



## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”) is dated as of \_\_\_\_\_, and is by and between \_\_\_\_\_, having an address of \_\_\_\_\_ (the “Receiving Party”) and \_\_\_\_\_, having an address of \_\_\_\_\_ (the “Disclosing Party”).

1. **Confidential Information, Representatives.** Receiving Party is considering a possible transaction involving the Disclosing Party (the “Transaction”), and in order to assist Receiving Party in evaluating the Disclosing Party and the Transaction, the Disclosing Party is prepared to make available to Receiving Party certain confidential, non-public and proprietary information concerning the business, operations and assets of the Disclosing Party (the “Confidential Information”). As a condition to the Confidential Information being furnished to Receiving Party and its affiliates and its and their respective officers, directors, partners, members, employees, agents, consultants, potential sources of capital or financing, advisors, attorneys, and accountants (collectively, “Representatives”), Receiving Party agrees to treat the Confidential Information in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions hereinafter set forth.

2. **Excluded Information.** The Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of acts by Receiving Party in breach of the terms of this Agreement, (ii) is in Receiving Party’s possession or the possession of any of its Representatives prior to disclosure by the Disclosing Party or is independently derived by Receiving Party or any of its Representatives without the aid, application or use of the Confidential Information, or (iii) is disclosed to Receiving Party or any of its Representatives by a third party on a non-confidential basis or by a source who is not known by Receiving Party to owe an obligation of confidentiality to the Disclosing Party with respect to such information.

3. **Non-Disclosure of Confidential Information.** Receiving Party shall use its best efforts to keep the Confidential Information in confidence and shall not disclose any of the Confidential Information in any manner whatsoever; provided, however, that (i) Receiving Party may make any disclosure of information contained in the Confidential Information to which the Disclosing Party gives its prior written consent, and (ii) any information contained in the Confidential Information may be disclosed to Receiving Party’s Representatives who reasonably require access to the Confidential Information for the purpose of assisting in the evaluation of the Disclosing Party and the Transaction and who agree to keep such information in confidence in accordance with the terms of this Agreement. Receiving Party shall be responsible for any breach of the terms of this Agreement by any of its Representatives unless such Representative has entered into a confidentiality agreement directly with the Disclosing Party that is acceptable to the parties thereto.

4. **Non-Disclosure of Existence of Negotiations.** Without the prior written consent of the other party, or except as may be required by applicable law, regulation or legal process,

neither Receiving Party, the Disclosing Party nor any person acting on behalf of either of them shall disclose to any third party that discussions or negotiations are taking place between the parties concerning a possible Transaction, including the status of such discussions or negotiations. The Disclosing Party agrees that neither it nor any of its representatives will share with any other person (including, without limitation, any other potential bidders) any analysis or other work product of Receiving Party or any of its Representatives.

5. **Return or Destruction of Confidential Information.** Promptly upon the written request of the Disclosing Party, Receiving Party will destroy or return all copies of the Confidential Information to the Disclosing Party that were furnished to Receiving Party by or on behalf of the Disclosing Party, and all notes, studies, reports, memoranda and other documents prepared by Receiving Party or its Representatives that contain or reflect the Confidential Information shall be destroyed. Notwithstanding the foregoing, Receiving Party and its Representatives (i) may retain copies of the Confidential Information to the extent that such retention is required to demonstrate compliance with applicable law, rule, regulation or professional standards, or to comply with a bona fide document retention policy, provided, however, that any such information so retained shall be held in compliance with the terms of this Agreement and (ii) shall, to the extent that (i) above is inapplicable to Confidential Information that is electronically stored, destroy such electronically stored Confidential Information only to the extent that it is reasonably practical to do so.

6. **Required Disclosure.** In the event that Receiving Party or its Representatives are required by applicable law, regulation or legal process or receive a request to disclose all or any part of the Confidential Information under the terms of a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, Receiving Party shall (provided that such is legally permitted and to the extent reasonably practicable) (i) promptly notify the Disclosing Party of the existence, terms and circumstances surrounding such a request, (ii) consult with the Disclosing Party on the advisability of taking steps to resist or narrow such request, (iii) if disclosure of such Confidential Information is required, furnish only such portion of the Confidential Information as Receiving Party or its Representatives is advised by legal counsel is legally required to be disclosed, and (iv) cooperate with the Disclosing Party, at the Disclosing Party's sole cost and expense, in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information that is required to be disclosed.

7. **Definitive Agreement.** Unless and until a definitive written agreement between Receiving Party and the Disclosing Party with respect to a Transaction has been executed and delivered, neither Receiving Party nor the Disclosing Party will be under any legal obligation of any kind whatsoever with respect to such a Transaction by virtue of this or any other written or oral expression by either of them or their Representatives except, in the case of this Agreement, for the matters specifically agreed to herein.

8. **Remedies.** Receiving Party acknowledges that in the event of any breach of the terms of this Agreement, the Disclosing Party may not be made whole by monetary damages. Accordingly, the Disclosing Party, in addition to any other remedy to which it may be entitled in

law or in equity, shall be entitled to seek an injunction to prevent a breach of the terms of this Agreement by Receiving Party or its Representatives.

9. **Entire Agreement; Amendment.** This Agreement (i) represents the entire understanding and agreement of the parties hereto with respect to the matters contained herein, and (ii) may be amended, modified or waived only by a separate writing executed by Receiving Party and the Disclosing Party expressly so amending, modifying or waiving this Agreement.

10. **No Waiver.** No failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

11. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to the laws of conflict of laws.

12. **Term.** This Agreement shall terminate and be of no further force or effect one (1) year from and after the date hereof.

13. **Captions; Interpretation.** The Captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provisions of this Agreement. No presumption or burden of proof shall arise favoring or disfavoring a party by virtue of the authorship of any provision of this Agreement.

14. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement, and may be delivered by facsimile or other reliable electronic means.

*[Remainder of Page Intentionally Left Blank]*



**IN WITNESS WHEREOF, THIS AGREEMENT** is executed and delivered effective as of the date first written above.

**Receiving Party:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Disclosing Party:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_