

# Triple S Holdings, Inc.

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A Business Development Company

## MUTUAL NONDISCLOSURE AGREEMENT

This Triple S Holdings, Inc. (TSH/BUYER) Mutual Nondisclosure Agreement (“NDA”) is made and entered into as of \_\_\_\_\_, 201\_\_ (Effective Date) by Triple S Holdings, Inc., a Massachusetts corporation with its principal place of business at 2 Executive Park Drive, Billerica, MA 01862 and \_\_\_\_\_ (SELLER), with its principal place of business at: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, collectively the “Parties” and individually a “Party”.

### BACKGROUND

The Parties to this NDA are engaged in discussions to explore possible business arrangements, which may constitute the acquisition of the SELLER by the BUYER. (“Transaction”). In connection with these discussions, each Party may need to disclose certain of its confidential and proprietary information and materials (“Evaluation Material”) to the other Party. The Parties wish to enter into this NDA to establish and set forth each Party’s obligations with respect to the other Party’s confidential information and Evaluation Material.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. Evaluation Material. For purposes of this NDA, “Evaluation Material” means the confidential and/or proprietary information and materials, including any modifications or derivatives thereof, disclosed orally or in writing by either Party during the term of this NDA. Specifically, the BUYER wishes to obtain a clear understanding of the SELLER’s finances, value proposition, customer base and staffing in an effort to formulate a fair valuation of the SELLER’s business. The SELLER in turn wishes to gain a clear understanding of the BUYER’s intentions with respect to the BUYER’s plan for the business and the SELLER’s staff. Confidential information does not include information which: (i) was in the public domain at the time it was communicated to the receiving Party by the other Party; (ii) entered the public domain subsequent to the time it was communicated to the receiving Party other than by a breach of this NDA; (iii) was in the receiving Party’s possession free of any obligation of confidence at the time it was communicated to the receiving Party; (iv) was developed independently without reference to any other Evaluation Material by the receiving Party; (v) is rightfully disclosed in response to an order of a court or as otherwise required by law; (vi) was disclosed pursuant to a written authorization by the other Party.
2. Term. This NDA will commence on the Effective Date and each Party’s nondisclosure and other obligations hereunder will continue in full force and effect for a period of three (3) years from the Effective Date.
3. Limitations on Use. Both Parties agree to use the Evaluation Material only in connection with the Transaction and not for any other purpose.

4. Protection of Evaluation Material. Each Party will protect the confidentiality of the other Party's Evaluation Material with no less care than it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care.
5. Access to Evaluation Material. Access to a Party's Evaluation Material must be restricted to employees and agents of each Party on a need-to-know basis, who are engaged in the Transaction. Furthermore, each Party will take, and will cause its employees and agents to take, any steps required to avoid inadvertent disclosure of the other Party's Evaluation Material in its possession.
6. No Other License. Evaluation Material disclosed by one Party to the other Party will at all times remain the property of the disclosing Party. No other license is granted under this NDA or by any disclosure of Evaluation Material under this NDA. Further, each Party understands and agrees that no contract or agreement will be deemed to exist between the Parties unless and until a definitive written agreement setting forth the terms, conditions and other provisions relating to a finalized Transaction has been executed and delivered.
7. Return of Evaluation Material. Upon request by either Party, a Party will promptly destroy or return all Evaluation Material including without limitation all copies, extracts, or other reproductions, and all materials prepared by the receiving Party based upon the disclosing Party's Evaluation Material. Upon written request by the other Party, destruction of Evaluation Material will be certified in writing.
8. Judicial Disclosures. If either Party is requested or required by any subpoena or other validly issued administrative or judicial process to disclose any of the other Party's Evaluation Material, the Party receiving such request or demand will promptly notify the other Party and tender to it the defense of that demand. The Party receiving such request of demand will cooperate with the other Party (at the other Party's expense) in the defense of a demand.
9. Successors and Assigns. This NDA is and will be binding upon and inure to the benefit of the Parties and each of their respective affiliates, heirs, successors, representatives, agents, and assigns.
10. Injunctive Relief. The Parties understand and agree that money damages would not be a sufficient remedy for any breach of this NDA. Therefore the Party disclosing Evaluation Material will be entitled to a restraining order, injunction or other equitable relief, in addition to any other rights or remedies at law or in equity otherwise available to the disclosing Party, if the Party receiving the Evaluation Material breaches its obligations under this NDA.
11. Severability. If any court of competent jurisdiction adjudges any clause, sentence or provision of this NDA to be invalid, illegal, or otherwise unenforceable, such judgment will not affect, impair, or invalidate the remainder of this NDA.
12. Entire Agreement. This NDA constitutes the entire agreement between the Parties with respect to the Transaction and the confidentiality and nondisclosure obligations discussed herein and may not be modified or amended other than by a written instrument duly executed by both Parties.

13. Governing Law. This NDA and the rights and obligations of the Parties hereunder will be governed by and interpreted in accordance with the laws of the State of Massachusetts, without regard to its conflicts of laws principles.

IN WITNESS WHEREOF the Parties have caused this NDA to be signed by their respective officers and confirm that the parties executing this agreement have full authority to bind their respective entities, by way of the signatures provided herein as of the day and year first written above.

\_\_\_\_\_ **Triple S Holdings, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_