

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT ("*Agreement*") is made and entered into this _____ day of _____, 20____, by and between _____, ("*Company*"); and THE STRAWHECKER GROUP, L.L.C., a Nebraska limited liability company ("*TSG*").

RECITALS

WHEREAS, Company and TSG have expressed an interest in a potential engagement ("*Potential Engagement*") between the parties. In connection with the Potential Engagement, Company may furnish TSG with certain information which may be non-public, confidential and/or proprietary in nature concerning the Company and its business, and TSG may furnish Company with certain information which may be non-public, confidential and/or proprietary in nature concerning TSG and its business;

WHEREAS, as a condition of providing information about the Company, its subsidiaries or affiliates (the Company, its subsidiaries, affiliates, employees, agents, and other third parties are referred to herein collectively as the "*Company*") and their businesses to TSG, and as a condition of providing information about TSG, its subsidiaries or affiliates (the Company, its subsidiaries, affiliates, employees, agents, and other third parties are referred to herein collectively as the "*TSG*") and their businesses to Company, Company and TSG have agreed to enter into this confidentiality agreement setting forth the parties' agreements herein with respect to the disclosure of information and/or documents in connection with the Potential Engagement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the terms, conditions and obligations hereinafter set forth, and intending to be legally bound hereby, TSG and Company do hereby covenant and mutually agree as follows:

1. **DEFINITIONS.** "*Confidential Information*" shall mean any and all information, documentation, records and data furnished or made available to Company, directly or indirectly, by TSG, whether such information has been directly prepared by TSG or any of its respective subsidiaries, employees, representatives, agents, or any third party; and, further, shall mean any and all information, documentation, records and data furnished or made available to TSG, directly or indirectly, by Company, whether such information has been directly prepared by Company or any of its respective subsidiaries, employees, representatives, agents, or any third party. Confidential Information shall include, without limitation, all information furnished about the Company or TSG relating to the ownership and operation of its business and the related assets (the "*Business*"), and specifically including, to the extent disclosed, all financial statements and notes thereto, general information about the Business, business plans or projections, reports, studies and summaries, market studies, business practices and methods, and information concerning the facilities or operations of the Business. Confidential Information shall further include, without limitation, data bases, lists, and contracts with customers, suppliers and vendors, pricing methods, marketing, sales, service, cost, computer software, algorithms, processing systems, techniques, new ideas, discoveries, inventions, developments, models, software technology, source code, know-how, processes, or experimental work, work in process, business practices and methods, formulas, templates, product specification, engineering, pricing policy and financial data, drawings, patterns,

copulations, programs, devices, methods, codes and processes that derive independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure including, without limitation, all information which constitute "trade secrets" under applicable state law. Such information may be in written, oral, electronic or other form, and shall be subject to the treatment described herein whether or not it is expressly labeled or identified in any particular fashion as confidential or labeled or identified in any particular fashion as to source.

2. **INCORPORATION OF CONFIDENTIAL INFORMATION IN OTHER DOCUMENTS.** In the event that Confidential Information is incorporated into or reflected in other documents, such other documents shall be deemed Confidential Information subject to the terms of this Agreement.
3. **USE OF INFORMATION.** Company and TSG shall use the Confidential Information provided hereunder only for the purposes of assessing the viability of the Potential Engagement between the parties and in connection with performance of the Potential Engagement in the event the Company and TSG engage in the Potential Engagement. Company and TSG shall not use the Confidential Information received hereunder for any other purpose or in any manner detrimental to TSG or the Company. Without limiting the generality of the foregoing, Company and TSG shall not, with respect to the Confidential Information of the other party, remove any copyright notice, trademark notice and/or other proprietary legend or indication of confidentiality set forth on or contained in any Confidential Information. Further Company and TSG shall not disassemble or decompile software, or otherwise attempt to reverse engineer the design and/or function of any Confidential Information of the other party, nor develop, manufacture, produce and/or distribute any product(s) derived from or which otherwise uses any Confidential Information of the other party.
4. **NON-DISCLOSURE.** Subject to Section 6 below, Company and TSG shall maintain all Confidential Information received hereunder as proprietary and confidential and take all affirmative measures reasonably necessary to safeguard and protect it against disclosure beyond that disclosure permitted herein. Without the prior written consent of the other party, Company and TSG shall not disclose or divulge the other party's Confidential Information in any fashion or to any person, in whole or in part; provided, however, the Confidential Information may be disclosed, as the case may be, to Company 's agents or representatives (including without limitation consultants and financial advisors, herein collectively "*representatives*"), which (i) have a need to know such Confidential Information in order that the objective of assessing and, as applicable, performing the Potential Engagement; (ii) are informed by Company or TSG of the confidential nature of the Confidential Information; and (iii) who shall agree (in writing, if so requested) to act in accordance with the terms and conditions of this Agreement. Company will be responsible for the compliance with the provisions of this Agreement by any person receiving Confidential Information through Company. TSG will be responsible for the compliance with the provision of this Agreement by any person receiving Confidential Information through TSG. Company and TSG shall not copy or reproduce in any manner, whether in electronic or other media, the Confidential Information for any purpose other than for the purposes set forth herein. Company and TSG shall immediately notify the other party in writing of any unauthorized use, disclosure or other violation of this Agreement regarding the Confidential Information of the other party,

including a detailed description of the circumstances and disclosure of the parties involved.

- 5. EXCEPTIONS TO CONFIDENTIALITY OBLIGATIONS.** Nothing in this Agreement shall affect the right of Company or TSG to use or disclose Confidential Information or any part thereof which (i) is or may hereafter be in the public domain through no breach of this Agreement or any other agreement contemplated hereby; (ii) is disclosed to Company, TSG, or the general public by a third party or entity in rightful possession of the Confidential Information and such disclosure does not violate confidentiality obligations of the third party or entity to the Company or TSG with regard to such disclosure; or (iii) is subsequently disclosed to the general public by the Company or TSG. Nothing in this Agreement shall be construed as granting or implying any right of Company or TSG to use the Confidential Information, or as permitting Company, TSG or any third party to obtain the right to use any portion of the Confidential Information that may become publicly known through any improper act or omission committed by Company or TSG.
- 6. LEGALLY REQUIRED DISCLOSURE.** If Company or TSG becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information received hereunder, Company shall provide TSG, and TSG shall provide Company, with prompt and detailed written notice thereof so that TSG or Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or TSG or Company waives compliance with the provisions of this Agreement, then the Confidential Information at issue may be disclosed without violation of this Agreement as legally required; provided that Company or TSG shall furnish only that Confidential Information which is legally required. Upon such disclosure, Company or TSG shall also, at its respective expense, exercise all necessary efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.
- 7. INFORMATION REGARDING EXISTENCE OF DISCUSSIONS.** Without the prior consent of TSG or Company, except as required by law, Company and TSG, and their representatives, shall not disclose to any person (i) that discussions concerning a Potential Engagement are taking or have taken place, (ii) that Confidential Information has been provided with a view toward the consummation of a Potential Engagement, or (iii) the existence of this Agreement.
- 8. TERM OF AGREEMENT.** This Agreement shall be effective as of the date hereof and shall remain in effect for a period of three (3) years. Upon the termination of this Agreement, all Confidential Information and any copies thereof, whether such copies are in electronic or other form, held by either TSG or Company shall be returned to the disclosing party; or, at the direction of the disclosing party, destroyed by the party in possession of such Confidential information as set forth in Section 9 below. Notwithstanding the foregoing, the nondisclosure and non-use obligations hereunder shall survive the termination of this Agreement and any Confidential Information that constitutes a trade secret under applicable law shall be held in confidence by the other party as long as such Confidential Information remains a trade secret under such applicable law.
- 9. RETURN OR DESTRUCTION OF DOCUMENTS.** Company and TSG shall return to the other party, respectively, any and all of the documents delivered to it hereunder upon the

written request of TSG or the Company, or upon determination by either party not to pursue the Potential Engagement, whichever occurs first. Company or TSG shall return not only all such original documents in Company's or TSG's possession, or in the possession of its representatives, but also of any copies thereof, whether in electronic or other form. The return of the documents shall be at the sole cost and expense of the party requesting such return, and shall be completed within ten (10) days after receipt of such request. At the election of TSG or Company, in lieu of returning such documents, Company or TSG may destroy the documents upon the written consent of the other party, whether in electronic or other form. Within ten (10) days following the request for a return or destruction of the documents, Company and TSG agree to provide to the other party a certificate signed by the President, CEO and CFO certifying compliance with this Section 9.

10. **REMEDIES.** The parties to this Agreement acknowledge and agree that (i) the remedy at law for a breach of this Agreement is inadequate because a breach would result in irreparable harm and damage to TSG and the Company, which cannot be adequately compensated by a monetary award, and (ii) the covenants and restrictions contained in this Agreement are reasonable as to scope and duration and necessary, fundamental and required for the protection of the Business and the Proposed Engagement. Accordingly, Company and TSG agrees that TSG and Company shall be entitled to an *ex parte* temporary restraining order and preliminary injunction for any breach of this Agreement, or such other form of injunctive or equitable relief as may be used by any court of competent jurisdiction to restrain or enjoin Company or TSG, or any other representative or person, from breaching any such covenant or restriction or to specifically enforce this Agreement, and TSG and Company shall not be required to post any bond in connection with such proceeding. Further, Company and TSG agree that the right to equitable relief hereunder is in addition to any other relief or remedy to which Company or TSG is entitled at law and in equity.
11. **NO WARRANTY OR REPRESENTATION.** TSG and Company shall not have any liability as a result of the use of, or reliance on, any material (including Confidential Information) delivered to Company or TSG pursuant to this Agreement or otherwise in relation to the Potential Engagement between them, and only those representations and warranties, if any, which may be made in a definitive agreement, signed by the parties thereto, shall have any legal effect with regard to warranties or representations.
12. **OWNERSHIP OF CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY.** TSG and Company retain all rights of ownership, title and interest in their respective Confidential Information disclosed under this Agreement. Nothing herein shall be deemed to grant Company or TSG, or any other party, any interest in or a license to use any portion of the Confidential Information beyond that expressly permitted hereunder.
13. **NO OBLIGATION.** Nothing contained in this Agreement shall be construed as constituting an obligation on the part of Company or TSG to enter into any other agreement or the Potential Engagement.
14. **NO ASSIGNMENT.** Neither the Company nor TSG may assign any of its rights, duties or delegate any of its obligations under this Agreement to any of its subsidiaries, affiliates, employees, agents, and other third parties other than those with a need to know without the other party's prior written consent. Subject to the preceding sentence, this

Agreement shall be binding upon the permitted successors and assigns of the parties hereto.

15. **GOVERNING LAWS.** This Agreement shall be governed by the laws of the state of Nebraska. The Company and Company hereby (i) agree that any suit, proceeding or action at law or in equity ("*Action*") arising out of or relating to this Agreement shall be instituted at the option of the party bringing such Action in any state or federal court in the state of Nebraska having subject matter jurisdiction, (ii) waive any objection that any party may have now or hereafter relating to the venue of any such Action, (iii) irrevocably submit to the jurisdiction of any such court in any such Action, and (iv) hereby waive any claim or defense of inconvenient forum.
16. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement and understanding between the parties as to the subject matter hereof. It merges with and supersedes all prior and contemporaneous agreements, commitments, representations, writings and discussions, whether oral or written. This Agreement may not be superseded, amended or modified except by written agreement signed by the parties hereto.
17. **NOTICES.** All notices required or contemplated by this Agreement shall be sent to the Company at the following address:

All notices to TSG shall be sent to the following address:

The Strawhecker Group, L.L.C.
Attn: Alexandra Bruening, Senior Director of Finance
11605 Miracle Hills Dr., Suite 302
Omaha, NE 68154

18. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which constitute an original, and all of which when taken together shall constitute one and the same instrument.
19. **MISCELLANEOUS.** No failure or delay of any party in exercising any right under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude any other or further exercise of any right hereunder. In the event any provision of this Agreement shall be judicially determined to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. The recitals set forth above are hereby incorporated into this Agreement as if fully set forth herein.

Signature Page Follows

IN WITNESS WHEREOF, the Company and TSG have executed this Agreement as of the date and year first above written.

COMPANY:

TSG:

THE STRAWHECKER GROUP, L.L.C., a Nebraska limited liability company

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____