NON-DISCLOSURE AGREEMENT FOR BUSINESS EVALUATION

THIS NON-DISCLOSURE AGREEMENT FOR BUSINESS EVALUATION (this “Agreement”) is entered into and made effective as of the Effective Date shown on the signature page hereof, by and between The TJX Companies, Inc., on behalf of itself and/or its relevant affiliate or subsidiary, with offices at 770 Cochituate Road, Framingham, MA 01701 (“TJX”) and the Service Provider identified on the signature page hereof. In consideration of the mutual covenants, terms and conditions set forth herein, the parties agree as follows:

1. Confidential Information; Feedback.

1.1 In connection with one or more evaluations by TJX of one or more proposed products or services arrangements with Service Provider (each such evaluation, an “Evaluation”), the parties desire to share certain information that is non-public, confidential or proprietary in nature.

1.2 Except as otherwise expressly provided herein, “Confidential Information” means all non-public, confidential or proprietary information disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) or its affiliates, or to any of such Receiving Party’s or its affiliates’ directors, officers, employees, agents, contractors, consultants, attorneys, advisors or representatives (collectively, “Representatives”) in any manner, directly or indirectly (including, without limitation, in writing, orally, or by inspection of or access to the Disclosing Party’s computer network, systems, servers, software programs or software configurations).

1.3 Confidential Information shall include, without limitation: (a) the existence and terms of and any information relating to: (i) this Agreement, (ii) the Evaluation, and (iii) any request for proposal, request for information or bid to which the Evaluation relates; (b) financial statements, budgets and projections, profit margins, pricing information and other financial information; (c) information about products, customers, marketing programs, plans and strategies, employees, suppliers, servicing methods, business strategies, plans, methods and analyses; (d) designs, specifications, components, source code, object code, images, icons, schematics, drawings, protocols, processes and visual depictions; (e) the Disclosing Party’s inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property; (f) personal information; (g) any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Receiving Party or its Representatives; and (h) notes, analyses, compilations, reports, forecasts, studies, summaries and other material, however recorded, prepared by the Receiving Party or its Representatives containing or based, in whole or in part, on any information described above.

1.4 Nothing contained in this Agreement, nor any disclosure of Confidential Information hereunder, shall grant or confer upon the Receiving Party any right, license or authority in or to the Confidential Information. The Confidential Information is provided “as is” and the Disclosing Party does not warrant the accuracy or completeness of same, and all implied warranties or representations to that effect are hereby disclaimed.

1.5 Service Provider may, from time to time, provide suggestions, comments or other feedback to TJX with respect to information provided by TJX (“Feedback”). Feedback, even if designated as confidential by Service Provider, shall not, absent a separate written agreement, create any confidentiality obligation for or upon TJX. Further, TJX shall be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property or otherwise. Service Provider will not give Feedback that is subject to confidentiality obligations or other terms or restrictions imposed by any third party.

2. Exceptions to Definition of Confidential Information.

Confidential Information shall not include information that:

(a) is already known to the Receiving Party or its Representatives without restriction on use or disclosure prior to disclosure of such information by the Disclosing Party;

(b) is or becomes publicly known other than by breach of this Agreement by, or other wrongful act of, the Receiving Party or any of its Representatives; or

(c) is disclosed by the Service Provider and is not marked or otherwise designated by Service Provider as confidential; or

(i) is disclosed by the Service Provider and is not marked or otherwise designated by Service Provider as confidential; or

(ii) is disclosed by the Service Provider and has been in the possession of TJX for at least two (2) years.

3. Receiving Party Obligations.

3.1 The Receiving Party shall: (a) protect and safeguard the confidentiality of the Confidential Information using at least the same degree of care it uses to protect and safeguard its own non-public, confidential or proprietary information, but in no event less than a reasonable degree of care; (b) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than for the Evaluation; (c) not disclose the Confidential Information to any person or entity, except to the Receiving Party’s Representatives who (i) need to know the Confidential Information for the Evaluation, (ii) are informed by the Receiving Party of the confidential nature of the Confidential Information, and (iii) are subject to confidentiality obligations to the Receiving Party that are at least as protective of the Confidential Information as those contained in this Agreement; and (d) be responsible for any breach of this Agreement caused by any of its Representatives.

3.2 Notwithstanding the foregoing, the Receiving Party may disclose the Confidential Information to the extent such disclosure is required by a court or governmental body, or by applicable law; provided that the Receiving Party provides (a) prior written notice of such required disclosure to the Disclosing Party so that the Disclosing Party may seek, at its own expense, a protective order or other limitation on disclosure or remedy, and (b) reasonable assistance, at the Disclosing Party’s expense, in opposing such disclosure or in seeking such a protective order, or other limitation or remedy.

4. Requirement of Notice of Unauthorized Use or Disclosure.

The Receiving Party shall give prompt (but in any event within twenty-four (24) hours) written notice to the Disclosing Party of any unauthorized use or disclosure of the Confidential Information and shall assist the Disclosing Party in remedying any such unauthorized use or disclosure. Neither the Receiving Party’s assistance, nor the Disclosing Party’s acceptance of such assistance, in connection with any such unauthorized use or disclosure shall constitute a waiver of any breach of this Agreement.

5. Return/Destruction of Confidential Information.

Upon written notice at any time from the Disclosing Party, Receiving Party and its Representatives shall, as promptly as possible, and in all events within three (3) business days: (a) return to the Disclosing Party or, at the Disclosing Party’s option, destroy all documents and tangible materials (and any copies) containing,
breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity. Any destruction or erasure of Confidential Information pursuant to this Section shall be done in a manner that is permanent and secure and that renders such Confidential Information unreadable, undecipherable and unable to be reconstructed.

6. **Injunctive Relief.**

Each party acknowledges that a breach of this Agreement may cause the non-breaching party irreparable damages, for which an award of monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including, but not limited to, a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity.

7. **Compliance With Laws.**

The Receiving Party and its Representatives shall at all times comply with all laws and regulations applicable to their receipt, custody and use of Confidential Information including, but not limited to, export control laws and all laws relating to the privacy of personal information.

8. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provisions. Service Provider irrevocably submits to the jurisdiction of the state and federal courts located in Massachusetts for the resolution of any matters related to this Agreement.

9. **Miscellaneous.**

9.1 This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and, as it relates to current and future Evaluations, supersedes all prior agreements between the parties with respect to the non-disclosure and use of Confidential Information in connection with such Evaluations.

9.2 No failure or delay by one party in enforcing its rights hereunder shall operate as a waiver of such right or preclude the exercise of any other or further right, power or privilege hereunder.

9.3 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement shall remain in full force and effect.

9.4 This Agreement may not be modified, amended or waived, except by an instrument in writing signed by each of the parties hereto. Any electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

9.5 Neither party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed herein.

9.6 The rights and obligations of the parties shall survive the termination of this Agreement, even after the return or destruction of the Confidential Information by the Receiving Party.

9.7 If this Agreement is entered into in the Province of Quebec, the parties hereto acknowledge that they have requested this Agreement and all related documents to be drawn up in the English language. Les parties aux présents reconnaissent qu’elles ont exigé que la présente convention et tout document s’y rattachant soient rédigés en anglais.

10. **Notices.**

All notices required or permitted to be made under this Agreement shall be in writing and shall be deemed delivered upon the first to occur of (a) actual delivery to the person to whom it is addressed, or (b) delivery by recognized overnight courier with confirmation of delivery, or (c) the third (3rd) business day after deposit in the United States mail, certified mail, return receipt requested, in each case addressed to the party as provided in this Agreement (Attention: General Counsel, in the case of TJX), or to such other address as either party may designate in writing to the other party for this purpose.

11. **Assignment.**

Neither party may assign any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without the express written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**Service Provider:**

Entity Name: ____________________________

By: ____________________________ (signature)

Signer’s Name: ____________________________

Title: ____________________________

Address: ____________________________

**TJX:**

The TJX Companies, Inc.

By: ____________________________ (signature)

Signer’s Name: ____________________________

Title: ____________________________

Address: ____________________________