**MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

This **Mutual Non-Disclosure and Confidentiality Agreement** (the “**Agreement**”) is entered into as of **Enter Date** (the “**Effective Date**”), by and between **Enter Counterparty’s Full Legal Name here**, with an office at **Enter Counterparty’s Address here** (“**Company**”), and **Choose Discover Entity**, together with its Affiliates (“**Discover**”), with an office at 2500 Lake Cook Road, Riverwoods, Illinois, 60015.

**WHEREAS**, Discover and Company (each, a “**Party**”) wish to protect the Confidential Information they might exchange.

**NOW, THEREFORE**, the Parties agree as follows:

1. **DEFINITIONS.**

When used in this Agreement:

* 1. “**Affiliate**” means, with respect to a Person, another Person that Controls, is Controlled by, or is under common Control with the first Person.
	2. “**Confidential Information**” means: (a) all information related to the business of Discloser, including all information related to its Representatives, clients, counterparties, or other relationships, that Receiver or its Representatives has had or will have access to during the term of this Agreement; (b) all information derived from the information described in (a); and (c) the terms and existence of this Agreement.
	3. “**Control**” means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, or operations of a Person, whether through ownership of voting securities, by contract, or otherwise.
	4. “**Discloser**” means the Party whose information has been accessed by Receiver.
	5. “**Intellectual Property**” means all: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and internet domain names; (c) copyrights and copyrightable works; (d) Trade Secrets and know-how; (e) rights of publicity and moral rights; (f) unregistered and registered design rights; (g) any application for or registration of the rights described in (a)–(f); and (h) database rights and all other forms of intellectual property, such as data.
	6. “**Legal Requirement**” means an applicable subpoena, court order, statute, law, rule, regulation, executive order, or other similar requirement.
	7. “**NPI**” has the meaning ascribed to “Nonpublic Personal Information” in Title V of the Gramm-Leach-Bliley Act of 1999, as it relates to Discloser or its Affiliates’ “Consumers” (as defined in the statute).
	8. “**Person**” means any individual, partnership, limited liability company, corporation, association, joint stock company, trust, entity, joint venture, labor organization, unincorporated organization or governmental authority.
	9. “**Receiver**” means the Party that has accessed Discloser’s information.
	10. “**Representatives**” means, with regard to a Party, its Affiliates, and its and their respective officers, directors, employees, consultants, attorneys, accountants, agents, contractors, subcontractors, and other representatives.
	11. “**Trade Secret**” has the meaning ascribed to it in the Uniform Trade Secrets Act.
1. **CONFIDENTIAL INFORMATION**
	1. Restrictions. Receiver will keep all Confidential Information confidential, but may disclose Confidential Information to its Representatives with a need to know the Confidential Information. Receiver must cause its Representatives to comply with this Agreement and will assume full responsibility if its Representatives violate this Agreement. Receiver will not disclose Confidential Information to any other Person (other than its Representatives) without Discloser’s prior written permission, and will ensure any Person that it discloses Confidential Information to has a contractual obligation to keep the Confidential Information confidential. Receiver will only use Confidential Information for the purpose of considering or conducting business with Discloser.
	2. Information Security Program. Receiver will maintain an industry-standard information security program that includes commercially reasonable practices and controls (such as reasonable encryption, access controls, and periodic testing) and will apply such program, as applicable, to protect Discloser’s Confidential Information. ***This Section 2.2 will survive any termination or direct or indirect modification of this Agreement (whether in connection with a definitive agreement regarding an arrangement being contemplated by the Parties hereunder or otherwise), other than a written agreement that makes specific reference to this provision and states that it amends, modifies or terminates this provision, it being understood and agreed that the existence of this provision shall not excuse a Party from complying with a more specific and/or onerous obligation than that which is contained herein.***
	3. Non-Public Personal Information. **No NPI is to be shared under this Agreement.** However, if Receiver gains access to Discloser’s NPI, Receiver must promptly notify Discloser and, unless Discloser instructs Receiver in writing that it may retain such NPI, Receiver immediately will return or destroy the NPI in a secure manner, at the direction of Discloser. ***The terms of this Section 2.3 apply notwithstanding anything to the contrary in this Agreement and will survive the termination of this Agreement***.
	4. Exclusions. Receiver will not be prohibited by this Agreement from using or disclosing information that: (a) is obtained from the public domain without breaching this Agreement; (b) was lawfully and demonstrably in its possession before the Confidential Information was received from Discloser; (c) is independently developed without using or referencing Discloser’s Confidential Information; or (d) is learned from another Person that is not subject to a confidentiality obligation.
	5. Return; Destruction. At any time, including after termination of this Agreement, Discloser may demand in writing that Receiver return or destroy Discloser’s Confidential Information under its control. Receiver shall comply with this request within 30 days and certify in writing that it has returned or destroyed all Confidential Information. Receiver may keep an archival set of its working papers and copies of Discloser’s Confidential Information as necessary to comply with applicable laws, regulations, and professional standards if the materials are retained and destroyed in accordance with this Agreement.
2. **LEGAL REQUIREMENTS**

If Receiver is asked to provide Discloser’s Confidential Information under a Legal Requirement, Receiver will, to the extent not precluded by law, promptly notify Discloser of the request so Discloser may seek a protective order or other remedy. If Discloser does not successfully obtain a remedy and Receiver is, in its counsel’s reasonable opinion, legally compelled to disclose the Confidential Information, Receiver may disclose Confidential Information to the extent necessary to comply with the Legal Requirement. Notwithstanding anything to the contrary in this Agreement, if Receiver’s federal or state governmental regulators, examiners, or auditors request Discloser’s Confidential Information, Receiver may comply with the request without notifying Discloser.

1. **NOTICE**

If Receiver has reason to believe that Discloser’s Confidential Information has been accessed by an unauthorized party, Receiver will promptly notify Discloser.

1. **NO PUBLICITY**

The Parties agree not to disclose the existence of their relationship under this Agreement or the identity of the other Party or its Representatives as a customer or prospective customer.

1. **TERM**

Each Party’s obligations set forth in Sections 2.2, 2.3, 2.5, 5 shall be perpetual. Receiver will keep Discloser’s Trade Secrets confidential until one of the exclusions in Section 2.4 is met. Each Party’s other obligations under this Agreement will end upon the earlier of: (i) three years after the Parties’ business discussions terminate; or (ii) the Parties execute a written agreement expressly superseding this Agreement.

1. **OWNERSHIP; NO WARRANTIES**

Discloser shall retain all interest in its Confidential Information and Intellectual Property. This Agreement only grants the right to use Discloser’s Confidential Information in accordance with this Agreement. Unless otherwise agreed to by the Parties, Discloser makes no warranties or representations with respect to any Confidential Information disclosed under this Agreement.

1. **FUTURE DEALINGS**

This Agreement does not obligate either Party purchase anything from or enter into a transaction with the other Party. If Receiver does not use or reference Discloser’s Confidential Information, it may independently develop ideas, products or technology similar to or the same as Discloser’s.

1. **GENERAL**
	1. Governing Law and Jury Trial Waiver. Delaware law governs this Agreement and all proceedings arising out of it, without regard to its choice of laws principles. **THE PARTIES UNCONDITIONALLY WAIVE THEIR RIGHTS TO A JURY TRIAL FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT.**
	2. Waiver. If a Party delays enforcing its rights under this Agreement that does not mean the Party has waived its rights.
	3. Severability. If any provision of this Agreement is held to be unenforceable, that will not affect the remaining provisions of this Agreement. The unenforceable provision shall be replaced by the enforceable provision that is closest to the Parties’ intent underlying the unenforceable provision.
	4. Assignment. Company cannot assign its rights or obligations under this Agreement without the prior written consent of the Discover. Any attempt to do so without consent shall be null and void.
	5. Interpretation. This Agreement should not be construed in favor of or against either Party because of the extent to which it prepared the Agreement. There are no third party beneficiaries to this Agreement.

**Accepted and Agreed:**

**[Do Not Modify]** **[Do Not Modify]**

By: By:

Name: Name:

Title: Title: