



## MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between **RUNWAY GROWTH CAPITAL LLC**, a Delaware limited liability company, ("RGC") and the undersigned ("Interested Party").

### RECITALS

- A. The parties hereto desire to explore and discuss a possible business relationship or transaction (the "Transaction").
- B. In connection with the Transaction, each of RGC and Interested Party may be given access to Confidential Information (as defined below) of the other.
- C. The parties hereto wish to set forth their understanding with respect to the provision, retention and return (or destruction) of such Confidential Information during and after the discussions relating to the Transaction.
- D. The party disclosing Confidential Information hereunder is referred to herein as "Disclosing Party," and the party receiving Confidential Information hereunder is referred to herein as "Recipient."

### AGREEMENT

**NOW, THEREFORE**, the parties agree as follows:

**Section 1. Confidential Information.** Except as set forth below, "Confidential Information" shall mean and include (i) any financial, operational, technical and other information relating to the past, present and future businesses and affairs of Disclosing Party, (ii) any information concerning Disclosing Party's products, processes and services, including, without limitation, relating to physical working models and samples of products, research, development, patentable and unpatentable inventions, manufacturing, purchasing and product development plans, forecasts, strategies and information, marketing, merchandising, selling, customer lists, customer prospects, software codes, algorithms, names and expertise of employees and consultants, blueprints, technical information, trade secrets or knowhow or other related proprietary business information and data, and (iii) any agreements, documents or instruments relating to the Transaction, in each case whether such information is provided in tangible or intangible form, written, oral, graphic, pictorial or recorded form or stored on computer discs, hard drives, magnetic tape or digital or any other electronic medium.



**Section 2. Exclusions.** For purposes of this Agreement, Confidential Information shall not be deemed to include information which (i) is, or becomes, public information through no wrongful act of Recipient, (ii) was previously or independently developed or known to Recipient without the use of Confidential Information disclosed under this Agreement, (iii) is, or becomes, lawfully available to Recipient from a source other than Disclosing Party which is under no duty of confidentiality or non-disclosure to Disclosing Party, (iv) is developed by Recipient without any use of or reference to the Confidential Information of Disclosing Party, or (v) is approved for release by written authorization from Disclosing Party.

**Section 3. Non-Disclosure and Non-Use of Confidential Information.** The Confidential Information shall (i) be kept confidential by Recipient and not disclosed to any third party (except as provided in this Section 3), (ii) not be used by Recipient for any commercial or competitive purpose whatsoever except as specifically provided in a definitive written agreement entered into between Recipient and Disclosing Party, and (iii) be used only in connection with the discussions relating to the Transaction. Notwithstanding the foregoing, Recipient may disclose the Confidential Information to such of its directors, officers, Affiliates (as defined below) or advisors (collectively, "Entity Representatives") as reasonably required for the purpose of evaluating or consummating the Transaction, provided all such Entity Representatives agree to be bound by the provisions of this Agreement, and provided further that any breach of this Agreement by an Entity Representative shall also be considered a breach of this Agreement by Recipient for which breach, Disclosing Party may hold Recipient wholly responsible.

**Section 4. Compelled Disclosure.** Notwithstanding anything herein to the contrary, in the event that Recipient, or anyone to whom Recipient transmits the Confidential Information, becomes legally compelled to disclose any of the Confidential Information by subpoena or other legal process, Recipient will provide Disclosing Party with prompt notice of such legal process. Disclosing Party may seek a protective order or other relief with respect to such Confidential Information and Recipient will reasonably cooperate with Disclosing Party, at Disclosing Party's sole expense, in connection with any such efforts. If, failing the entry of a protective order or other appropriate relief, Recipient is compelled to disclose Confidential Information, Recipient may only disclose that portion of the Confidential Information which Recipient reasonably believes is required to be disclosed.

**Section 5. Return of Confidential Information.** Upon the request of Disclosing Party, Recipient shall destroy or return to Disclosing Party, the original and all copies of the Confidential Information, or in the case of Confidential Information stored in electronic, magnetic or digital media, at the election of Recipient, shall erase or render unreadable, all materials furnished (including, without limitation, any working papers containing any Confidential Information or extracts therefrom) which contain Confidential Information of Disclosing Party. Notwithstanding anything to the contrary in this Agreement, Recipient and its Entity Representatives may retain Confidential Information (a) stored in standard



archival or computer back-up systems, or (b) as required by law, regulation, professional obligations or bona fide document retention policies.

**Section 6. Non-Disclosure of the Transaction.** Neither party will publicly announce or otherwise disclose, without the prior written consent of the other party, that discussions relating to the Transaction are taking place except for such disclosure as a party has been advised by its legal counsel is required by law, in which case, the party wishing to make such disclosure shall provide the other party with as much prior notice of such announcement or disclosure as is reasonably possible under the circumstances (and attempt in good faith to obtain such other party's concurrence with the manner and extent of such disclosure).

**Section 7. No Liability.** Neither party hereto shall be under any obligation of any kind with respect to the Transaction, except for the matters specifically agreed to herein, unless and until a separate written agreement regarding the Transaction has been executed and delivered by each of the parties hereto.

**Section 8. Governing Law, Jurisdiction.** This Agreement shall be construed and enforced in accordance with the law of the State of Illinois, excluding its conflict of laws rules. The parties acknowledge that the state and federal courts located in the State of California will have exclusive jurisdiction over any case or controversy arising out of or relating to this Agreement, its subject matter or any of the transactions contemplated by this Agreement and that any litigation arising out of or relating to this Agreement, its subject matter or any of the transactions contemplated by this Agreement may be commenced in the state or federal courts located in the State of California. Each of the parties submits to the jurisdiction of the state and federal courts located in the State of California for the foregoing purposes.

**Section 9. Remedies.** Each party hereby acknowledges that Disclosing Party would be irreparably harmed by a breach hereof by Recipient and it may be difficult to estimate damages resulting from such a breach and that there can be no adequate remedy at law for any breach of Recipient's obligations hereunder and that any such breach may allow Recipient or a third party unfairly to compete with Disclosing Party.

Consequently, upon any breach or threatened breach of this Agreement, Disclosing Party shall be entitled to seek to enforce the provisions of this Agreement by any means allowed by law or equity, including without limitation, injunctive relief and/or specific performance or such other equitable relief as may be appropriate to prevent a breach or threatened or continuing breach of this Agreement, and to secure the enforcement of this Agreement, without the necessity of proving actual damages. In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain in full force and



effect, and the unenforceable provisions shall be construed by limiting them so as to be enforceable to the fullest extent permitted by law.

**Section 10. Entire Agreement.** This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, superseding all previous oral or written communications, representations, understandings, arrangements or agreements.

**Section 11. Headings, etc.** The section headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

**Section 12. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**Section 13. Notices.** In any case where any notice or other communication is required or permitted to be given hereunder (including, without limitation, any change in the information set forth in this Section 13), such notice or communication shall be in writing and (i) personally delivered, (ii) sent by certified or registered United States mail, postage prepaid, return receipt requested, (iii) transmitted by telecopy (with confirmation of receipt received), or (iv) sent by way of a recognized overnight courier service, postage prepaid, return receipt requested with instructions to deliver on the next business day, in each case to the addressee at the address stated in the introductory paragraph of this Agreement. Either party may change the contact information provided above by providing the other party notice of its new contact information in accordance with the procedure set forth in this Section 13.

**Section 14. Amendments.** This Agreement may be amended or modified only by a duly authorized and executed writing signed and delivered by both parties to this Agreement.

**Section 15. Term.** Unless otherwise agreed in writing by the parties hereto, the term of this Agreement shall be two years commencing on the date hereof. Following the expiration of the term of this Agreement the obligations of the parties hereunder shall terminate, except that the parties' obligations under

Section 1, Section 2, Section 3, Section 4, and Section 9 hereunder shall survive the termination of this Agreement and continue indefinitely.



**IN WITNESS WHEREOF**, the parties hereto have caused this Mutual Confidentiality Agreement to be executed as of the date first written above.

**RUNWAY GROWTH CAPITAL LLC**

\_\_\_\_\_  
Print Name and Title of Authorized Representative

\_\_\_\_\_  
*Signature of Authorized Representative*

**INTERESTED PARTY**

\_\_\_\_\_  
Print Name of Interested Party

\_\_\_\_\_  
*Signature of Interested Party/Authorized Representative  
(if an entity, signature of Authorized Representative)*

\_\_\_\_\_  
Print Name and Title of Authorized Representative  
(if applicable)