

Transworld Business Advisors of Mohawk Valley West Non-Disclosure Agreement ("NDA")

This Agreement dated and effective as of the latest date below (the "Effective Date"), by and between Transworld Business Advisors of Mohawk Valley West ("Broker") and:

Name _____, individually, his/her agents or assigns (individually & together "Buyer"),

Address _____

City _____ State _____ Zip _____

Email _____ Driver's License /EIN # _____

Phone _____ Cell _____

BUSINESS REFERENCE ID NUMBER (the "Business")

BUSINESS CATEGORY

1. **Confidential Information** - Buyer acknowledges and agrees that the officers, managers, agents and representative of the Business ("Seller") shall directly or indirectly through Broker, as a conduit of information, disclose to Buyer certain confidential and proprietary information related to the Business ("Confidential Information"), which shall include, but not be limited to, information relating to non-public, confidential and proprietary operations, properties, personnel, financial information, materials, products, technology, computer programs, manuals, business plans, software, marketing plans, and other information disclosed or submitted, orally, in writing, or by any other media solely relating to Buyer's interest in purchasing the Business. Buyer agrees not to disclose, publish, or otherwise reveal any of the Confidential Information to any other parties, agents, representative or employees whatsoever without the prior written consent of Seller, except that Buyer may disclose the Confidential Information to Buyer's legal counsel, accountant, or lender.
2. **Conduct** - Buyer acknowledges and agrees that all communications concerning the above Business shall be conducted solely through Broker, and that Buyer shall be obligated to pay Broker its full compensation if Buyer intentionally interferes with, prevents or otherwise contravenes Broker's right to be paid its compensation upon the occurrence of the following: 1) Buyer is ready, willing and able to purchase the Business at the terms advertised by Seller, or at any other Price and/or terms acceptable to Seller; 2) Buyer buys, leases, receives in trade or otherwise obtains any part of the Business during the two (2) year period commencing from the date of the Effective Date; 3) Seller and Buyer enter into a contract for sale; 4) Buyer, through no fault of Seller, fails or refuses to complete a sale, lease, trade or other disposition of the Business after entering into an agreement to do so; 5) Buyer does any act equivalent of a purchase, or has an employment, independent contractor or consulting relationship directly or indirectly with Seller. Buyer agrees to not approach or contact Seller or any of its officers, managers, or agents, or visit the physical Business location without an appointment arranged through Broker. Buyer agrees to not contact or approach Business's employees, independent contractors, customers, suppliers, and/or competitors without the express written consent of Broker. Buyer shall be solely responsible for any breach of this Agreement by Buyer, Buyer's agents, representatives, or employees, and shall fully indemnify, defend, and hold Broker harmless from any costs, damages, or expenses whatsoever incurred by Broker by Buyer's violation, or threatened violation of the terms of this Agreement.
3. **Information** – Buyer acknowledges and agrees that Broker is acting as a conduit of the information provided by Seller and its representatives and has not and will not make any independent investigation of the accuracy of the information provided. All information and documents provided to Buyer concerning the Business is the property of Seller and must be returned immediately upon written request by Broker or Seller. Any and all representations and warranties shall be made solely by and between Seller and Buyer in a signed purchase/sale agreement and subject to the provisions thereof. Buyer specifically acknowledges and agrees that Broker makes no representations or warranties whatsoever, express or implied, to Buyer with respect to the Business and the veracity or completeness of the Confidential Information disclosed to Buyer, and any representations and warranties made by Seller. Buyer acknowledges and agrees that it will not rely upon any information, written or oral, furnished by Broker, and Buyer acknowledges and agrees that all Confidential Information received must be independently verified by Buyer. Buyer acknowledges and agrees that all Confidential Information furnished and/or received by Buyer is provided by Seller and is not verified by Broker or its agents, and that Broker and its agents are relying upon Seller for the accuracy and completeness of the information. Buyer agrees that any Confidential Information received by Buyer will not be used in any way to Seller's or Broker's detriment. Buyer and its authorized representative(s) executing this NDA, acknowledge and agree that they shall be jointly and severally liable for any breach or threatened breach of this NDA, irrespective of whether the breach or threatened breach were the result of the actions of the signer of this agreement, or an agent, representative or officer of Buyer, and further agrees to indemnify and hold Broker harmless from any claims or damages from their use and/or reliance thereon. The provisions in this paragraph shall also inure to the benefit of Broker's agents and shall survive termination of this NDA.
4. **Seller as Third-Party Beneficiary** – Buyer acknowledges and agrees that Seller has the right to protect the Confidential Information and to enforce the terms of this NDA. Accordingly, and for such limited purposes only, Seller shall be considered an intended third-party beneficiary hereunder. The fact that Seller is not a signatory to this NDA shall not prohibit, alter or limit Seller's or Broker's right to enforce the terms hereof.
5. **Representation & Advice** – Buyer understands and agrees that Broker is a transaction broker as defined by state law. As such, Broker is not a single agent or representative of Seller or Buyer. Buyer further acknowledges and agrees that Broker has advised Buyer to consult an attorney and/or certified public accountant for assistance in reviewing and verifying the legal, financial and/or any other information and Confidential Information regarding the Business.
6. **Procuring Cause** - Buyer acknowledges and agrees that Broker is the procuring cause of any purchase or other act set forth in paragraph 2 herein triggering Broker's right to compensation, and acknowledges and agrees that for a period of two (2) years from the Effective Date to not deal directly or indirectly with the Seller, its agents, representatives or assigns, without the prior written consent of Broker. If Buyer, or an entity in which Buyer has an interest, or person or entity introduced to the Business and/or Seller by Buyer, enters into: (a) a sale and/or purchase agreement; or (b) management contract or other financial arrangement with Seller with respect to the Business or any part thereof, including leasing the Business premises from Seller or Seller's landlord; Buyer shall be liable to Broker for any and all damages Broker may

suffer, including but not limited to the payment of the full compensation due Broker under a separate agreement with Seller. To ensure the collection of its compensation, Buyer hereby grants Broker the right to place a lien on the Business assets which may be acquired by Buyer in violation of this Agreement, and Buyer agrees and does hereby appoint Broker its attorney-in-fact to execute all documents necessary to perfect such lien, and this Agreement shall be Buyer's consent to do so as required by ___NY___ state law.

- 7. **Warrantees** - Buyer represents and warrants that it does not represent any third-party competitor of the Business, and is not an employee or agent of a competitor business. Buyer warrants that the sole purpose for requesting and receiving Confidential Information on the Business is to evaluate its desire to affect a purchase, merger and/or acquisition of the Business, and Buyer acknowledges and agrees that no compensation will be payable to Buyer as a result of a purchase or merger and/or acquisition. Buyer acknowledges and agrees that Seller and Broker are relying upon the Buyer's agreement to be bound by the terms of this NDA in disclosing the Confidential Information to Buyer. Buyer further warrants that it is financially capable of purchasing the Business, has not filed for an undisclosed bankruptcy, and has not been convicted of any felony or crime and that Buyer has no legal impediments that would prevent it from purchasing the Business.
- 8. **No implied waiver** - Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.
- 9. **Consent & Jurisdiction** - This Agreement shall be governed by the laws and construed in accordance with the laws of the State of ___NY___, and the parties consent and agree that ___Oneida___ County, ___NY___, shall be the sole and exclusive venue for all proceedings relating to this Agreement and/or its subject matter, including without limitation the enforcement hereof. Buyer hereby waives all objections to establishing venue elsewhere. Buyer agrees that in the event of any breach or threatened breach of the provisions contained herein, Seller or Broker may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Broker and/or Seller against any such breach or threatened breach. Buyer acknowledges and agrees that Seller or Broker may obtain such equitable relief with the posting of a minimal bond as determined by a court of competent jurisdiction.
- 10. **Attorney Fees** - In the event of any dispute or litigation arising out of or relating to this NDA, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, costs, and expenses incurred in both the trial court and appellate levels.
- 11. **Copies** - This NDA may be executed in multiple parts and the separate parts may be jointly deemed as a whole. Buyer has received a copy of this NDA, and an electronically transmitted copy with signatures shall be considered as an original.
- 12. **Wire Transfers** - Broker will never request or send wire instructions by electronic mail and Buyer acknowledges and agrees to verbally verify account information directly from any Escrow Agent and not rely on account or contact information obtained via email without verbally confirming accuracy.

Buyer's Signature

Today's Date

Agent's Signature, on behalf of Broker

Today's Date