

## CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT

This Confidentiality/Non-Disclosure Agreement (the "Agreement") is made and entered into on \_\_\_\_\_(DATE) by and between **Phoinix Development Foundation, Inc. (PDFI)**, a Louisiana corporation and \_\_\_\_\_, as individual and/or \_\_\_\_\_ representing the \_\_\_\_\_ company.

### RECITALS:

**WHEREAS**, the parties hereto have entered into certain discussions relating to a possible future business transaction (the "Transaction");

**WHEREAS**, in connection with these discussions, it will be necessary for the parties hereto to exchange proprietary, confidential and competitively sensitive documents and information (collectively, the "Confidential Information"); and

**WHEREAS**, the parties hereto are therefore entering into this Agreement as a condition of disclosing the Confidential Information and to limit the disclosure and use of the Confidential Information.

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

- 1) Any Confidential Information which either party hereto (the "Disclosing Party") discloses to the other party including business strategies, customer data, funding sources, financial content, business contacts and or leads (a) shall not be used by the party receiving the Confidential Information (the "Receiving Party") for its competitive advantage or in its business activities or for any purpose other than in connection with the Transaction, (b) shall be kept in strict confidence by the Receiving Party and (c) shall not be disclosed by the Receiving Party to any other person or entity without the Disclosing Party's prior written consent; provided, however, that the Receiving Party may reveal such information to representatives and consultants who (i) need to know or be aware of the Confidential Information in connection with the Transaction (ii) are informed of the confidential nature of the Confidential Information, and (iii) have executed the Supplementary Confidentiality Agreement attached hereto as Exhibit A.
- 2) Notwithstanding any other provision of this Agreement, the Receiving Party may disclose the confidential information to the extent required by applicable law. If Receiving Party is required in any civil or criminal legal proceeding, regulatory proceeding or any similar process to disclose any part of the Confidential Information, the Receiving Party shall give prompt notice of such request to the Disclosing Party so that the Disclosing Party may seek an appropriate protective order or waive the Receiving Party's compliance with the provisions of this Agreement.
- 3) Notwithstanding the foregoing, the following will not constitute "Confidential Information" for purposes of this Agreement:
  - a) Information which was already in the Receiving Party's possession prior to the date hereof and which was not acquired or obtained from the Disclosing Party or pursuant to a confidentiality agreement
  - b) Information which is obtained or was previously obtained by the Receiving Party from a third person who, insofar as is known to the Receiving Party after reasonable inquiry, is not prohibited from transmitting the information to the Receiving Party, by a contractual, legal or fiduciary, obligation to the Disclosing Party.
  - c) Information which is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its agents or employees.
- 4) It is agreed and acknowledged that all information supplied hereunder is confidential, proprietary and of the highest value to the Disclosing Party and shall not be used by the Receiving Party in a competitive manner or in a manner otherwise detrimental or adverse to the best interests of the Disclosing Party.
- 5) In the event either party terminates the discussions for any reason, all Confidential Information, including, without limitation, all copies of all documents and other materials containing Confidential Information, which the Receiving Party has received or prepared shall upon request be returned to the Disclosing Party, along with a certificate signed by an authorized officer of the Receiving Party that all such information has been returned, and that none of the Confidential Information has been retained by the Receiving Party in any form.
- 6) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and to each party's successors, assigns, and the employees, agents, officers and directors of each such party.
- 7) Under no circumstances shall either party, without the prior written consent of the other party, assign any of its rights, powers, duties or obligations under this

Agreement to any other person or entity.

- 8) The Receiving Party acknowledges and agrees that the Disclosing Party cannot be made whole nor have its interests completely protected solely by a monetary award of damages. Accordingly, the Receiving Party agrees that if it breaches or threatens to breach any of the terms of this Agreement it will consent to the issuance of a temporary and/or permanent injunction by any court of competent jurisdiction (without the posting of a bond) enjoining the Receiving Party from such breach of the terms of this Agreement. This remedy is in addition to any other rights or remedies available to the Disclosing Party.
- 9) The Receiving Party agrees to indemnify and hold harmless the Disclosing Party from and against any and all loss, liability, cost or expense based upon, arising out of or otherwise in respect of any breach or violation of this Agreement.
- 10) Neither party shall make any public disclosure concerning the subject matter hereof or the transactions referenced herein without the prior written consent of the other party. This provision shall survive the termination of this Agreement.
- 11) This Agreement extends to any affiliate relationships that either party has undertaken or where confidentiality/non-disclosure agreements have been executed.
- 12) This Agreement shall be governed and construed in accordance with the laws of the State of Louisiana.
- 13) This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes any written or oral agreements previously entered into relating to the subject matter hereof.
- 14) This Agreement cannot be changed, modified, or terminated herein except by a written agreement signed by the authorized representatives of each party hereto.

Any waiver of any of the provisions of this Agreement must be in writing and signed by a duly authorized representative of the party against whom enforcement of such waiver is sought. One or more waivers of any provisions of this Agreement shall not be construed as a waiver of subsequent breach of any other provision.

- 15) Any communication or notices required or desired hereunder shall be written and shall be sent by (a) certified mail, return receipt requested or (b) hand delivery or overnight delivery service to the parties hereto at the following addresses, or such other addresses as either party may designate in writing from time to time. Such notice shall be effective as of the third day following the mailing date, if mailed, or the date delivered, if delivered by hand or overnight delivery service. Addresses for notice are:

**If to:** Phoinix Development Foundation, Inc.(PDFI)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Attn:** \_\_\_\_\_

**If to:** \_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, Zip**

**Attn:** \_\_\_\_\_  
**Name**

**Fax:** \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have executed this Confidentiality Agreement as of the date first above written.

**Phoinix Development Foundation, Inc.**  
**(PDFI)**

\_\_\_\_\_  
**Company Name or Individual's Name**

By: \_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date