

## MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (this "Agreement"), effective as of the date set forth last below, is made by and between the undersigned counter party (the "Counter Party") and TJS (USA) Inc., Boston, MA, USA. In consideration of the mutual agreements and other provisions of this Agreement, the parties hereto agree as follows:

### 1. Scope of Confidential Information.

1.1 "Confidential Information" means, subject to the exceptions set forth in Section 1.2 hereof, any information or data, regardless of whether it is in tangible form, that is disclosed or otherwise made available by a party hereto (the "Disclosing Party") to the other party hereto (the "Receiving Party") and that (a) the Disclosing Party has marked or identified as confidential or proprietary, or (b) the Disclosing Party identifies as confidential in writing within 30 days of disclosure to the Receiving Party; provided, however, that reports and/or information related to or regarding the Disclosing Party's business plans, business methodologies, strategies, technology, specifications, development plans, customers, prospective customers, partners, suppliers, billing records, and products or services shall be deemed Confidential Information of the Disclosing Party even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 1.2 hereof.

1.2 "Confidential Information" shall not include any information that: (a) is or becomes available to the public (other than as a result of disclosure by Receiving Party or its representatives prohibited by this Agreement); (b) is made available to Receiving Party by a third party who is lawfully in possession of such information, and who is not in violation of any confidentiality obligation in favor of Disclosing Party; or (c) the Receiving Party can show by written record was in available to or in possession of Receiving Party (free of any confidentiality obligation in favor of Disclosing Party known to Receiving Party at the time of disclosure or availability) prior to disclosure of such information by Disclosing Party to Receiving Party, provided that the Receiving Party must promptly notify the Disclosing Party of any prior knowledge in the manner provided in Section 2.4 below.

### 2. Use and Disclosure of Confidential Information.

2.1 The Receiving Party shall only use the Confidential Information internally solely for the purpose of evaluating a potential business relationship between the Receiving Party and the Disclosing Party (the "Permitted Purpose"). The Receiving Party must keep secret and shall never, without the prior written consent of the Disclosing Party, directly or indirectly, disclose, publish, divulge, furnish or make accessible to anyone all or any portion of the Confidential Information, other than furnishing such Confidential Information to (a) the Receiving Party's employees who are required to have access to such Confidential Information in connection with the Permitted Purpose, and (b) Receiving Party's professional advisers (e.g., lawyers and

accountants), in each case, during the time that the Receiving Party is permitted to retain such Confidential Information hereunder; provided that any and all such employees are bound by written agreements or, in the case of professional advisers, ethical duties, respecting the Confidential Information in the manner set forth in this Agreement.

2.2 The Receiving Party shall use at least reasonable care and adequate measures to protect the confidentiality of the Confidential Information of the Disclosing Party and to ensure that any Confidential Information of the Disclosing Party is not disclosed or otherwise made available to other persons or used in violation of this Agreement. Without limiting any of the foregoing, such measures shall be at least the equivalent of measures which the Receiving Party uses to protect the Receiving Party's own most valuable proprietary information.

2.3 In the event that the Receiving Party is required by law to make any disclosure of any of the Confidential Information of the Disclosing Party, by subpoena, judicial or administrative order or otherwise, the Receiving Party shall first give written notice of such requirement to the Disclosing Party, and shall permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the Disclosing Party in seeking to obtain such protection.

2.4 The Receiving Party agrees to notify the Disclosing Party promptly in writing if (a) the Receiving Party becomes aware of any breach of this Agreement with respect to the Confidential Information of the Disclosing Party in the Receiving Party's possession; (b) subsequent to disclosure of any Confidential Information by the Disclosing Party, information is disclosed to the Receiving Party in the manner described in Section 1.2; or (c) upon disclosure of Confidential Information by the Disclosing Party, the Receiving Party has prior knowledge of the same.

2.5 The Receiving Party shall not embody any of the Confidential Information of the Disclosing Party in any of the Receiving Party's products, processes or services, or duplicate or exploit any of such Confidential Information in the Receiving Party's business, or file any patent application, utility model or design application based upon, derived from, or disclosing any Confidential Information of the Disclosing Party or otherwise use any of the Confidential Information for any purpose other than for the Permitted Purpose.

**3. Certain Rights and Limitations.**

3.1 All Confidential Information shall remain the property of Disclosing Party. The provision of Confidential Information hereunder shall not transfer any right, title or interest in such information to Receiving Party. Disclosing Party does not grant Receiving Party any express or implied right to or under Disclosing Party's or another party's patents, copyrights, trademarks, trade secret information or other proprietary rights.

3.2 The Receiving Party shall not reverse-engineer, decompile, or disassemble any software, hardware or any other physical devices disclosed to it under this Agreement and shall not remove, overprint or deface any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Confidential Information it obtains from the Disclosing Party.

3.3 This Agreement imposes no obligations on either party to exchange any Confidential Information or to purchase, sell, license, transfer or otherwise transact in any technology, services or products.

3.4 All tangible embodiments of the Confidential Information of the Disclosing Party (e.g., drawings, memoranda and notes) and all copies thereof, whether in hard-copy or machine-readable form and whether supplied by the Disclosing Party or made by or for the Receiving Party (collectively, the "Tangible Embodiments"), shall at all times be and remain the exclusive property of the Disclosing Party.

**4. Remedies.** Receiving Party acknowledges that a breach by it of any of the terms of this Agreement would cause irreparable harm to the Disclosing Party for which Disclosing Party could not be adequately compensated by money damages. Accordingly, Receiving Party agrees that, in addition to all other remedies available to Disclosing Party in an action at law, in the event of any breach or threatened breach by the Receiving Party of the terms of this Agreement, the Disclosing Party shall, without the necessity of proving actual damages or posting any bond or other security, be entitled to temporary and permanent injunctive relief, including, but not limited to, specific performance of the terms of this Agreement.

**5. Non-solicitation and Non-hire.** From and after the date first set forth above and for a period of one year thereafter, each party agrees (a) not to, directly or indirectly, or in concert with others, encourage or seek to influence any officer or employee of the other party to quit or leave employment with the other party, and (b) not to employ or otherwise engage (as employee, consultant, independent

contractor or otherwise) any officer or employee of the other party.

**6. Termination.**

6.1 The Agreement shall continue in force for three years from the signing of this Agreement. Thereafter it can be extended by notice in writing at least thirty days prior to termination.

6.2 Upon the earlier of (a) the termination of this Agreement, (b) Disclosing Party's written request or (c) such time as the Receiving Party no longer requires the Confidential Information for the Permitted Purpose, Receiving Party agrees to promptly return to Disclosing Party or destroy all Confidential Information and any Tangible Embodiments that are in the possession of Receiving Party and to certify the return or destruction of all such Confidential Information and embodiments.

**7. Warranty.** NO WARRANTY IS MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."

**8. Miscellaneous.** This Agreement does not create any agency or partnership relationship between the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the United States of America governing such agreements, without regard to conflicts-of-law principles. The sole and exclusive jurisdiction and venue for any litigation arising out of this Agreement shall be an appropriate court located in Massachusetts, USA, and the parties agree not to raise, and waive, any objections or defenses based upon venue or forum non conveniens. This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral, express or implied. If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, such shall not affect any other provision of this Agreement, which shall remain in full force and effect. No amendment or alteration of the terms of this Agreement shall be effective unless made in writing and executed by both parties hereto. A failure or delay in exercising any right in respect to this Agreement shall not be presumed to operate as a waiver, and a single or partial exercise of any right shall not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right. Any modification or waiver of any provision of this Agreement shall not be effective unless made in writing. Any such waiver shall be effective only in the specific instance and for the purpose given.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed below by their duly authorized signatories.

Company: \_\_\_\_\_

**TJS (USA), Inc.**

By:

By:

\_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_  
Name:  
Title:  
Date:

Address for notices to Counter Party:

Address for notices to TJS: