



CONFIDENTIALITY AND NONCOMPETITION AGREEMENT

THIS CONFIDENTIALITY AND NONCOMPETITION AGREEMENT the (“Agreement”) is made and entered into as of this _____ day of _____, _____ by and between _____ with its principal office at _____, (the “Company”) and _____ with its principal office at _____ (the “Counterparty”)

WHEREAS, the Counterparty and the Company are contemplating a possible transaction (the "Transaction") with respect to an investment opportunity. The Company plans to furnish to the Counterparty, certain information in connection with the Transaction, said information may involve financial statements, know how, investment opportunities, equity investment opportunities, debt instruments, lending and financing opportunities and combinations of known information (collectively, the "Confidential Information") in connection with undertaking discussions possibly leading to a business relationship between the Company and the Counterparty under which the Counterparty would use and implement the Confidential Information (the "Business Relationship") to execute a Transaction being presented by the Company to the Counterparty; and

WHEREAS, the Counterparty acknowledges that the disclosure, dissemination or unauthorized use of the Confidential Information by the Counterparty, its officers, directors, employees, agents, affiliates, subsidiaries, or any third party (collectively, the "Others") would be harmful to the potential domestic and foreign intellectual property rights and legitimate business interests of the Company; and

WHEREAS, the Company is willing to disclose the Confidential Information to the Counterparty, provided that the Counterparty signs this agreement covenanting not to disclose or use the Confidential Information or circumvent the Company's rights to such Confidential Information; and

WHEREAS, in connection with the foregoing, the Company and the Counterparty desire to set forth in writing the terms and conditions of their agreement and their understandings relating to such Confidential Information.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Page 1 of 6

Agreement

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the parties hereby agree as follows:

1. Confidential Information and Competition.

(a) Confidential Information. The Counterparty hereby acknowledges that he will or may be making use of, acquiring and adding to confidential information of a special and unique nature and value affecting and relating to the Company and its respective operations, including, but not limited to, its respective businesses, the identities of its respective customers and suppliers, its respective data base information, prices paid by the Company for services, its respective business practices, marketing strategies, expansion plans, contracts, business records and other records,

trade secrets, inventions, techniques, know-how and technologies, whether or not patentable, and other similar information relating to the Company (all the foregoing regardless of whether same was known to the Counterparty prior to the date hereof is hereinafter also referred to collectively as “Confidential Information”). The Counterparty further recognizes and acknowledges that all Confidential Information is the exclusive property of the Company, is material and confidential, and greatly affects the legitimate business interests, goodwill and effective and successful conduct of the Company’s respective businesses. Accordingly, the Counterparty hereby covenants and agrees that he will use the Confidential Information only for the benefit of the Company and shall not at any time, directly or indirectly, either during the Term of this Agreement or afterward, divulge, reveal or communicate any Confidential Information to any person, firm, corporation or entity whatsoever, or use any Confidential Information for his own benefit or for the benefit of others.

(b) Competition. The Counterparty hereby acknowledges and agrees that the Company would suffer irreparable injury if the Counterparty competes with the Company. As a material inducement to the Company to enter into this Agreement, the Counterparty hereby covenants and agrees that, unless the Company and its respective successors and assigns shall cease to engage in its respective businesses, during the period beginning on the date hereof and continuing until two years following the date of the termination of this Agreement, he shall not:

(i) directly or indirectly, operate, be employed by, provide consulting services to, organize, maintain, establish, manage, own, participate in, or in any manner whatsoever, individually or through any corporation, firm or organization of which he shall be affiliated in any manner whatsoever, have any interest in, whether as owner, operator, partner, stockholder, director, trustee, officer,

lender, employee, principal, agent, consultant or otherwise, any other business or venture which engages in the Company's business or is otherwise in competition with the Company or its respective assigns at the time of the expiration or sooner termination of this Agreement, unless such activity shall have been previously agreed to in writing by the Company and its respective successors and assigns;

(ii) directly or indirectly, divert business from the Company or its respective successors or assigns, or solicit business from, divert the business of, or attempt to convert to other methods of using the same or similar services as are provided by the Company, or any client or account of the Company; or

(iii) directly or indirectly, solicit for employment, employ or otherwise engage the services of, any employees or consultants of the Company or its respective successors or assigns.

(c) Reasonableness of Restrictions. The Counterparty has carefully read and considered the provisions of Sections 1 (a) and (b) hereof and, having done so, agrees that the covenants set forth in those Sections are fair and reasonable and are reasonably required to protect the legitimate business interests of the Company. The Counterparty agrees that the covenants set forth in Sections 1 (a) and (b) hereof do not unreasonably impair the ability of the Counterparty to conduct any unrelated business or to find gainful work in his field. The parties hereto agree that if a court of competent jurisdiction holds any of the covenants set forth in Sections 1 (a) and (b) unenforceable, the court shall substitute an enforceable covenant that preserves, to the maximum lawful extent, the scope, duration and all other aspects of the covenants deemed unenforceable, and that the covenant substituted by the



court shall be immediately enforceable against the Counterparty. The foregoing shall not be deemed to affect the right of the parties

hereto to appeal any decision by a court concerning this Agreement.

(d) Survival. This Section 1 shall survive the termination of this Agreement and the Business Relationship hereunder. The Counterparty acknowledges and agrees that the provisions of this Section 1 are specifically intended by both the Company and the Counterparty to benefit, and be enforceable by, not only the Company, but also the Company's respective successors and assigns.

2. Non-Circumvention and Remedies

(a) Non-Circumvention. The Counterparty acknowledges and agrees that the Company would suffer irreparable injury if the Counterparty were to circumvent its obligations under this Agreement. As a material inducement to the Company to disclose the Confidential Information to the Counterparty, the Counterparty hereby covenants and agrees for itself and the Others that during the period beginning on the date hereof and continuing for three (3) years following the latter to occur of the date that either party gives written notice to the other of termination of the Business Relationship or negotiations relating thereto and the return to the Company of all Proprietary Information disclosed to the Counterparty, the Counterparty shall not directly or indirectly divert business from the Company or its successors or assigns relating to the making, using or selling of systems or products embodying the Confidential Information or participate, solicit, initiate, or encourage dealings with any third party with regard to the making, using or selling of the Confidential Information or



systems or products embodying same without the prior written consent and participation of the Company, and shall not in any way directly or indirectly circumvent the Counterparty's obligations to the Company, or the Company's rights to the Confidential

Information under this Agreement.

(b) Remedies. In the event of a breach or threatened breach of the obligations hereunder by the Counterparty, the Company, in addition to and not in limitation of any other rights, remedies or damages available to the Company at law or in equity, shall be entitled to a permanent injunction in order to prevent or restrain any such breach or threatened breach by the Counterparty.

3. Miscellaneous

(a) Choice of Law. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Florida, without giving effect to the application of the principles relating to conflicts of law.

(b) Jurisdiction and Venue. Any suit, action or proceeding with respect to this Agreement shall be brought in the courts of Miami-Dade County in the State of Florida or in the U.S. District Court for the Southern District of Florida. The parties hereto hereby accept the exclusive jurisdiction of those courts for the purpose of any such suit, action or proceeding. Venue for any such action will be Miami-Dade County, Florida. The parties hereto hereby irrevocably waive, to the fullest extent permitted by law, any objection that any of them may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in Miami-Dade County, Florida, and hereby further irrevocably waive any claim that any suit, action or proceeding brought in Miami-Dade County, Florida, has been brought in an inconvenient forum.



(c) Headings. The section and subsection headings used herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

(d) Notices. Any and all notices or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Agreement shall be deemed to have been duly given or made for all purposes if sent by certified or registered mail, return receipt requested and postage prepaid, overnight courier, Express Mail, hand delivered or sent by facsimile with receipt confirmed as follows:

Company:

Counterparty:

Or at such other address as any party may specify by notice given to the other parties in accordance with this Section 4(d). The date of giving of any such notice shall be the date of the actual receipt thereof.

(e) Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, heirs and personal representatives; provided, however, that no party assign any of its or his rights or delegate any of its or his duties under this Agreement without the prior written consent of the other parties, except that the Company may assign this Agreement in connection with a sale of all, or substantially all, its assets, and the Counterparty may assign this Agreement to Counterparty Parent, Affiliate or Subsidiary.

(f) Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(g) Amendments. This Agreement may not be amended or modified orally, but only by an agreement in writing signed by each party hereto.

(h) No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly so provided.

(i) Severability. The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties. If such invalidity is caused by duration, geographic scope or both, the otherwise invalid provision will be considered to be reduced to a period or area which would cure such invalidity.



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

COMPANY:

By: _____

Name Title: _____

COUNTERPARTY:

By: _____

Name Title: _____