

CONFIDENTIALITY AGREEMENT

Presented by

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Birmingham, Alabama
January 12, 2001

Typically in the sale of a business, negotiations begin well in advance of any effort to reduce discussions to writing. During this period, the Purchaser may engage in some preliminary due diligence, and this due diligence may include disclosure to Purchaser of information about Seller's business that is sensitive or proprietary. Many Sellers consider the information to be confidential without making that clear to the Purchaser, and it is frequently the case that no written agreement is entered into in which the Purchaser acknowledges the confidential nature of the information or agrees to return it if negotiations do not go forward.

The following Confidentiality Agreement is typical of those in use in many business discussions and is appropriate as a precursor to the execution of a Letter of Intent (which should also include confidentiality provisions) and a formal Stock Purchase Agreement or Asset Purchase Agreement. This is presented as an example of documentation appropriate for some kinds of legal transactions but should not be used in any particular context without consulting one of our attorneys. This agreement is not suited for use in certain states, and certain of its provisions may not be enforceable. Also, the reader should be aware that the interests of Seller and Purchaser in such an agreement may be significantly different, and a confidentiality agreement welcomed by a Seller may have provisions which the Purchaser should resist.

In addition to the enclosed, the reader should refer to the MODEL STOCK PURCHASE AGREEMENT WITH COMMENTARY, published in 1995 by the Committee on Negotiated Acquisitions of the Section of Business Law of the American Bar Association, which document includes an appendix containing an alternative form of Confidentiality Agreement and includes detailed commentary on its various provisions. Sam Oliver and George Taylor from the firm of Burr & Forman are active members of the Committee on Negotiated Acquisitions and participated in the drafting of those documents.

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 200__, by and among _____ (the "Purchaser") and _____, (the "Seller").

R E C I T A L S:

WHEREAS, Purchaser desires to enter into a relationship for discussions with Seller to explore the possibility of Purchaser's acquisition (the "Transaction"), in some manner to be determined hereafter, of certain business of _____, (the "Business") which might include the shares of stock of the Business, or all or substantially all of the assets of Business, said anticipated transaction being herein referred to as the "Transaction"); and

WHEREAS, this Agreement is being entered into by Seller as sole shareholder of the Business and both for the benefit of himself in the event that the transaction takes the form of a stock purchase and for the benefit of the Business in the event of an asset purchase; and

WHEREAS, in order to further such discussions Purchaser wishes to obtain certain information concerning the Business which is not generally known and which Seller is only willing to disclose on a strictly confidential basis in accordance with the terms of this agreement.

AGREEMENT

NOW, THEREFORE, THESE PREMISES CONSIDERED and in consideration of the mutual covenants and conditions herein set forth, the parties do hereby agree as follows:

1. In connection with Seller's and Purchaser's consideration of the Transaction, Purchaser may request that Seller furnish to Purchaser material and information about the Business (the "Evaluation Material"). The Evaluation Material may include financial statements, operating histories, customer lists, and other highly sensitive information regarding the Business. As a condition to Seller's furnishing any such information, Purchaser agrees to treat the Evaluation Material confidentially, subject to disclosure required by law, regulation or stock exchange rule upon compliance with Section 4 hereof. For purposes of this Agreement, the phrase "Evaluation Material" shall include any and all information furnished by or on behalf of Seller or the Business to Purchaser in connection with the evaluation of the Transaction in any form, whether oral, written or in a machine readable form, except for information that (i) is generally available to the public or becomes generally available to the public other than as a result of disclosure by Purchaser or its Representative (as herein defined), (ii) was available to Purchaser prior to its disclosure in connection with the Transaction, or (iii) becomes available to Purchaser from a source other than

Seller or its Representative, provided that such source is not bound by a confidentiality agreement with Seller. For purposes of this Agreement, the term "Representative" shall mean a party's directors, officers, employees and agents engaged pursuant to the provisions of this Agreement to advise such party with respect to a Transaction.

2. Purchaser hereby agrees with respect to the Evaluation Material that such Evaluation Material will be used by Purchaser and/or its Representatives only for the purpose of evaluating the Transaction and for no other purpose, and that such Evaluation Materials will be kept confidential by Purchaser and its Representatives, subject to disclosure required by any law, regulation or stock exchange rule upon compliance with Section 4 hereof. Purchaser further agrees that Evaluation Material may only be disclosed to Purchaser Representatives who need to know such Evaluation Material for the purpose of evaluating a possible Transaction (it being understood that such Representatives shall be informed by Purchaser of the confidential nature of such Evaluation Material and that they are required to treat such Evaluation Material confidentially), subject to disclosure required by any law, regulation or stock exchange rule upon compliance with Section 4 hereof.

3. Without the other party's prior written consent, the parties hereto will not disclose, and their Representatives will not disclose, to any person other than their respective Representatives either the fact that the discussions or negotiations are taking place concerning a possible Transaction, or any of the terms, conditions, or other facts with respect to any such possible Transaction, including the status thereof, or any information concerning any agreement or agreements reached with respect thereto, subject to disclosure required by law, regulation or stock exchange rule upon compliance with Section 4 hereof. The term "person" as used herein shall include without limitation any corporation, company, partnership, limited liability company, firm, individual or legal entity.

4. In the event that Purchaser or Purchaser's representatives receive a request to disclose all or any part of the information contained in the Evaluation Material under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a government body, Purchaser shall (i) immediately notify the Seller of the existence, terms and circumstances surrounding such a request, so that it may seek an appropriate protective order, and (ii) if disclosure of such information is required by law, regulation or stock exchange rule, exercise its reasonable best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such of the disclosed information which the Seller so designates. In addition, prior to disclosing any Evaluation Material pursuant to "disclosure required by law, regulation or stock exchange rule" in accordance with exceptions contained in Sections 1, 2 and 3 hereof, Purchaser shall promptly notify Seller, but in no case later than one (1) business day after the receipt by Purchaser, of a demand issued by a competent authority that is reasonably likely to result in such disclosure.

5. At the written request of Seller at any time, Purchaser and Purchaser's representatives shall promptly redeliver to the Seller all written Evaluation Material and any other written material and will not retain any copies, extracts or other reproductions in whole or in part of such written material. Also all documents, memoranda, analyses, notes and other writing whatsoever prepared by Purchaser or Purchaser's representatives based on the information in the Evaluation Material shall be destroyed (including those stored by tape, disk or other electronic, laser or magnetic means), and

such destruction shall be certified in writing to the Seller by an authorized officer supervising such destruction.

6. Purchaser shall not contact any customer, supplier, employees, agents or consultants of the Seller for the purpose of obtaining information for use in Purchaser's evaluation, except for those individuals designated in writing by the Seller prior to any contact. At this time no individuals have been designated in writing other than _____.

7. It is understood and agreed that money damages will not be a sufficient remedy for any breach of this Agreement and that any aggrieved party shall be entitled to seek equitable relief in the nature of an injunction or specific performance as a remedy for any such breach in any court of competent jurisdiction. Such remedy shall not be deemed to be an exclusive remedy for any such breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

8. No failure or delay by either party in exercising any right or power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

9. Each party shall require its authorized Representatives to abide by the terms of this Agreement to the same extent that it is required to do so. Should either party institute legal proceedings to enforce this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable costs, including attorney's fees, incurred in the proceedings.

10. This Agreement shall be construed in accordance with the laws of the State of _____.

11. This Agreement shall be binding upon the parties hereto, their respective heirs, successors, assigns, legal representatives, transferees and receivers.

12. Although the Seller may endeavor to include in the Evaluation Material information known to it which it believes to be relevant for the purpose of Purchaser's investigation, Purchaser understands that neither the Seller nor any of the representatives or advisors of Seller have made or make any representation or warranty as to the accuracy or completeness of the Evaluation Material.

13. The agreements set forth in this letter may be modified or waived only by a separate writing signed by the Seller and by Purchaser expressly so modifying or waiving such agreements.

14. Unless and until a definitive written agreement between the Seller and Purchaser with respect to the transaction has been executed and delivered, neither the Seller, its affiliates, nor Purchaser will be under any legal obligation to agree to, contract for, or consummate, any Transaction.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on the day and year first above written.

SELLER:

PURCHASER:
