

# CONFIDENTIAL & PROPRIETARY – NEED TO KNOW DISCLOSURE ONLY

## Mutual Confidentiality and Nondisclosure Agreement

This **Mutual Confidentiality and Nondisclosure Agreement** (the "Agreement") is made by and between **ATM Brokerage** a New York corporation (referred to hereinafter as "ATM-B"), with principal offices at 16 Jordan St, Skaneateles, NY 13152 and [LEGAL COMPANY NAME] a [STATE] [TYPE OF ENTITY] (referred to hereinafter as "BUYER"), with principal offices located at [ADDRESS] (each also sometimes referred to as a "Party" and collectively as the "Parties"), and is entered into and deemed effective as of [MONTH] [DAY], 2019 (the "Effective Date").

**WHEREAS**, BUYER wishes to utilize the business brokerage services of ATM-B to learn about, evaluate, and facilitate a purchase-sale transaction to enable BUYER to purchase one or more ATM businesses, (the "Relationship"), during the course of which each Party has and will disclose to the other Party its, and in the case of ATM-B also its client's, Confidential Information (as defined below); and

**WHEREAS**, the Parties wish to protect their (and ATM-B's client's) respective confidential and proprietary business information (as defined hereunder) that has or will be disclosed by either Party to the other Party,

**NOW, THEREFORE**, in exchange for the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged and accepted, the Parties on behalf of themselves and their affiliates agree as follows:

1. This Agreement will govern the use and protection of such Confidential Information disclosed by a Party (the "Disclosing Party"), whether before, on or after the date of this Agreement, to the other Party (the "Receiving Party") in the course of their discussions and negotiations regarding exploration, consummation, and effectuation of the Relationship. Disclosure to an employee, agent, contractor, advisor, counsellor, affiliate, owner, partner, officer, director or any other such representative of a Party shall constitute disclosure to their respective Party.

2. "Confidential Information" of a Party means and includes, without limitation, all of the Disclosing Party's (and in the case of ATM-B also its client's) present or future client or business contacts, current business and client relationships, service offerings, products, inventions, formulae, trade secrets, know-how, processes and procedures, methodologies, software programs, related product documentation, business plans, business methods and strategies, investment methods and strategies, sales and marketing information, customer names, identities and lists or compilations, contracts and contract terms, investment criteria, data, legal strategies and work products, and any other business, financial or technical information that is marked or otherwise identified as confidential or proprietary, or that the Receiving Party knows or should reasonably know is confidential or proprietary business information (collectively and without limitation, "Confidential Information"). Confidential Information may be conveyed in written, electronic or graphic form or disclosed orally. Notwithstanding any failure to so identify it, Disclosing Party's product information, business plans and pricing, financial information and reports, marketing plans, business strategies, customer information, data, research and development, computer software and hardware, products, APIs, specifications, product designs, processes, proprietary formulae, proprietary algorithms and all trade secret information shall without limitation be deemed Confidential Information under this Agreement.

3. Receiving Party agrees:

(a) To use the highest degree of care to protect the Confidential Information from disclosure to third parties, and no less care than it uses to protect its own confidential and proprietary business and technical information of a similar nature (but in no event less than a reasonable degree of care);

(b) Except as otherwise permitted herein, to not distribute to, nor discuss with, any third parties (including through any public display), nor provide or convey any such Confidential Information by any means whatsoever;

(c) To not reverse engineer, disassemble or de-compile any prototypes, software or other tangible objects that embody the Confidential Information, unless written consent for such action(s) is first received from Disclosing Party;

(d) To limit the internal disclosure of the Confidential Information to those employees, contractors, agents, advisors, counsellors, affiliates and other similar representatives having a need to know such information in connection with the Relationship and that have agreed to abide by non-disclosure terms at least as protective of the Confidential Information as those set forth herein; and

(e) To use the Confidential Information solely to carry out discussions and negotiations concerning, and the undertaking of, the Relationship and for no other purpose whatsoever. The Receiving Party will not reproduce Confidential Information of the Disclosing Party except as required for the Relationship.

4. Notwithstanding the above, Receiving Party shall not have liability to Disclosing Party with regard to the disclosure of any Confidential Information which Receiving Party can prove:

(a) was in the public domain at the time it was disclosed by Disclosing Party or subsequently entered the public domain through no fault of Receiving Party;

(b) was known to Receiving Party, without restriction, at the time of disclosure, as demonstrated by written documentation in existence at the time of Receiving Party's receipt of the Confidential Information;

(c) is disclosed with the prior written approval of an authorized representative of Disclosing Party;

(d) becomes known to Receiving Party from a source other than Disclosing Party, without breach of this Agreement by Receiving Party and otherwise not in violation of Disclosing Party's rights under any other agreement; or

(e) is disclosed pursuant to the binding order or requirement of a court, administrative agency, or other governmental body of authority; provided, however, that Receiving Party shall have, if legally permissible, provided advance notice to Disclosing Party to allow it an opportunity to seek a protective order or otherwise prevent or restrict such disclosure. Receiving Party shall reasonably cooperate with Disclosing Party in seeking to prevent or restrict such disclosure, provided that such cooperation will not require Receiving Party to incur any unreimbursed costs.

5. Upon written request of Disclosing Party at any time in Disclosing Party's sole discretion, Receiving Party must, within ten (10) days of such request, return to Disclosing Party all Confidential Information received in written or tangible form, including any copies thereof and notes related thereto, and including documents or other media containing or based upon such Confidential Information. At Disclosing Party's option, any documents or other media provided to Receiving Party or developed by Receiving Party containing or based upon the Confidential Information of Disclosing Party, may be destroyed by the Receiving Party, provided that an authorized representative of Receiving Party supplies Disclosing Party with a certificate attesting to such destruction within the same ten (10) day period.

6. The obligations of confidentiality under this Agreement shall remain in place and will only expire five (5) years following the Effective Date of this Agreement, except as may be otherwise provided herein. Notwithstanding such expiration of this Agreement all Confidential Information that constitutes a trade secret under New York law shall remain subject to the confidentiality and non-disclosure obligations of this Agreement for so long as such Confidential Information remains a trade secret.

7. Confidential Information remains at all times the property of the Disclosing Party. Nothing in this Agreement shall be construed as granting any license or any other rights to a Receiving Party under or to any patents, copyrights, trademarks, inventions or any other intellectual property rights of the Disclosing Party, nor shall this Agreement grant Receiving Party any rights in or to Disclosing Party's Confidential Information other than the limited right to review and use such Confidential Information solely in connection with the Relationship. Receiving Party understands that nothing in this Agreement requires the disclosure of any Confidential Information. Confidential Information shall be disclosed, if at all, solely at Disclosing Party's option. The Parties also understand and agree that nothing in this Agreement requires either Party to proceed to consummate any specific sales transaction in the course of the Relationship in connection with which the Confidential Information may have been disclosed.

**8. THE CONFIDENTIAL INFORMATION DISCLOSED UNDER THIS AGREEMENT IS DELIVERED "AS IS" AND THE DISCLOSING PARTY MAKES NO REPRESENTATION OF ANY KIND WITH RESPECT TO THE**

**ACCURACY OF SUCH CONFIDENTIAL INFORMATION OR ITS SUITABILITY FOR ANY PARTICULAR USE.**

9. The Parties each expressly agree that due to the unique nature of Disclosing Party's Confidential Information, monetary damages alone would be inadequate to compensate Disclosing Party for any breach by Receiving Party of its covenants and agreements set forth in this Agreement. Each Party acknowledges that Disclosing Party may take all reasonable steps to protect its Confidential Information, including, but not limited to, seeking injunctive relief and any other remedies available at law or in equity in the event Receiving Party breaches, threatens to breach or acts in a manner that the Disclosing Party may reasonably believe that Receiving Party intends to breach its confidentiality obligations under this Agreement. In such case, the Receiving Party agrees not to (a) raise a threshold legal objection to issuance of injunctive relief to prevent or stop such improper disclosure, or (b) seek to have a bonding requirement imposed upon Disclosing Party as a precondition to the issuance of such injunctive relief.

10. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon each Party's successors and assigns, provided, however, that each Party's obligations hereunder may not be assigned without the other Party's prior written consent, which will not be unreasonably withheld. Nothing in this Agreement, express or implied, is intended to confer upon any third party or and their respective permitted successors and assigns any rights, remedies, obligations, or liabilities under this Agreement, except as expressly provided in this Agreement. All additions or other modifications to this Agreement or its terms must be made in a writing referencing this Agreement and signed by both Parties. This Agreement supersedes all prior discussions and writings between the Parties, if any, and constitutes their entire agreement with respect to the subject matter hereof. This Agreement will be governed by and interpreted in accordance with the laws of the State of New York, excluding application its choice of law provisions. An action to enforce this Agreement or its terms shall be solely and exclusively brought in a New York state court with subject matter jurisdiction over the action and located in Onondaga County, New York, USA, or, if applicable, in U.S. Federal District Court for the Northern District of New York. The Parties each freely acknowledge the existence of a significant nexus with this geographical location and freely submit to personal jurisdiction there for purposes of entering into and, as necessary, enforcing or interpreting the terms of this Agreement.

11. If any provision of this Agreement is determined to not be legally enforceable in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and the Parties will work cooperatively and in good faith to modify the Agreement to give effect to the original intent of the Parties with respect to such unenforceable provision(s) through adoption of an appropriate amendment to this Agreement.

12. This Agreement may be executed on separate copies, any one of which need not contain signatures of more than one Party, but all of which taken together will constitute one and the same fully executed Agreement. An electronic PDF version of any signature to this Agreement shall be given the same legal force and effect, and deemed the same for all purposes, as if were an original handwritten signature hereto.

13. Each Party will indemnify, hold harmless and defend the other from any and all third-party actions, claims, judgments and expenses (including reasonable attorneys' fees and court costs) resulting from disclosure by that Party to the other Party of Confidential Information that is or is alleged to be a third-party's confidential information that has been wrongfully disclosed. Each Party shall notify the other promptly of written claims or demands against such Party for which the other is responsible hereunder. Each Party shall cooperate fully with the other, and the indemnifying Party shall pay for the costs of and control any required legal defense and the right to litigate, settle, appeal (provided it pays the costs of any required appeal bond), compromise or otherwise deal with any such claim or resulting judgment; provided that such settlement, compromise or other resolution of such claim does not result in any liability to the indemnified Party absent its prior written approval. The indemnified Party may elect to undertake its own defense of any claim, in which case the indemnifying Party will be excused from its indemnification obligations with respect to that (but not any other) claim hereunder. Except as expressly stated herein, neither Party makes any representation or warranty, express or implied, about, for or in connection with the Confidential Information that it discloses to the other.

14. The exchange of Confidential Information between the Parties is not and does not create a partnership, joint venture, or any other form of legal entity, business enterprise or other relationship between the Parties. Any business relationship between the Parties with respect to the Relationship is intended solely to be that of an independent contractor.

15. Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective on the first business day following the date of receipt, and (c) delivered by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service, with delivery receipt confirmation required, to the following names and addresses:

In the case of ATM Brokerage (ATM-B), as follows:

ATM Brokerage  
Attn: Jeff Sosville, President  
16 Jordan St. #2  
Skaneateles, NY 13152

And in the case of \_\_\_\_\_ (BUYER), as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other addresses of which a Party has been advised by the other Party in writing using the above-described means and information.

16. Pronouns used herein shall be construed as masculine, feminine, or neuter, and both singular and plural, as the context may require and the term "person" includes an individual, corporation, limited liability company, association, partnership, limited partnership, limited liability partnership, trust, and other such entities or business organizations. The term "affiliate" means any person controlling, controlled by, or under common control with another person, and "control", for purposes of this definition and the Agreement, means the power to vote ten percent (10%) or more of the equity securities or comparable interests (or to manage the affairs) of the controlled person. The word "include" and derivations thereof shall not be construed as terms of limitation. The words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year, and the words "writing" or "written" mean preserved or presented in retrievable or reproducible written form, whether in a hard copy, facsimile, email or other electronic format.

17. In the course of their dealings, each Party may obtain confidential customer and partner information, and ultimately may establish relationships with customers and strategic business partners of the other Party. Both Parties agree that they will not, during the term of this Agreement and for two years following its termination, attempt to develop any independent relationships or arrangements of any kind, consummate business relationships, enter into joint projects or activities or otherwise deal with the customers or strategic business partners of the other Party in a manner that would be adverse to the Relationship or would damage or materially diminish the interests of the Party originating the introduction to/relationship with the customer or strategic business partner.

18. This Agreement is intended to specifically (a) cover and protect any and all Confidential Information of the Parties and their affiliates that is provided by one Party to the other Party pursuant or with respect to the Relationship; and (b) bind and obligate the Parties and their affiliates to the terms and conditions of this Agreement. For purposes of this Agreement, the term "affiliates" means any person or entity controlling, controlled by, or under common control with a Party or any of its principal owners or their family members or significant others, and "control", for purposes of this definition, means the power to vote ten percent (10%) or more of the equity securities or comparable interests (or to manage or participate in managing the affairs) of the controlled person.

**IN WITNESS WHEREOF, ATM BROKERAGE ("ATM-B")** has caused this Mutual Confidentiality and Nondisclosure Agreement to be executed by its

duly authorized representative, effective as of this \_\_ day, of \_\_\_\_\_, 2019.

**ATM BROKERAGE ("ATM-B")**

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

Name: Jeff Sosville

Title: President

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

**IN WITNESS WHEREOF,** \_\_\_\_\_ ("**BUYER**") has caused this Mutual Confidentiality and Nondisclosure Agreement to be executed by its duly authorized representative, effective as of this \_\_\_\_ day, of \_\_\_\_\_, 2019.

\_\_\_\_\_  
 ("**BUYER**")

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

Name: \_\_\_\_\_

Location/Price of Route interested in: \_\_\_\_\_

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

CONFIDENTIAL