

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (the “**Agreement**”), which shall be effective upon the date it has been executed by the authorized representatives of both Parties, is made by and between Kinetica Partners, LLC (“**Kinetica**”), a Texas limited liability company, whose address is: 1001 McKinney Street, Suite 900, Houston, Texas 77002, and _____ (“**Company**”), a _____, whose address is _____. Kinetica and Company are also referred to individually as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, in connection with the consideration of a potential transaction between the Parties regarding _____

_____, (the “**Potential Transaction**”), each Party may provide or, have provided on its behalf, (“**Disclosing Party**”) certain of its confidential, trade secret, sensitive or proprietary information relevant to such Potential Transaction (“**Confidential Information**”) to the other Party (“**Receiving Party**”); and

WHEREAS, as a condition to furnishing such Confidential Information, each Party requires that the Confidential Information be protected from unauthorized use or disclosure and be used only in evaluating the Potential Transaction in accordance with the provisions of this Agreement.

NOW THEREFORE, in consideration of the mutual obligations herein, the Parties, agree as follows:

1. **Confidentiality.**

Subject to the terms and conditions of this Agreement, the Receiving Party agrees to protect and hold in strict confidence the Confidential Information furnished to it by the Disclosing Party. Confidential Information shall include, without limitation, any information that the Disclosing Party considers proprietary, trade secret, or confidential, including any information with respect to its rates, fees, tariffs, costs, or other pricing information, and any plans, documents, studies, reports, drawings or information containing or derived from Confidential Information.

Confidential Information shall not include (i) information which at the time of disclosure to the Receiving Party is available in the public domain without violation of a confidentiality obligation; (ii) information which, after disclosure to the Receiving Party, becomes available in the public domain other than by means of a breach of this Agreement, or any other obligation of confidentiality, by the Receiving Party or otherwise; (iii) information which was lawfully within the Receiving Party’s possession prior to its being provided to the Receiving Party by or on behalf of the Disclosing Party, provided that the source of such information was not itself subject to any confidentiality agreement or other duty of confidentiality in respect thereof; or (iv) information which came into the Receiving Party’s possession on a non-confidential basis prior to disclosure by the Disclosing Party, provided that the source of such information was not, to the Receiving Party’s good faith knowledge and belief, subject to any agreement or other duties of confidentiality in respect thereof.

2. **Limited Use.**

Each Receiving Party agrees not to disclose, distribute or disseminate the Disclosing Party’s Confidential Information to any person or entity and not to use such Confidential Information in

any manner except with respect to the Potential Transaction as provided herein and for no other purpose without the express written consent of the Disclosing Party. This Agreement itself and the fact that the Parties are discussing the Potential Transaction shall also be deemed Confidential Information.

3. **Authorized Disclosures.**

For purposes of this Agreement, the term “Representative(s)” shall mean the directors, officers and employees of the Receiving Party, and to the extent they receive Confidential Information, their consultants, professional advisers, potential financing sources, agents and/or affiliates and/or contract employees. Each Party agrees that its Confidential Information may be provided to those Representatives of the Receiving Party who have undertaken to comply with the restrictions on disclosure set forth in this Agreement as though they were original parties hereto. The Receiving Party shall remain fully responsible for compliance with the requirements of this Agreement when its Representatives use or handle the Disclosing Party’s Confidential Information. For the purposes of this Agreement, affiliate(s) shall mean, with respect to any specified Party, any other person or entity which directly or indirectly through one or more intermediate persons or entities controls, or is controlled by, or is under common control with, such Party.

The Receiving Party shall remain liable for any improper use of such Confidential Information or breach of this Agreement by its Representatives. The Receiving Party shall release, defend, indemnify, and hold harmless the Disclosing Party from and against any and all claims, losses, and damages of any kind or character arising out of the improper disclosure or use of any Confidential Information by any of its Representatives.

The Receiving Party may disclose Confidential Information to the extent to which it is compelled to do so by law, order or regulation in connection with any legal or regulatory proceeding to which the Receiving Party may be subject provided that the Receiving Party, to the extent permitted by applicable law or regulation, immediately advises the Disclosing Party of the possibility of any such compulsory disclosure and reasonably cooperates with the Disclosing Party in any effort to obtain protection from disclosure for such Confidential Information.

4. **Ownership.**

All Confidential Information shall remain the property of the Disclosing Party and the Receiving Party shall have no license, right, title or interest in such Confidential Information.

5. **Relief.**

The Parties agree that the unauthorized use or disclosure of Confidential Information would cause irreparable harm and/or significant injury for which the Disclosing Party would not have an adequate remedy at law. Therefore, the Parties agree that in the event of any violation of this Agreement, without limiting any other rights and remedies that may otherwise be available to the Disclosing Party, the Disclosing Party shall be entitled to injunctive relief to prevent or abate the disclosure or use of the Disclosing Party’s Confidential Information.

6. **Right to Disclose.**

Each Disclosing Party warrants that it has the right to disclose the Confidential Information pursuant to this Agreement. No Disclosing Party makes any other representation or

warranty, express or implied, with respect to any Confidential Information, including with respect to the completeness or accuracy thereof.

7. **Return of Confidential Information.**

Upon the request of the Disclosing Party and, in any event, upon the termination or expiration of this Agreement, the Receiving Party shall promptly return all copies of the Confidential Information, including any documents in any media derived from or containing such Confidential Information or at the Disclosing Party's option, shall destroy, or permanently erase from electronic media, all such copies and documents in all media containing Confidential Information, and certify such destruction or erasure in writing. Copies in electronic network system backups may be retained with the backup so long as no attempt is made to access the Confidential Information. The Receiving Party may return the Confidential Information, or any such documents or media, or any part thereof, to the Disclosing Party at any time.

8. **Term.**

Unless terminated earlier by written notice, this Agreement shall remain in force for two (2) years from the date it is effective as provided in the preamble. The confidentiality obligations of the Parties shall survive for an additional one (1) year after the termination or expiration of this Agreement.

9. **General.**

THIS AGREEMENT, AND ALL QUESTIONS RELATING TO ITS VALIDITY, INTERPRETATION, PERFORMANCE, AND ENFORCEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, NOTWITHSTANDING ANY CONFLICT-OF-LAWS DOCTRINES OF SUCH STATE OR OTHER JURISDICTION TO THE CONTRARY. ALL MATTERS LITIGATED BY OR BETWEEN THE PARTIES THAT INVOLVE THIS AGREEMENT OR, THE RELATIONSHIP OF THE PARTIES, OR RELATED MATTERS HEREUNDER SHALL BE BROUGHT ONLY IN THE STATE OR FEDERAL COURTS IN HARRIS COUNTY, TEXAS.

EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT OR ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT AND AGREES THAT THIS WAIVER IS A MATERIAL TERM OF THIS AGREEMENT.

If any term or provision of this Agreement is contrary to or in conflict with any requirement of applicable law, then that term or provision shall be modified to the extent necessary to comply with the applicable law.

This Agreement contains the entire understanding between the Parties with respect to the subject matter of this Agreement and shall supersede all prior oral or written communications, negotiations, understandings, or agreements.

The Parties specifically disclaim any express or implied partnership or joint venture relationship between them, regardless of the actions of the Parties. The Parties also disclaim, to the fullest extent permitted by law, any fiduciary duties they may owe to or may be owed from one another.

This Agreement may not be amended except in writing and signed by an authorized representative of each Party. The Parties shall remain responsible for their respective Representatives' compliance with the amended Agreement.

This Agreement shall inure to the benefit of and be binding upon the Parties' respective permitted successors, assigns and transferees; provided, however, that this Agreement shall not be assigned by either Party without the other Party's prior written consent and in no event shall either Party be relieved of any of its respective obligations hereunder. Any purported assignment in violation of the foregoing shall be null and void and not enforceable, it being acknowledged and agreed that a merger, acquisition, reorganization or sale of the assets of either Party shall not constitute a permitted assignment hereof.

This Agreement may be executed in counterparts, and it shall not be necessary for the signature of each Party to be on every counterpart hereof. Each counterpart shall be deemed to be an original, all of which shall be merged together and constitute one and the same instrument. Counterparts may be provided by electronic scan or fax, which shall be effective when received. When such electronic copies are provided, the Parties shall provide each other with hard copies with original signatures within three business days.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

KINETICA PARTNERS, LLC

By: _____
Name: _____
Title: _____
Date: _____

COMPANY

By: _____
Name: _____
Title: _____
Date: _____