

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made and entered into as of \_\_\_\_\_, between TCB Data Systems, Inc. (“TCB”) and \_\_\_\_\_ (“Discloser”).

WITNESSETH:

WHEREAS, in consideration for Discloser disclosing to TCB the Data (as defined below), as well as certain proprietary information, technical data and other related business information, TCB is willing to enter into this Confidentiality Agreement for the benefit of Discloser and for the protection of the confidential information of Discloser;

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, it is hereby agreed between the parties as follows:

1. Definitions.

- (a) “*Confidential Information*” as used herein shall mean the Data, and any written, oral or electronically-transmitted information relating to the Data, or to the Discloser’s business, projects, activities or affairs, *provided, however*, that such information excludes any information that (1) has been or is obtained by TCB from a source independent of Discloser and not itself under a confidentiality obligation to Discloser, (2) is or becomes generally available to the public other than as a result of an unauthorized disclosure by TCB or its personnel, or (3) is independently developed by TCB without reliance in any way on Confidential Information provided by Discloser, and provided further, that such information (other than the Data) shall be deemed Confidential Information for purposes of this agreement only if (x) it is conspicuously stamped or marked “Confidential” or “Proprietary” or with words of similar import if the information is delivered to TCB in writing, or (y) TCB is advised no later than thirty (30) days after the disclosure of such Data or information, if it is initially delivered verbally, visually, or by any other means and not in writing, that it is confidential and is given a written summary of the information so disclosed and believed to be confidential, which summary is conspicuously stamped or marked “Confidential” or “Proprietary” or with words of similar import.
- (b) “*Data*” as used herein shall mean such data as is set forth Exhibit A hereto.
- (c) “*Purpose*” as used herein shall mean in connection with the provision by TCB of billing, data collection and distribution, storage, and usage services regarding the transmission of Data in TCB’s normal course of business.

2. Acknowledgements. TCB acknowledges:

- (a) that the design and development of the Confidential Information has involved the

expenditure of substantial amounts of money and the use of skilled development experts over a long period of time and which affords Discloser a commercial advantage over its competitors;

- (b) that the Confidential Information may constitute TRADE SECRETS, and may also be protected by the federal copyright law and international copyright treaties;
- (c) that loss of this competitive advantage due to unauthorized disclosure or use of the Confidential Information would cause irreparable injury and harm to Discloser; and
- (d) that the restrictions imposed upon TCB by this Agreement are necessary to protect the secrecy of the Confidential Information and prevent the occurrence of injury and harm to Discloser.

3. Confidentiality Obligations. TCB shall be subject with respect to the Confidential Information to the following obligations:

- (a) to keep the Confidential Information strictly confidential and secret, and not, without previous written consent of Discloser, to disclose the Confidential Information to any third party (except as provided in paragraph (b) below);
- (b) to disclose or divulge the Confidential Information (whether directly or indirectly and by whatever means or method) only to (i) those officers and employees of TCB who reasonably have reason or need to know Confidential Information for the Purpose, or (ii) such consultants, representatives or other third-party experts or advisors who reasonably have reason or need to know Confidential Information for such same Purpose, provided, that such employees, officers, consultants, representatives, or third-party experts execute a written confidentiality agreement;
- (c) to ensure that such individuals or persons set forth in paragraph (b) above do not disclose any of the Confidential Information to any individual or person (whether or not employed by Discloser) except those who have such a need to know;
- (d) cooperate with Discloser and execute, or cause its personnel to execute, such further acknowledgments and instruments as may be necessary to establish such ownership.
- (e) notify Discloser immediately if Confidential Information is disclosed in violation of this Agreement or is otherwise lost or unaccounted for;
- (f) not to use the Confidential Information for any purpose other than the Purpose; and
- (g) otherwise to exercise at least the same degree of care with respect to the Confidential Information as TCB uses in handling its own proprietary information.

The foregoing obligation of confidentiality and non-use in this Confidential Agreement shall not apply to any information which is disclosed pursuant to a valid order of a court or other governmental body or political subdivision thereof having jurisdiction over TCB.

4. Return of Materials. At the request of Discloser, or upon termination of this Agreement, TCB shall account for and return to Discloser all materials and devices, including copies thereof, that contain or evidence Confidential Information, including the Data.

5. Ownership. No title or interest in or to any Confidential Information is granted by Discloser to TCB hereunder.

6. Copyright Notices; No Publication. TCB shall not alter or remove any identification, copyright or propriety rights notice which indicates the ownership of any part of the Confidential Information. TCB shall, if permitted by Discloser to make any copies of the Confidential Information, reproduce and include such notice on any copies of the Confidential Information, and shall add any additional or replacement notice specified by Discloser upon reasonable notice to TCB. TCB acknowledges that no copyright registration of, or notice of copyright on the Confidential Information shall be deemed to constitute publication thereof within the meaning of Title 17 of the United States Code or to imply that such Confidential Information does not contain valuable confidential and proprietary information in the nature of TRADE SECRETS.

7. Remedies. TCB agrees that, in the event of any breach of any provision hereof, Discloser will not have an adequate remedy in money or damages. TCB therefore agrees that, in such event, Discloser shall be entitled to obtain injunctive relief against such breach in any court of competent jurisdiction, without the necessity of posting a bond even if otherwise normally required. Such injunctive relief will in no way limit Discloser's right to obtain other remedies available under applicable law.

8. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns, except that no assignment of any right to access the Confidential Information may be made by TCB without the prior written consent of Discloser. The waiver of any provision in any instance shall not be construed as a waiver in other instances. Where appropriate to give effect to the Purpose, references to Discloser or TCB may include affiliates and subsidiaries, provided that they are bound by the obligations set forth herein.

7. Authority. Discloser represents and warrants that it has the right to disclose the Confidential Information in furtherance of the Purpose, without violating any agreement with or right of any other person or Discloser.

8. Termination and Survival. This Agreement shall terminate (a) upon completion of the Purpose or (b) upon written request of Discloser, whichever is earlier. Following the termination of this Agreement and the proper return of Confidential Information pursuant to Section 3, the confidentiality obligations set forth hereunder shall continue in effect for a period of two (2) years, unless otherwise modified or superseded by any formal contract or agreement related to the subject matter of these

negotiations.

9. Applicable Law. This Confidentiality Agreement shall be construed and interpreted in accordance with the laws of the State of New York without reference to the principles of conflict of laws. Suit under this agreement shall only be brought in a court of competent jurisdiction in the State of New York, County of New York.

10. Effective Date. This Confidentiality Agreement shall be effective and binding from the date first above written.

11. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and with respect to the matter contained herein and supersedes all prior agreements or understandings. This Agreement shall not be modified except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have made and executed the Confidentiality Agreement as of the date first above written.

Discloser

By: \_\_\_\_\_

Title: \_\_\_\_\_

TCB

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A

Data

Data includes Discloser's customer lists, customer data, financial information, business plans, database contents and electronic reports that are collected, stored or passed through TCB's system in connection with this Agreement.