



BLACK DIAMOND MERGERS & ACQUISITIONS, LLC

CONFIDENTIALITY AGREEMENT • NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, entered into on _____, is between _____ (“Potential Purchaser”), and Black Diamond Mergers & Acquisitions, LLC (“BDMA” or “Black Diamond”), on behalf of a Potential Seller (the “Company”).

WHEREAS, the Potential Purchaser has expressed to Black Diamond Mergers & Acquisitions, LLC (“BDMA”), an interest in purchasing the stock or assets and business of the Company;

WHEREAS, the Potential Purchaser has requested that BDMA make information about the Company available to the Potential Purchaser for the sole purpose of review and determination as to whether the Potential Purchaser desires to enter into negotiations relating to a merger with, or the acquisition or purchase of the stock, assets or business of, the Company (a “Transaction”);

WHEREAS, the Potential Purchaser acknowledges that BDMA is authorized by the Company to serve the Company as its consultant and to enter into this agreement on behalf of the Company and for the benefit of both BDMA and the Company;

WHEREAS, BDMA is authorized by the Company to provide certain information to the Potential Purchaser upon the terms and conditions set forth below;

IT IS AGREED:

1. **Confidential Information:** The Potential Purchaser acknowledges that it will receive from the Company and BDMA confidential and proprietary financial and business information of the Company (“Confidential Information”) and that it will not disclose any Confidential Information except as provided in Section (2). “Confidential Information” includes, without limitation, all financial information, business concepts and business plans (whether or not they include intellectual property rights), confidential ideas, trade secrets, software, processes, data, marketing and sales information, customer names, customer contacts, accounting and pricing information, or other business and/or related technical information. Confidential Information may be disclosed orally, visually or in tangible form (whether by document, electronic media, or other form). The fact that the Company is considering a Transaction, its discussions with Potential Purchaser of a potential Transaction, including the fact that such discussions are taking place, is also “Confidential Information.” The absence of any mark, label or identification on any of the above-described information as proprietary or confidential shall not affect the status of such Information as part of the Confidential Information protected by this Agreement. “Confidential Information” does not include information which (i) was or becomes generally available to the public or (ii) was or becomes available on a non-confidential basis from a source other than the Company, provided that such source was not bound by an obligation of confidentiality in respect thereof.



BLACK DIAMOND MERGERS & ACQUISITIONS, LLC

2. Disclosure and Use of Confidential Information: The Potential Purchaser shall hold and maintain the Confidential Information in strict confidence and shall use such Confidential Information only for the purpose of assisting it in the assessment, determination, investigation and or negotiation of terms mutually agreeable of a Transaction with the Company (the "Evaluation"). Potential Purchaser shall not reproduce such Confidential Information, or disclose any of such Confidential Information to any third party, or other person or business entity of any kind without prior written approval of the Company, provided that that Confidential Information may be disclosed to Potential Purchaser's professional advisors and representatives who need to know such information for the purpose of the Evaluation. Potential Purchaser agrees that it shall be responsible for any breach by such advisers and representatives of the restrictions imposed by this Agreement on use and disclosure of Confidential Information. Potential Purchaser shall not approach, write to, discuss or have contact with the Company's customers, vendors, employees or other agents.
3. Disclosure of Evaluation: Without the prior written consent of the Company, the Potential Purchaser agrees that it will not, and will direct its advisors and representatives not to disclose to any person (unless such disclosure is required by law) either the fact that any information of the Company has been made available or that the Evaluation is occurring or that discussions or negotiations are taking place concerning a possible Transaction involving the Company, or the status of any of the foregoing. If it appears that the Potential Purchaser or its representatives will be required to disclose any Confidential Information obtained from the Company or BDMA, the Potential Purchaser will promptly notify BDMA and the Company of such request or requirement so that they may seek an appropriate protective order or waive compliance with the provisions of this Agreement.
4. No Warranties: The Potential Purchaser acknowledges that all Confidential Information (including projections) and other information regarding the Company have been provided to Potential Purchaser and to BDMA and its affiliates by the Company. The Potential Purchaser agrees that it shall make its own independent evaluation and analysis of all matters (including projections) relating to any Transaction in consultation with its own professional advisors. The Potential Purchaser is solely responsible for performing its own due diligence prior to closing of any Transaction and is responsible for establishing the Company's representations and warranties in any definitive Transaction agreements between Potential Purchaser and Company. The Potential Purchaser acknowledges and agrees that neither BDMA nor any of its affiliates make any warranty or representation, express or implied, as to the accuracy or completeness of any information, written or oral, which may be provided to Potential Purchaser, regardless of its status as Confidential Information, nor is any representation or warranty made by BDMA or its affiliates regarding the future performance of the Company should a Transaction occur. The Potential Purchaser indemnifies and holds BDMA and its affiliates harmless from any and all claims or actions arising from Potential Purchaser's acts or failure to act in pursuing a Transaction with the Company.



BLACK DIAMOND MERGERS & ACQUISITIONS, LLC

5. Noncircumvention; Nonsolicitation: The Potential Purchaser acknowledges and agrees that BDMA has introduced the Potential Purchaser to the Company and that no other intermediary or consultant has previously made the Potential Purchaser aware of the opportunity to effect a Transaction with the Company. The Potential Purchaser will not contact the Company or the Company's employees, customers, suppliers or agents other than through BDMA and will direct all negotiations, offers to purchase, letters of intent or other communication with the Company through BDMA. The Potential Purchaser acknowledges and agrees that the closing of any Transaction will occur at a location to be selected by BDMA and the Company, which may be a title agency or other escrow agent. The Potential Purchaser also agrees that, for a two year period following the date of this Agreement, it will not contact, interview, or hire any person who has been an employee of the Company at any time within six (6) months of such contact, interview or hiring, unless such contact, interview or hiring is consented to, in writing, by the Company, provided, however, that these non-solicitation restrictions shall not apply to (i) general employment advertisements in newspapers, internet (e.g., Monster.com) or other media not directed to employees of any particular company; (ii) employees hired following a definitive Asset Purchase Agreement; (iii) employees of the Company who were previously known to Potential Purchaser prior to the execution of this agreement.
6. Return of (or Destroy) Information: In the event that a Transaction between the Company and the Potential Purchaser is not completed, or at the request of BDMA for any reason, the Potential Purchaser agrees to return to BDMA, or destroy, any and all information received from BDMA or the Company regarding the Company, including Confidential Information. The Potential Purchaser shall not retain any information entered or stored in any retrieval or other system or and copies of or extracts or summaries made from any information obtained from BDMA or any of its affiliates.
7. Equitable Remedies: The Potential Purchaser acknowledges and agrees that any breach of this Agreement will result in irreparable injury for which monetary damages alone would not be an adequate remedy. Therefore, the Potential Purchaser agrees that in the event of a breach or threatened breach of this Agreement, the Company and/or BDMA shall be entitled to specific performance, injunctive or other equitable relief, including, but not limited to, reasonable attorneys' fees. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
8. Costs: The Potential Purchaser shall bear all its own costs and expenses for conducting any due diligence investigation of the Company and any negotiations in pursuit of a Transaction, including but not limited to accounting, tax, and legal fees. Neither the Company nor BDMA shall be liable to the Potential Purchaser for any such costs and expenses in the event a Transaction is not consummated for any reason.
9. Severability; Survival: The invalidity, illegality, or unenforceability of any obligation or provision under this Agreement shall not affect or impair the enforceability or legality of any remaining provision or obligation under this Agreement, which shall remain in full force and effect and shall be construed as the remaining understanding of the parties. All the obligations of the parties under this Agreement shall survive any termination hereof.



BLACK DIAMOND MERGERS & ACQUISITIONS, LLC

10. **Entire Agreement:** This Agreement (i) constitutes the entire understanding between the parties concerning the subject matter hereof and supersedes any prior discussions or agreements between them; (ii) may not be amended or modified except by a written instrument signed by each of the parties; (iii) shall be governed by the laws of the United States of America and the State of Arkansas, without reference to its conflicts of laws principles (and the parties agree to personal jurisdiction and venue in the courts of the State of Arkansas); and (iv) may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS THEREOF, the Potential Purchaser and BDMA have executed this Agreement as of the day and year first written above as evidenced by their signatures below:

POTENTIAL INVESTOR/PURCHASER

Black Diamond M & A, LLC

Print Name: _____

Print Name: Christian Baldwin

Signature: _____

Signature: _____

Title: _____

Title: Managing Director

Phone: _____

Phone: 479-365-4307

E-Mail: _____

E-Mail: christian@blackdiamondma.com

Return To:

**Christian Baldwin
Managing Director
Black Diamond Mergers & Acquisitions, LLC
2458 E. Joyce Blvd, STE 8
Fayetteville, AR 72703
Phone: 479-365-4307 Fax: 866-422-4068
christian@blackdiamondma.com**

Black Diamond Mergers & Acquisitions, LLC is an intermediary firm focused on serving the needs of the middle market. Our firm is committed to providing companies with high quality merger and acquisition, private placement, and advisory services. We provide clients with senior level attention from start to finish and are 100% focused on achieving our clients' objectives. For more information about Black Diamond Mergers & Acquisitions, please visit our website at www.blackdiamondma.com.
