



# Mackay Research Group

4494 Coolidge Place, Boulder, Colorado 80303  
(720) 890-4255 Fax (720) 890-8719 www.mackayresearchgroup.com

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

1. This Confidentiality and Non-Disclosure Agreement is entered into on \_\_\_\_\_, 20\_\_, between Mackay Research Group, Inc. ("Mackay") and the person (entity or individual) shown on the signature line below ("Company"), for good and adequate consideration.
2. Engagement. Mackay has been engaged by NAFCD to provide consolidated industry information to members of its trade association ("Association) who subscribe to it (the "Engagement"). As part of that engagement Company will be providing financial and operating information about the Company that it considers confidential, in the format provided by Mackay (the "Confidential Information"). Such information will be used in the preparation of reports and presentations that set forth consolidated information, but do not identify the specific information provided by the Company. That consolidated information is not considered Confidential Information under this Agreement. All confidential information will only be disclosed as consolidated which is defined as a sample set consisting of four (4) or more NAFCD respondents, as to not single out any one company for comparison purposes.
3. Confidentiality. Mackay will not disclose to others Confidential Information of Company except to its employees, and to contractors, if any, that Mackay engages to perform work directly related to the Engagement and with which Mackay has a confidentiality agreement similar in scope to this Agreement. NAFCD officers, board of directors or general members as well as Smith Bucklin officers, board of directors or employees will not be considered as Mackay employees or contractors, or be given Confidential Information. Mackay is free to use information which is generally known in the trade or industry not as a result of a breach of this Agreement. The Company will mark Confidential Information "confidential". Confidential Information does not include information that (a) was in Mackay's possession before receipt from the Company; (b) is in or enters the public domain without a breach of this Agreement; or (c) is rightfully received by Mackay from a third party without a duty of confidentiality.
4. Without by implication expanding the definition of Confidential Information, Company understands Mackay will inform the Association that the Company participated in the project and Mackay is not responsible for the disclosure of the consolidated information by any recipient under the Engagement or a later engagement involving the Association or its successor that utilizes the information for historical purposes.
5. Survival, Law, Other. This Agreement survives termination of the Engagement. The law of Colorado will apply, without application of choice of law principles. This Agreement is written using concepts in United States of America law, and if the law of another jurisdiction applies, the closest comparable provision of that law will apply in order to accomplish the intent of the parties. This Agreement inures to the benefit of the successors and assigns of the parties. This Agreement may be enforce by injunctive relief and specific performance. Any action to enforce this Agreement will be brought and conducted solely in the federal and state courts located in Boulder or Denver, Colorado.
6. Notices. Notice under this Agreement shall be sent to the email address or physical address written below.

MACKAY RESEARCH GROUP, INC.

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

Email: \_\_\_\_\_

Address: \_\_\_\_\_

COMPANY

Name of Company: \_\_\_\_\_

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

Email: \_\_\_\_\_

Address: \_\_\_\_\_