



CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is made this _____ day of _____, _____, by and between ABC Association, a _____ nonprofit corporation (“ABC”), and XYZ Association, a _____ nonprofit corporation (“XYZ”). (“ABC” and “XYZ” being sometimes hereinafter referred to as “the parties” and individually as a “party.”)

In consideration of the information to be disclosed by ABC and XYZ to each other, the access to certain books and records to be provided by ABC and XYZ as hereinafter described, the other covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties hereto, each intending to be legally bound, hereby agree as follows:

1. Purpose of Agreement.

ABC and XYZ are set to explore and possibly negotiate a potential affiliation between their respective corporations. In order to negotiate the possible transaction, and in order to allow each party to investigate and evaluate the transaction, each of the parties hereto has requested or will soon request certain information from the other, and may request additional information in the future. As a condition to providing the information requested, each of ABC and XYZ has required that the other execute this Agreement, and each of the parties has agreed to do so in consideration of the disclosure of information and access to the books and records to be provided to it. The purpose of this Agreement is to establish the conditions and restrictions on use of any such disclosed information, as well as to ensure the confidentiality of the existence of the Agreement, the negotiations between the parties, and the possibility of the transaction between them.

2. Disclosure of Information.

Each of ABC and XYZ may at its option from time to time disclose to the other such information about its organization, operations, programs, activities, and assets (including the organization, operations, programs, activities, or assets of any subsidiaries or affiliated entities) as may be reasonably requested in order to permit the parties hereto to evaluate and negotiate a possible transaction between them. In addition, each of ABC and XYZ may also grant to the other from time to time access to such of its books and records (and its subsidiaries’ and affiliated entities’ books and records) as the other parties may reasonably request. In no event, however, shall either ABC or XYZ, without the prior written consent of the other, be permitted to speak about the transactions contemplated hereby to the employees, members, creditors, lenders, or others having dealings with such other party other than the appropriate representatives who have a need to have access to such information for the purpose of evaluating a possible transaction, it being understood that such representatives shall have first been advised of the terms of this agreement and agreed to be bound by the provisions hereof until definitive agreements have been entered into by the parties. ABC and XYZ each acknowledges and agrees that the information to be disclosed may include, but not be limited to, strategic plans, business plans, financial records, tax and information returns, budgets, pricing information, cost data, sources of supply, market information, marketing plans, membership lists, registration lists, certificant lists, trade secrets, technology, know-how, software, technical information, inventions, processes, formulas, employee information, operating records, and any other proprietary information. All information, whether or not similar to the foregoing and whether disclosed orally, in writing, or in any other tangible form, or by delivery of copies of documents or other materials, is hereinafter referred to as the “Information.” The parties acknowledge and agree that unless and until a definitive agreement is entered which provides otherwise, either party in its sole discretion for any reason or no reason whatsoever may elect by written notice to the other to cease any further discussions or negotiations on the matters contemplated hereby

but no such election shall affect the parties' obligations of confidentiality and non-disclosure as provided hereunder.

3. Confidentiality of Information.

ABC and XYZ each acknowledges and agrees that any and all of the Information (except as otherwise provided in Section 8) furnished to it in whatever form or manner pursuant to Section 2 is and will remain confidential and proprietary to the party disclosing such information, and agrees not to disclose or use the Information for any purpose other than as set forth in Section 4 below (including but not limited to any use of the Information directly or indirectly in competition with a party or in any manner that would provide it or its affiliates with an advantage that, but for disclosure of the Information, they would not have had). Neither ABC nor XYZ shall imitate or adopt for its own use any Information disclosed by the other in the course of negotiations for, and/or investigations or evaluations regarding, the proposed transaction contemplated by this Agreement. The restrictions on the use and disclosure of all Information contained herein shall continue in effect for so long as such Information remains confidential and proprietary to the disclosing party under applicable law.

4. Permitted Uses.

ABC and XYZ each agrees that it will acquire no ownership interest as a result of any activity pursuant to this Agreement or otherwise in any of the Information provided or disclosed in any manner by the other party, that such Information is being provided pursuant to an express limited privilege, and that it will be used only for the purposes described in Section 1 above.

5. Restrictions on Disclosure of Information.

ABC and XYZ each agrees that except as provided in Section 8 hereof, it will not, without the prior written consent of the party who provided the Information, disclose the Information or any portion thereof to any third party other than its employees, officers, directors, legal counsel, accountants, and/or other advisors identified on Schedule 1 attached hereto (referred to herein collectively as the "Representatives and Advisors"), when and to the limited extent such Representatives and Advisors actively involved in the evaluation and negotiation process require disclosure or access to such Information in connection therewith. Each of the parties also agrees to take, and to cause each of their Representatives and Advisors to take, all reasonable precautions to protect the confidentiality of the Information, including without limitation, the following:

(a) Access to the Information will be restricted to those natural persons of each party, and of each Representative and Advisor of such party, who (either as employees, agents or representatives) are actively involved in the evaluation and negotiation process, or who require disclosure or access in connection therewith.

(b) Neither ABC, XYZ nor any of their Representatives or Advisors will be required to mark or identify any of the Information as being confidential, but each will treat all of such Information as confidential and will maintain any of such materials in its custody or possession in a manner designed to protect the security and confidentiality of the Information consistent with the permitted uses.

(c) In addition to the foregoing, neither party hereto nor any of its Representatives or Advisors will use any less care to protect the security and confidentiality of the Information than it uses to protect its own proprietary information and trade secrets.

6. Return of Materials.

If so requested in writing by an authorized officer of either ABC or XYZ, as the case may be, as soon as practically possible, but in no event more than ten (10) days after such written request, each of the parties hereto agrees to return all of the Information (other than its own Information) consisting of documentary items or items in any other tangible or intangible form, and any copies thereof, data banks or notes, memorandum, excerpts or summaries therefrom in its possession or in the possession of its Representatives and Advisors, to ABC or XYZ, as the case may be, at such location and in such manner as may be reasonably requested. Regardless of whether any written request has been received, upon termination of the negotiations for the proposed transaction between ABC and XYZ, if such proposed transaction is not consummated, each party and each of its Representatives and Advisors will either return all Information in its possession to the other party, or (i) promptly delete all Information stored in any computer programs or data banks and otherwise destroy or mark out all Information

summarized, referred to, or otherwise contained, in any internal memoranda and/or analyses, (ii) cause all other third parties under its control to do the same, and (iii) if requested, provide the other party hereto with a sworn affidavit from an authorized officer to such effect.

7. Non-Solicitation of Employees.

Upon a termination of the negotiations for the proposed transaction between ABC and XYZ, if such proposed transaction is not consummated, each of ABC and XYZ agrees that for a period of one (1) year following the date of termination, it will not, and will cause its subsidiaries and affiliates not to solicit, employ or attempt to employ any employees of the other party or its affiliates.

8. Inapplicability of Restrictions.

The foregoing restrictions and obligations imposed upon the parties and their Representatives and Advisors will not apply to any portion of the Information as follows:

a. Such Information is legally in the possession of a party before the commencement of the negotiations contemplated by this Agreement and such party provides evidence of such possession.

b. Such Information is, at the time of disclosure or thereafter, published or becomes public knowledge or generally known within the trade without breach of this Agreement by either party.

c. Such Information is received from a third party, without, to the knowledge of the receiving party, breach of any obligation of disclosure.

d. Such Information is independently developed in good faith as supported by written evidence.

e. Such Information is required to be disclosed pursuant to a governmental or court order or by law. In the event a party hereto becomes aware of the possibility of such order, it shall promptly advise the other parties of such possibility and shall cooperate in good faith with the others in efforts to prevent such order from becoming final and unappealable.

9. No Public Disclosure.

ABC and XYZ each agree that, without the express prior written consent of the other, no public disclosure of the existence or status of the transactions contemplated by this Agreement shall be made by it or by any of its Representatives and Advisors and each shall hold the existence of the Agreement in strict confidence.

10. Miscellaneous.

(a) This Agreement shall be construed and enforced pursuant to the laws of the State of _____ . The parties hereby consent to the personal jurisdiction of the federal, state and local courts located in the State of _____ for such purposes.

(b) This Agreement shall be binding upon and inure to the benefit of the successors or permitted assigns of each of the parties hereto.

(c) The rights of the parties specified herein are in addition to, and not in lieu of, such rights as may be available under applicable laws and regulations, including those governing trade secrets and other proprietary information.

(d) If the provisions of this Agreement are breached by a party or anyone given access to the Information by or through such party, such party agrees to indemnify and hold harmless the other party, its successors and assigns, from and against any resulting loss, cost, damage or expense that is undertaken, paid, awarded, assessed, incurred or suffered by the other party, including all court costs, attorneys' fees and other expenses incurred by such other party in enforcing its rights under this Agreement and in recovering damages and obtaining other appropriate relief. Because of the unique nature of the Information, each of the parties hereto understands and agrees that another party will suffer serious and irreparable harm in the event of a failure to comply with any obligations hereunder and that monetary damages alone will be inadequate to compensate for

such breach. Accordingly, each of the parties agrees that a party will, in addition to the foregoing indemnities and any other remedies available to it, be entitled to preliminary and permanent injunctive relief to enforce the terms hereof.

(e) The parties intend that the restrictive covenants contained herein have the widest application possible. If any covenant or agreement contained herein is found by a court to be unreasonable in duration, scope or character of restrictions, the covenant or agreement shall not be rendered unenforceable thereby, but rather the duration, scope or character of restrictions of such covenant or agreement shall be deemed reduced or modified with retroactive effect to render such covenant or agreement reasonable and such covenant or agreement shall be enforced as thus modified. If the court refuses to review or modify the covenant or agreement, then the parties shall agree to a revision having an effect as close as permitted by law to the provision declared unenforceable. Each party further agrees that if a court determines, despite the intent of the parties, that any portion of the covenants contained herein are not enforceable, the remaining provisions of this Agreement shall nonetheless remain valid and enforceable.

(f) It is further understood and agreed that no failure or delay by a party hereto in exercising any right, power, or privilege thereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any right, power or privilege hereunder.

(g) This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein and supercedes all prior written or oral agreements or understandings between the parties regarding the matters set forth herein. This Agreement may not be modified other than by an agreement in writing signed by the party to be charged with performance.

(h) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

* * * * *

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, as a document under seal, by their duly authorized representatives as of the day and year first above written.

ABC ASSOCIATION

By: _____

Name: _____

Title: _____

XYZ ASSOCIATION

By: _____

Name: _____

Title: _____

SCHEDULE 1

List of additional Representatives and Advisers
(other than those specified in Section 5 of the Agreement)
entitled to receive Information:

For ABC:

For XYZ:

Disclaimer ¶

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