



# Confidentiality/Disclosure/Non-Circumvention Agreement

This Agreement dated and effective as of the latest date below (the "Effective Date") by and between The Engenuity Group, LLC, dba Engenuity ("Intermediary") and \_\_\_\_\_, address: \_\_\_\_\_ City \_\_\_\_\_ ST \_\_\_\_\_ Zip \_\_\_\_\_


Phone \_\_\_\_\_ email \_\_\_\_\_ do hereby agree as follows:

### BUSINESS LISTING ID NUMBER (the "Listing") 1054

### BUSINESS CATEGORY AEC

- 1. **Confidential Information** - Prospect understands that the seller set forth in the Listing referenced above ("Seller") and of the business also set forth in the Listing (the "Business") shall, directly or indirectly through Intermediary as its conduit, disclose to Prospect certain confidential and proprietary information related to the Business ("Confidential Information"), which shall include information relating to non-public, confidential and proprietary operations, properties, personnel, financial information, materials, products, technology, computer programs, manuals, business plans, software, marketing plans, and other information disclosed or submitted, orally, in writing, or by any other media solely relating to Prospect's interest in purchasing the Business. Prospect agrees not to disclose, publish or otherwise reveal any of the Confidential Information to any other parties, agents, representative or employees whatsoever without the prior written consent of Seller, except that Prospect may disclose the Confidential Information to Prospect's legal counsel, accountant or lender (including financing sources) and those in the prospect's company that are actively engaged with this transaction. Information already made available to Prospect prior to execution of this agreement shall not be considered Confidential Information. Information that becomes public after the execution of this agreement (that did not become public by way of disclosure by Prospect) shall not be considered Confidential Information.
- 2. **Conduct** - Prospect understands and agrees that all communications concerning the above business listing (BL) shall be conducted solely through the Intermediary. Prospect agrees not to approach or contact Seller or its principals or visit the physical business location without an appointment arranged through Intermediary. Prospect also agrees to not contact or approach Seller's employees, officials, agents, customers, suppliers, and/or competitors, to the best of its knowledge, without the express written consent of Intermediary. Prospect shall be fully responsible for any breach of this Agreement by Prospect, Prospect's agents, representatives or employees.
- 3. **Information** - All information and documents provided to Prospect concerning the Business is the property of Seller and must be destroyed upon written request by Intermediary or Seller. However, prospect and its Representatives may retain copies of the information and documents to the extent necessary to comply with applicable law, regulations, or bona fide document retention policies. Any and all representations and warranties shall be made solely by and between Seller and Prospect in a signed purchase/sale agreement and subject to the provisions thereof. Prospect fully understands that Intermediary makes no representations or warranties whatsoever, expressed or implied, to Prospect with respect to the Business and Confidential Information disclosed to Prospect. Prospect acknowledges that it is and will not rely upon any information, written or oral, furnished by Intermediary, and Prospect understands that all information received must be independently verified by Prospect. Prospect acknowledges that all information furnished and/or received by Prospect is provided by Seller and not verified in any way by Intermediary or its agents, and that Intermediary and its agents are relying upon Seller for the accuracy and completeness of the information. Prospect agrees that any information and documents received by Prospect will not be used in any way to Seller's or Intermediary's detriment or liability, and Prospect agrees to indemnify and hold Intermediary harmless from any claims or damages from its use and/or reliance thereon. The provisions in this paragraph shall also inure to the benefit of Intermediary's agents.
- 4. **Seller as Third-Party Beneficiary** - Prospect acknowledges that Seller has the right to protect the Confidential Information and to obtain the benefits hereunder. Accordingly, and for such limited purposes only, Seller shall be considered an intended third-party beneficiary hereunder. The fact that Seller is not a signatory to this Agreement shall not prohibit, alter or limit Seller's or Intermediary's right to enforce the terms hereof.
- 5. **Representation** - Prospect understands and agrees that Intermediary is a transaction Intermediary. As such, Intermediary is not a single agent or representative of Seller or Prospect.

- 6. **Advice** - Prospect understands, agrees and acknowledges that Prospect has been advised to consult an attorney and/or certified public accountant for assistance in reviewing and verifying the legal, financial and/or any other pertinent information concerning the Business. Prospect further understands and agrees that Intermediary is merely acting as a conduit of information and has not made any independent investigation of the accuracy of the information provided by Seller. Prospect agrees to independently verify all representations and warranties made by Seller and understands that Intermediary has not made, nor will it make any verification or warranty regarding any information provided.
- 7. **Procuring Cause** - Prospect hereby recognizes Intermediary as the procuring cause of any purchase or other act set forth in paragraph 2 above and agrees that for a period of one (1) year from the Effective Date not to deal directly or indirectly with the Seller, its agents, representatives or assigns, without the prior written consent of Intermediary.
- 8. **Warrantees** - Prospect represents and warrants that it is not an employee of a competitor business. Prospect warrants that the sole purpose of requesting and receiving information on the Business is to possibly affect a purchase or merger, investment in and/or acquisition, and none other, and Prospect knows that Seller and Intermediary are relying upon such representations in disclosing the Confidential Information to Prospect. Prospect further warrants that it is financially capable of purchasing the Business, has not filed for an undisclosed bankruptcy, and has not been convicted of any felony or crime.
- 9. **No implied waiver** - Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.
- 10. **Consent & Jurisdiction** - This Agreement shall be governed by the laws and construed in accordance with the laws of the State of Delaware, and the parties' consent and agree that Delaware, shall be the sole and exclusive venue for all proceedings relating to this Agreement and/or its subject matter, including without limitation the enforcement hereof. Prospect hereby waives all objections to establishing venue elsewhere. Prospect agrees that in the event of any breach or threatened breach of the confidentiality provisions contained herein, Seller or Intermediary may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Intermediary and/or Seller against any such breach or threatened breach.
- 11. **Attorney's Fees** - In the event of any dispute or litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, costs, and expenses incurred in both the trial court and appellate levels.
- 12. **Copies** - Prospect has received a copy of this Agreement, and a fax or electronically transmitted copy with signatures shall be considered as an original.
- 13. Nothing in this Agreement shall be binding upon, or restrict the activities of, any of the Prospect's portfolio companies, investment professionals, or affiliated investment funds that do not receive Confidential Information.
- 14. This Agreement shall terminate two (2) years from the Effective Date.

 W. D. Kimbrell for EEG

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

Prospect's Signature \_\_\_\_\_ Date \_\_\_\_\_