



NYSSA CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (this “Agreement”) is made and entered into on _____, 20____ by and between NYSSA, a New York not-for-profit corporation (“NYSSA”), and _____ (“Recipient”) (NYSSA and Recipient shall be referred to herein individually as a “Party” and collectively as the “Parties”).

WHEREAS, the Parties acknowledge and agree that this Agreement (i) is designed to protect the confidential nature of business and personal information pertaining to NYSSA, its members and employees, (ii) is intended to help directors, members of the Nominations Committee, staff, and contractors to understand NYSSA’s standards regarding confidential information of a personal or business nature and to stimulate awareness of confidentiality issues that may be encountered in carrying out responsibilities to NYSSA, and (iii) is fundamental to the values of NYSSA and essential to achieving NYSSA’s mission.

NOW THEREFORE, for and in consideration of the exchange of Confidential Information to each other and in further consideration of the promises and the agreements herein contained, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Confidentiality.
 - a. Acknowledgement. Recipient acknowledges that, in connection with the performance of Recipient’s duties (“Performance”) as (i) a member of the Board of Directors of NYSSA (the “Board”), (ii) a member of the Nominations Committee of NYSSA, (iii) an employee of NYSSA, or (iv) a contractor of NYSSA, NYSSA will make available to Recipient, or Recipient will have access to, certain Confidential Information (as defined below).
 - b. Obligations. During the term of Recipient’s Performance and thereafter, Recipient (i) shall keep all Confidential Information confidential, (ii) shall not use such Confidential Information other than in connection with Recipient’s Performance, and (iii) shall safeguard the Confidential Information from unauthorized disclosure and/or access, provided, however, for any Recipient who is a current member of the Board of Directors, the preceding restrictions shall be subject to the terms of NYSSA’s Openness and Transparency Policy. Except as otherwise provided in NYSSA’s Openness and Transparency Policy, only upon written authorization from NYSSA may Recipient disclose Confidential Information to persons that need to know such Confidential Information in order to perform their respective duties and obligations to NYSSA and are bound by similar confidentiality obligations to NYSSA. Recipient may only access and/or use Confidential Information that is necessary for Recipient to complete and conduct Recipient’s Performance.

- c. Definition. For the purposes of this Agreement, “Confidential Information” shall mean all non-public information provided, disclosed, communicated or furnished in any form or manner to Recipient as a result of Recipient’s relationship with NYSSA or in connection with Recipient’s Performance, including, without limitation:
- i. Financial, business and marketing information of, or that relates to, NYSSA and its members, directors, and employees (collectively, “Protected Persons”);
 - ii. Personal contact information, such as unlisted telephone numbers and cell phone numbers, of any Protected Person;
 - iii. Board deliberations, other than the information recorded in minutes or other documents that are publicly available;
 - iv. Information surfaced during the due diligence and deliberations of the NYSSA Nominations Committee;
 - v. Medical records of any Protected Person;
 - vi. Human resources and payroll information of NYSSA and its members or candidates before the Nominations Committee for NYSSA leadership roles;
 - vii. Insurance records of any Protected Person;
 - viii. Intellectual property owned by any Protected Person; and
 - ix. Customer and vendor lists of NYSSA, and vendor bids.

2. Exclusions from Confidential Information. For purposes of this Agreement, “Confidential Information” shall not include (i) information which is or becomes generally available to the public other than as a result of, directly or indirectly, any breach of any confidentiality agreement, including this Agreement, (ii) information obtained by Recipient from third persons (other than a Protected Person), which are under no agreement to maintain confidentiality of the same, (iii) information known by or in the possession of Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of NYSSA to Recipient and (iv) information which is required to be disclosed by law or legal process, subject to paragraph 4.

3. Standard of Care; Notice of Disclosure. The Recipient agrees to use at least the same care and discretion to avoid disclosure of the Confidential Information as it uses with its own similar information it does not wish to disclose, but in no event less than a reasonable standard of care; provided, however, that if NYSSA requests that Recipient employ specific measures against disclosure (e.g., restrictions on copying), Recipient shall agree to be bound by such measures by accepting the Confidential Information. Recipient shall promptly provide NYSSA with notice of any actual or threatened breach of the terms of this Agreement or unauthorized disclosure of the Confidential Information.

4. Requested or Required Disclosure. If Recipient is requested or required by law to disclose any Confidential Information, Recipient shall promptly notify NYSSA of such request or requirement so that Recipient may seek an appropriate protective order. To the fullest extent permitted by law, Recipient agrees to cooperate with NYSSA to obtain an appropriate protective order. If, in the absence of a protective order or the receipt of a written waiver by NYSSA, Recipient is compelled by a subpoena or by an order of a court of competent jurisdiction to disclose any portion of the Confidential Information or else stand liable for contempt or suffer other censure or penalty, Recipient may disclose only such portion(s) of the Confidential Information to the party compelling disclosure as is required by such subpoena or order and, in connection with such compelled disclosure, Recipient shall use their reasonable efforts to obtain from the party to whom disclosure is made written assurance that confidential treatment will be accorded to such portion(s) of the Confidential Information as is disclosed.

5. Disciplinary Action. Recipient acknowledges that: (i) if Recipient is an employee or contractor, violation of the Agreement may be grounds for disciplinary action, including immediate

termination of employment and/or legal action; and (ii) if Recipient is a member of the Board or the Nominations Committee, violation of this Agreement may be grounds for disciplinary action, including review of membership status and/or termination of employment or removal from membership.

6. Enforcement. Recipient acknowledges that, should Recipient violate any of the covenants or obligations contained herein (collectively “Covenants”), it will be difficult to determine the resulting damages to NYSSA and, in addition to any other remedies it may have, NYSSA shall be entitled to temporary injunctive relief without being required to post a bond, and permanent injunctive relief without the necessity of proving actual damage. NYSSA may elect to seek one or more of these remedies at its sole discretion on a case by case basis. Failure to seek any or all remedies in one case does not restrict NYSSA from seeking any remedies in another situation. Such action by NYSSA shall not constitute a waiver of any of its rights.

7. Return of Confidential Information. Upon the request of NYSSA, Recipient will, at NYSSA’s sole discretion, either (a) return all Confidential Information to the chair of the Audit Committee of NYSSA or (b) destroy all Confidential Information, in either case such action shall include all copies and any documents or materials in Recipient’s possession or control containing any Confidential Information and no copies will be retained by Recipient unless the Parties agree otherwise in writing or unless required by any applicable laws or regulations governing document retention (in which case Recipient continues to keep such information confidential in accordance with the terms set forth herein). In the event NYSSA opts to have Recipient destroy all Confidential Information, Recipient shall provide NYSSA, within 10 days of a demand by NYSSA, a written certification stating that all Confidential Information in Recipient’s custody and/or control has been destroyed and no such Confidential Information has been disclosed in violation of this Agreement.

8. Successors. This Agreement shall inure to the benefit of NYSSA and Recipient and their respective successors and assigns, as applicable. Recipient shall not assign this Agreement and any such attempt to assign this Agreement shall be null and void.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof. For the limited purposes of the interpretation and/or enforcement of this Agreement, the Parties (a) consent and agree to the exclusive personal and subject matter jurisdiction of the New York State Supreme Court, County of New York, in connection with any action or proceeding that relates to or arises from this Agreement, (b) consent to, and waive any objection to, the personal and subject matter jurisdiction of that court over any legal matter that relates to this Agreement, and (c) agree to service of process of any action commenced under this paragraph by FedEx in accordance with paragraph 11.

10. Entire Agreement; Severability; Enforceability. This Agreement compromises the entire agreement between the parties relating to the subject matter hereof and supersedes, cancels and annuls all previous agreements between NYSSA and Recipient. If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. It is the parties’ intent that each of the Covenants be read and interpreted with every reasonable inference given to its enforceability. Finally, it is also the parties’ intent that, if it is determined that any of the Covenants are unenforceable because they are overly broad, then the Covenants shall be modified so as to make it reasonable and enforceable under the prevailing circumstances.

11. Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party (a) on the date delivered by

hand, (b) on the date delivered by a nationally recognized overnight courier service (costs prepaid), (c) on the fifth day after the date mailed, by certified or registered US mail, return receipt requested, postage prepaid, in each case to the address set forth below a Party's signature hereto (or to such other address as a Party may designate by written notice to the other Party pursuant to the provisions of this Section).

12. Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing by Recipient and NYSSA. Any term or provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof by a written instrument duly executed by such Party; provided, however, that such waiver shall not operate as a waiver of, or estoppels with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or equity.

13. Counterparts; Execution. This Agreement may be executed in any number of counterparts each of which shall be an original with the same force and effect as if the signatures were upon the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other method of electronic transmission shall have the same force and effect as manual delivery of an original executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Confidentiality Agreement to be duly executed as of the day and year first above written.

NYSSA:

By: _____

Name: _____

Title: _____

Address for Notices:

NYSSA

1540 Broadway, Suite 1010

New York, NY 10036-2714

Attention: CEO

RECIPIENT:

By: _____

Name: _____

Title: _____

Address for Notices: