



MUTUAL CONFIDENTIALITY AGREEMENT

INTRODUCTION: This Mutual Confidentiality Agreement (this "**Agreement**") is made by and between the parties as of the date signed below (the "**Effective Date**"). This Agreement governs the disclosure of Confidential Information (as defined below) by either party and its Affiliates (in such role, "**Discloser**") and the receipt of Confidential Information by the other party and its Affiliates (in such role, "**Recipient**").

1. CONFIDENTIAL INFORMATION.

a. "**Confidential Information**" means information provided in any form by or on behalf of Discloser to Recipient that:

(1) is Discloser's or its Affiliates software, or third-party software, or object code, source code, related end user documentation, and related technical documentation (collectively, "**Software**");

(2) concerns matters of a technical, financial, commercial, business, or other proprietary nature, that are not generally disclosed to the public and which, if disclosed to others, may be competitively detrimental to the Discloser, or which may reasonably be understood by Recipient to be confidential or proprietary in nature;

(3) contains Discloser's customer or account information ("**Customer Data**");

(4) is marked "confidential," "restricted," "proprietary," "secret," or with similar designation; or

(5) is disclosed orally or in another manner that prevents the information from being marked with a legend and is identified as confidential prior to or at the time of disclosure, and the status of the information is confirmed in writing by Discloser promptly following disclosure;

b. Confidential Information includes all copies and other reproductions and all summaries and other abstracts of Confidential Information however made (collectively, "**Derivatives**").

c. If a party has disclosed Confidential Information to the other party within thirty (30) days prior to the Effective Date and the disclosure was not governed by a separate agreement, the Confidential Information will be subject to the terms of this Agreement from the Effective Date. Any Confidential Information disclosed following the Effective Date is subject to this Agreement.

d. Confidential Information does not include information that (i) is publicly available, or subsequently becomes publicly available, unless it becomes available by breach of this Agreement or other duty by Recipient, (ii) is in, or subsequently comes into Recipient's rightful possession from a third party who was not prohibited from disclosing the information to Recipient, or (iii) is independently developed or discovered by Recipient without use of, or reference to Confidential Information or (iv) is authorized in writing by the Discloser to be released from the confidentiality obligations herein.

e. "**Affiliate**" of a party shall mean any person or entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with a party. For purposes of the foregoing, "control" shall mean, with respect to: (a) a corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof or, for purposes of foreign corporations, if less than fifty percent (50%), the maximum amount allowed by applicable law; and (b) any other entity, fifty percent (50%) or more ownership interest in said entity, or with respect to other foreign entities, the power to direct the management of such entity.

f. A Recipient may share Confidential Information with any of its Affiliates only during such periods when such common control relationship exists. Each party is responsible for the acts and omissions of its Affiliates with respect to the treatment of Confidential Information disclosed pursuant to this Agreement (even after such common control relationship no longer exists). Confidential Information disclosed by any Affiliate of Discloser will be subject to the terms of this Agreement and treated by Recipient as if disclosed by Discloser.

2. RECIPIENT'S OBLIGATIONS.

a. Recipient will and will ensure each of its Affiliates:

(1) use the same level of care and discretion to avoid disclosure, publication, or dissemination of Confidential Information as it uses with its and its Affiliates' own similar information, but no less than a reasonable level of care;

(2) use Confidential Information solely for the purpose for which it was disclosed;

(3) use any Software disclosed by the other party in machine-readable form only and will not reverse engineer, decompile, or disassemble any Software so disclosed;

(4) disclose Confidential Information only to its or its Affiliates' employees, attorneys, agents, partners, subcontractors or financial advisors with a need to know (collectively, "**Representatives**");

(5) have an agreement in place with each Representative that is sufficient to require the person to treat the information in accordance with this Agreement and will take reasonable steps to cause such individuals to comply with the terms of this Agreement;

(6) return or destroy (and, if requested by Discloser, certify the destruction of) all originals and all Derivatives of Discloser's Confidential Information when they are no longer needed for the purpose for which they were provided and in any case promptly upon Discloser's request; except, however, the Recipient is not required to return or destroy computer files stored in the ordinary course of business as a result of automated back-up procedures (subject, however, to the restrictions of confidentiality and limited use set forth herein); and

(7) comply with applicable legal requirements in the use of Confidential Information, including without limitation prohibitions on trading in a public company's securities while in possession of material nonpublic information, other applicable securities regulations, and export compliance regulations.

b. Recipient will notify Discloser immediately upon discovery of any unauthorized use or disclosure of Confidential Information and cooperate with Discloser in every reasonable way to mitigate the effect of the disclosure on Discloser. This provision does not limit any of the remedies otherwise available to Discloser or limit Recipient's liability for failure to comply with the provisions of this Agreement.

3. ADDITIONAL UNDERSTANDINGS.

a. This Agreement does not require either party to disclose Confidential Information or to update Confidential Information previously disclosed.

b. Each party signing below represents, warrants and covenants to the other party signing below and such other signing party's Affiliates that it has the authority to bind its Affiliates and ensure compliance of this Agreement by such Affiliates.

c. Recipient acknowledges that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information and, in the event of such breach, Discloser will be entitled to seek injunctive or other equitable relief against Recipient in addition to any and all remedies at law or in equity, including without limitation the recovery of damages and reasonable attorneys' fees to the Discloser should the Discloser prevail.

d. Recipient may disclose Confidential Information to the extent required by law; however, prior to any such disclosure, Recipient will give Discloser prompt written notice of the need for such disclosure to allow Discloser a reasonable opportunity to obtain a protective order or engage in other efforts to minimize the required disclosure. Recipient will reasonably cooperate with Discloser's efforts. If Discloser is unable to obtain a protective order or other remedy, Recipient will disclose only that portion of the Confidential Information that it is legally required to furnish and, at Discloser's request, will use reasonable efforts to obtain confidential treatment for the portions disclosed.

e. Notwithstanding anything to the contrary in this Agreement, subject to Discloser's valid patents and copyrights and so long as Recipient does not breach its confidentiality obligations under this Agreement, Recipient shall not be limited in developing, acquiring, marketing, or selling any product or service of its choosing.

f. All Confidential Information is and will remain the property of Discloser. This Agreement and the disclosure of Confidential Information does not grant any license or assignment under any patent, patent application, copyright, trade secrets or trademark by implication, estoppel, or otherwise.

g. Confidential Information is provided by Discloser "AS IS," without warranty of any kind. Use of Confidential Information is at Recipient's risk.

h. This Agreement and the fact the parties are having discussions do not commit the parties nor their Affiliates to enter into a transaction, indicate the existence of a business relationship of any kind, or bind the parties to enter into a transaction or business relationship. Transactions or business relationships between the parties, if any, exist only under separate written agreements that are signed by authorized representatives of each party.

i. Each party guarantees the performance under the terms of this Agreement by their Affiliates and Representatives.

j. Each party agrees to maintain the substance of this Agreement in confidence. Furthermore, each party agrees to maintain the existence of this agreement in confidence where disclosure of the existence of this Agreement to a third-party is reasonably likely to be detrimental to either party.

4. **TERM AND TERMINATION.** This Agreement will remain in effect from the Effective Date until terminated by either party with at least thirty (30) days' prior written notice to the other party. All Confidential Information will remain subject to the terms of this Agreement for a period of five (5) years, from the date of disclosure; provided, however, Confidential Information that constitutes a trade secret of Discloser will remain subject to the terms of this Agreement for so long as the Confidential Information remains a trade secret under applicable law.

5. **GENERAL PROVISIONS.**

a. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and replaces all prior and contemporaneous discussions or agreements between them regarding the disclosure or receipt of Confidential Information. Notwithstanding the foregoing, all prior confidentiality agreements shall remain in effect as to all previously disclosed Confidential Information. This Agreement may be modified only by a written amendment or other agreement signed by authorized representatives of each party. This Agreement will inure to the benefit of and be binding upon the parties, their successors, and assigns.

b. Provisions of this Agreement are waived only if an authorized representative of the party against whom waiver is sought agrees in writing. No waiver of any provision of this Agreement will constitute a waiver of any other provisions or of the same provision on another occasion.

c. Unless expressly prohibited by local law without the possibility of contractual waiver, the parties agree this Agreement shall be governed and interpreted by the laws of the applicable jurisdiction as specified in the table below, without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of the applicable courts specified below. If the Agreement is controlled by the laws of England, no person who is a party to the Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999. Nothing in this Section 5 will prevent the parties from seeking interim injunctive relief against the other party in the courts having jurisdiction over the other party (or parties).

Country of Principal Address of Non-Körber Party	Governing Law	Venue
United States	State of Minnesota, U.S.A.	State and federal courts located in Hennepin County, Minnesota
Canada	Province of Ontario, Canada	Provincial and federal courts located in Ontario, Canada
Europe, Middle East, Africa or Asia	England	Courts of England
Australia	State of New South Wales, Australia	State and federal courts located in New South Wales
Any other Country	State of Minnesota, U.S.A.	State and federal courts located in Hennepin County, Minnesota

d. To the extent permitted by law, the parties hereby confirm that they have requested that the Agreement be drafted in English. Any language translation of this Agreement is for convenience only and no such translation will be binding against the parties except as required by applicable law without the possibility of contractual waiver.

e. If any provision of this Agreement is held to be invalid, illegal or unenforceable, then the provision will be treated as severed from this Agreement and the remainder of the Agreement will be enforced. In addition, the severed provision will be deemed to be automatically modified, and included in this Agreement as so modified, to the extent necessary to render the provision valid, legal and enforceable and consistent with the intention of the original provision.

f. Neither party may assign or transfer its rights or delegate its duties or obligations under this Agreement without the other party's prior written consent, except that a party may assign this Agreement, upon written notice to the other party, to a third party that (i) is the surviving entity in a merger with the assigning party, or (ii) acquires substantially all of the assigning party's assets or voting securities.

g. Notices required or permitted under this Agreement will be in writing and sent to the attention of the "Legal Department" of the other party at the address set forth below. Each notice will be deemed to have been received when delivered personally or by UPS, Federal Express, or other nationally recognized courier service, or three (3) days after having been deposited in the mail, certified, postage prepaid, return receipt requested.

h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one instrument. A version of this Agreement signed and transmitted by .pdf or electronic copy shall have the same binding effect as an original signature. Each party agrees that its electronic signature is the legal equivalent of its manual signature on this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Körber

Non-Körber Party

(Körber legal entity name)

(insert full legal name, type of entity, and location of organization above)

Authorized Signature: _____

Authorized Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Principal Address: 5600 W 83rd Street
Suite 600 – 8200 Tower
Bloomington, MN 55437

Principal Address: _____

