



## 2018 TOP TRENDS, THREATS, AND DEFENSES

BOB GOLDBERG  
BTA GENERAL COUNSEL  
[BOB.GOLDBERG@SFNR.COM](mailto:BOB.GOLDBERG@SFNR.COM)  
312/648-2300

## TRENDS

- Consolidation
- Private Equity Investment
- New Opportunities/Direction
- Application Integration
- Leasing Rules/Regulations
- Seat Based Programs
- Volume Based Programs
- Dealer Trust/Brand Identification



## TRENDS

- \$250,000,000+ Dealers
- Supplier Reorganization/Focus
- Software Driven
- Generational Changes
- Production Print
- Hardware To Data Collection
- Direction Is Workflow



## THREATS

- Declining Pages
- Sophisticated/Educated Purchasers
- Employees
- Qualified Technicians
- Reduced Margins
- Difficult Growth
- Consolidation
- Equipment Reliability
- Demographics





## THREATS

---

- Vendor Meetings
- Supplier As a Competitor
- Pricing
- Tariffs
- Competitive Supplies
- Performance Compensation
- End User Control
- Commission Reductions

## SELF PRESERVATION

### PROTECTING YOUR CUSTOMER BASE

- **Confidentiality Agreement Prior to Disclosure:  
Recipient Will Not:**

Supplier acknowledges that it may receive Confidential Information regarding Dealer's customers. Supplier shall maintain all Customer information as Confidential and shall not disclose Confidential Information to any third party or use Customer Information, directly or indirectly, for sales or marketing purposes without Dealer's express written consent.

- Lease Company
- Suppliers
- Software Providers
- Service Providers



## CONFIDENTIAL INFORMATION

Confidential Information. Means the terms of this Agreement and any confidential and/or proprietary information and data related to technology and business activities, including, but not limited to, trade secret, technical, developmental, marketing, sales, strategies, operating, performance, cost, know-how, business and process information; computer programming techniques, file formats, interface protocols and interface formats, computer programs and software (including, but not limited to architecture diagrams, source code, object code, software output, screen displays/file hierarchies, graphics and user interfaces), all record bearing media containing or disclosing such information and techniques; samples, models or prototypes, or parts thereof; formulas; **Customer identities and information**; or third party data. Confidential Information does not include information which (a) has been or may in the future be published or is now or may in the future be otherwise in the public domain through no fault of the receiving Party; (b) prior to disclosure pursuant to this Agreement is property within the legitimate possession of the receiving Party; (c) subsequent to disclosure pursuant to this Agreement is lawfully received from a third party having rights in the information without restriction; and (d) is independently developed by the receiving Party through parties who have not had access to such Confidential Information.

## RIGHT OF FIRST REFUSAL

### OPPORTUNITY TO PURCHASE

Dealer Principal acknowledges Supplier's desire to maintain the Dealer's installed base with Supplier's equipment and that the sale of that base to a competitive entity would not be in Supplier's best interest. Dealer Principal has no current interest in selling the business, but agrees that if he enters into good faith discussions for the sale of the business he will notify the President of Supplier within seventy-two (72) hours of the onset of the discussions that a sale is being considered. Dealer Principal will not enter into a binding sale of the business without first providing Supplier with an equal opportunity opportunity to negotiate for the purchase of the business. Failure of the Dealer Principal to so proceed will result in the payment of Fifty Thousand (\$50,000.00) Dollars, to Supplier as liquidated damages and not as a penalty.

## ASSIGNMENT

### ASSIGNMENT

Dealer shall not assign, transfer or sell any of its rights or delegate any of its responsibilities under this Agreement or appoint other Dealers unless Dealer first obtains the prior written consent of Supplier, **which consent shall not be unreasonably withheld**. Any material change in the ownership of Dealer other than to **a family member or key employee** without the prior written consent of Supplier shall be a breach hereof and will be grounds for cancellation of this Agreement by Supplier. The provisions of this Agreement shall be binding upon the beneficiaries of the parties, their successors and permitted assigns.

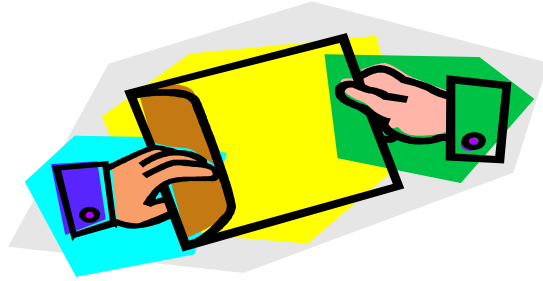
## REVIEW/AUDIT

### Review of Dealer Compliance with this Agreement

Supplier may review Dealer's books and records to determine compliance with this Agreement. Dealer shall make its records solely relating to this Agreement available to Supplier or an independent auditor reasonably acceptable to Dealer on a **Confidential basis** subject to a Non-Disclosure Agreement. The reviews shall occur not more frequently than one (1) time in each twelve (12) month period during the Term of this Agreement. Each review shall be conducted with reasonable **Notice at a mutually agreed upon location** during normal business hours. The review shall **not disrupt or interfere** with Dealer's business operations. Supplier may make and retain copies of such records. In addition to the reviews described above, Supplier may conduct a review of Dealer's books and records, consistent with the terms herein, at any time it has a valid reason to believe that there has been or may be a material breach of this Agreement.

# PROPOSALS

- Confidential
- Evaluation Fee
- Response to RFP



## CONFIDENTIAL PROPOSAL

THIS AGREEMENT, entered into on \_\_\_\_\_, 20\_\_\_\_ by and between DEALER (hereinafter referred to as "DL"), and  
(hereinafter referred to as "END-USER").

Whereas, DL agrees to furnish the END-USER **certain confidential information relating to the solutions proposed by DL** for purposes of the END-USER's work place efficiency needs; specifically:

\_\_\_\_\_

\_\_\_\_\_

Whereas, the END-USER agrees to review, examine, and consider such information only for the purposes described above, and to otherwise **hold such information confidential** pursuant to the terms of this agreement,

BE IT KNOWN, that DL has or shall furnish to the END-USER certain confidential and proprietary information and suggestions, as set forth in the proposal on Schedule A, attached to this Agreement, all on the following conditions:

1. The END-USER agrees to hold the proposal, and all confidential or proprietary information or trade secrets ("information") in confidence and agrees that it shall be used only for the purpose of evaluating DL proposal and shall not be used for any other purpose or **disclosed to any third party**.
2. **No copies** will be made of the proposal and it shall only be disclosed within the company on a need to know basis.
3. At the conclusion of our discussions, or upon demand by DL made at any time, the proposal and all copies shall be returned to DL.
4. This information shall not be disclosed to any employee unless they agree to be bound by the terms of this Agreement.
6. The END-USER fully understands that DL is prepared, based upon the representations made in this Agreement, to disclose to the END-USER valuable trade secret information, which is critical to the continued success of DL's business, and END-USER agrees that END-USER will be subject to damages if it violates this agreement by disclosing to others this valuable information.

IN WITNESS WHEREOF, the parties hereto have provided herein.

DATED: \_\_\_\_\_, 20\_\_\_\_.

END-USER:

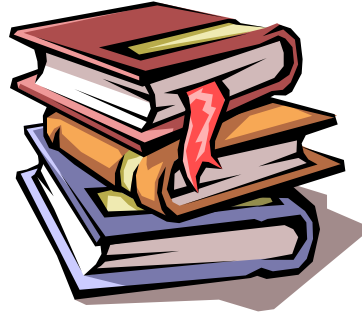
DEALER:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

## EMPLOYMENT AGREEMENT/POLICIES

- Protection of Confidential Information
- Non-Compete
- Non-Solicitation
- Non-Disclosure



## TRADE SECRETS



- DEFEND TRADE SECRETS ACT
- STATE TRADE SECRETS ACT
- SEIZURE V. INJUNCTION
- DAMAGES
- WHISTLEBLOWER IMMUNITY



## REDUCING LIABILITY



- Insurance
- Errors and Omission
- Policy Exclusions

## WORDS TO REMEMBER

- Knowingly
- Material
- Substantially
- Reasonable
- Solely
- Not Unreasonably Withheld
- Fair, Equitable & Ethical
- Undisputed
- Best of Its Ability





## LIMITATION OF LIABILITY

LIMITATION OF LIABILITY. Dealer agrees that Supplier/Solution Provider's liability for any damages or injuries suffered by Dealer, Subscribers, or Users, whether based on a breach of contract or warranty, claim of negligence, misrepresentation or other tort, or on any other legal or equitable theory, will be limited to **the lesser of \$2,500 or the amount of subscription fees actually paid** by the affected Subscriber pursuant to the subscription agreement. Under no circumstances will Supplier/Provider be liable for any special, incidental, or consequential damages (including loss of profits, information, data). No action may be brought more than one year after the claim arose.

## NO WARRANTIES

NO WARRANTIES. To the maximum extent permitted by applicable law Supplier/Provider disclaims all warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. Supplier further disclaims any warranty that services or support will be uninterrupted, error-free or free from harmful components or that any content will not be lost, misappropriated, corrupted or damaged. Any warranty against infringement that may be provided in Section 2-313(3) of the Uniform Commercial Code is expressly disclaimed.

## **“AS IS”**

Notwithstanding anything to the contrary, Dealer is not liable for any delay in delivery or unavailability of third party applications ordered by or on behalf of Customer and Dealer disclaims all warranties, express or implied, including implied warranties of non-infringement, merchantability, and fitness for a particular purpose related to such third party applications. All such third party applications are provided by Dealer **“AS IS”** and **“AS AVAILABLE”**.

## **FEES/AVAILABILITY**

DEALER may pass through any increase in fees from Third Party Providers. CUSTOMER shall reimburse DEALER for any Third Party Provider fees or charges incurred by DEALER on behalf of CUSTOMER. DEALER may increase the rates herein due to increases in fuel, supplies, parts, or any other third party product. The continued availability of Third Party Applications is not within the control of DEALER and CUSTOMER therefore agrees that DEALER may cancel and cease to provide any Third Party Applications with a minimum of fifteen (15) days prior notice at any time without liability to CUSTOMER. In case of cancellation, DEALER will reasonably assist CUSTOMER in identifying an alternative provider of the Third Party Applications.

## NON-SOLICITATION

Non-Solicitation of Employees. Customer/Supplier acknowledges that Dealer is involved in a highly strategic and competitive business. Customer/Supplier further acknowledges that Customer/Supplier would gain substantial benefit and that Dealer would be deprived of such benefit, if Customer/Supplier were to directly hire any personnel employed by Dealer. Except as otherwise provided by law, Customer/Supplier shall not, without the prior written consent of Dealer, solicit the employment of Dealer's personnel during the term of this Agreement and for a period of one (1) year following the termination or expiration of this Agreement. If a Dealer employee shall come to work for Customer/Supplier during said period, Customer/Supplier agrees to pay Dealer the sum equal to that employee's total compensation, including benefits, for the previous twelve (12) months.

## TAXES

Taxes and Additional Charges. CUSTOMER agrees to pay any sales, use, withholding, VAT, excise, personal property, or any other similar tax or charge, or duty or assessment levied or assessed by any governmental authority as a result of receipt of the DEALER Services under this Agreement, or any other service or materials provided to CUSTOMER under this Agreement, with the exception that DEALER will pay any income or similar taxes assessed on DEALER by any governmental authority as a result of DEALER's receipt of revenues pursuant to this Agreement. For avoidance of doubt, to the extent that a sales tax is due and owing to a governmental authority as a result of receipt of the DEALER Services under this Agreement, CUSTOMER (and not DEALER) shall be responsible for payment of any such applicable sales or use taxes.

## CLOUD

Customer will have access to Content following termination or expiration of this Agreement for at least thirty (30) days after the effective date of termination or expiration, and Cloud Provider shall not be liable to Customer for any damages or losses Customer may incur as a result of not having access to Content after that time.

Provided this Agreement is not terminated by Cloud Provider for cause, Customer may request and Cloud Provider may, upon payment by Customer of all applicable recurring monthly, transition and storage fees, provide post-termination data retrieval and/or transition assistance for a period of up to ninety (90) days ("Transition Assistance") so long as the request by Customer for Transition Assistance is made prior to the actual termination or expiration date of this Agreement. Transition Assistance may include, by way of example, transferring Data, Confidential Information and related information and materials to either Customer or its third party designee at Customer's expense.



## QUESTIONS????



**Bob Goldberg**  
**BTA General Counsel**  
[bob.goldberg@sfnr.com](mailto:bob.goldberg@sfnr.com)  
**312/648-2300**