

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This **MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (the “Agreement”) is made and entered into by and between [ELECTRICAL CONTRACTOR COMPANY #883-90267, TAMPA BAY, FLORIDA] (the “Company”), and each undersigned party (the “Prospective Purchaser”), and is effective with respect to each such party as of the date on which such party has executed this Agreement as set forth below (the “Effective Date”).

RECITALS

WHEREAS, the parties have entered into certain discussions relating to the Prospective Purchaser’s potential purchase of the Company (the “Proposed Transaction”).

WHEREAS, in connection with the discussions relating to the Proposed Transaction, the parties may disclose certain of their operational, financial, business, and other proprietary or confidential materials and plans to the each other. Pursuant to such disclosure, each party may become acquainted with certain confidential information and trade secrets of other party, including, but in no way limited to, business methods and systems, client screen techniques, client database information, strategic contracts, financial statements, fee schedules and other price information, billing records, policies, actual and projected financial and operational information, contracts, projections, business plans, officer, director and owner information, employees and contractors, suppliers and vendors, client lists, marketing, software, technology, technical memoranda, manuals, prospects and proposed projects, trademarks and patents, intellectual property, advice from lawyers and accountants and other consultants, and other information and know-how, all relating to or useful to a disclosing party’s business and relating to the disclosed materials (collectively, the “Confidential Information” or the “Disclosing Party’s Confidential Information”). The Disclosing Party’s Confidential Information includes all disclosures of matters made prior to the Effective Date, if any, in addition to all disclosures made after the Effective Date.

NOW, THEREFORE, as a condition to any party’s disclosing (the “Disclosing Party”) its Confidential Information to any other party (the “Receiving Party”) and in recognition by each party that such Confidential Information constitutes proprietary, valuable, and unique assets owned by or in the custody of the Disclosing Party, the parties agree as follows:

TERMS AND CONDITIONS

- 1. Recitals.** The recitals stated above are true and correct and are incorporated by reference into and made a part of this Agreement.
- 2. Access to Confidential Information.** Each party will receive or be given access to certain Confidential Information of the other party, all relating to or useful in a Disclosing Party’s business and all considered by a Disclosing Party as confidential or proprietary information.
- 3. Non-Disclosure and Non-Use of Confidential Information.** Without the express written consent of the Disclosing Party, which may be withheld in its sole and absolute discretion, each Receiving Party covenants and agrees:

(a) Not to disclose any of the Disclosing Party’s Confidential Information, to any person, entity or third party, other than its financial and legal advisors expressly for the purpose of evaluating the Proposed Transaction (which advisors will agree to abide by the terms of this Agreement);

(b) Not to use the Disclosing Party's Confidential Information for its competitive advantage or in its business activities or for any purposes other than in connection with the Proposed Transaction;

(c) To keep in strict confidence the Disclosing Party's Confidential Information and to use appropriate and reasonable safeguards to maintain such confidentiality; and

(d) Not to use the Disclosing Party's Confidential Information for any purpose which may be in any way detrimental to the Disclosing Party or the business of the Disclosing Party.

4. Non-Disclosure of Proposed Transactions. The terms of the Proposed Transaction are confidential and proprietary, and except as set forth in Section 5 below, the parties covenant and agree not to disclose any information related to the Proposed Transactions (including the existence thereof) to any person, entity, or third party, other than the party's financial and legal advisors pursuant to section (3)(a) above.

5. Mandated Disclosure. No Receiving Party will be liable for any disclosure of a Disclosing Party's Confidential Information made pursuant to a valid and enforceable judicial or government order not sought by the Receiving Party for the purpose of circumventing its obligations (the "Mandated Disclosure"); provided, however, that the Receiving Party's obligations under this Section 5 will only be deemed satisfied if:

(a) promptly upon the Receiving Party's receipt of a subpoena or other written notice seeking the Disclosing Party's Confidential Information, the Receiving Party provides prompt written notice to the Disclosing Party concerning the request; and

(b) the Receiving Party reasonably cooperates with the Disclosing Party in the event that the Disclosing Party elects to legally contest and avoid the Mandated Disclosure.

6. Enforcement. A Disclosing Party's Confidential Information is a proprietary, unique, and valuable asset of the Disclosing Party, and the Disclosing Party will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, in addition to all other remedies available at law (which neither party waives by the exercise of any rights hereunder), in the event of a breach or threatened breach by the Receiving Party of this Agreement, the Disclosing Party will be entitled to an injunction restraining such breach, without being required to show any actual damage or post any bond or other security.

7. Return of the Confidential Information. Within two (2) business days of the Receiving Party's receipt of a written request by the Disclosing Party, the Receiving Party will either:

(a) return to the Disclosing Party, any and all writings, documents and images that either contain, analyze, or reference the Disclosing Party's Confidential Information, both in hardcopy and electronic form; or

(b) at the election of the Disclosing Party and at the expense of the Receiving Party, destroy the information referenced in Section 7(a).

8. Certification Requirement. After complying with Section 7, the Receiving Party will certify, under penalty of perjury, in writing to the Disclosing Party that the information referenced in Section 7(a) has either been delivered to the Disclosing Party or destroyed, as the case may be.

9. Improper Disclosure. The Receiving Party will promptly provide notice to the Disclosing Party if the Receiving Party knows of or suspects the disclosure of any of the Disclosing Party's Confidential

Information by any third party, which disclosure would not be permitted if such person or entity were bound by the terms of this Agreement.

10. Relationship of the Parties. No party has an obligation under this Agreement to purchase anything from the other party. This Agreement does not create any agency, partnership or joint venture between the parties. The Company's disclosure of its Confidential Information is not exclusive to the Potential Purchaser, and the Company may disclose its Confidential Information to other potential purchasers.

11. Termination. If any party determines that he, she, or it does not wish to proceed with the Proposed Transaction, or, if entered into, the actual transaction is to be terminated or terminates in accordance with its terms, each party must automatically comply with the requirements of Section 7 above.

12. Ownership. The Disclosing Party's Confidential Information is, and will remain, the sole and absolute property of the Disclosing Party, to be used by the Receiving Party only for the Proposed Transaction expressly identified by this Agreement. Confidential Information will not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information will remain the property of the Company and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Company.

13. Representations and Warranties. The parties represent and warrant to each other:

(a) that they each have full, requisite legal authority and capacity to execute, deliver, and perform the obligations set forth in this Agreement;

(b) that the persons executing and delivering this Agreement are duly authorized and have been directed to do so; and

(c) that this Agreement, when executed and delivered, will constitute the legal and binding obligation of the party, duly enforceable against each of them in accordance with the terms hereof.

14. Completeness or Accuracy. No representations or warranties, expressed or implied, as to the completeness or accuracy with respect to the Confidential Information are given by any party as part of this Agreement. The Disclosing Party shall not be liable to the Receiving Party relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

15. Indemnification. The Receiving Party agrees to indemnify and hold harmless the Disclosing Party from and against any and all loss, liability, cost or expense based upon, arising out of, or otherwise in respect of, any breach or violation of this Agreement by such Receiving Party.

16. No Defense to Enforcement; Waiver. The existence of any claim or cause of action by the Receiving Party against the Disclosing Party predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Disclosing Party of this Agreement. The Disclosing Party's failure to object to any conduct in violation of this Agreement will be not be deemed a waiver by the Disclosing Party.

17. Integration; Amendment; Additional Parties. This Agreement represents the entire understanding and agreement by and between the parties with respect to the subject matter hereof, and supersedes all other understandings and representations, if any, made by and among the parties. No modification or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by all parties.

18. Notices. Any communications or notices required or desired will be written and will be provided by: (a) hand delivery; (b) U.S. certified mail; or (c) recognized national overnight delivery service to the parties at the addresses set forth below their signatures or such other address as a party may designate in writing from time to time. Such notice will be effective on the date delivered or the date on which delivery was refused.

19. Assignment; Binding Effect. Under no circumstances will any party, without the prior written consent of the other parties, assign any of its rights, powers, duties or obligations under this Agreement to any other person or entity. This Agreement will be binding upon and inure to the benefit of the parties, and to each party's successors, assigns, and the employees, agents, officers, and directors of each such party.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile, pdf, and similar electronic signatures will be treated as original signatures.

21. Interpretation; Rules of Construction. For purposes of this Agreement the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation." The word "or" is not exclusive. The words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Any reference to sections and sub-sections means the sections and sub-sections of this Agreement. The captions and section headings or titles are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions of this Agreement. This Agreement will not be construed more strongly against any party regardless of who is responsible for its preparation.

22. Jurisdiction; Venue; Governing Law. The parties agree that the jurisdiction and venue of any action, proceeding, counterclaim, crossclaim, or other litigation relating to, involving, or resulting from the enforcement of this Agreement will be in the state courts of Pinellas County, Florida. This Agreement will be governed by, construed, and enforced in accordance with Florida law.

23. Fees and Expenses; Remedies Cumulative. If a party prevails in any legal action or other proceeding brought for the enforcement of this Agreement, such party will be entitled to recover from the other party or parties as applicable reasonable legal fees, court costs and all expenses incurred in that action or proceeding (including, without limitation, all such fees, costs and expenses incident to appellate, bankruptcy, post-judgment and alternative dispute resolution proceedings). No remedy conferred upon a party is intended to be exclusive of any other remedy. No single or partial exercise by a party of any right, power or remedy will preclude any other or further exercise thereof.

24. Survival. Each party's obligations under this Agreement will commence on the Effective Date and continue and survive without any specific time limit. Notwithstanding any other provision of this Agreement to the contrary, this Agreement will be effective whether or not the Proposed Transaction or any actual agreed upon transaction between the parties, if applicable, is consummated or completed.

25. Severability. The validity or unenforceability of a particular provision of this Agreement will not affect the other provisions hereof, and the Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted.

26. Reasonableness. Each party recognizes that the restrictions set forth in this Agreement are both reasonable and properly required for the adequate protection of the parties involved.

[Signature page follows.]

IN WITNESS WHEREOF, the parties agree to the foregoing terms and provisions of this Mutual Confidentiality and Non-Disclosure Agreement as of the Effective Date.

COMPANY:

By: _____
[NAME, POSITION]

PROSPECTIVE PURCHASER:

Signature

Print Name: _____

Date Executed: _____

Address: _____

[Signature page Mutual Non-Disclosure Agreement].