

# MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT (this "Agreement") is made by and between Emburse, Inc., having a place of business at 320 Cumberland Avenue, Portland, ME 04101 ("Emburse") and

\_\_\_\_\_, with a principal place of business at \_\_\_\_\_ ("Company") (each a "Party" and collectively the "Parties").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Emburse and Company, intending to be legally bound, hereby agree as follows:

1. **Purpose.** Emburse and Company desire to enter into discussions and negotiations with regard to certain business transactions or to engage in certain business relationships under which each may disclose certain Confidential Information to the other.
2. **Definitions.** For purposes of this Agreement, the following terms have the respective meanings:

"Affiliates" means each legal entity (other than non-operating holding companies) that is controlled by, or is under common control with Company or Emburse, as the case may be, on or after the Effective Date and for so long as such entity remains controlled by, or is under common control with Company or Emburse, as applicable, (where "controls," in its various forms herein, means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership).

"Confidential Information" means any information, technical data, or know-how, including, but not limited to, that which relates to research, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances, which Confidential Information is designated in writing to be confidential or proprietary, or if given orally, is confirmed promptly in writing as having been disclosed as confidential or proprietary. Confidential Information does not include information, technical data or know-how which (i) is in the possession of the receiving Party at the time of disclosure as shown by the receiving Party's files and records immediately prior to the time of disclosure, (ii) prior or after the time of disclosure becomes a part of public knowledge or literature, not as a result of any inaction or action of the receiving Party, or (iii) is approved for release by the disclosing Party.

3. **Non-Disclosure of Confidential Information.** Emburse and Company agree not to use the Confidential Information disclosed to it by the other Party for its own use or for any purpose except to carry out discussions concerning, and the undertaking of, any business relationship between Emburse and Company. Each Party shall keep secret and confidential any and all Confidential Information already disclosed or to be disclosed hereunder, and neither Party shall divulge the Confidential Information, in whole or in part, to any third party except as expressly permitted herein. Neither Party shall make any commercial use or other use of the Confidential Information. Neither Party will disclose the Confidential Information of the other to third parties or to the receiving Party's employees, except employees (including officers, directors and agents) who are required to have the information in order to carry out the contemplated business. Each has advised or will advise employees to whom Confidential Information of the other is disclosed of this Agreement, pursuant to which such employees will be required to maintain the confidentiality of all Confidential Information. Each agrees that it will take all reasonable steps to protect the secrecy, and avoid disclosure, of Confidential Information of the other in order to prevent it from falling into the public domain or the possession of unauthorized persons. Each agrees to notify the other in writing of any misuse or misappropriation of such Confidential Information of the other which may come to its attention.
4. **Disclosure.** In the event that either Party is compelled by law or by any applicable regulatory agency to disclose any Confidential Information of the other, such Party shall (except for in the case of regulatory inquiry or examination or as

otherwise prohibited by law or regulation) immediately notify the other of such pending disclosure so that a protective order or other appropriate remedy may be obtained. If such an order or other remedy is not available, the compelled Party shall only disclose the minimum portion of Confidential Information that it is legally compelled to disclose, consistent with the advice of its counsel.

5. **Agents.** Each Party shall be responsible for any breach of the terms of this Agreement by any of its Affiliates, directors, officers, employees, representatives or agents. Each Party further agrees to take any and all necessary action to ensure that such representatives comply with the obligations imposed on each Party hereunder.
6. **Return or Destruction of Materials.** Any materials or documents which have been furnished by one Party to the other Party will be promptly returned or destroyed, accompanied by all copies of such documentation after the business possibility has been rejected or concluded. Within ten (10) days of any written request from either Party, the Party so requested will deliver the Confidential Information, and all copies thereof, and will destroy all analyses, compilations, studies or other documents, and all copies thereof, derived therefrom. Notwithstanding the foregoing, a Party may retain an archival, non-production use copy of Confidential Information if required for compliance with record retention policies.
7. **Patent or Copyright Infringement.** Nothing in this Agreement is intended to grant any rights under any patent or copyright of either Party, nor shall this Agreement grant either Party any rights in or to the other Party's Confidential Information, except the limited right to review such Confidential Information solely for the purposes of determining whether to enter into the proposed business relationship between the Parties.
8. **Representations.** Although each Party will endeavor in good faith to include in the Confidential Information materials and data known to it that it believes to be responsive to requests from time to time, neither Party makes any representation or warranty as to the accuracy or completeness of the Confidential Information.
9. **Announcements.** Neither Party will make, or permit to be made, any announcement or disclosure of our possible transaction without the prior written consent of the other.
10. **Term.** Either Party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other; provided, however, that the confidentiality obligations set forth herein shall survive termination or expiration of this Agreement for any reason.
11. **Miscellaneous.** This Agreement shall be binding upon and shall be for the benefit of the undersigned Parties, their successors and assigns, provided that Confidential Information may not be assigned without consent to the disclosing Party. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.
12. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to its conflicts of law principles.
13. **Non-Solicitation.** During the term of this Agreement and for one (1) year following its termination, the Parties agree that they will not directly or indirectly solicit or attempt to solicit any of the employees or consultants of the other Party or its respective affiliates to terminate his or her relationship with such Party in order to become an employee, consultant, or independent contractor to or for any other person or entity. For the avoidance of doubt, "solicit" does not include employing an individual in response to their reply to a bona fide advertisement made generally to the public. Notwithstanding the foregoing, a Party may retain an archival, non-production use copy of Confidential Information if required for compliance with record retention policies.
14. **Remedies.** Each Party agrees that its obligations hereunder are necessary and reasonable in order to protect the other Party and the other Party's business, and expressly agrees that monetary damages would be inadequate to compensate the other Party for any breach of any covenant or agreement set forth herein. Accordingly, each Party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the other Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the other party shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages. All reasonable legal costs and other costs of suit incurred by the non-violating party

in connection such a breach hereof shall be the sole obligation of, and shall be paid by, the violating Party.

15. **Waiver.** No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other future exercise of any right, power or privilege hereunder.

16. **Counterparts.** This Agreement may be executed in several counterparts which, taken together, shall constitute one and the same original agreement.

This Agreement is effective as of the date of Company signature herein ("Effective Date").

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Company:		Emburse, Inc.
Name:		Name:
Title:		Title:
Date:		Date:
Address:		Address: 320 Cumberland Avenue, Portland, ME 04101