

THIS FORM WAS DEVELOPED BY CABI FOR EDUCATIONAL PURPOSES ONLY. IF THIS IS TO BE USED AS A BINDING CONTRACT, IT WILL HAVE IMPORTANT LEGAL CONSEQUENCES AND LEGAL, TAX AND/OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.



CONFIDENTIALITY AGREEMENT

_____, an individual, and _____ (company name, if applicable), a _____ (state) _____ (type of company – corporation, LLC, etc.) (collectively "Buyer") and _____ ("Broker") enter into the following Confidentiality Agreement dated this _____ day of _____, 20_____.

- 1. Buyer requests that Broker provide Buyer with confidential and proprietary information relating to one or more businesses being offered for sale by Broker (each such business is referred to as "Seller"). (Information Broker provides to Buyer is referred to herein as the "Information".) Buyer agrees to maintain the confidentiality of the Information, including that Seller is for sale. Buyer will neither (i) disclose the Information to any other person or entity except for lenders and advisors assisting Buyer to evaluate and/or acquire Seller; nor (ii) use the Information to the detriment of Seller, including that Buyer will not solicit any of Seller's employees.
- 2. If a party notifies the other party that it does not intend to close a transaction with the other party, then Buyer shall immediately thereafter return to Broker, or destroy, all Information without retaining any photocopies or electronic copies of the Information.
- 3. Descriptions of Seller prepared by Broker are based solely upon information which Seller provided to Broker. Broker has not verified the accuracy or completeness of any of the Information, nor does Broker make any representations or warranties to Buyer regarding the accuracy or completeness of the Information. It is Buyer's responsibility to conduct whatever investigation of Seller Buyer reasonably deems appropriate. Buyer's decision to complete a transaction shall be based solely on Buyer's investigation, assisted by legal, tax, and other advisors of Buyer's choosing, and not that of Broker. Buyer releases Broker, including Broker's agents and employees, from any and all claims arising from or relating to the accuracy or completeness of the Information.
- 4. Buyer shall neither (i) contact Seller or its employees, customers, suppliers, or landlords, nor (ii) visit Seller's business, without Broker's consent. Buyer shall direct all inquiries, correspondence, and purchase offers concerning Seller to Broker. Buyer shall conduct all negotiations concerning Seller exclusively through Broker.
- 5. Buyer shall not purchase all or any part of Seller, or acquire any interest in Seller, without Broker's participation, or in any way interfere with or circumvent Broker's right to receive a commission relating to the sale of any interest in Seller. If Buyer violates this provision, then Buyer shall be liable to Broker for the commission that would have otherwise been payable to Broker, and any other damages suffered by Broker as a result of Buyer's acts, including Broker's reasonable attorney's fees and costs.
- 6. Buyer represents and warrants that any information about Buyer, including financial information, which Buyer provides to Broker to be conveyed to Seller will be accurate.
- 7. This Confidentiality Agreement constitutes the parties' entire agreement as to its subject matter and supersedes all such prior agreements between the parties. Modifications to this Confidentiality Agreement must be in writing. Waiver of a breach of this Confidentiality Agreement shall not be a waiver of any later breach.
- 8. If any action is instituted by a party to enforce the provisions of this Confidentiality Agreement, attorney's fees and costs shall be awarded to the prevailing party. This Confidentiality Agreement shall be governed by the laws of the State of Colorado. The venue for any action instituted to enforce any terms of this Confidentiality Agreement shall be exclusively in the state courts of the county in which the principal office of Seller is located, and Buyer consents to venue and personal jurisdiction being proper in such courts.
- 9. This Confidentiality Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- 10. Any provision of this Confidentiality Agreement which is held by a court of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this Confidentiality Agreement.
- 11. Seller and Seller's successors and assigns are intended to be third party beneficiaries of this Confidentiality Agreement and may prosecute any action at law or in equity necessary to enforce its provisions as though a party hereto. Seller shall be entitled to seek a temporary restraining order and a permanent injunction to prevent a breach of this Agreement, and Seller may do so without the requirement of posting a bond or other security.

IN WITNESS WHEREOF, the parties have executed this Confidentiality Agreement effective as of the date first set forth above.

BUYER: _____
(Company Name, if applicable)

BROKER: _____
(Firm Name)

Signed: _____
Print Name, Title _____, _____

Signed: _____
Print Name, Title _____, _____

Print Name _____, Individually