



CONSULTKAP, INC.



Experts Solving Your Business Transition Puzzles

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BUYER CONFIDENTIALITY AGREEMENT

THIS BUYER CONFIDENTIALITY AGREEMENT (the "Agreement") is executed and delivered as of the date specified below by Buyer in consideration of Seller providing to Buyer, its agents and representatives, Confidential Information related to Seller and the Business (as each such capitalized term is defined below). Buyer hereby covenants and agrees as follows:

- 1. Confidential Information.** For a period of five years from the date of this Agreement, Buyer will not, either directly or indirectly:
 - A. use the Confidential Information for any purpose other than evaluating the feasibility of purchasing the Business; or
 - B. distribute, disclose or disseminate any Confidential Information to any third party, except to Buyer's employees and professional advisors (however, Buyer shall remain liable for any unauthorized use or disclosure of Confidential Information by such professional advisors) who have a need to know such information in connection with the analysis of the feasibility of the purchase of the Business and who are subject to confidentiality and non-use provisions at least as restrictive as those in this Agreement, which will protect the Seller against breach of such provisions.
- 2. Non-Solicitation.** For a period of two years from the date hereof, the Buyer shall not, without the prior written consent of the Seller directly or indirectly through any third person, firm or corporation, solicit any of the employees or full time consultants of the Seller, for the purpose of inducing them to leave the employ or engagement of the Seller.
- 3. Definitions.**
 - A. "*Confidential Information*" means the fact that Seller is discussing the possible sale of the Business, and all information disclosed or made available to Buyer regarding Seller and the Business, whether disclosed in writing, verbally, visually or by any other means, including without limitation all Trade Secrets, business strategies and opportunities, operating processes and formulas, financial information, asset and equipment lists, customer and vendor lists, and employee information. Confidential Information does not include Seller information to the extent that such information: (i) was, at the time of disclosure or thereafter becomes, generally available to the public other than by breach of this Agreement; (ii) that Buyer can show by documentary evidence was in Buyer's possession prior to disclosure by Seller or Seller's representatives; (iii) is acquired in good faith from a third party who obtained it lawfully and not under an obligation of secrecy; or (iv) that Buyer can show by documentary evidence was or is developed independently within Buyer's organization by personnel not having access to such information.
 - B. "*Trade Secrets*" means information disclosed to Buyer under this Agreement which rises to the level of a trade secret under the Georgia Trade Secret Act of 1990, as amended from time to time.
 - C. "*Buyer*" means the person or persons executing this Agreement and includes any entity controlled or under common control by the signatories, whether or not now in existence.
 - D. "*Seller*" means the owner or owners of the Business.
 - E. "*Business*" means the business identified in the signature block below.
- 4. Return or Destruction of Confidential Information.** The Buyer shall return or destroy all tangible Confidential Information including internal memoranda or other documents that incorporate the Confidential Information ("Derivative Information") within fourteen days of 1) the termination of discussions concerning Buyer's potential purchase of the Business or 2) receipt of the written request of the Seller, whichever is sooner. In the event a return of all Confidential Information or Derivative Information is not practical, Buyer or his authorized representative shall execute a certification stating that all Confidential Information and Derivative Information that have not been returned have been irretrievably destroyed.
- 5. Disclosure Required by Law.** In the event that the Buyer is requested or required to disclose any Confidential Information by operation of law, regulation, or government agency, the Buyer agrees to provide the Seller with prompt notice of such request(s) so that the Seller may seek an appropriate protective order or other appropriate remedy and/or waive the Buyer's compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or the Seller grants a waiver hereunder, the Buyer shall (i) only disclose Confidential Information to the extent so required, (ii) exercise commercially reasonable efforts to assure that confidential treatment will be accorded any material so furnished, and (iii) reasonably cooperate with the Seller in any legal action it may take with regard to such request or requirement.

6. Communications. Buyer shall direct or submit all communications, correspondence, inquiries, negotiations and purchase offers relating to Seller and the Business through Selling Broker. Buyer shall not, directly or indirectly, contact Seller, its agents, employees, suppliers, customers and representatives. Buyer shall not visit the business without the express permission of Listing Broker.

7. No Warranties by Brokers. Buyer acknowledges that the delivery of any information, including Confidential Information and Trade Secrets (collectively, the "Information") relating to the Business has not been verified or audited by either Listing Broker or Selling Broker, and Listing Broker and Selling Broker make no warranties or representations concerning the accuracy of the Information. Buyer acknowledges that Buyer has been advised to, and Buyer understands that Buyer should, exercise adequate due diligence, through its own independent investigation, before making any decisions relating to the Business. Buyer further acknowledges that it will not rely upon any statements or opinions of any kind of Listing Broker or Selling Broker, their respective agents, employees or representatives, in connection with the purchase and sale of the Business. Buyer releases Listing Broker and Selling Broker, their respective agents and representatives, of any and all claims arising from or relating to the accuracy or completeness of the Information.

8. Miscellaneous. Buyer acknowledges that Seller and Listing Broker are intended third party beneficiaries of this Agreement. Therefore, in the event of breach of this Agreement, Seller and Listing Broker shall be entitled to collect its expenses of litigation, including its reasonable attorneys' fees and expenses, from the defaulting party or parties. Buyer agrees that this Agreement shall be construed and enforced in accordance with the laws of the State of Georgia and that venue for any action based on or arising from this Agreement only shall be in the County in which the principal office of the Business is located, and the Buyer waives any claims that the forum is inconvenient. Personal service may be made on the Buyer by delivery of process in person or by certified mail or express courier service to the address specified below. In addition to all remedies provided at law or in equity, Seller shall be entitled to seek a temporary restraining order and a temporary and permanent injunction to prevent a breach of this Agreement, without the requirement of posting a bond or other security. This Agreement contains the entire understanding of Buyer and Seller with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings of Buyer and Seller relating to the subject matter hereof. If Buyer is a business entity, then the person signing on behalf of Buyer shall also be bound individually. For the purposes of this Agreement, Listing Broker is the Broker that has listed the Business for sale and Selling Broker is the Broker that will introduce Buyer to the Business. The parties acknowledge that the identity of Listing Broker may remain confidential prior to a entering into a purchase agreement (the "Purchase Agreement") for the sale of the Business. The identity of the Business shall remain confidential until Buyer signs this Agreement. Identification numbers in this document are defined by official documents of the Georgia Association of Business Brokers.

9. Severability. It is expressly agreed that any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be excessively broad as to time, duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it so as to be enforceable to the fullest extent permitted under the applicable law.

10. Survival. This Agreement does not obligate Buyer to purchase the Business or any of the assets of the Business; however, the terms of this Agreement shall survive for the time periods set forth in this Agreement. In the event that Buyer purchases the Business, this Agreement shall terminate, except with respect to Confidential Information that relates only to the Seller or the owners of the Seller and not to the Business, and in the event of a conflict between this Agreement and the Purchase Agreement the terms of the Purchase Agreement shall govern.

11. Agency Disclosure. Buyer acknowledges that Listing Broker (identified at the end of this agreement) is acting as Seller's agent only, has been retained by Seller, and will be compensated by Seller in accordance with an agreement between Seller and such Broker. Buyer further acknowledges that Selling Broker is: (Buyer to initial one selection)

- Mark Buyer Initial Selection (speak to Broker if unsure of correct selection. Select only ONE agency option.)
- _____ Listing Broker and represents only Seller and, for purposes of this Agreement, is considered to be both Listing Broker and Selling Broker but does not represent Buyer under any agency relationship agreement.
Buyer acknowledges and agrees that Buyer is solely responsible for protecting Buyer's interests, and that Listing Broker's role is limited to performing ministerial acts for Buyer.
- _____ Buyer's Agent, representing Buyer in this transaction only, and shall be compensated by (check one box below):
- Listing Broker pursuant to a separate agreement between Listing Broker and Selling Broker.
- Buyer pursuant to a separate agreement between Buyer and Selling Broker.
- _____ Transactional Broker and does not have any agency relationship with either Buyer or Seller, will perform ministerial acts only, will not provide advice to either party and shall be compensated under a separate agreement.
- _____ Dual Agency or Designated Agency – See Dual Agency/Designated Agency Disclosure Addendum which is completed and attached, and its terms are incorporated into and are a part of this agreement.

