



NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is entered into this __day of __ 200__, by and between ACTIV Financial Systems, Inc., an Illinois corporation, with offices at 120 E. Liberty Dr., Suite 200, Wheaton, IL 60187 (“**ACTIV**”) and _____, a _____ corporation/partnership/limited liability company, with offices at _____ (“**Participant**”).

WHEREAS, in connection with discussions regarding a potential business relationship between the parties (the “**Discussions**”), the parties propose to provide to each other certain confidential and proprietary information;

WHEREAS, the parties wish to set out the rights and obligations in respect of the Confidential Information (as defined below); and

WHEREAS, each of the parties, in its capacity as a discloser of information, is referred to as the “Disclosing Party” and, in its capacity as a recipient of information is referred to as the “Receiving Party.”

IT IS THEREFORE AGREED as follows:

1. Definitions

“**Confidential Information**” shall mean any information or data that is disclosed by the Disclosing Party in any manner and in any media to the Receiving Party or its affiliates in connection with or as a result of Discussions between the parties, and which at the time of disclosure, either (i) is marked or otherwise designated as confidential or proprietary, (ii) is reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential and proprietary information of the Disclosing Party. Specifically, Confidential Information shall include (a) any and all non-public information relating to the business, operations, products, systems and/or services of the Disclosing Party or its affiliates (including, but not limited to, released or unreleased computer software, methodologies, algorithms, product plans, designs, application interface, technical data and know how), (b) all notes, memoranda, and other documentation of Receiving Party and/or its affiliates, officers, directors, employees, agents, representatives and advisors relating to, derived from, and/or incorporating Disclosing Party’s Confidential Information, (c) information received from others that the Disclosing Party is obligated to keep as confidential, (d) Confidential Information disclosed prior to the date of this Agreement, (e) all discussions, negotiations and/or agreements between the parties, and (f) the existence, terms and conditions of this Agreement.

2. Confidentiality Obligations

The Receiving Party acknowledges the economic value to the Disclosing Party of all Confidential Information. With respect to Confidential Information, the Receiving Party will keep such Confidential Information confidential and will:

- (a) use the Confidential Information solely in connection with the Discussions described above;
- (b) not disclose the Confidential Information except to those officers, directors, employees and agents of the Receiving Party (hereinafter “Authorized Parties”) with a need to know such Confidential Information in order to perform the Authorized Party’s responsibilities in connection with the matters contemplated hereby and who are bound in writing by restrictions regarding disclosure and use of such information comparable to and no less restrictive than those set forth herein;
- (c) advise Authorized Parties who gain access to Confidential Information of their obligations with respect to the Confidential Information;

- (d) not make any copies of the Confidential Information without the prior written consent of the Disclosing Party, and if so permitted, ensure that any confidentiality notices set forth on the Confidential Information are reproduced in full on such copies;
- (e) safeguard the Confidential Information with at least the same degree of care to avoid unauthorized disclosure and use as the Receiving Party uses to protect its own confidential information (but no less than reasonable security measures); and
- (f) not reverse engineer, decompile or disassemble any software disclosed to it under this Agreement.

3. **Exceptions**

The obligations set forth in Section 2 shall not apply to any Confidential Information which the Receiving Party can sufficiently demonstrate:

- (a) is or becomes available to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party ;
- (b) was previously known by the Receiving Party without any obligation to hold it in confidence;
- (c) is received from a third party free to disclose such information without restriction;
- (d) is independently developed by the Receiving Party without any use of or reference to Confidential Information of the Disclosing Party;
- (e) is approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorization;
- (f) is required to be disclosed by law or regulation or in response to a valid order of a court or other governmental body of the United States or any political subdivisions thereof, but only to the extent of and for the purposes of such law, regulation, or order and only if the Receiving Party (if permitted by law) first notifies the Disclosing Party so that the Disclosing Party may seek an appropriate protective order.

4. **No License and No Warranty**

Nothing in this Agreement or any disclosures hereunder shall be construed as granting any patent, copyright, trademark or other proprietary license or right. The Confidential Information being provided hereunder is for informational purposes only and no warranties of any kind are given with respect to such Confidential Information disclosed hereunder or any use thereof, except as may be otherwise agreed to in writing.

5. **No Commitment**

Nothing contained in this Agreement or in any Discussions undertaken or disclosures made pursuant hereto will (a) be deemed a commitment to engage in any future business relationship with the other party, or (b) limit either party's right to conduct similar discussions to that undertaken pursuant hereto, so long as said discussions do not violate this Agreement.

6. **Ownership**

Each party shall retain the title and full ownership rights to their respective Confidential Information, including permitted copies. The Receiving Party shall not remove any proprietary, copyright, trade secrets, or other legend from any form of the Confidential Information.

7. **Term and Termination**

- 7.1 This Agreement shall continue in effect for three (3) years from the date first written above. Notwithstanding the foregoing, the terms of this Agreement will remain in effect for Confidential Information disclosed prior to termination for a period of three (3) years from the date of disclosure of such Confidential Information with respect to Confidential Information that does not qualify as a trade secret under applicable law, and, with respect to trade secrets, for so long as such Confidential Information remains a trade secret.

7.2 The Receiving Party agrees that upon termination of the Discussions or this Agreement or at any time upon written request of the Disclosing Party, to return or destroy (at the Disclosing Party's option) all Confidential Information in its possession, custody or control, including notes or copies thereof.

8. Miscellaneous

8.1 The parties acknowledge that a threatened, impending or existing violation of any provision of this Agreement would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that the Disclosing Party may seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it. The prevailing party shall also be entitled to recover its costs of suit and reasonable expenses in any suit to enforce this Agreement.

8.2 This Agreement shall be governed by the laws of the State of Illinois, without regard to any conflicts of law principle, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. The parties hereby irrevocably consent to the jurisdiction of the courts of Illinois for the interpretation of this Agreement and for the resolution of all disputes hereunder.

8.3 This Agreement may only be varied or modified by written agreement between the parties.

8.4 This Agreement may not be assigned by either party without the prior written consent of the other party. Any such prohibited assignment shall be null and void. This Agreement shall be binding upon the parties hereto and their respective legal successors and permitted assigns.

8.5 This Agreement contains the complete agreement between the parties with respect to the subject matter hereof. All previous and collateral agreements, representations, promises, and conditions relating to the subject matter of this Agreement are superseded by this Agreement.

8.6 The invalidity, in whole or part, of any provision of this Agreement will not affect the remainder of that provision or this Agreement.

8.7 Waiver by a party of any default by the other will not be deemed a waiver of any other default irrespective of whether such default is similar.

8.8 All notices, claims, and approvals given under this Agreement must be in writing and delivered in person, by first class or express mail or facsimile addressed as set forth above or such other address that a party gives by notice. Notice given in accordance with this subsection will be deemed given when received.

WHEREFORE, the parties have caused their authorized representatives to execute this agreement effective as of the date first written above:

ACTIV Financial Systems, Inc.
("ACTIV")

("Participant")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____