

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

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

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is made and entered into by and between \_\_\_\_\_ (the "Company"), and Trivest Partners Corporation, including its subsidiaries and affiliates ("Recipient"). The Company and Recipient may sometimes, collectively, be referred to herein as the "Parties", and individually as a "Party."

WHEREAS, Recipient is considering the possible acquisition of the Company's business (directly or indirectly, by way of a sale of assets, sale of equity securities, merger, or otherwise), and in connection therewith, Recipient has requested from the Company access to certain non-public, confidential or proprietary information of the Company in connection with a possible transaction with or involving the business of the Company (the "Possible Transaction"); and

WHEREAS, the Company is willing to disclose such information to Recipient, while protecting and preserving its confidentiality.

NOW, THEREFORE, as a condition to Recipient being furnished such confidential information by or on behalf of the Company, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. Standard of Care; Restrictions on Use and Disclosure. Recipient agrees to treat such confidential information that is to be, or has been, furnished (collectively referred to herein as the "Evaluation Material") in accordance with the provisions of this Agreement, and to take or refrain from taking certain other actions herein set forth. Unless otherwise authorized in writing, Recipient will keep Evaluation Material confidential and secret, will not use such information in any way detrimental to the Company, will use such information for the sole purpose of evaluation, negotiation, and consummation of a Possible Transaction, and will not disclose, publish or disseminate any Evaluation Material to anyone other than its equityholders, directors, officers, employees, consultants, agents, legal counsel, accountants, lenders and financing sources, and other professional advisors and representatives (those persons to whom the Evaluation Material has been or hereafter is provided, collectively, the "Representatives") who (i) have a good faith need to know such information for the purpose of evaluating a Possible Transaction, (ii) agree to keep such information confidential, and (iii) agree to be bound by the terms of this Agreement to the same extent as if they were parties hereto. Recipient will ensure compliance by its Representatives of this Agreement, and will use commercially reasonable efforts to avoid any unauthorized publication, dissemination or reproduction of the Evaluation Material, as it would with respect to its own confidential and proprietary information. Recipient will be responsible for any breach of this Agreement by its Representatives; provided, however, that Recipient will not be responsible for any breach of this Agreement by those Representatives who execute their own confidentiality agreement with the Company, or who have agreed to be bound by the confidentiality provisions of this Agreement by executing a joinder to this Agreement between the Recipient and the Company.

The term *Representatives*, as it relates to Recipient, shall not include, and no provision of this Agreement shall be applicable to Recipient's affiliates or portfolio companies who have not received any Evaluation Material and are not aware of a Possible Transaction. For the avoidance of doubt, (a) Recipient's affiliates, portfolio companies and affiliated funds shall not be bound or in any way restricted by this Agreement unless they receive Evaluation Material; and (b) certain of Recipient's Representatives may serve as directors or officers of portfolio companies managed by Recipient ("Dual Hat Employees"), and such portfolio companies shall not be deemed to have been provided with Evaluation Material and, thus, shall not be restricted by the obligations under this Agreement solely due to the service of any Dual Hat Employee, so long as such Dual Hat Employee does not provide any Evaluation Material to personnel of such portfolio company (excluding other Dual Hat Employees).

2. Exceptions. *Evaluation Material* shall not include, and this Agreement shall not impose any obligation upon Recipient with respect to, information that (a) was known and lawfully in Recipient's or any of its Representatives' possession prior to having received it from the Company, (b) is now or subsequently becomes generally available to the public, other than as a result of an unauthorized disclosure by Recipient or its Representatives in violation of the terms of this Agreement, (c) was independently developed by or on behalf of Recipient or its Representatives without any use of or reference to the Company's Evaluation Material, (d) is received or becomes available to Recipient on a non-confidential basis from a third party source, provided such source is not known by Recipient to be bound by a confidentiality agreement or other obligation of secrecy to the Company or other person/entity, (e) is disclosed with the prior written consent of the Company, or (f) is legally compelled to be disclosed.

3. Required Disclosures. In the event that Recipient or any of its Representatives is required by law, regulatory authority or other applicable judicial or governmental order to disclose Evaluation Material, Recipient agrees to use commercially reasonable efforts to, and to the extent practicable and permitted by law, notify the Company of the existence, terms and circumstances surrounding such request or requirement so that the Company may seek an appropriate protective order, or other appropriate remedy. In the absence of a protective order, Recipient may disclose all or part of the Evaluation Material, without liability to the Company. Recipient or its Representatives will, nonetheless, upon the advice of legal counsel, disclose only that portion of the Evaluation Material that is legally required to be disclosed, will, upon Company's request, exercise commercially reasonable efforts to preserve confidentiality of the Evaluation Material, and will reasonably cooperate with the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to such Evaluation Material, in each case at the Company's sole cost and expense. Notwithstanding the foregoing, no such notice will be required with respect to disclosures to regulatory authorities having jurisdiction over Recipient in connection with routine regulatory examinations, unless such regulatory requests are specifically targeted at the Company or the Evaluation Material.

4. Return of Evaluation Material. As soon as practicable upon the Company's written request, Recipient will destroy all physical and written Evaluation Material received from or on behalf of the Company; provided, however, that Recipient and its Representatives shall be entitled to retain and keep Evaluation Material to the extent that such retention is required in order to demonstrate compliance with applicable law, regulatory authorities, Recipient's established internal document retention policies, or to bring or defend litigation. Nothing herein shall require the destruction, deletion or modification of electronically stored information contained in automated archival computer back-up systems or other media where it would be impractical to delete or destroy such information from servers or other storage devices, or that is in accordance with Recipient's security and/or disaster recovery procedures, or is in the ordinary course of business of safeguarding Recipient's data.

5. Miscellaneous. Notwithstanding any other provision in this Agreement, the Company understands and acknowledges that Recipient is a private equity investor engaged in the business of evaluating, making, and managing investments in businesses and acquiring businesses, and it is possible that one or more of those businesses are or may in the future be competitive with the Company in some way (e.g., providing products and services) and, consequently, may currently or in the future be developing information internally or receiving information from other parties that is similar to the Evaluation Material of the Company. Accordingly, nothing in this Agreement will be construed as a representation or agreement that restricts Recipient from investing in or acquiring any such businesses, or that restricts such businesses from competing with the Company, or not developing or have developed products, concepts, systems, or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Evaluation Material; provided that such businesses or development do not use Evaluation Material to do so, in violation any of obligations under this Agreement. In addition, Recipient's discussions with the Company and the review of Evaluation Material will inevitably serve to give Recipient increased knowledge and understanding of the Company's industry and business in a way that cannot be reasonably expected to be forgotten or separated from Recipient's overall knowledge base, even after the destruction of Evaluation Material. Accordingly, without in any way limiting Recipient's obligations under this Agreement not to disclose Evaluation Material to third parties or to destroy Evaluation Material in accordance with this Agreement, Recipient will not be deemed to be in breach of this Agreement by reason of remembering, retaining and using in its business such increased knowledge. Recipient acknowledges that the Evaluation Material may still be under development or may be incomplete.

The Parties understand that entering into this Agreement in no way creates any obligation to enter into any transaction. Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall be deemed a commitment to engage in any partnership, agency, joint venture, other business relationship or any contract or future dealing with a Party to this Agreement.

Recipient acknowledges that money damages may not be a sufficient remedy for any breach of this Agreement, and that the Company is entitled to seek specific performance and injunctive or other equitable relief. Such remedies will not be deemed to be the exclusive remedy, but will be in addition to all other remedies available at law or in equity to the Company. The Company acknowledges and agrees that in no event shall it be entitled to recover any special, punitive and/or consequential damages related to any breach hereunder. In any controversy arising under or relating to the interpretation or implementation of this Agreement or any breach thereof, the prevailing party shall be entitled to payment of all costs and attorneys' fees (both trial and appellate) incurred in connection therewith.

This Agreement will be governed by and construed in accordance with the laws of the State of Florida.

This Agreement will terminate upon the second anniversary of the date first written above.

An electronic copy of this Agreement shall have the same legal effect as an original. This Agreement may be executed in one or more counterparts, and each person executing this Agreement on behalf of such party hereto represents that such execution is made with full authority and that such party is bound by the terms hereof.

The undersigned have executed this Agreement effective as of the date first written above.

**Recipient:**

TRIVEST PARTNERS CORPORATION

By: \_\_\_\_\_  
David Gershman  
Managing Partner & General Counsel

Address:

Trivest Partners Corporation  
2811 Ponce de Leon Blvd, Suite 400  
Coral Gables, FL 33134

**Company:**

\_\_\_\_\_

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

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