



## Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Versatile Merchant Solutions, LLC, a Virginia limited liability company with offices at 1229 Mall Drive, Richmond, VA. 23235 ("VMS"), and \_\_\_\_\_, a \_\_\_\_\_ with \_\_\_\_\_ offices at \_\_\_\_\_ ("Agent").

VMS and Agent have agreed to hold discussions in contemplation of a business relationship. In connection with these discussions, the parties are prepared to furnish each other with certain confidential, proprietary and competitively-sensitive information and materials relating to each party's business, operations and products, including but not limited to trade secrets, methodologies, potential products, services, processes, customers, business relationships, marketing materials, strategic plans, ideas, research data, development, costs, fees, technologies, financial information and pricing information. All information and materials disclosed to the other party, or an affiliate, parent company, subsidiary, partner, agent or advisor of the other party during these discussions, including without limitation that such discussions are taking place, regardless of the form or media on which it is stored or disclosed, will be referred to as the "Business Information". The purpose of this document is to establish an agreement between VMS and Agent governing the confidentiality, disclosure and use of such Business Information.

1. Each party will: (a) treat all Business Information confidentially and will not disclose such information to any other person, corporation or entity except as permitted in writing by the disclosing party or as expressly permitted by the terms of this Agreement; (b) protect all Business Information with the highest degree of care and hold all Business Information in strict confidence; (c) disclose Business Information only to those within its organization who have a need to know the information in order to further the discussions between the parties; (d) advise its directors, officers, employees, agents, advisors and representatives (collectively, its "representatives") who receive the Business Information of the existence and terms of this Agreement, and the restrictions on disclosure and use, and obligations of confidentiality, in this Agreement; and (e) use the Business Information only for the purpose of evaluating the contemplated business relationship, and not for its own business purpose or for its own monetary gain. Each party



represents and warrants that it has binding obligations, by agreement or law, of confidentiality by each of its representatives with respect to the Business Information and will use its best efforts, at its sole cost and expense, to enforce such obligations at the disclosing party's request. Further, the disclosing party shall be deemed a third party beneficiary of such obligations, with the right upon breach to enforce such obligations directly against the receiving party's representatives.

2. Notwithstanding the provisions of Paragraph 1 above, neither party will have any obligation with respect to any information that: (a) is or becomes known within the public domain through an act not in breach of this Agreement; (b) a receiving party can document was in the possession of the receiving party prior to its disclosure by the disclosing party and was not acquired by the receiving party under an obligation of confidentiality; (c) a receiving party can document is independently developed by the receiving party without use of any Business Information; or (d) is received from another source that is not under any restriction on use or disclosure.

3. If the receiving party is required by law (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any information supplied to it or its representatives in the course of the parties' dealings, the receiving party will provide the disclosing party with prompt notice thereof so that the disclosing party may seek an appropriate protective order and/or waive compliance with the provisions of this Agreement.

4. Business Information furnished in written, pictorial, magnetic and/or other tangible form, or in a form that may be duplicated in any way, will not be duplicated except as necessary in order to evaluate the contemplated business relationship. The receiving party will, upon request by the disclosing party, promptly deliver the Business Information to the disclosing party without retaining any copy of it, and the receiving party and its representatives will thereafter maintain the confidentiality of, and will neither use nor disclose, for its own purposes or otherwise, any Business Information.

5. No failure or delay in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise preclude any other exercise of such right. All obligations under this Agreement will survive termination of this Agreement.

6. No rights to the Business Information, nor to any patents or trademarks, are provided or are to be implied by any provision of this Agreement. Nothing



contained in this Agreement will constitute a warranty or representation by the disclosing party with respect to the infringement of trade - or service - mark, patent, copyright, or other rights of third parties.

7. In consideration of access given to the receiving party to employees of the disclosing party in the course of discussions, and the disclosure of Business Information relating to disclosing party's employees, from and after the date hereof and for a two (2) years after the last disclosure of Business Information hereunder, neither party shall solicit for employment or hire any employees of the other employed by the other at the time of, or at any time within six (6) months prior to, such solicitation or hiring.

8. This Agreement contains the entire Agreement between the parties relating to the subjects of confidentiality, use and disclosure of Business Information, and any promise not contained in this Agreement, or any amendment to it, will not be binding on either party unless set forth in a written agreement signed by both parties.

9. In the event of a breach of this Agreement, the parties agree that the disclosing party will suffer irreparable harm, and that the amount of monetary damages would be impossible to calculate. Thus, the parties will be entitled to injunctive relief in addition to any other rights to which they may be entitled, without the necessity of proof of actual damages. In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be enforced to the maximum extent permitted by law, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby

10. This Agreement will be governed by the laws of the State of Virginia, and will benefit and be binding upon the parties and their successors and assigns. Any action arising out of the terms and conditions of this Agreement shall be filed in the Supreme Court of the State of Virginia, City of Richmond, or if there is federal jurisdiction, in the United States District Court for the Eastern District of Virginia.

**VMS Payments, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_