warranty with respect to the non-infringement of third party patents, copyrights, trademarks or trade secrets with respect to its respective Confidential Information.

(c) ALL CONFIDENTIAL INFORMATION FURNISHED UNDER THIS AGREEMENT IS PROVIDED BY DISCLOSING PARTY "AS IS, WITH ALL FAULTS." DISCLOSING PARTY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR USE, NONINFRINGEMENT OR OTHER ATTRIBUTES OF ITS CONFIDENTIAL INFORMATION.

(d) Immediately upon (i) the decision by either party not to enter into any transaction or agreement contemplated or discussed by the parties hereto, or (ii) request by Disclosing Party at any time, Receiving Party shall return to Disclosing Party all copies or extracts of Disclosing Party's Confidential Information, in any medium, or certify, in writing by an authorized officer of Receiving Party, the destruction of the same to Disclosing Party.

(e) Receiving Party shall not assign or transfer this Agreement or any of its rights hereunder or delegate any of its obligations hereunder (whether by merger, operation of law or in any other manner) without the prior written consent of the other party, which consent may be withheld at such party's sole discretion. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties, their permitted successors and permitted assigns.

(f) Receiving Party shall not remove, export or reexport from the United States any Confidential Information of the other party or any direct product thereof.

(g) Nothing in this Agreement shall be construed to require Disclosing Party to disclose any Confidential Information to Receiving Party or to negotiate or enter into any business transaction with Receiving Party.

(h) The parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the parties hereunder shall be deemed to create an agency, partnership, employment or joint venture relationship between the parties. Neither party's officers or employees, agents or contractors shall be deemed officers, employees, agents or contractors of the other party for any purpose. Each party shall be deemed to be acting solely on its own-behalf and has no authority to incur obligations or perform any acts or make any statements on behalf of the other party. Neither party shall represent to any person or permit any person to act upon the belief that it has any such authority from the other party.

(i) Any notice under this Agreement shall be in writing and shall be effective only if it is delivered by hand or mailed, certified or registered mail, postage prepaid, return receipt requested, addressed to the appropriate party at its address set forth on the first page of this Agreement. Any such notice shall be effective only upon actual receipt by the party to be notified.

(j) This Agreement shall be construed and governed by the laws of the State of Arizona, without giving effect to its conflicts of law principles. The parties hereby submit to the personal jurisdiction of, and agree that any legal proceeding with respect to or arising under this Agreement shall be brought solely in, the state courts of the State of Arizona for the County of Maricopa or the United States District Court for the District of Arizona, if such court has subject matter jurisdiction. If any legal action or proceeding is commenced in connection with any dispute arising under, relating to or otherwise concerning this Agreement, the prevailing party, as determined by the court, shall be entitled to recover its attorneys' and experts' fees and all costs and necessary disbursements actually incurred in connection with such action or proceeding.

(k) Receiving Party acknowledges and agrees that due to the unique nature of Disclosing Party's Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow Receiving Party or third parties to unfairly compete with Disclosing Party resulting in irreparable harm to Disclosing Party and, therefore, that upon any such breach or any threat thereof, Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. Receiving Party will notify Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

(l) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understanding and agreements between and among them respecting the subject matter hereof. It shall not be modified except by a written agreement signed by both parties. No delay, failure or waiver of either party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. More than one counterpart of this Agreement may be executed by the parties hereto, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

(m) If the term of this Agreement shall be determined by a court of competent jurisdiction as being unenforceable because of its length, the term of this Agreement shall be reduced to the maximum amount of time permitted by applicable law and all other provisions of this Agreement shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

Receiving Party

ATLAS44, LLC

By: 

By: _____

Name: 

Name: _____

Title: _____

Title: _____