

Note: microsoft word version available upon request to [mercatone@simmons-simmons.com](mailto:mercatone@simmons-simmons.com)

## CONFIDENTIALITY AGREEMENT

### Between

M. Estate S.p.A. in Amministrazione Straordinaria, Mercatone Uno Services S.p.A. in Amministrazione Straordinaria, M. Business S.r.l. in Amministrazione Straordinaria, Mercatone Uno Finance S.r.l. in Amministrazione Straordinaria, Mercatone Uno Logistics S.r.l. in Amministrazione Straordinaria, M. Uno Trading S.r.l. in Amministrazione Straordinaria, all companies incorporated under the laws of Italy with registered office at Imola (Bo), 9/C via Molino Rosso, (the “**Companies**”) for the purpose hereof represented by Avv. Stefano Coen, Dott. Ermanno Sgaravato e Prof. Dott. Vincenzo Tassinari in their capacities as Extraordinary Commissioners;

### and

[●], a company incorporated under the laws of [●], share capital [●], with registered office at [●], for the purpose hereof represented by [●], in its capacity as [●] (hereinafter, the “**Interested Subject**”)

(hereinafter, the Companies and the Interested Subject, jointly, the “**Parties**” and each a “**Party**”)

### Whereas

- (A) The Companies operate in the non-food retail sector in Italy;
- (B) On April 7, 2015, the Companies were admitted to the insolvency proceeding of *Amministrazione Straordinaria* pursuant to article 2, paragraph 2, of the Italian Law Decree No. 347 dated December 23, 2003, as amended by the Italian Law No. 39 dated February 18, 2004 (“**Legge Marzano**”) and Avv. Stefano Coen, Dott. Ermanno Sgaravato and Prof. Dott. Vincenzo Tassinari were appointed as Extraordinary Commissioners (the “**Extraordinary Commissioners**” or the “**Commissioners**”);
- (C) On April 8-10, 2015, the Court of Bologna - Bankruptcy Section - assessed and declared the insolvency of the Companies pursuant to article 4, Paragraph 1, of the Legge Marzano;
- (D) In May 2015, the Commissioners published a first invitation to express interest in the business units and the other assets of the Companies;
- (E) On October 5, 2015, the Commissioners filed to the Italian Ministry of the Economic Development (“**Ministry**”), in accordance with article 4, paragraph 2, of the Legge Marzano, the programme of the Companies pursuant to Article 54 of the Italian Legislative Decree No. 270/99 in line with article 27, paragraph 2, lett. a) of the Italian Legislative Decree No. 270/99 (the “**Programme**”). On January 14, 2016, the Ministry, considering the opinion of the Supervisory Committee (*Comitato di Sorveglianza*), authorised the Programme;
- (F) On June 7, 2016, the Ministry authorised the sale of the business assets of the Companies;

- (G) The Interested Subject has required to obtain information regarding the Companies and has agreed to keep such information confidential according to the terms and conditions hereinafter provided for;

**In light of the above, the Parties convene and agree as follows**

1. **Recitals**

- 1.1 Recitals are integral and substantial part of this agreement.

2. **Definitions**

- 2.1 In addition to the terms and expressions defined in other section of this agreement (as defined below), the following terms shall have the meaning set forth below:

- (A) **“Agreement”** means this confidentiality agreement, including recitals which are integral and substantial part of it.
- (B) **“Affiliate”** means any company or any other legal entity which, directly or indirectly, is participated by and/or controlled by and/or controls, and/or is subject to common control by the same controlling entity of a Party, it being understood that “control” shall have the meaning provided for by section 2359 of the Italian Civil Code.
- (C) **“Confidential Information”** means any single information, data, document, whether communicated verbally, in writing or by any other means or otherwise made available to the Interested Subject and/or to its Related Parties (as defined below) and irrespective of such information being marked as “confidential”, which regards to the Companies and/or their Affiliates, including, but not limited to, any information concerning their intellectual property rights of the Companies and/or their Affiliates, whether registrable or not, including the relevant business and commercial know-how and records, their industrial and/or financial plans, their commercial, accounting, legal and financial information.
- (D) **“Related Parties”** means any Affiliate as well as any director, member of corporate body, manager, employee, advisor, financial and/or business partner of the Interested Subject and/or of any of its Affiliates.

3. **Confidentiality obligations**

- 3.1 By this Agreement, the Interested Subject acknowledges and agrees that the Confidential Information is the exclusive property of the Companies and/or their Affiliates and, at the same time, undertakes:

- (A) to keep the Confidential Information as strictly reserved and confidential;
- (B) to adopt, at its exclusive expenses, any necessary measure for the purpose of preserving the property and confidentiality of the

Confidential Information in favour of the Companies and/or their Affiliates;

- (C) to use the Confidential Information only for the purpose of the due diligence activity; and
  - (D) not to use the Confidential Information for any purpose other than as set forth in letter (C) above.
- 3.2 The provisions of section 3.1 above shall not prevent the Interested Subject from transferring the Confidential Information to its Related Parties to the extent strictly necessary for the due diligence activity. The Interested Subject shall ensure that all its Related Parties treat the Confidential Information as strictly confidential and not disclose or otherwise divulgate it to third parties. For the purposes hereof, the Interested Subject shall ensure that its Related Parties be duly informed in advance of the requirement of confidentiality by which they are bound under the terms herein and accept in writing such obligations, being the Interested Subject liable for any violation to the confidentiality undertakings herein also on part of its Related Parties.
- 3.3 The Interested Subject duly notes and hereby accepts that:
- (A) none of the Confidential Information or the other information of which it may come into possession may be treated or interpreted as a representation or warranty, express or implied, by the Companies and/or their Affiliates; and
  - (B) neither the Interested Subject nor any of its Related Parties is entitled to rely on the accuracy or completeness of the Confidential Information.
- 3.4 The confidentiality obligations herein shall not apply to the Confidential Information which:
- (A) is, at the time of disclosure to the Interested Subject, already in public domain or lawfully in possession of the Interested Subject; or
  - (B) becomes known to the Interested Subject through no breach of this Agreement.
- 3.5 In the event that the Interested Subject is no longer intentioned to carry on the due diligence activities, it shall return to the Companies and/or their Affiliates (at the request of any of these) all the material and documents of which it has come into possession, without making and/or keeping any copies thereof. Notwithstanding the above restitution of material and documents, the Interested Subject shall remain (and shall cause its Related Parties to remain) bound by the terms of this Agreement.
- 3.6 Should the Interested Subject be obliged to disclose any Confidential Information to third parties as a result either of legal and/or regulatory requirements or following a legitimate request by the competent authorities, it shall inform without delay the Companies and/or their Affiliates of such circumstance before the Confidential Information is disclosed, transmitted, divulgated to any other third party or otherwise made public.

4. **No solicitation - no interferences with suppliers, landlords and litigation counterparts**

- 4.1 Unless otherwise agreed in writing between the Parties, the Interested Subject undertakes not to contact, solicit, hire or however engage, for any reason, directly or indirectly, any manager, employee or other consultant of the Companies and/or their Affiliates, regardless of the legal nature of the relevant working relationship, without the prior written consent of the Companies and/or their Affiliates. Moreover, for any violation of the provisions of this clause in respect of the hiring of any manager (*dirigente*) or any point-of-sale director (*direttore punto di vendita*) of the Companies, the Interested Subject shall pay the Companies liquidated damages in the amount of Euro 2,000,000.00 (*two millions*).
- 4.2 Unless otherwise agreed in writing between the Parties, the Interested Subject shall not, directly or indirectly, and regardless of any damages for any of the Companies, interfere or disturb in any way the relationships with the Companies' suppliers and landlords, and it shall not contact, in any manner whatsoever, any litigation counterpart of any of the Companies. For any violation of this provision the Interested Subject shall pay the Companies liquidated damages in the amount of Euro 5,000,000.00 (*five millions*).
- 4.3 The Interested Subject further undertakes to ensure that all its Related Parties respect the above obligations. The Interested Subject acknowledges that failure in respecting such obligations (including those obligations on part of its Related Parties) shall be deemed to constitute, *inter alia*, unfair business practice with all associated consequences.

5. **Duration**

- 5.1 This Agreement shall be valid and binding upon the Parties as of its signing date and it shall remain in force for 24 months from the signing date.

6. **Notices**

- 6.1 By executing this Agreement, the Companies appoint M. Business S.r.l. as their special attorney in order to be represented in all relevant relationships and communications.
- 6.2 All notices, documents or requests under this Agreement shall be made in writing and, except otherwise provided for, shall be made by registered mail and, in any case, anticipated by e-mail at the following addresses of the Parties:

(A) if to the Companies:

**M. Business S.r.l. in Amministrazione Straordinaria**

To the attention of the Extraordinary Commissioners  
Avv. Stefano Coen  
Dott. Ermanno Sgaravato  
Prof. Dott. Vincenzo Tassinari  
c/o  
Studio Legale Associato  
In Associazione con Simmons & Simmons LLP

C.so Vittorio Emanuele II, n. 1  
20122 Milano

anticipated via e-mail to:  
[mercatone@simmons-simmons.com](mailto:mercatone@simmons-simmons.com)

(B) if to the Interested Subject:

Mailing address:

[●]

E-mail: [●]

To the attention of: [●]

7. **Miscellaneous**

7.1 This Agreement may not be amended or modified except by written instrument, signed by the Parties. This Agreement binds the Parties as well as their relevant successors and assignees.

7.2 The Parties do expressly refer to the Italian Civil Code and, in any case, to the applicable Italian laws for any matter not expressly governed by this Agreement. Any reference to any Party causing or ensuring the fulfilment of an obligation by a third party shall be construed as reference to section 1381 of the Italian Civil Code.

7.3 The possible tolerance by one of the Parties to the behaviour of the other Party involving a breach of the terms and conditions of this Agreement shall not be deemed as a waiver of any right whatsoever and/or of the right to claim for the exact fulfilment of all the terms and conditions of this Agreement.

8. **Governing law and exclusive jurisdiction**

8.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the Republic of Italy, excluding its conflicts of laws rules.

8.2 All disputes relating to the interpretation, fulfilment of obligations, breach of terms and conditions, resolution or execution of this Agreement or otherwise arising in connection to the same, that may not be amicably resolved by the Parties, shall be devolved to the exclusive jurisdiction of the Court of Bologna (Italy).

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*[Reminder of page left intentionally blank]*

M. ESTATE S.p.A. in A.S.  
MERCATONE UNO SERVICES S.p.A. in A.S.  
M. BUSINESS S.r.l. in A.S.  
MERCATONE UNO FINANCE S.r.l. in A.S.  
MERCATONE UNO LOGISTICS S.r.l. in A.S.  
M. UNO TRADING S.r.l. in A.S.

*Date*

\_\_\_\_\_

Avv. Stefano Coen          Dott. Ermanno Sgaravato          Prof. Dott. Vincenzo Tassinari

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THE INTERESTED SUBJECT

*Date*

\_\_\_\_\_

Signature (with indication of the signatory)

\_\_\_\_\_

Subject to section 1341 of the Italian Civil Code, the Interested Subject acknowledges and expressly declares to specifically approve the following clauses: section 3 (Confidentiality obligations); section 4 (No solicitation – no interferences with suppliers, landlords and litigation counterparts); section 5 (Duration); section 8 (Governing law and exclusive jurisdiction).

THE INTERESTED SUBJECT

Signature (with indication of the signatory)

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