

**THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (“Agreement”) is made as of this \_\_\_\_\_, 2009 by and among \_\_\_\_\_ (“Participant”), Shotgun Capital Advisors LLC, a Texas limited liability corporation (“Shotgun Capital”), and Shotgun Capital Client Number # \_\_\_\_\_ “Client”. “Participant”, “Shotgun Capital”, and “Client” herein are collectively referred to as “Parties”.

**WHEREAS**, Representatives of Participant are desirous of entering into discussions regarding the potential acquisition of Client’s business (the “Potential Transaction”);

**WHEREAS**, Shotgun Capital and Client (referred to collectively as “Offeror”) expect to provide Participant with Confidential Information (as defined below) in connection with the Potential Transaction;

**WHEREAS**, each of the Representatives, in the course of discussions relating to the Potential Transaction, may disclose certain confidential and proprietary information of each Party’s business plans, financial and operational data, services, strategic initiatives, products, and product developmental plans;

**WHEREAS**, each of the Parties desires to protect its proprietary plans; and further desires to prevent unauthorized disclosure of any information regarding its individual business plans, financial and operational data, products and services;

**WHEREAS**, the Representatives collectively desire to prevent unauthorized disclosure by any one of them of any information regarding the discussions and the business plans, financial and operational data, products and services associated therewith;

**WHEREAS**, the Parties intend to have the Confidential Information treated as being confidential and/or proprietary.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

1. Definition of Confidential Information. In connection with the discussions among the Representatives, each of the Parties and their Representatives may disclose certain information intended to remain as proprietary and confidential, including information regarding business plans, financial data, operational data, product development plans, products and services. The information furnished by either of the Parties or any Representative is hereinafter referred to as “Confidential Information” and such Confidential Information shall belong to the Party furnishing the same (through one or more of its Representatives) and shall be treated as Confidential Information as provided therein. Confidential Information shall also include all discussion in connection with, and all information in any medium in any way related to, the Potential Transaction. The term “Confidential Information” shall not include information which was or becomes generally available to the public other than as a result of a disclosure by a Representative

or his affiliates, agents or advisor including without limitation, attorneys, accountants, consultants, bankers, and financial advisors (collectively “Affiliates”).

2. Use of Confidential Information. The Representatives of a Party shall not use any Confidential Information disclosed by the Representatives of the other Party or pertaining to the Potential Transaction for its own use or for any purpose other than to carry out the discussions between the Parties and to further the evaluation of the Potential Transaction.

3. Permitted Disclosure. A Party or its Representatives may disclose Confidential Information if required by a governmental agency or court of competent Jurisdiction, or the rules thereof, provided, however, each Party agrees to give to the other prompt notice of the receipt of the subpoena or other process requiring or requesting disclosure of Confidential Information.

4. Proprietary Rights. All Confidential Information furnished by a Party or its Representatives to the other Party or its Representatives shall remain the property of the Party furnishing the same and shall be promptly returned or destroyed at the request of the Party furnishing the Confidential Information.

5. No License or Right to Reproduce. Nothing contained in this Confidentiality Agreement shall be construed as granting or conferring on any Party or its Representatives, any rights, by license or otherwise, to reproduce or use in any other manner any Confidential Information disclosed hereunder by the other Party or its Representatives or pertaining to the Potential Transaction, except to further the Potential Transaction.

6. Effectiveness, Termination, and Survivability. This Agreement is effective upon the date written above. This Agreement shall terminate on the earlier of (a) the consummation of the Potential Transaction, or (b) written notice by either party as to its termination. The Covenants set forth in this Agreement shall survive any such termination of this Agreement (provided that this provision shall not be construed to lengthen any otherwise applicable statute of limitations).

7. No Further Obligation. Neither the disclosure nor receipt of Confidential Information shall obligate the Party to undertake any business relationship with the other Party in connection with the Potential Transaction. The Parties and the Representatives understand and acknowledge that neither Party is making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and that only those representations or warranties that are made in a definitive purchase and sale or merger agreement when, as, and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreement, will have any legal effect.

8. No Waiver. Failure to enforce any provision of this Agreement shall not constitute a waiver of any other term herein and any waiver of any breach shall not be

construed as a waiver of any subsequent breach. If any provision of the Agreement is held to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalid. This Agreement shall be construed and governed in accordance with the laws of the State of Texas.

9. Entire Agreement. This Confidentiality Agreement embodies the entire understanding among the Parties and their respective Representatives with regard to the Potential Transaction, the Confidential Information and all other subject matter described or contained herein. This Agreement may not be amended, changed, altered or modified in any way, except in writing signed by the Parties. This Agreement may be executed in a number of counterparts which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Confidentiality and Non-Disclosure Agreement as of the day and year first above written.

Participant

Shotgun Capital Advisors, LLC

BY:

BY:

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_

Client #: (to be named)

BY:

ITS: \_\_\_\_\_