

Non-Disclosure, Non-Circumvention and Confidentiality Agreement

1. PROSPECTIVE PURCHASER INFORMATION

Prospective Purchaser: _____ Address: _____
 City, State and Zip: _____ Contact Person: _____
 Email: _____ Telephone: _____ Cell: _____
 Price Range: _____ Investment Amount: _____ Are you a Broker: Yes No

Nature of Prospective Purchaser (Please check appropriate box)

☐ Individual/Sole Proprietorship, ☐ Corporation, ☐ Limited Liability Company, ☐ Partnership, ☐ Other (specify): _____

Seller: Listing Number/Identification: _____

2. **Agreement:** Prospective Purchaser executes this Non-Disclosure, Non-Circumvention and Confidentiality Agreement (the "Agreement") in order to induce Seller and Seller's Broker, to reveal certain Information with respect to Seller's Business, its processes and technologies owned, developed or licensed to or by Seller relating to the referenced Listing (the "Subject Matter") and to show or discuss with the Prospective Purchaser information about or relating to the Business, whether data, financial information or other confidential information concerning the Business, so that the Prospective Purchaser may determine whether or not to enter into a sale/purchase agreement with the Seller regarding the Business and/or so that the Prospective Purchaser may determine whether the Prospective Purchaser is interested in doing business with Seller upon such terms as may be negotiated in the future. Further, the Prospective Purchaser acknowledges and agrees that the Seller will only disclose the Information to the Prospective Purchaser on a strictly confidential basis and only pursuant to, and in reliance upon, the terms and conditions of this Agreement in order to protect the Seller, the Information and the Business.

3. Definitions:

Seller: means the Seller of the Business (regardless of the form of the sale).
 Effective Date: means the date set forth on the signature page of this Agreement.
 Broker: means Trinity Transaction Advisory, LLC
 Business: means the business described in the Listing Number/Identification referenced above and the Information supplied to Prospective Purchaser.
 Information: means the information regarding the Business supplied by Broker or Seller to Prospective Purchaser for Prospective Purchaser's evaluation and possible purchase of said Business, or for whatever reason, any and all written, printed, electronic or other materials regarding the Business and the substance and content thereof provided by the Seller whether or not through the Broker, or any of Seller's Representatives to the Prospective Purchaser or any of its Representatives before or after the Effective Date, and all information ascertained through the discussions between Representatives of the parties concerning the Subject Matter. Information shall include, but not be limited to, the existence of this Agreement, all marketing, operational, economic or financial information, or data of any nature whatsoever relating to the Business which has been or may be provided or disclosed by the Seller or Seller's Representatives in connection with the Business.
 Representatives: means all of a party's affiliates, partners, members, officers, employees, managers, investors, accountants, attorneys, independent contractors, temporary employees, agents or any other representatives or persons that may from time to time be employed, retained by, working for, or acting on behalf of, such party.
 Seller: means the Business and/or the owner(s) of the Business.

4. **Obligations Of The Prospective Purchaser:** With respect to Information disclosed under this Agreement, the Prospective Purchaser and its Representatives shall:

- a. hold the Information in confidence, exercising a degree of care not less than the care used by the Prospective Purchaser to protect its own proprietary or confidential information that it does not wish to disclose, but in any event, at least a reasonable degree of care;
- b. restrict disclosure of the Information solely to those Representatives with a need-to-know the Information for purposes of evaluating the Subject Matter and not disclose the Information to any other person;
- c. advise those Representatives to whom the Information is disclosed that they shall be bound by the terms of this Agreement to the same extent as if they were parties hereto and be responsible for any breach of this Agreement by any of such Representatives;
- d. indemnify the Seller with respect to any and all breaches of this Agreement or the disclosure of the Information; and
- e. use the Information only in connection with continuing discussions by the parties concerning the Business, except as may be agreed by the Seller, in writing.
- f. Prospective Purchaser agrees to cooperate with the Seller in any attempt to obtain such a protective order or other appropriate remedy. The Prospective Purchaser also agrees to furnish only that portion of the Information that counsel advises the Prospective Purchaser is legally required.

5. **Confidential Nature:** Prospective Purchaser agrees that the Seller considers its Information confidential because the Seller has developed the Information, because it may be proprietary, because it has received the Information subject to a continuing obligation to maintain the confidentiality of the Information, or because of other reasons. The Prospective Purchaser agrees that the Seller shall have the right to determine, in its sole judgment, what Information, if any, it shall provide to the Prospective Purchaser.

6. **Resources:** Prospective Purchaser represents that Prospective Purchaser has sufficient financial resources to purchase this Business and agrees to provide, upon request by Broker or Seller, financial statements, references or other information evidencing such financial capacity.

7. **No or Solicitation:** Prospective Purchaser agrees that for a period of two (2) years from and after the Effective Date, the Prospective Purchaser will not, directly or indirectly, for profit or not, enter into and/or engage in solicitation or employment of the Employees of the Business for hire by himself or any other person or entity.

8. **No Contact:** Prospective Purchaser agrees that neither it nor its Representatives will contact the Business, the Seller, Seller's employees, customers or suppliers, except through the Broker.

9. **Broker Represents Seller:** Prospective Purchaser acknowledges and understands that the broker is representing the Seller of the Business and that Broker owes fiduciary duties to the Seller. Prospective Purchaser understands and agrees that the Broker WILL NOT PROVIDE ANY LEGAL, ACCOUNTING, TAX OR OTHER advice to Prospective Purchaser and will NOT provide any related services to Prospective Purchaser.

10. **Prospective Purchaser represents, warrants and agrees** that Prospective Purchaser, directly or indirectly, as a member of a group or any entity, will not circumvent the broker in any way, will not assist anyone in doing so, and will not for a period of three (3) years from today's date, enter into any agreement for the purchase, lease, or exchange of the Business, or its capital stock, or any portion thereof, in any other capacity, whether directly or indirectly (nor will Prospective Purchaser assist or promote in any way anyone else entering into such an agreement) unless said agreement contains a provision wherein the parties acknowledge that Broker is entitled to the fee as agreed between the Seller and the Broker. Further, if said purchase agreement does not provide for the payment of said Fee to Broker by Seller, or if Fee is not paid by Seller, Prospective Purchaser agrees to be liable for and pay same on demand without any obligation of Broker's part to first exhaust legal remedies against Seller.

11. **Term Of Agreement:** The term of this confidentiality Agreement shall be a period of three (3) years from the Effective Date, or such longer period as any of the Information may be protected by applicable State, or Federal law, or by common law.

12. **Ownership Of Information:** The Information shall be deemed the property of the Seller and, upon request, the Prospective Purchaser shall return all Information received in tangible form to the Seller, without retaining any copy or duplicate thereof, and shall destroy or permanently delete any and all written, printed, electronic, or other material or information derived from the Information and provide the Seller with written certification of such return, destruction or deletion. Notwithstanding the return, destruction or deletion of Information, the Prospective Purchaser shall continue to be bound by the obligations of confidentiality and other obligations hereunder. Should the Prospective Purchaser lose or make an unauthorized disclosure of the Information, it shall notify the Seller immediately and will use best efforts to retrieve the lost or wrongfully disclosed Information at the Prospective Purchaser's sole cost and expense.

13. **No Warranties:** With respect to any information, including but not limited to Information, which the Seller, the Broker or their Representatives disclose to the Prospective Purchaser for the purpose of evaluating the Business, it is understood and agreed that the Seller does not make any representations or warranties as to the accuracy, completeness or fitness for a particular purpose thereof. It is further understood and agreed that neither the Seller, Broker nor their Representatives shall have any liability or responsibility to the Prospective Purchaser or to any other person or entity resulting from the use of any information so furnished or otherwise provided and that such information is subject to error, change or withdrawal at any time. Neither this Agreement, nor the transfer of Information hereunder, shall be construed as granting to the Prospective Purchaser, either expressly, by implication, estoppel, or otherwise, any license or right to any Information, including but not limited to patents, trademarks, copyrights, trade secrets or any other intellectual property right now or hereafter owned or controlled by Seller and all such Information shall remain the property of the Seller.

14. **No Obligations:** Neither this Agreement, nor the disclosure of Information under this Agreement, nor the ongoing discussions and correspondence between the parties, shall constitute or imply a commitment or binding obligation between the parties or their Representatives, if any, regarding the Subject Matter. If, in the future, the parties elect to enter into a binding commitment regarding the Business or any relationship whatsoever, such commitment shall be explicitly stated in a separate written and definitive agreement executed by both parties, and the parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding the Business or any other transaction between them without execution of such separate written agreement.

15. **Injunctive Relief:** Without prejudice to the rights and remedies otherwise available to the Seller, the Prospective Purchaser acknowledges that money damages may not be an adequate remedy for any actual or threatened breach of this Agreement by the Prospective Purchaser, that the interests of the Seller and/or those of the affiliates of the Seller may be irreparably injured by unauthorized disclosure of the Information, and that the Seller will be entitled to pursue such specific performance and other equitable relief by way of injunction if the Prospective Purchaser breaches or threatens to breach any provision of this Agreement.

16. **Governing Law and Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to choice of law or conflicts of law principles, and the exclusive venue with respect to enforcement of this Agreement shall be in any state or federal trial court sitting in Dallas, Texas.

17. **Entire Agreement; Amendment:** This Agreement constitutes the entire understanding between the parties with respect to the Information provided hereunder. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and executed on behalf of each party by its duly authorized representative.

18. **No Waiver:** The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect during the term hereof.

19. **Benefit:** This Agreement shall benefit and be binding upon the parties hereto and their respective successors and permitted assigns.

20. **Severability:** If any term or provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining terms and provisions of this Agreement shall remain in full force and effect, and such invalid, illegal or unenforceable term or provision shall be deemed not to be part of this Agreement.

21. **Enforcement:** This Agreement may be enforced by the Seller as the Seller is a beneficiary of the terms and conditions of this Agreement, facsimile signatures are binding and it shall not be necessary in making proof of this Agreement or the terms hereof, to produce more than a copy hereof.

22. **Signatures:** By signing this Agreement, the undersigned certify having read, understood, and agreeing to be legally bound by the terms and conditions of this Agreement. **When this Agreement is signed, it shall constitute the joint and several, personal and individual obligation of each Prospective Purchaser signatory hereto.**

Effective Date: _____.

Prospective Purchaser:

Signed By: _____
Name: _____
Title: _____

Broker: 

PLEASE FAX THIS FORM IN ITS ENTIRETY TO:

DALLAS OFFICE: (877) 384-0091