



Advanced Merchant
s o l u t i o n s
INC

MUTUAL NON-DISCLOSURE AGREEMENT

In connection with discussions between _____ with offices at _____ Tel: (____) _____ - _____ (Company) and Advanced Merchant Solutions, Inc. with offices at 604 Princeton Circle West, Fullerton, Ca. concerning potential mutually beneficial business relationships (the "Discussions"), "Company" and Advanced Merchant Solutions, Inc. may each provide to the other, certain confidential and proprietary information for evaluation purposes. The parties agree to the following terms with respect to the treatment and use of such information.

1. Definition of Confidential Information

- a. "Confidential Information" means information that has been or that may be disclosed, either orally or in writing by one party (the "Provider") to the other (the "Recipient"), including but not limited to, information concerning all aspects of the business of the Provider and its affiliates, financial statements, business and marketing plans, pending or threatened litigation, prospective contractual relations, collection, tabulation and analysis of data, computer programming methods, designs, specifications, plans, drawings and similar materials, programs, databases, inventions (whether or not eligible for legal protection under patent, trademark, or copyright laws), research and development, and work in progress. The Recipient will consider such information disclosed by the Provider Confidential Information whether designated as "Confidential" or not.
- b. Confidential Information does not include any information which:
- is in the public domain at the time communicated to the Recipient, or which becomes public through no fault of the Recipient;
 - is obtained by the Recipient, with permission to disclose, from a third party not to the Recipient's knowledge, subject to a contractual or fiduciary duty not to disclose;
 - has been independently derived by the Recipient without reference to Confidential Information;
 - the Recipient can demonstrate he/she was lawfully in its possession free of any duty to the Provider before the date of disclosure to the Recipient by the Provider;
 - is disclosed by the Recipient in response to a valid order by a court or other governmental body, or is otherwise disclosed as required by law, provided however that before disclosure the Recipient notifies the Provider of its obligation to so disclose the information and takes reasonable measures to obtain a protective order preserving the confidentiality of the information.

2. Confidentiality

Without the prior written approval of the Provider, the Recipient agrees not to disclose, directly or indirectly, Confidential Information except to officers, directors, employees, owner of thirty percent (30%) or more of the equity of Recipient, parent and affiliated companies of Recipient, and agents of the Recipient, only to the extent needed for the Discussions or as required by law. Confidential Information may be used only for the purposes of the Discussions. Any Confidential Information disclosed shall be held confidential by the individuals and entities to whom it is disclosed and shall not be further disclosed by those individuals or entities.

3. Duty of Care

The Recipient shall exercise the level of care it would exercise to safeguard its own Confidential Information with regard to Confidential Information received from the Provider. This duty shall include, but is not limited to, advising individuals and entities to whom Confidential Information is disclosed of their obligations to maintain confidentiality under this Agreement.

4. No License

Nothing in this Agreement shall be construed as granting any license or right under any patent, copyright, trade secret or otherwise, nor shall this Agreement impair the right of either party to contest the scope, validity or alleged infringement of any patent, copyright, trademark, or trade secret. Recipient acknowledges that the Provider's Confidential Information is and shall continue to be the exclusive property of the Provider.

5. Independent Development

Both parties understand that the other may currently or in the future be developing information internally, or receiving information from the other party that may be similar to their own. Accordingly, nothing in this Agreement will be construed as a representation or inference that the other party will not develop products, or have products developed for it, that, without violation of this Agreement, compete with the products or systems contemplated by the other's Confidential Information.

6. Termination of Discussions

If the Discussions are terminated for any reason, and in any event upon the reasonable request of the Provider, the Recipient shall within three (3) business days return or destroy, at the Provider's option, all copies and notes of the Provider's Confidential Information in the Recipient's possession or control, or the possession or control of any individual or entity to which the Recipient has disclosed the Provider's Confidential Information. The Recipient shall confirm in writing that neither it, nor any individual nor entity to which the Recipient has disclosed the Provider's Confidential Information, has retained copies, notes, or other records of such Confidential Information in any medium whatsoever.

7. Injunctive Relief and Damages

Each party acknowledges that any breach of this Agreement could cause irreparable harm to the other that could be difficult if not impossible to quantify in monetary damages. Accordingly, each party agrees that, in addition to any other remedies to which the other party may be legally entitled, such party shall have the right to seek immediate injunctive relief in the event of a breach of this Agreement by the other party or any of its officers, employees, consultants or other agents. Each party further agrees that, in addition to any other remedies to which the other party may be entitled, if a court having jurisdiction determines that a party breached the Agreement, the breaching party shall be required to pay to the other party compensatory damages resulting from the breach, which in no event shall be less than \$10,000.00, regardless of whether the non-breaching party is able to prove that it was damaged in that amount as a result of the breach. Each party further agrees that, if a court having jurisdiction determines that the breaching party willfully breached this Agreement, the other party shall be entitled to recover from the breaching party as a penalty, in addition to compensatory damages and any other remedies to which the other party may be entitled, an amount equaling two times the amount of the compensatory damages. In addition, in the event that legal action is necessary to enforce any party's rights under this Agreement, the prevailing party shall be entitled to recover from the other its reasonable costs, expenses, and attorneys fees.

8. Miscellaneous

- a. Governing Law. This Agreement shall be governed by the laws of the State of California and venue shall be in the state or federal courts in Fullerton, California.
- b. Disclosure of Third Party Information. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.
- c. Modification and No Assignment. This Agreement may be modified only in writing signed by the parties. This Agreement may not be assigned.
- d. Effect and Term. This Agreement supersedes all prior understandings of the parties relating to Confidential Information. This Agreement shall be in force from the date of execution, for the duration of the Discussions, and for a period of one (1) year following termination of the Discussions.

EXECUTED _____ (Date)

Company

Advanced Merchant Solutions, Inc.

By: _____

By: _____

(Printed Name/Title)

(Printed Name/Title)