

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this “Agreement”), entered into this ___ day of _____ 2022, is by and between _____ (together with its affiliates, the “Company” or the “Disclosing Party”) and Evergreen Services Group, LLC (together with its affiliates and subsidiaries, the “Recipient”). From time to time throughout this Agreement, the Disclosing Party and the Recipient are referred to each as a “Party” and, collectively, as the “Parties.”

WHEREAS, the Disclosing Party is interested in releasing certain Confidential Information (as below defined) to the Recipient in connection with a potential capital raising transaction (collectively, the “Purpose”);

NOW, THEREFORE, in order to induce the Disclosing Party to provide Confidential Information to the Recipient and in return for good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. The term “Confidential Information” means non-public, proprietary or confidential information regarding the Disclosing Party and/or the Purpose disclosed to the Recipient by or on behalf of the Disclosing Party (whether before or after the date hereof).
2. The Recipient agrees (i) not to use any Confidential Information other than for the Purpose and (ii) to hold in confidence and not to disclose to any third party any Confidential Information without the written consent of the Disclosing Party; provided that the Recipient may disclose Confidential Information (a) to its affiliates and its and their respective directors, partners, employees, affiliates, auditors, advisors, potential financing sources, lenders, counsel and consultants (collectively, “Representatives”; provided, however, that the Recipient’s Representatives shall include only such of the foregoing persons as actually receive Confidential Information hereunder) on a “need to know” and confidential basis in connection with the Purpose; (b) pursuant to subpoena or other legal process or as otherwise required by law or regulation; provided, further, that the Recipient or Representative shall promptly notify the Disclosing Party, where practicable and legally permissible, of any such request or requirement and reasonably cooperate at the Disclosing Party’s request, and at the sole cost and expense of the Disclosing Party, to obtain a protective order or other protective treatment of any such required disclosures; or (c) pursuant to an ordinary course examination by a regulator, bank examiner or self-regulatory organization or examining authority having jurisdiction over the Recipient or Representative not specifically directed at the Company, the Purpose or the Confidential Information. The possession by the Recipient or its Representatives of Confidential Information shall not create any presumption of the unauthorized use or disclosure of the Confidential Information by the Recipient or its Representatives for anything other than the Purpose without specific evidence (i) of such unauthorized use or disclosure of the Confidential Information or (ii) that the Recipient or its Representatives specifically encouraged such unauthorized use or disclosure of the Confidential Information in knowing violation of this Agreement. Confidential Information may include, but is not limited to, all information relating to Disclosing Party’s finances and financing plans, marketing plans and techniques, licensing plans, methods of doing business, price lists and pricing information, and information regarding Disclosing Party’s customers, suppliers, licensees, licensors, and competitors. Recipient understands and agrees that the Confidential Information is a valuable asset to Disclosing Party, has substantial competitive value, and is of a confidential nature, and the Disclosing Party owns and reserves all proprietary rights and interests in the Confidential Information.
3. The term “Confidential Information” shall not include information which: (a) is in the public domain prior to any disclosure by the Recipient; (b) becomes available to the Recipient or its

Representatives on a non-confidential basis from a source other than the Disclosing Party or the Disclosing Party's representatives (provided that such source is not known by the Recipient or its Representatives to be itself bound by an applicable, effective confidentiality or similar agreement); (c) after being provided to the Recipient, entered the public domain without any breach or fault by or of the Recipient; (d) is already known to the Recipient or its Representatives or in their possession without a confidentiality obligation; or (e) is independently developed by or for the Recipient or its Representatives without reference to the Confidential Information.

4. Nothing stated herein shall entitle Recipient to receive any Confidential Information other than Confidential Information that Disclosing Party, in its sole discretion, determines to provide. Further, nothing in this Agreement shall impose any obligation: (a) on either the Recipient or the Disclosing Party to provide or accept any proposal in connection with the Purpose or any other transaction; or (b) on either the Recipient or the Disclosing Party to enter into any discussions or agreements with respect thereto.

5. Notwithstanding anything to the contrary herein, the Company acknowledges that nothing in this Agreement shall restrict the ability of the Recipient and its affiliates and its and their respective directors, partners, employees, affiliates, auditors, advisors, potential financing sources, lenders, counsel and consultants (a) to initiate, evaluate or consummate any investments or transactions, including, without limitation, (i) any investment or transaction other than the Purpose involving the Company or (ii) any investment or transaction in any other company, partnership or other enterprise, including any competitor of the Company, or (b) to design, develop, manufacture, market, and distribute products and services that contain similar features or functionality to, or that compete with, products or services of the Company.

6. Any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance or alleged breach of this Agreement, or the alleged unauthorized use or disclosure of the Confidential Information, shall be governed by, enforced and construed in accordance with the laws of the State of California without reference to its choice of law rules and as if wholly performed within the State of California. Any litigation regarding the interpretation, performance or alleged breach of this Agreement, or the alleged unauthorized use or disclosure of the Confidential Information, will be filed in and heard by the state or federal courts with jurisdiction to hear such disputes in California, and each Party hereby submits to the jurisdiction of such courts.

7. If any action at law or in equity is commenced to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees, legal expenses and court costs.

8. Recipient understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause Disclosing Party irreparable harm and therefore agrees that Disclosing Party shall have the right to apply to a court of competent jurisdiction for specific performance and injunction or other equitable relief. Upon the written request of Disclosing Party or the expiration of the two year period set forth in Section 12(i), whichever occurs first, Recipient shall use its best efforts to promptly destroy all copies of Confidential Information that are in its possession or the possession of its Representatives.

9. This Agreement shall not be assigned by the Recipient without the prior written consent of the Disclosing Party, and this Agreement shall otherwise be binding on all respective successors and assigns of the Parties.

10. This Agreement constitutes the entire and only agreement between the Parties relating to the Confidential Information, and there are no previous agreements between the Parties with respect thereto.

11. The terms and conditions of this Agreement may not be changed, amended, or waived unless in writing, signed by both Parties. There are no third party beneficiaries to this Agreement.

12. This Agreement shall continue in full force and effect for a period ending upon the earlier of (i) two years from the date hereof or (ii) the date on which the Recipient enters into a financing agreement with the Disclosing Party.

13. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof is held to be invalid, illegal or unenforceable under any applicable law or rule in any jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of this Agreement.

14. This Agreement may be executed in counterparts. Each counterpart is an original, but together constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages hereto by facsimile or electronic PDF transmission shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original Agreement for all purposes. Signatures of representatives of the parties transmitted by facsimile or electronic PDF shall be deemed to be their original signatures for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has caused their respective, duly authorized representative to execute and deliver this Agreement, as of the date first above written.

Evergreen Services Group, LLC

Signature

Signature

Name

Name

Title

Title