

# CONFIDENTIALITY & NON DISCLOSURE AGREEMENT

The "Recipient" identified below by signature makes this **CONFIDENTIALITY & NON DISCLOSURE AGREEMENT** to Murphy McCormack Business Group, LLC ("MMBG") and to any company presented to Recipient by MMBG (such company, together with its subsidiaries, affiliates and related entities, collectively hereinafter referred to as the "Company").

## W I T N E S S E T H:

**WHEREAS**, MMBG and the Company wish to protect the confidentiality of and proprietary interests in the information which may be provided to the Recipient for the sole purpose of evaluating a Transaction;

**WHEREAS**, MMBG and the Company are willing to provide such confidential and proprietary information to the Recipient for the limited purpose of a possible acquisition of the Company or for the limited purpose of a debt or equity position in the Company (collectively or individually a "Transaction") and under the terms and conditions set forth herein;

**WHEREAS**, the Recipient recognizes and acknowledges the competitive value and confidential nature of all material, data and information, customer lists, including, but without limitation, non-public financial and business information and documents hereafter furnished to the Recipient or its officers, directors, agents, or employees, relating to the business and affairs of the Company.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants set forth herein and intending to be legally bound hereby, the Recipient hereto agrees as follows:

### 1. CONFIDENTIAL INFORMATION

"Confidential Information" shall mean any information in any form emanating, directly or indirectly, from MMBG, the Company or any affiliate of MMBG or the Company, and any of its divisions or subsidiaries including, but not limited to, information pertaining to the Company's trade secrets, processes, formulas, data, data bases, know-how, improvements, inventions, techniques, software, administration, research, technical data, technology, research projects, plans for future development, financial and accounting data, financial condition, assets, portfolio quality, business plans, lists or compilations of or by customers, manufacturers, suppliers, prospects and contacts, other information concerning customers or prospective customers, ways of doing business, pricing formulas, information about costs, profits, pricing, markets, sales, personnel, salaries, wage rates, and other financial information, business and marketing plans and strategies, whether written, graphic or oral, including any copies, abstracts, summaries or analyses, furnished directly or indirectly to the Recipient by MMBG or the Company with the exception of the following:

(a) Information that is now in the public domain or subsequently enters the public domain other than as a result of disclosure in violation of this Agreement or any other obligation and without act or fault on the part of the Recipient or by any officers, directors, associates, partners, agents, advisors (including counsel), or employees of the Recipient; and

(b) Information that the Recipient receives on a non-confidential basis from any third party having a lawful right to disclose such information to the Recipient.

### 2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

The Recipient agrees to maintain in confidence all Confidential Information and agrees that the Confidential Information will be made available only (i) as required by applicable law, regulation, or legal process, and (ii) to those officers, directors, associates, partners, agents, advisors (including counsel), or employees of the Recipient who are directly concerned with evaluating the transaction and only after such person shall have been advised of the obligations created by this Agreement and shall agree to be bound by its terms. Upon request, the Recipient will cause such persons to execute confidentiality agreements similar to this Agreement. The Recipient will maintain a list of individuals to whom any part of the Confidential Information is disclosed, and will make such list available to MMBG or the Company upon request. The Recipient shall take all necessary precautions to prevent the Confidential Information from being disclosed or provided to any unauthorized person, firm, or company. In the event that, the Recipient or a third party to whom the Recipient transmits the Confidential Information pursuant to this Agreement, becomes legally

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compelled to disclose any of the Confidential Information, that the Recipient shall provide MMBG with prompt notice so that a protective order or other appropriate remedy may be sought and/or MMBG or the Company may waive compliance with this Agreement. In the event that MMBG is unable to obtain such protective order or other appropriate remedy, the Recipient shall furnish only that portion of the Confidential Information that is legally required (as advised by written opinion of counsel), and shall exercise best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

### 3. USE OF CONFIDENTIAL INFORMATION

The Recipient agrees not to use the Confidential Information for any purpose, other than for the assessment of a possible Transaction with the Company, without first obtaining the prior written consent of MMBG and/or the Company. The Recipient nor its officers, directors, associates, agents, advisors (including counsel), or employees will disclose any Confidential Information or the fact that the matter referred to above is under consideration to any third party without MMBG and/or the Company's prior written consent.

### 4. COMPANY/CUSTOMER/SUPPLIER CONTACT RESTRICTED

Without limiting anything else in this Agreement, the Recipient shall not in any event do any of the following, each of which shall be deemed a wrongful use of Confidential Information and a breach of a separate covenant and undertaking by the Recipient:

(a) Knowingly and directly contact the officers, owners, board members or employees of the Company, except through MMBG.

(b) Knowingly and directly solicit the present or former customers of the Company revealed by the Confidential Information (marketing and advertising activities conducted by the Recipient in the normal course of business not directed to specifically identified present or former customers as described above will not be considered a violation of this Agreement); and

(c) Use, retain or copy documents or lists of the Company's customers or their addresses, employees, contacts or product preferences, suppliers, inventories, vendors or finding sources, or any reports or summaries of the Company.

### 5. RETURN OF THE CONFIDENTIAL INFORMATION

All records and other documents, and all copies thereof, relating to such information (including summaries, analyses and notes of the contents or parts thereof) supplied as a result of evaluating the Transaction shall be returned to MMBG or securely destroyed (including the reasonably non-recoverable erasure of computerized data/files) at the end of the evaluation period or upon request of MMBG. Upon request, Recipient will certify in writing (an email to a representative of MMBG shall be sufficient for such purpose) such destruction or reasonably non-recoverable erasure of computerized data/files. Return, destruction or erasure of such documents and data shall in no event relieve the Recipient of any obligation of confidentiality contained herein respecting such information.

### 6. THIRD PARTY RIGHTS

The Recipient acknowledges there is a third party beneficiary to this Agreement. The Company is the intended third party beneficiary to this Agreement and therefore a breach of this Agreement shall also be actionable by the Company.

### 7. INJUNCTIVE RELIEF

The Recipient agrees that failure to maintain the confidentiality of the Confidential Information would result in irreparable harm to MMBG and the Company and that in the event of such failure or violation, in addition to any and all other legal and equitable remedies that may be available, MMBG and the Company may obtain temporary restraining orders, preliminary injunctions, or similar equity relief in any courts in which it chooses to seek such remedy.

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8. LIABILITY AND INDEMNIFICATION

The Recipient shall accept full liability and indemnify MMBG and the Company against any wrongful disclosure or use of the Confidential Information by any officers, directors, associates, partners, agents, advisors (including counsel), or employees of the Recipient. The Recipient shall accept full and exclusive liability for the acts and omissions of itself and by any officers, directors, associates, partners, agents, advisors (including counsel), or employees of the Recipient. Further, the Recipient agrees to indemnify and hold harmless MMBG and the Company and all employees against any and all liability to third parties arising from or in connection with the negligence of any officers, directors, associates, partners, agents, advisors (including counsel), or employees of the Recipient in connection with the engagement.

9. GOVERNING LAW

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

10. SUCCESSORS

This Agreement shall inure to the benefit of and be binding upon MMBG, the Company and the Recipient, and any of the affiliates, successors or assigns of each MMBG, the Company and the Recipient.

11. SEVERABILITY

If any provision of this Agreement is declared unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

12. AMENDMENT

This Agreement may be amended or canceled only by the mutual agreement of MMBG and the Recipient in writing.

13. ENTIRE AGREEMENT

This Agreement supersedes any and all agreements, either oral or in writing, between MMBG and the Recipient with respect to Confidential Information provided by MMBG or the Company, and this Agreement contains all the covenants and agreements between MMBG, the Company, and the Recipient with respect to Confidential Information.

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Recipient intending to be legally bound, has duly executed this Agreement as of the day, month and year first above written.

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_