

Non-Disclosure Agreement

This Non-Disclosure Agreement (the “**Agreement**”) is entered into as of the date set forth in the signature block below, between, on the one hand, the disclosing party (“**Company**”), (whose identity will be disclosed upon Company’s acceptance of this Agreement) and

(“**Prospect**”).

WHEREAS, Company owns and is seeking to close a sale, recapitalization, refinancing and/or a joint-venture (a “**Transaction**”) of its businesses and/or business assets (which shall hereinafter be referred to as the “**Business**”), and

WHEREAS, Company has engaged Keen-Summit Capital Partners LLC (“**Keen**”) to market the Business, in whole or in parts, for a Transaction, and

WHEREAS, Company, for the sole purpose of consummating a Transaction, wishes to disclose to Prospect certain written and/or oral confidential and proprietary information relating to the Business and to engage in confidential discussions pertaining to the prospective Transaction. For purposes of this Agreement, the term “**Confidential Information**” shall include, without limitation,

1. all information, data, reports, analyses, compilations, studies, interpretations, projections, forecasts, records and other materials (whether prepared by the Company or Keen or otherwise and in whatever form maintained, whether documentary, computerized or otherwise) related or pertaining to the Business, including but not limited to its financial statements, customer lists, vendors, H/R information, I/T information, and business processes and procedures,
2. all notes, summaries, or other material derived therefrom, that contain or otherwise reflect information concerning the Business and that are disclosed in the course of Prospect’s evaluation of a possible transaction, and
3. the fact of Prospect’s possible interest in a Transaction, the fact of Prospect’s communications with the Company and/or Keen regarding the Business and/or a Transaction, the possibility of Prospect making a Transaction offer, and/or any and all details regarding the terms and conditions of Prospect’s anticipated Transaction offer, if any, and

Whereas, the parties hereto intend for this Agreement to be binding upon their respective affiliates and each of their respective officers, directors, employees, financial partners, lenders, advisors, attorneys, accountants, consultants, agents and representatives (collectively, “**Representatives**”);

NOW WHEREFORE, Company agrees to disclose, and Prospect agrees to receive and use, such Confidential Information subject to terms and conditions set forth below:

1. Prospect agrees:
 - a. not to use any Confidential Information except for the sole purpose of evaluating the merits of a potential Transaction and the terms thereof;
 - b. to keep confidential and not to disclose any Confidential Information to persons or entities other than its Representatives with a need to know the information contained therein; *provided*, that such Representatives shall be bound by obligations of confidentiality materially the same as the confidentiality and non-use terms of this Agreement, have been informed of the confidential nature of the Confidential Information and are directed to abide by and have agreed to the terms of this Agreement;
 - c. not to disclose: (i) that the Confidential Information has been made available to Prospect; (ii) that Prospect and/or its Representatives have inspected the Business; (iii) that Prospect may be considering a Transaction; (iv) that Prospect and/or its Representatives have had, are having or propose to have any discussions or negotiations with Company with respect to the Business; and/or (v) that Prospect and/or its Representatives are bidding for a Transaction (the foregoing being deemed Confidential Information); and

- d. not to communicate regarding the Confidential Information and/or the Transaction with Company's employees, customers, vendors, secured creditors and/or unsecured creditors without the prior written consent of Company. For the avoidance of doubt, nothing in this Agreement will restrict or preclude the Prospect's or its Representatives' communications in the ordinary course of business unrelated to the Transaction.
2. Confidential Information shall not include any information that:
 - a. is or becomes generally available to the public other than as a result of a disclosure by Prospect or any of its Representatives in violation of this Agreement,
 - b. is already known to Prospect or its Representatives or is already in its or their possession prior to its disclosure to Prospect by the Company or its Representatives,
 - c. becomes available to Prospect from a source other than the Company or its Representatives, provided that such source is not, to Prospect's knowledge after due inquiry, in breach of an obligation of confidentiality to the Company, or
 - d. is independently developed by Prospect or its Representatives without reliance on Confidential Information.
3. Company may elect at any time to terminate further access by Prospect to the Confidential Information. Upon written request by Company, Prospect agrees to promptly destroy or return to the Company, at Prospect's option, all Confidential Information, and to confirm in writing (e-mail being sufficient) that all such material has been either returned or destroyed in compliance with this Agreement. Company and Prospect further acknowledge that no such termination will affect their obligations of Confidentiality hereunder or those of their Representatives, all of which obligations shall continue in effect for the term of this Agreement. Notwithstanding the foregoing:
 - a. Prospect may retain copies of the Confidential Information and such portion of the Confidential Information that:
 - i. are stored on Prospect's information technology backup and/or disaster recovery systems until the ordinary course deletion thereof;
 - ii. may be found in any analyses, compilations, forecasts, studies, projections or other documents prepared by Prospect or its Representatives for Prospect's or its Representatives' files in accordance with such party's respective document retention policies;
 - iii. Prospect is required to maintain in accordance with applicable governmental laws, rules and regulations;
 - iv. Prospect's legal counsel advises in writing Prospect to retain; and/or
 - v. are related or pertain to any dispute relating to or arising out of this Agreement; and
 - b. Prospect shall continue to be bound by the terms and conditions of this Agreement while Prospect retains Confidential Information pursuant to subparagraph (a) above.

4. Notice pursuant to this Agreement shall be deemed given when transmitted via certified mail, return receipt requested or via Federal Express or other recognized standard overnight delivery to:

As to Prospect: _____
Address: _____
Address: _____
Address: _____
ATTN: _____
Telephone: _____
Mobile: _____
Email: _____

If to Company: To Be Disclosed Upon Company's Acceptance of this NDA

Company: _____
Address: _____
Address: _____
ATTN: _____
Telephone: _____
Mobile: _____
Email: _____

With copies to Legal Counsel:

Firm Name: _____
Address: _____
Address: _____
ATTN: _____
Telephone: _____
Mobile: _____
Email: _____

And to: Keen-Summit Capital Partners LLC
555 Madison Avenue, 5th Floor
New York, NY 10036
ATTN: Harold Bordwin and Rob Tramantano
Telephone: (646) 381-9201
Email: hbordwin@keen-summit.com and
rtramantano@keen-summit.com

5. If requested or required (by law, court order, stock exchange, self-regulatory organization, governmental agency, regulatory body, oral questions, interrogatories, requests for information, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, Prospect agrees, to the extent legally permissible, to provide the Company with prompt written notice of such request so as to allow the Company to seek an appropriate protective order and/or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, Prospect or Prospect's Representatives are, in the opinion of Prospect's or Prospect's Representatives' counsel, as the case may be, required to disclose Confidential Information, Prospect may disclose only that portion of such information as is legally required without liability hereunder; *provided*, that Prospect agrees to exercise Prospect's reasonable efforts to obtain assurance that confidential treatment will be accorded such information. Notwithstanding anything in this Agreement to the contrary, Prospect and its Representatives may disclose Confidential Information without notice, a protective order or other remedy where disclosure is in connection with a routine audit or examination by, or a document request from, a regulatory or self-regulatory authority, bank examiner or auditor that does not reference the Company or this Transaction.
6. It is understood that Keen will arrange for appropriate contacts for due diligence purposes in connection with the Transaction. Unless otherwise directed by the Company, all:
 - a. communications regarding the Transaction,
 - b. requests for additional information in connection with the Transaction,
 - c. requests for Business inspections in connection with the Transaction,
 - d. discussions regarding making an offer in connection with the Transaction, and/or
 - e. discussions or questions regarding procedures in connection with the Transaction,must be submitted or directed exclusively to Keen. Unless otherwise directed by the Company, neither Prospect nor Prospect's Representatives will initiate or cause to be initiated any communication with anyone known to Prospect to be an employee of the Company, to be a customer of Company, to be a supplier to Company and/or to be a lender to Company concerning the Confidential Information or the Transaction without Company or Keen's prior written consent.
7. Prospect agrees that no contract or agreement providing for any Transaction shall be deemed to exist between Prospect and the Company unless and until Prospect and the Company execute and deliver a final definitive agreement relating thereto (a "**Transaction Agreement**"), and Prospect hereby waives, in advance, any claims (including, without limitation, breach of contract) in connection with any Transaction unless and until Prospect and the Company shall have executed and delivered a Transaction Agreement. Prospect also agrees that unless and until Prospect and the Company shall have executed and delivered a Transaction Agreement, neither Prospect nor the Company will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. Prospect further acknowledges and agrees that the Company reserves the right, in its sole discretion, to reject any and all proposals made by Prospect or Prospect's Representatives with regard to a Transaction, and to terminate discussions and negotiations with Prospect at any time. Prospect further understands that the Company shall be free to establish and change any process or procedure with respect to a Transaction as the Company in its sole discretion shall determine (including, without limitation, negotiating with any other interested party and entering into a Transaction Agreement with any other party without prior notice to Prospect or any other person).
8. Although the Company and Keen will endeavor to include in the Confidential Information all of the information known to them which they believe to be relevant for the purpose of Prospect's investigation, Prospect understands and agrees that, except pursuant the Transaction Agreement, the

Company, Keen nor any of their respective Representatives (i) have made or make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information or (ii) shall have any liability whatsoever to Prospect or any of Prospect's Representatives relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom.

9. Prospect understands and agrees that, except pursuant to the Transaction Agreement to be entered between the Company and Prospect, the Company, Keen nor any of their respective Representatives:
 - a. have made or make and expressly disclaim making any written or oral statements, representations, warranties, promises or guarantees, whether express or implied or by operation of law or otherwise, with respect to the Business or with respect to the accuracy, reliability or completeness of the Confidential Information;
 - b. to the fullest extent permitted by law, shall have any liability whatsoever to Prospect or any of Prospect's Representatives on any basis (including, without limitation, in contract, tort, under federal, foreign or state securities laws or otherwise) as a result of, relating or pertaining to, or resulting or arising from Prospect's or Prospect's Representatives reliance on the Confidential Information, or Prospect's or Prospect's Representatives use or non-use of the Confidential Information, for any alleged acts or omissions of Company, Keen or any of their respective Representatives, or any errors or omissions in the Confidential Information;
 - c. shall have any liability or responsibility for any decisions made by Prospect or its Representatives in reliance on any Confidential Information;
 - d. will be under any obligation or duty (express or implied) to make available to Prospect or its Representatives any Confidential Information; and
 - e. will be under any duty or obligation (express or implied) to update, supplement, revise or correct any Confidential Information disclosed under this Agreement, regardless of the circumstances.
10. Prospects are advised to conduct their own due diligence prior to submitting an offer for the Business and to engage the services of legal counsel, accountants and such other financial advisors as may be required to understand the Business.
11. Without limiting the generality of the immediately preceding paragraphs, the Confidential Information may include certain statements, estimates and projections with respect to the Business. Such statements, estimates and projections reflect various assumptions made by the Company, which assumptions may or may not prove to be correct. No representations are made as to the accuracy of such assumptions, statements, estimates or projections. The only information that will have any legal effect will be specifically represented in the Transaction Agreement, subject to such limitations and restrictions as may be specified therein.
12. It is further understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement and that the Company shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and Prospect further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available at law or equity to the Company.
13. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of law principles (that might dictate the application of the laws of another jurisdiction). The Parties hereby irrevocably acknowledge and consent that any legal action or proceeding brought with respect to any of the obligations arising under or relating to this Agreement may be brought only in the courts of the State where Company is headquartered, in the County where Company is headquartered, or in the United States District Court for the district where Company is

headquartered, and irrevocably submit to and accept the exclusive jurisdiction of the aforesaid courts. (Upon Company's acceptance of this Agreement, when Company discloses its identity and the identity of its legal counsel, it will also specify the above-referenced courts.) The Parties irrevocably waive any claim that such courts lack jurisdiction over such party, and agree not to plead or claim, in any legal action or proceeding with respect to this agreement or the transactions contemplated hereby brought in any of the aforesaid courts, that any such court lacks jurisdiction over such party. EACH OF THE PARTIES HERETO EXPRESSLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

14. Attorneys' Fees. If any party to this Agreement brings an action directly or indirectly based upon this Agreement or the matters contemplated hereby against any other party, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other appropriate amounts, its reasonable costs and expenses in connection with such proceeding, including, but not limited to, reasonable attorneys' fees and arbitration and/or court costs.
15. Prospect warrants and represents that it is a principal acting on its own behalf, and not as a broker, finder or agent acting on another's behalf. Prospect acknowledges that it will not look to the Company and/or Keen and their respective Representatives for the payment of any fee or commission. Prospect hereby agrees to indemnify, defend and hold Company and Keen and their respective Representatives harmless from and against any and all claims, damages, losses and liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder or similar agent for commissions, fees or other compensation who allege that they have dealt with the Company and/or Keen in connection with the Business as an agent of Prospect. Prospect understands that the Company and Keen and their respective Representatives have not agreed to pay any brokerage commissions, finder's fee or other compensation in connection with Prospect's possible Transaction. If Prospect is working with a broker or finder other than Keen, Prospect agrees that Prospect shall be responsible for the payment of any fees, if any, to such broker, finder or agent.
16. The term of this Agreement shall expire upon the earlier of: (i) (2) years from the date hereof, or (ii) the date of execution of Transaction Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last day and year set forth below.

**AGREED & ACCEPTED THIS ___ DAY OF ____,
2018**

PROSPECT: _____

By: _____

Name:

Title:

**AGREED & ACCEPTED THIS ___ DAY OF ____,
2018**

COMPANY: _____

By: _____

Name:

Title: