

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This confidentiality agreement (the “Agreement”) is dated _____, 2023 by and between _____, a _____ (the “Disclosing Party”) and Pareto Capital Partners LLC, a Delaware limited liability company (the “Receiving Party”). The Receiving Party and the Disclosing Party are sometimes collectively referred to herein as the “Parties” and individually as a “Party”.

RECITALS

In connection with the Receiving Party’s interest in engaging in a potential investment in the Disclosing Party (the “Potential Transaction”), the Disclosing Party may disclose to the Receiving Party or its Representatives (as defined below) certain non-public and proprietary information relating to the Disclosing Party.

The Disclosing Party wishes to preserve the confidentiality and prevent the unauthorized disclosure and use of any such non-public and proprietary information of the Disclosing Party disclosed to the Receiving Party hereunder in accordance with the terms hereof.

AGREEMENT

The parties hereby agree as follows:

1. As used herein, the term “Confidential Information” shall include all non-public information, proprietary information and other confidential information received by the Receiving Party or its Representatives on or following the date of this Agreement, regardless of the manner or medium in which it is furnished, including, without limitation, all information and documentation relating to the Disclosing Party’s financial, tax, accounting, intellectual property and other information regarding business operations and structure, marketing practices and techniques, business strategies and capabilities, business plans, and relationships with customers, suppliers, principals, employees and others; any information that is a trade secret within the meaning of applicable trade secret law; and other documentation and materials prepared by the Receiving Party or any of its Representatives containing or based in whole or in part on any of the foregoing furnished by the Disclosing Party or its Representatives. Confidential Information does not include information that: (a) is in the public domain or comes into the public domain through no fault of the Receiving Party, (b) becomes available to the Receiving Party on a non-confidential basis from a source that is believed to be entitled to disclose it on a non-confidential basis, (c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party or (d) was or is independently developed by the Receiving Party or its Representatives.
2. As a condition to receiving the Confidential Information that the Disclosing Party or any of its employees, representatives or agents may furnish to the Receiving Party or its members, managers, partners, directors, officers, employees, attorneys, advisors, representatives and financing sources, (collectively, “Representatives”) or to which the Receiving Party is afforded access, directly or indirectly, by the Disclosing Party, the Receiving Party:

- i. shall use, and shall cause its Representatives to use, the Confidential Information solely for the purpose of the review, evaluation, negotiation, and consummation of the Potential Transaction and for no other purpose;
 - ii. shall take all reasonable measures to avoid disclosure, dissemination or unauthorized use of the Confidential Information, including, at a minimum, those measures that it takes to protect its own confidential information of a similar nature (provided that such measures are consistent with at least a reasonable degree of care); and
 - iii. shall not, without the prior written consent of the Disclosing Party, use, disclose or make the Confidential Information accessible to any person or entity, including Representatives or other third parties, other than to those who need to know the Confidential Information to permit the Receiving Party to review, evaluate, negotiate and consummate a Potential Transaction and who are informed of the confidential nature of the Confidential Information. Receiving Party shall be responsible for any breach of the terms of this Agreement applicable to Representatives by any of its Representatives to whom it has provided the Confidential Information and who has not entered into a separate confidentiality agreement with the Disclosing Party covering the Confidential Information.
3. All Confidential Information shall remain the property of the Disclosing Party, and the Receiving Party shall have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement with respect to the Confidential Information.
4. In the event that the Receiving Party or any of its Representatives are requested or required (by law, judicial order, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Receiving Party or its Representatives, to the extent permitted by law, shall provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may, at its sole expense, seek an appropriate protective order. The Receiving Party will cooperate with the Disclosing Party in obtaining such an order, at the Disclosing Party's sole expense. Notwithstanding the foregoing, the Receiving Party and its Representatives may disclose such information, and need not provide such notice, in connection with a proceeding (including in response to oral questions, interrogatories or requests for information or documents) involving the Receiving Party or its Representatives, as applicable, and a regulatory authority with jurisdiction over the Receiving Party or such Representative, provided that such proceeding is not specifically directed at the Confidential Information or the Potential Transaction.
5. At any time upon written request of the Disclosing Party, the Receiving Party and its Representatives shall promptly either (at the Receiving Party's option): (a) destroy all copies, including electronic, of the written Confidential Information in their Representatives' possession and confirm such destruction to the Disclosing Party in writing; or (b) return to the Disclosing Party all copies of the Confidential Information furnished it and in its possession or in the possession of its Representatives.

Notwithstanding the foregoing, the Receiving Party and its Representatives may retain any Confidential Information required by law, regulation or for the purpose of the Receiving Party's or its Representatives' internal document retention or compliance policies and procedures or for the defense of the Receiving Party's or its Representatives' rights and obligations under this Agreement. The Receiving Party and its Representatives may also retain Confidential Information to the extent it is "backed up" on its or its Representatives' (as the case may be) electronic information management and communications systems or servers as part of such policies.

6. Except as provided in any separate agreement between the Parties, the Disclosing Party is making no representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. Absent fraud, the Disclosing Party expressly disclaims any and all liability to the Receiving Party and its Representatives that may be based upon or related to their use of or reliance upon the Confidential Information.
7. The Disclosing Party acknowledges that in the ordinary course of the Receiving Party's business, it and its private equity affiliates pursue, acquire, manage and serve on the boards of companies that may be competitors or potential competitors to the Disclosing Party. The Disclosing Party acknowledges that the Receiving Party's review of the Confidential Information will inevitably enhance its knowledge and understanding of the Disclosing Party's industries in a way that cannot be separated from the Receiving Party's other knowledge and the Disclosing Party agrees that this Agreement shall not restrict the Receiving Party's use of such overall knowledge and understanding of such industries, including in connection with the purchase, sale, consideration of, and decisions related to other investments and serving on the boards of such investments. It is acknowledged and agreed that notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be applicable to or binding upon any of the Receiving Party's affiliated portfolio companies. Notwithstanding the previous sentence, to the extent that any of the Receiving Party's affiliated portfolio companies has been provided with Confidential Information by Receiving Party, they shall be deemed to be a Representative of the Receiving Party for purposes of this Agreement and subject to the terms of this Agreement as a Representative. For purposes of clarification, the Receiving Party's affiliated portfolio companies shall not be deemed to have been provided with Confidential Information simply as a result of the employees or directors of the Receiving Party (whether or not such persons have been provided with or have knowledge of the Confidential Information) serving on the board of such affiliated portfolio company.
8. The Receiving Party recognizes that in the event of a breach of this Agreement by it or its Representatives, money damages may not be an adequate remedy to the Disclosing Party for such breach. Accordingly, if there should be a breach by the Receiving Party or its Representatives of any provisions of this Agreement, the Disclosing Party shall be entitled to seek specific performance in any court of competent jurisdiction prohibiting the Receiving Party or its Representatives from violating this Agreement. Nothing in the preceding sentence shall limit or otherwise affect any remedies that the Disclosing Party may otherwise have under applicable law.

9. Receiving Party agrees that no failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
10. Except as otherwise provided herein, the restrictions and covenants set forth herein shall terminate and be of no further force or effect upon the eighteen (18) month anniversary of this Agreement.
11. Neither Party shall assign (by operation of law or otherwise) its rights under this Agreement without the prior written consent of the other Party. This Agreement shall inure to the benefit of the respective Parties and their permitted assigns.
12. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflict of laws principles. Any action brought in connection with this Agreement shall be brought in the federal or state courts located in New York, New York, and the parties hereto hereby irrevocably consent to the exclusive jurisdiction of such courts.
13. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any transaction or agreement (including the Potential Transaction) by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Potential Transaction or otherwise.
14. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same agreement.
15. This Agreement contains the entire agreement between the Parties concerning the subject matter hereof, and no modification of this Agreement or waiver of the terms and conditions hereof will be binding unless approved in writing by the Receiving Party and the Disclosing Party. It is understood that the terms of access by the Receiving Party and its Representatives to Confidential Information contained in any electronic data room or website shall be superseded by the terms of this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

THE RECEIVING PARTY:

Pareto Capital Partners LLC

THE DISCLOSING PARTY:

By:_____

Name:

Title:

Address:

By:_____

Name:

Title:

Address: