



CONFIDENTIALITY AGREEMENT - 1

This Confidentiality Agreement (the "Agreement") is dated as of [date], by and between ABC, with offices at [_____] ("ABC") and XYZ, with offices at [_____] ("XYZ").

1. **Confidential Information, Representatives.** ABC is considering the possible acquisition of a [_____] company ("Target") and a business arrangement with XYZ (together the "Transaction"), and in order to assist ABC in evaluating the Transaction, XYZ is prepared to make available to ABC, certain confidential, non-public or proprietary information concerning the business, operations, assets and financial projections of the Target ("Confidential Information"). As a condition to the Confidential Information being furnished to ABC and its affiliates, partners, directors, officers, employees, agents, advisors, attorneys, accountants, sources of capital and financing, and financial advisors ("Representatives"), ABC agrees to treat the Confidential Information in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions hereinafter set forth.

2. **Excluded Information.** The Confidential Information shall not include information that (i) is or becomes publicly available other than as a result of acts by ABC in breach of the terms of this Agreement, (ii) is in ABC's possession prior to disclosure by XYZ or is independently derived by ABC without the aid, application or use of the Confidential Information, (iii) is disclosed to ABC by a third party on a non-confidential basis, or (iv) ABC is advised by counsel is required to be disclosed as a matter of law.

3. **Non-Disclosure of Confidential Information.** ABC and its Representatives shall use the Confidential Information solely for the purpose of evaluating a possible Transaction. ABC shall use its best efforts to keep the Confidential Information in confidence and shall not disclose any of the Confidential Information in any manner whatsoever; provided, however, that (i) ABC may make any disclosure of information contained in the Confidential Information to which XYZ gives its prior written consent, and (ii) any information contained in the Confidential Information may be disclosed to ABC's Representatives who need to know such information for the purpose of evaluating a possible Transaction and who agree to keep such information in confidence. ABC shall be responsible for any breach of the terms of this Agreement by any of its Representatives.

4. **Non-Disclosure of Existence of Negotiations; Exclusive Arrangement.** For a period of one (1) year from and after the date hereof, without the prior written consent of the other party, or except as may be required by applicable law or regulation, neither ABC, XYZ nor any person acting on behalf of either of them shall disclose to any person that discussions or negotiations are taking place between the parties concerning a possible Transaction, including the status of such discussions or negotiations. For a period of [_____] years from and after the date hereof, without the prior written consent of XYZ, ABC will not discuss or negotiate a Transaction or any business arrangement similar to the Transaction with any entity or person other than XYZ.

5. **Return of Confidential Information.** Promptly upon the written request of XYZ, ABC will return all copies of the Confidential Information to XYZ, and all notes, studies, reports, memoranda and other documents prepared by ABC or its Representatives that contain or reflect the Confidential Information shall be destroyed.

6. **Subpoena or Court Order.** In the event that ABC or anyone to whom it discloses the Confidential Information receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, ABC shall (i) promptly notify XYZ of the existence, terms and circumstances surrounding such a request, (ii) consult with XYZ on the advisability of taking steps to resist or narrow such request, (iii) if disclosure of such Confidential Information is required, furnish only such portion of the Confidential Information as ABC is advised by counsel is legally required to be disclosed, and (iv) cooperate with XYZ, at XYZ's expense, in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information that is required to be disclosed.

7. **Definitive Agreement.** Unless and until a definitive written agreement between ABC and XYZ with respect to a Transaction has been executed and delivered, neither ABC nor XYZ will be under any legal obligation of any kind whatsoever with respect to such a Transaction by virtue of this or any other written or oral expression by either of them or their Representatives except, in the case of this Agreement, for the matters specifically agreed to herein.

8. **Remedies.** ABC acknowledges that in the event of any breach of the terms of this Agreement, XYZ could not be made whole by monetary damages. Accordingly, XYZ, in addition to any other remedy to which it may be entitled in law or in equity, shall be entitled to an injunction to prevent breaches of this Agreement.

9. **Entire Agreement.** This Agreement represents the entire understanding and agreement of the parties hereto with respect to the matters contained herein, and may be amended, modified or waived only by a separate writing executed by ABC and XYZ expressly so amending, modifying or waiving this Agreement.

10. **No Waiver.** No failure or delay by XYZ in exercising any right, power or privilege hereunder 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.

11. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of [_____], without regard to the laws of conflict of laws.

12. **Term.** This Agreement shall terminate and be of no further force or effect [_____] years from and after the date hereof.

13. **Captions.** The Captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.

14. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, THIS AGREEMENT is executed and delivered effective as of the date first written above.

ABC

By: _____

Name: _____

Title: _____

XYZ

By: _____

Name: _____

Title: _____