

## Confidentiality Agreement

This Confidentiality Agreement (this "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2000 by and between Company XYZ Inc., a corporation to be formed, having offices at 123 Main Street, New York, New York 10001 ("Discloser") and \_\_\_\_\_ ("Recipient").

### Recital

Recipient is considering assisting Discloser to obtain private financing for a business venture (the "Transaction"). In this connection, Recipient wishes to have access to certain information about Discloser's business, through the delivery of documents and otherwise. As a condition to being supplied with such information, Recipient agrees, as set forth below, to treat such information confidentially.

### Terms of Agreement

1. As used in this Agreement, "Confidential Information" means all information, whether written or oral, tangible or intangible, and including trade secrets and data of whatever nature, disclosed to Recipient by Discloser or any of its representatives or agents, whether before or after the date of this Agreement, or which may otherwise be made available or become known to Recipient regarding Discloser's business.

2. Recipient agrees that Confidential Information will be used only for evaluating the merits of the Transaction. Without prior written consent of Discloser, Recipient shall not disclose in any manner whatsoever, in whole or in part, any Confidential Information. Recipient shall transmit Confidential Information only to a limited number of its officers and employees who have a need to know such information, and to prospective investors in Discloser's business venture, for the purpose of evaluating and negotiating the Transaction or assisting in the evaluation and negotiation. Any copies of documents containing Confidential Information made by Recipient for such limited disclosure permitted by this Agreement shall be conspicuously legended as Confidential Information. Confidential Information may be disclosed to Recipient's officers and employees, and to prospective investors, without the prior consent of Discloser, only if such persons are advised of this Agreement and made aware that the materials thus presented to them are Confidential Information.

3. If Recipient is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose Confidential Information supplied to it, Recipient shall promptly notify Discloser of such request(s) so that Discloser shall have full opportunity to seek an appropriate protective order and take other action as it deems appropriate for the protection of its Confidential Information. If, in the absence of a protective order or the receipt of a waiver hereunder Recipient is nonetheless, in the opinion of its counsel, compelled to disclose Confidential Information or information concerning the Transaction to any tribunal or else stand liable for contempt or suffer other censure or penalty, it may disclose such information to such tribunal without liability hereunder, provided Recipient shall make all

reasonable efforts to have its disclosure limited to the narrowest scope practicable under the circumstances, including cooperation in any request for a protective order and seeking to have any proceedings held in camera, with a sealed record.

4. If the Transaction is not effected, Recipient shall, upon request, promptly deliver to Discloser all copies of any Confidential Information in its possession or control or that of any of its officers, agents or employees, and shall destroy all copies of any analyses, compilations, studies or other documents prepared by or for its internal use which reflect all or any portion of the Confidential Information.

5. The term "Confidential Information" shall not include information which:

(i) becomes or has been generally available to the public other than as a result of disclosure by Recipient or its officers, agents or employees,

(ii) was in the possession of Recipient prior to its disclosure by Discloser or its representatives, having been obtained from a third-party source that obtained the information without violation of the rights of Discloser and Recipient having observed all restrictions on use or disclosure of such information imposed by that third-party source,

(iii) becomes available to Recipient from a third-party source other than Discloser or its representatives, the third-party source having obtained the information without violation of the rights of Discloser and Recipient having observed all restrictions on use or disclosure of such information imposed by that third-party source, or

(iv) is independently developed by Recipient without use of any of the Confidential Information,

(v) provided that the burden of establishing the availability of the foregoing exceptions shall be on Recipient.

6. This Agreement shall be construed under and governed by the laws of the State of New York applicable to contracts executed and wholly performed in such state. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and may not be amended or modified except by a written instrument executed by each of the parties. No failure or delay by any party 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 other right, power or privilege hereunder.

7. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument. This Agreement shall become effective when signed by each of the parties on any counterpart, whether or not all of the parties have signed any one counterpart.

Execution

Intending to be bound, each of the parties has caused this Agreement to be executed by its duly authorized officer as of the date first stated above.

Company XYZ Inc. ("Discloser")

\_\_\_\_\_ ("Recipient")

By:

By:

Name: David Gilford

Name:

Title: Founder and Chief Executive Officer

Title: