

## NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (the “**Agreement**”) made as of \_\_\_\_ \_\_, 201\_ (the “**Effective Date**”) by and between CHERRY BEKAERT LLP (“**Cherry Bekaert**”), and \_\_\_\_\_ (“**Company**”), says as follows:.

### **Statement of Purpose**

The Company and Recipient are exploring or have entered into a relationship regarding the *North Carolina Mid-Market Fast 40* (the “**Relationship**”). As is necessary to accomplish the Purpose, a party may disclose to the other certain “**Confidential Information**” (as defined below). When a party discloses such Confidential Information, such party is referred to in this Agreement as a “**Disclosing Party**,” and when it receives Confidential Information, such party is referred to as a “**Receiving Party**.”

Now therefore, in consideration of the promises and obligations stated herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree as follows:

**1. Definition of Confidential Information.** As used in this Agreement, the term “**Confidential Information**” means nonpublic information that (i) a Disclosing Party designates as being confidential to a Receiving Party, or (ii) by reason of its nature would be treated as confidential by a reasonable Receiving Party. Confidential Information includes, without limitation, any technical or non-technical information, data or know-how, including that which relates to business plans or business methods that derive economic value from not being generally known to other persons or easily ascertainable by other persons, including business policies, documents, financial data, plans and forecasts, research, products and/or services, product and/or services plans, product and/or services pricing and strategy, models, tools and templates, requests for proposals, proposals, actual or proposed alliance partners, actual or proposed vendors, service offerings and pricing, actual or proposed clients, client usage, and client purchasing potential, actual or proposed markets, sales and marketing materials and methods, software, developments, inventions, processes, algorithms, designs, drawings, engineering, and hardware configuration information. Confidential Information includes any reports or documents created by the Receiving Party that include, summarize or refer to the Disclosing Party’s Confidential Information. Further, Confidential Information includes the terms of this Agreement.

**2. Treatment of Confidential Information and Prohibitions**

**a) Treatment.** The parties acknowledge that each party considers the Confidential Information it discloses to be valuable, confidential and a trade secret. Each party agrees to keep secret and confidential the Confidential Information of the other party and further agrees to use such information solely for the Purpose. Except as authorized by this Agreement, the Receiving Party shall not use any Confidential Information for its own or any third party’s benefit, without the prior written approval of an authorized representative of the Disclosing Party.

**b) Prohibitions.** Except as otherwise expressly agreed, each party further agrees that the Confidential Information shall not be disclosed to any third party, except that a Receiving Party may disclose the Confidential Information or portions thereof to those of its directors, officers, employees, representatives and agents (collectively, “**Representatives**”) who need to know such information for the purpose of evaluating and analyzing the Purpose. Prior to disclosing any Confidential Information to any Representative, the Receiving Party will inform such Representative of the confidential nature of the Confidential Information and will ensure that such Representative is bound by confidentiality and use-

restriction terms substantially similar to the terms in this Agreement. Each party shall take all reasonable measures to protect the confidentiality of all Confidential Information it receives and prevent it from becoming part of the public domain or coming into the possession of anyone other than as permitted hereunder. Such measures shall include, but not be limited to, the highest degree of care that a party utilizes to protect its own proprietary information, which shall be no less than reasonable care.

c) **Exceptions.** Notwithstanding the above, neither party shall have any liability to the other party under this Agreement with regard to any Confidential Information which a party can prove:

(i) was known to the Receiving Party, without restriction, at the time of such information's disclosure to the Receiving Party pursuant to this Agreement, as demonstrated by documentary evidence in existence at the time of such disclosure;

(ii) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or

(iii) is disclosed by the Receiving Party pursuant to the order or requirement of a court, administrative agency, or other governmental body of competent jurisdiction; provided, however, that in such case the party compelled to make such disclosure shall provide prompt written notice of such order or requirement to the other party to enable such party and/or the RPA Participants, if applicable, to seek a protective order or otherwise prevent or restrict such disclosure.

3. **Return of Materials.** At the request of a Disclosing Party, the Receiving Party will promptly return to the Disclosing Party all of the Disclosing Party's Confidential Information, together with all copies thereof. Nothing herein shall be deemed to affect in any way the parties' right to retain one copy of the Confidential Information in their files to comply with professional standards or for archival purposes; provided, however, that such copy shall be protected in accordance with the terms of this Agreement.

#### 4. **Disclaimers.**

Nothing in this Agreement shall be construed as granting any rights to the Receiving Party or any of its Representatives with respect to any Confidential Information of the Disclosing Party, other than the limited right to review in accordance with this Agreement, solely for the Purpose, any Confidential Information which is disclosed to the Receiving Party or its Representatives pursuant to this Agreement. Each party understands that nothing in this Agreement requires the disclosure of any Confidential Information to the other party, which shall be disclosed, if at all, solely at the discretion of the Disclosing Party.

5. **Term.** This Agreement shall commence on the Effective Date, and shall continue in effect until Company or Cherry Bekaert provides the other party with written notice of termination; provided that each party's obligations hereunder shall survive any termination of this Agreement and shall remain in effect for two (2) years following the date on which Confidential Information is last disclosed to the Receiving Party.

#### 6. **Miscellaneous Provisions.**

a) **Benefit/Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns; provided, however, that Company may not assign this Agreement without the prior written consent of Cherry Bekaert, which consent shall be subject to Cherry Bekaert's sole discretion.

**b) Third Party Beneficiaries.** The terms and provisions of this Agreement are intended solely for the benefit of the Company, Cherry Bekaert, and their respective permitted successors or assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

**c) Waiver of Breach; Cumulative Remedies.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or other provision hereof. All remedies under this Agreement, at law, in equity or otherwise afforded are cumulative and not alternative.

**d) Notices.** Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received if sent via overnight courier, or when received if sent via United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed to the applicable address stated on the signature page of this Agreement, as either party's addresses is changed from time to time by such party pursuant to notice in accordance with this Section.

**e) Divisions and Headings.** The division of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

**f) Drafting.** No provision of this Agreement shall be interpreted for or against either party hereto on the basis that such party was the draftsman of such provision, each party having participated equally in the drafting hereof, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**g) Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**h) Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Virginia without giving effect to such State's principles of conflicts of law.

**i) Remedies.** The parties each agree that due to the unique nature of the Confidential Information, monetary damages would be inadequate compensation for any breach by a party or its Representatives of any obligations set forth in this Agreement. Accordingly, the parties agree and acknowledge that any such breach or threatened breach shall cause irreparable injury and that, in addition to any other remedies that may be available under this Agreement, at law, in equity or otherwise, the parties shall be entitled to obtain injunctive relief against any breach or threatened breach of this Agreement, without the necessity of proving actual damages or posting any bond.

**j) Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**k) Entire Agreement.** This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof, and merges all prior negotiations, representations, understands,

agreements and drafts of the parties, whether oral or written, with regard to such subject matter. Any and all other written or oral agreements existing between or among any of the parties regarding such subject matter are expressly canceled.

*[Signatures on next page]*

In witness whereof, the Company and Cherry Bekaert have executed this Agreement as of the date first above written.

**Company**

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

Name: \_\_\_\_\_

(print)

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

Address for Notices:

**Cherry Bekaert LLP**

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

Name: \_\_\_\_\_

(print)

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

Address for Notices: