

BUYER CONFIDENTIALITY AGREEMENT

THIS BUYER CONFIDENTIALITY AGREEMENT (the “Agreement”), dated and effective as of the date signed by Buyer, as indicated below (the “Effective Date”), in consideration for Seller providing to Buyer, its agents and representatives, Confidential Information relating to Seller and the Business. Buyer hereby covenants and agrees as follows:

1. **Definitions.**
 - a. “*Business*” means the business identified in the signature block of this Agreement.
 - b. “*Buyer*” means the person or persons executing this Agreement and includes any entity controlled or under common control by the signatories, whether or not now in existence.
 - c. “*Confidential Information*” means any information concerning the Business or Seller or any of Seller’s affiliates disclosed to the Buyer in the discussions between Buyer and Seller regarding the potential purchase and sale of the Business, including, without limitation, Trade Secrets, business strategies and opportunities, operating processes and formulas, financial information, asset and equipment lists, customer and vendor lists, employee and contractor information, sales lists, invoices, confidential selling and profit information, earnings, volume of business, outlets, contracts, methods, products or services under development, software and computer technology, systems, practices, designs, plans, trade knowledge and know-how, analyses, compilations, forecasts, studies, or other information or documentation, in whatever format communicated or maintained, regardless of whether prepared by Seller, its representatives or otherwise, together with notes, reports, analyses, compilations, studies or other documents that contain or otherwise reflect such information, whether such Confidential Information is provided before or after the execution of this Agreement. Confidential Information shall also include the terms and existence of this Agreement, any information regarding discussions between Buyer and Seller with respect to a potential transaction, and the fact that Buyer and Seller are exploring the possibility of entering into a transaction. “Confidential Information” does not include Seller information to the extent that such information: (i) was, at the time of disclosure or thereafter becomes, generally available to the public other than by breach of this Agreement; (ii) that Buyer can show by documentary evidence was in Buyer’s possession prior to disclosure by Seller or Seller’s representatives; (iii) is acquired in good faith from a third party who obtained it lawfully and not under an obligation of secrecy; or (iv) that Buyer can show by documentary evidence was or is developed independently within Buyer’s organization by personnel not having access to such information.
 - d. “*Representatives*” means owners, affiliates, officers, managers, directors, employees, consultants, agents, representatives, financing sources, and/or advisors.
 - e. “*Seller*” means the owner or owners of the Business.
 - f. “*Trade Secrets*” means information disclosed to Buyer under this Agreement which rises to the level of a trade secret under the Georgia Trade Secret Act of 1990, as amended from time to time.
2. **Use of Confidential Information.** All Confidential Information received by Buyer from Seller shall be kept confidential and shall not, without the prior written consent of Seller, be disclosed by Buyer or its Representatives, in any manner whatever, in whole or in part, to any person or entity. Further, all such Confidential Information shall be used by the receiving Party solely for the purpose of evaluating the potential business transaction between Seller and Buyer and for no other purpose. Notwithstanding the foregoing, Buyer may make such Confidential Information available to those Representatives who need to know the same for the purposes of evaluating and advising with respect to the possible business transaction contemplated herein; *provided, however*, that such Representatives: (i) are informed of the confidential and proprietary nature of the Confidential Information; and (ii) agree to adhere to the provisions of this Agreement. Buyer shall be responsible to Seller for any breach of this Agreement by Buyer or its Representatives. The obligations herein shall continue to be applicable to each piece of Confidential Information disclosed to Buyer for so long as that information continues to satisfy the definition of Confidential Information set forth herein.
3. **Return or Destruction of Confidential Information.** All copies of the Confidential Information (including all copies of any analyses, compilations, studies or other documents prepared by Buyer for its use containing or reflecting Confidential Information) shall be returned to Seller or its designee or destroyed by Buyer (at Seller’s option) within ten (10) days after Seller’s written request, and the contents of the Confidential Information and oral Confidential Information shall continue to be subject to the terms of this Agreement. Any destruction of Confidential Information shall be confirmed in a written notarized certification by the Buyer. Notwithstanding the foregoing, Buyer and its Representatives shall be entitled to retain Confidential Information to the extent necessary to comply with applicable law, regulation, or bona fide document retention policies; provided, however that such Confidential Information shall continue to be subject to the terms of this Agreement.
4. **No Required Disclosure or Business Arrangement.** Buyer understands and agrees that nothing herein (i) requires the disclosure by Seller of any Confidential Information, which information shall be disclosed solely, if at all, in the discretion of Seller, or (ii) requires Seller or Buyer to proceed with any subsequent negotiations or transaction. Unless and until a definitive agreement between Seller and Buyer with respect to a transaction has been executed and delivered, neither Seller nor Buyer will be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement or any written or oral expression and each Party.
5. **Disclosure Required by Law.** In the event that the Buyer is requested or required to disclose any Confidential Information by operation of law, regulation, or government agency, the Buyer agrees to provide the Seller with prompt notice of such request(s) so that the Seller may seek an appropriate protective order or other appropriate remedy and/or waive the Buyer’s compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or the Seller grants a waiver hereunder, the Buyer shall (i) only disclose Confidential Information to the extent so required, (ii) exercise

BUYER CONFIDENTIALITY AGREEMENT

- commercially reasonable efforts to assure that confidential treatment will be accorded any material so furnished, and (iii) reasonably cooperate with the Seller in any legal action it may take with regard to such request or requirement.
6. **No Warranty; No License.** Seller makes no representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information provided by it hereunder, and Seller and its Representatives will not have any liability to Buyer or any other person or entity as a result of Buyer's use of such Confidential Information. Nothing contained in any discussions between Seller and Buyer or in any Confidential Information provided hereunder shall be deemed to constitute such a representation or warranty. Nothing in this Agreement is intended to, nor will it be deemed to, grant any ownership, license, or other rights in or to Seller's Confidential Information to Buyer, except the limited right to review such Confidential Information solely for the purpose of evaluating a potential business transaction and for no other purpose.
 7. **Communications.** Buyer shall direct or submit all communications, correspondence, inquiries, negotiations and purchase offers relating to Seller and the Business through Selling Broker. Buyer shall not, directly or indirectly, contact Seller, its agents, employees, suppliers, customers and representatives. Buyer shall not visit the business without the express permission of Listing Broker.
 8. **No Warranties by Brokers.** Buyer acknowledges that the delivery of any information, including Confidential Information, relating to the Business has not been verified or audited by either Listing Broker or Selling Broker, and Listing Broker and Selling Broker make no warranties or representations concerning the accuracy of any such information. Buyer acknowledges that Buyer has been advised to, and Buyer understands that Buyer should, exercise adequate due diligence, through its own independent investigation, before making any decisions relating to the Business. Buyer further acknowledges that it will not rely upon any statements or opinions of any kind of Listing Broker or Selling Broker, their respective agents, employees or representatives, in connection with the purchase and sale of the Business. Buyer releases Listing Broker and Selling Broker, their respective agents and representatives, of any and all claims arising from or relating to the accuracy or completeness of the Information.
 9. **Non-Solicitation.** For a period of two years from the Effective Date, Buyer shall not, without the prior written consent of Seller, directly or indirectly through any third party, (i) solicit any of the employees or full time consultants of the Seller, for the purpose of inducing them to leave the employ or engagement of the Seller or (ii) hire any employees or full time consultants of Seller.
 10. **Legal, Tax, and Other Advice.** This Agreement is a form document provided by the Georgia Association of Business Brokers ("GABB"). Seller and Buyer understand and acknowledge that GABB (including counsel for GABB that prepared this form document) is not providing legal, tax, or any other advice to Seller or Buyer and is not warranting that the provisions of this form are suitable for the transaction contemplated by Seller and Buyer or the preferred tax treatment of the transaction contemplated by Seller and Buyer. GABB (including counsel for GABB that prepared this form document) is not providing any advice of any kind to Buyer and/or Seller. Seller and Buyer should consult their own respective legal counsel, tax professional, and/or other advisors to determine whether the provisions of this Agreement are suitable to Seller and Buyer. Seller and Buyer agree to indemnify and hold GABB (including counsel for GABB that prepared this form document) harmless from any and all claims or damages arising out of the use of this form document.
 11. **Applicable Law; Jurisdiction and Venue; Injunctive Relief.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. This Agreement and its subject matter have substantial contacts with Georgia, and all actions, suits, or other proceedings with respect to this Agreement shall be brought only in a court of competent jurisdiction sitting in the County in Georgia in which Buyer resides or has a place of business. In the event Buyer does not reside in or have a place of business in Georgia, then such action shall be brought in the Superior Court of Fulton County, Georgia. In any such action, suit, or proceeding, such court shall have personal jurisdiction over Seller, Buyer, and all Representatives, and service of process upon them under any applicable statutes, laws, and rules shall be deemed valid and good. Seller and Buyer, on behalf of themselves and their respective Representatives, irrevocably and unconditionally consent to being subject to the personal jurisdiction of the previously listed courts and to venue being proper in those courts, and further waives any and all rights it may have to object to personal jurisdiction or venue. Buyer acknowledges that remedies at law may be inadequate to protect Seller against any breach of this Agreement, and in the event of a breach, Buyer hereby consents in advance to the seeking of injunctive relief in favor of Seller without the need of proof of actual damages. Buyer further waives the requirement for the securing or posting of any bond in connection with such remedy.
 12. **Waiver of Breach.** No covenant or condition of this Agreement can be waived except by the written consent of the Seller. Forbearance or indulgence by Seller in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Buyer to which the same may apply and, until complete performance of said covenant or condition, Seller shall be entitled to invoke any remedy available under this Agreement or by law or in equity despite said forbearance or indulgence.
 13. **Third-Party Beneficiaries.** Buyer acknowledges that Listing Broker is an intended third-party beneficiary of this Agreement. Aside from the Listing Broker, there are no other intended third-party beneficiaries.
 14. **Attorney's Fees.** In the event Buyer fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorney's fees.
 15. **Severability.** If any term, provision, covenant or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, and such invalid, void or unenforceable term, provision, covenant or condition does not materially affect the purpose and intent of this Agreement, then this determination will not affect any other provision of this Agreement or the remaining portion of a partially invalid provision, which shall remain in

BUYER CONFIDENTIALITY AGREEMENT

full force and effect and shall in no way be affected, impaired or invalidated, and the provision in question shall be modified, as appropriate, by the arbitrator so as to be rendered enforceable, and if modification is not possible, said provision term, provision, covenant or condition, shall be severed from the Agreement.

16. **Notice.** All notices, offers, requests, demands, and other communications pursuant to this Agreement shall be given in writing by personal delivery, by prepaid first class registered or certified mail properly addressed with appropriate postage paid thereon, or by UPS, FedEx, or other recognized, reputable overnight courier and shall be deemed to be duly given and received on the date of delivery if delivered personally, on the third day after the deposit in the United States Mail if mailed, or upon delivery if by UPS, FedEx or other recognized, reputable overnight courier. Notices shall be sent to the parties at the addresses set out below their signatures to this Agreement.
17. **Signature.** This Agreement may be signed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Electronic signature of this Agreement shall be as effective as physical signature. Facsimile or electronic copies (including PDF or other image copies) of the signed Agreement shall be as valid and enforceable as an original.
18. **Captions and Headings.** The section and paragraph captions and headings contained in this Agreement are included for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
19. **Authorization.** Any signor executing this Agreement on behalf of a legal entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity in accordance with a resolution of the governing body of that entity duly adopted in accordance with the governing documents of said entity; that this Agreement is binding on said entity in accordance with its terms; and that this Agreement is not in violation of or inconsistent or contrary to provisions of any other agreement to which such entity is a party. In addition, if Buyer is a business entity, then the person signing on behalf of Buyer shall also be bound individually.
20. **Brokers.** For the purposes of this Agreement, Listing Broker is the Broker that has listed the Business for sale and Selling Broker is the Broker that will introduce Buyer to the Business. The parties acknowledge that the identity of Listing Broker may remain confidential prior to entering into a purchase agreement (the "Purchase Agreement") for the sale of the Business. The identity of the Business shall remain confidential until Buyer signs this Agreement. Identification numbers in this document are defined by official documents of the Georgia Association of Business Brokers.
21. **Agency Disclosure.** Buyer acknowledges that Listing Broker (identified at the end of this agreement) is acting as Seller's agent only, has been retained by Seller, and will be compensated by Seller in accordance with an agreement between Seller and such Broker. Buyer further acknowledges that Selling Broker is: (Buyer to initial one selection)

_____ Listing Broker and represents only Seller and, for purposes of this Agreement, is considered to be both Listing Broker and Selling Broker but does not represent Buyer under any agency relationship agreement. Buyer acknowledges and agrees that Buyer is solely responsible for protecting Buyer's interests, and that Listing Broker's role is limited to performing ministerial acts for Buyer.

_____ Buyer's Agent, representing Buyer in this transaction only, and shall be compensated by (check one below):

_____ Listing Broker pursuant to a separate agreement between Listing Broker and Selling Broker.

_____ Buyer pursuant to a separate agreement between Buyer and Selling Broker.

_____ Transactional Broker and does not have any agency relationship with either Buyer or Seller, will perform ministerial acts only, will not provide advice to either party and shall be compensated under a separate agreement.

_____ Dual Agency or Designated Agency – See Dual Agency/Designated Agency Disclosure Addendum which is completed and attached, and its terms are incorporated into and are a part of this Agreement.

22. **Initial Disclosure of Confidential Information.** Selling Broker acknowledges that Buyer has furnished (initial by Seller Broker as appropriate): _____ Buyer Profile; _____ Resume; _____ Personal or corporate net worth statement.
23. **Entire Agreement.** This Agreement, including any other documents or writings referred to herein or delivered pursuant hereto, all of which form a part hereof, contains the entire understanding of Buyer with respect to its subject matter set forth herein. This Agreement merges and supersedes all prior and/or contemporaneous agreements and understandings, written or oral, with respect to the subject matter hereof and there are no restrictions, agreements, promises, warranties, covenants, or undertakings with respect to the subject matter hereof other than those expressly set forth. This Agreement may be amended only by a written instrument duly executed by Seller and Buyer or their respective heirs, successors, assigns or legal personal representatives. Buyer acknowledges and agrees that any attempted oral change or modification of this Agreement shall be null, void and unenforceable, even if Buyer and Seller or their representatives purport to make a mutual oral agreement for such change or modification.

BUYER CONFIDENTIALITY AGREEMENT

SIGNATURE PAGE

“**BUSINESS**”: GABB Listing #: _____; Description: _____

BUYER:

Buyer Signature: _____ Date: _____

Print Name: _____

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Facsimile: _____

LISTING BROKER:

Brokerage Firm: _____

Brokerage Firm License #: _____

Signature: _____

Print Selling Agent Name: _____

GA Real Estate License #: _____

Date Signed: _____

Brokerage Firm Address:

SELLING BROKER:

Brokerage Firm: _____

Brokerage Firm License #: _____

Signature: _____

Print Selling Agent Name: _____

GA Real Estate License #: _____

Date Signed: _____

Brokerage Firm Address:

_____ Buyer's Initials