



BUSINESS ACQUISITION & MERGER ASSOCIATES

3111-B Springbank Ln, Charlotte NC 28226
O | 704.295.0102

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

This Confidentiality & Non-Disclosure Agreement (this “Agreement”) is made as of _____, 20__ (the “Effective Date”) by and between (i) Business Acquisition & Mergers, LLC (dba Business Acquisition & Merger Assoc.), a North Carolina LLC, with its principal place of business 3111-B Springbank Ln, Charlotte NC 28226, along with its directors, officers, partners, managers, employees, representatives and advisers (the “Broker”), on behalf of its client, the Company, hereinafter described and defined, and (ii) _____, a(n) _____ with its principal place of business at _____ (the “Recipient”).

Recital

The Recipient has indicated an interest in acquiring the Company, which is represented by the Broker (the “Proposed Transaction”). The Recipient has requested that the Company make available to the Recipient certain confidential or proprietary information about the Company and its business for the purpose of evaluating the Proposed Transaction. As a condition of providing Confidential Information (hereinafter defined) to the Recipient, the Company requires the Recipient to agree to the following terms and conditions.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:
 - (a) “**Confidential Information**” means all information pertaining to the Company and its business or the Proposed Transaction, which information is or has been furnished or disclosed in any manner by or on behalf of the Company to the Recipient or any of its Representatives (hereinafter defined) at any time on or after the Effective Date of this Agreement, as well as all analyses, reports, compilations, forecasts, studies or other information prepared by the Recipient or any of its Representatives that contain any such information. Confidential Information includes, without limitation, technical, commercial, financial, accounting, legal and administrative information of whatever nature, whether written, in electronic form, or oral, and includes, without limitation, any due diligence memoranda and documents made available in a physical manner or in an electronic data room.
 - (b) “**Representatives**” means the subsidiaries and other affiliates of the Recipient and its and their respective directors, officers, managers, members, employees, representatives, financing sources (subject in each case to the prior written consent of the Company) and advisers (including, without limitation, attorneys, accountants and financial and other advisers). The

Recipient's "Representatives" shall be further defined to mean only those of its Representatives to whom the Confidential Information has been or hereafter is provided.

(c) "Company" means the subsidiaries and other affiliates of the Company and its and their respective directors, officers, managers, members, employees, representatives and advisers (including, without limitation, attorneys, accountants and financial and other advisers).

(d) "Permitted Purpose" means evaluation by the Recipient for the purposes of evaluating a Proposed Transaction.

2. Nondisclosure; Use of Information. The Recipient shall keep the Confidential Information strictly confidential. The Recipient shall not, and shall ensure that its Representatives do not, use any Confidential Information for any purpose other than the Permitted Purpose. The Recipient shall not disclose any Confidential Information to any person, except to those of its Representatives assisting with the Permitted Purpose, provided that each such Representative shall be directed to abide by the terms of this Agreement. The Recipient shall be responsible for any breach of any provision of this Agreement by its Representatives, unless any of its Representatives execute a separate written confidentiality agreement with the Company that contains confidentiality commitments that are at least as restrictive as those in this Agreement. The Recipient shall not, and shall ensure that its Representatives do not, disclose that the Company is considering a Proposed Transaction, that the Recipient has received Confidential Information or that the Recipient is engaged in any discussion with the Company regarding a Proposed Transaction. The Recipient further represents that neither it nor its affiliates are party to any agreement or arrangement with any debt or equity financing source providing that such debt or equity financing source will provide financing exclusively to the Recipient or its affiliates in connection with the Proposed Transaction, and the Recipient hereby covenants that it shall not enter into any such agreement or arrangement without the Company's prior written consent.
3. Return of Information. Upon the request of the Company at any time (email being sufficient), the Recipient shall, and shall ensure that its Representatives who possess Confidential Information shall: (a) return to the Company or its designees any and all Confidential Information in tangible form, together with any copies or reproductions thereof; and (b) delete or destroy all Confidential Information in any medium including, without limitation, notes, memoranda or other documents containing Confidential Information. Upon the Company's request (email being sufficient), the Recipient shall provide a certificate from an officer of the Recipient certifying to the Company that such items have been destroyed; provided, however, that the Recipient will be permitted to retain copies of the Confidential Information for the sole purpose of complying with applicable law/regulatory authority and/or internal record retention policies and procedures, provided that any such Confidential Information retained shall remain subject to the confidentiality obligations of this Agreement for so long as it is retained.
4. Exceptions for Certain Information. The Recipient shall have no obligations under this Agreement concerning, and Confidential Information does not include, any information that the Recipient can demonstrate, through written evidence, (i) is or becomes generally available to and known by the public, through no disclosure by the Recipient or any of its Representatives, (ii) is in the Recipient's possession prior to the first disclosure by the Company to the Recipient, or (iii) is disclosed to the Recipient by a third party that is not known by the Recipient after reasonable inquiry to be under any obligation to the Company to hold the information in confidence.
5. Disclosure Required by Law. If the Recipient is required by any law or regulation or any legal, regulatory or judicial process or proceeding, or by the rules of any recognized stock exchange, to disclose any Confidential Information, the Recipient may disclose only such information that it is legally compelled to disclose. The Recipient shall give the Company reasonable advance written

notice (to the extent legally permissible and practicable) to the Company of such requirement prior to any such disclosure and shall cooperate with any efforts by the Company to obtain an appropriate protective order to maintain the confidentiality of such information.

6. Non-Solicitation of Employees. For a period of two (2) years from the Effective Date of this Agreement, the Recipient shall not, and shall cause its Representatives not to, recruit, solicit or hire, directly or indirectly, any Employee of the Company, or otherwise induce any such Employee to leave the employ of the Company, provided that nothing in this Agreement shall prevent the Recipient or its Representatives from hiring any employees based on general advertisements or solicitations for employment that are not specifically directed toward, or targeted at, the Company or any Employees of the Company. “Employees” shall be defined as any directors, officers or employees of the Company with whom the Recipient or any of its Representatives have direct contact or who become known to the Recipient or any of its Representatives in connection with the Proposed Transaction.
7. No Representations. The Company is making no representation or warranty concerning the completeness or accuracy of any Confidential Information that may be disclosed to the Recipient, except as may be made in a definitive agreement between the Company and the Recipient (or its affiliate) with respect to the Proposed Transaction. The Company shall have no liability to the Recipient as a result of its reliance on or use of such Confidential Information.
8. No Obligation to Enter into Transaction. Nothing in this Agreement shall obligate either the Company or the Recipient to enter into a definitive agreement with respect to the Proposed Transaction or to negotiate any such agreement. The Company may: (i) reject any and all proposals made by the Recipient with regard to the Proposed Transaction, (ii) terminate discussions or negotiations with the Recipient at any time for any or no reason, (iii) conduct the sales process relating to the Proposed Transaction as the Company may choose, including, without limitation, by negotiating with one or more potential buyers or entering into a definitive agreement with any person and at any time without prior notice to the Recipient, and (iv) change the procedures relating to the Proposed Transaction at any time without prior notice to the Recipient.
9. Equitable Relief. The Recipient recognizes the irreparable injury which would result to the Company if the Recipient or any of its Representatives should disclose or misuse Confidential Information or otherwise breach or threaten to breach this Agreement, and that monetary damages would not be an adequate remedy for such breach. Therefore, in addition to any legal remedies the Company may have, the Company will be entitled, without the posting of any bond, to seek injunctive relief and such other equitable remedies as a court of competent jurisdiction may deem appropriate. It is understood that the Company is an intended third-party beneficiary of this Agreement, whose rights are being protected and who may enforce the terms of this Agreement as if it were a party to it. In any litigation to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees, court costs and related expenses from the non-prevailing party upon receipt of a final, non-appealable judgment from a court of competent jurisdiction.
10. Circumvention. The Recipient and its Representatives will negotiate and communicate solely through the Broker and will not circumvent any agreement between the Company and the Broker. Should the Recipient or any of its Representatives purpose to circumvent any fee agreement between the Company and the Broker, the Recipient may be held liable for the full fee agreed to between the Company and the Broker.
11. Term. This Agreement shall become effective as of the Effective Date and shall expire on the third (3rd) anniversary of such date; provided that, notwithstanding the foregoing, the obligations

of the Recipient to (a) maintain the confidentiality of and not disclose Confidential Information disclosed to the Recipient prior to such expiration date, (b) not use such Confidential Information for any purpose other than the Permitted Purpose, and (c) maintain the confidentiality of any retained Confidential Information pursuant to Section 3, shall survive the expiration of this Agreement.

12. Governing Law. This Agreement is governed by the laws of the State of Delaware, without regard to the conflict of law principles thereof.
13. Miscellaneous. If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, all other provisions shall remain in full force and effect to the extent permitted by law. If any provision of this Agreement is capable of two constructions, only one of which would render the provision valid and enforceable, then the provision will have the meaning which renders it valid and enforceable. This Agreement is the entire agreement with respect to the subject matter hereof and will inure to the benefit of the Company and its successors and assigns, and will be binding upon the representatives, successors and assigns of the Recipient. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and all of which, when taken together, shall be deemed to constitute one and the same agreement. This Agreement may be amended or terminated only by a writing executed by authorized officers or representatives of the Recipient and the Company. The Recipient agrees that the Company may be entitled to the protections of the attorney work-product doctrine, attorney-client privilege or similar protections or privileges with respect to portions of the Confidential Information, and that the Company is not waiving, and will not be deemed to have waived or diminished, any of its attorney work-product protections, attorney-client privileges or similar protections or privileges as a result of the disclosure of the Confidential Information. In the event of any conflict between any provision of this Agreement and any provision of a "click through" or similar agreement to which consent is required in order to access a website or electronic data room, the provisions of this Agreement shall prevail.

Executed as of the Effective Date shown at the beginning of this Agreement.

Business Acquisition & Merger Associates:



By: Matthew Bradbury
Its Managing Director

Recipient:

By: _____
Title: _____

Email: _____

Phone: _____

RETURN EXECUTED NDA TO: admin@buysellyourbusiness.com.