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**SAMPLE CONFIDENTIALITY AGREEMENT FOR**

**POSSIBLE NONPROFIT MERGER OR OTHER COLLABORATION**

This sample confidentiality agreement was developed by Community Action Program Legal Services, Inc. (CAPLAW) and has not been approved by any outside authority, such as the U.S. Department of Health and Human Services. You should review this sample agreement thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization’s particular situation. ***CAPLAW strongly recommends that when working with this sample agreement, you consult with an attorney in your state who is well-versed in state contract laws and the laws affecting Community Action Agencies (CAAs).***

This agreement contains bracketed text and footnotes corresponding to specific provisions, both of which are intended to help you better understand the agreement and how to adapt it to the needs of your organization. You should update this text and delete any brackets when finalizing the agreement.

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**CONFIDENTIALITY AGREEMENT**[[1]](#footnote-1)

This CONFIDENTIALITY AGREEMENT (the “Agreement”) is by and between [***insert name of CAA***] and [***insert name of other party***] (each, a “Party” and together, the “Parties”)[[2]](#footnote-2).

WHEREAS, each Party is requesting information concerning the other Party in connection with the consideration of a possible negotiated business combination transaction (the “Possible Transaction”); and

WHEREAS, in the course of consideration of the Possible Transaction, one Party (the “Disclosing Party”) may disclose to the other Party (the “Recipient”) confidential and proprietary information concerning the Disclosing Party and its activities.

NOW, THEREFORE, the Parties agree to enter into this Agreement with respect to the disclosure by the Disclosing Party to the Recipient of certain information:

1. Definitions.
   1. “Affiliates” of a Party include that Party’s affiliates, subsidiaries, and legally-related organizations.
   2. “Confidential Information” means any information, whether written or oral, concerning the Disclosing Party (whether prepared by the Disclosing Party or any of its Representatives) that is furnished to the Recipient by or on behalf of the Disclosing Party in connection the Possible Transaction. Confidential Information includes all notes, analyses, compilations, Excel spreadsheets, data, reports, studies, interpretations, or other documents that the Recipient prepares to the extent such materials reflect or are based upon Confidential Information. Confidential Information does not include information that Recipient can demonstrate:
      1. Is or becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided that the source is not known by the Recipient to be bound by a confidentiality agreement with, or other legal or fiduciary obligation of confidentiality to, the Disclosing Party;[[3]](#footnote-3)
      2. Is generally known or becomes generally known to the public other than as a result of a disclosure by the Recipient or its Representatives in violation of this Agreement;[[4]](#footnote-4) or
      3. Is independently developed by the Recipient without use of or reference to the Confidential Information.
   3. “Representatives” of a Party include that Party’s and its Affiliates’ directors, officers, employees, agents, and financial, legal, or other advisors.
2. Confidentiality.
   1. Confidential Information.[[5]](#footnote-5) Neither the Recipient nor its Affiliates or Representatives shall disclose any of the Confidential Information in any manner whatsoever, except as provided in Sections 3 and 4 of this Agreement. The Recipient, its Affiliates, and its Representatives will use the Confidential Information solely for the purpose of evaluating and negotiating the Possible Transaction. Nothing in this Agreement shall be construed as granting any rights to the Recipient, by license or otherwise, to any of the Disclosing Party's Confidential Information.
   2. Possible Transaction.[[6]](#footnote-6) Neither Party will, and each Party will direct its Affiliates and Representatives not to, disclose to any person (including any governmental agency, authority, or official, or third party) either the fact that discussions or negotiations are taking place concerning the Possible Transaction or any of the terms, conditions, or other facts with respect to the Possible Transaction, including the status of the Possible Transaction, or that Confidential Information has been made available to that Party.
3. Permissible Disclosures.[[7]](#footnote-7) The Recipient may disclose the Disclosing Party’s Confidential Information to the Recipient’s Affiliates and Representatives if they have a bona fide need to know such Confidential Information, but only to the extent necessary to evaluate or carry out the Possible Transaction. All such Affiliates and Representatives shall (a) be informed by the Recipient of the confidential nature of the Confidential Information, (b) agree to keep the Confidential Information strictly confidential, and be advised of the terms of this Agreement and (c) agree to be bound by the terms hereof to the same extent as if they were parties to this Agreement. The Recipient agrees to be responsible for any breaches of any of the provisions of this Agreement by any of its Affiliates or Representatives. Such responsibility shall not limit any right or remedy the Disclosing Party may have against the Recipient’s Affiliates and Representatives with respect to such breach.
4. Required Disclosures.[[8]](#footnote-8) The Recipient may disclose the Disclosing Party’s Confidential Information if and to the extent that such disclosure is required by court order or applicable law, provided that the Recipient immediately notifies the Disclosing Party and provides the Disclosing Party a reasonable opportunity to review the disclosure before it is made and to seek a protective order or other appropriate remedy to the extent it is available. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions in this Section 4, the Recipient may disclose only the portion of the Confidential Information which it is advised by counsel is legally required to be disclosed.
5. Return or Destruction of Documents.[[9]](#footnote-9) If the Recipient does not proceed with the Possible Transaction with Disclosing Party, or at any time upon the Disclosing Party’s request, the Recipient will either promptly (a) destroy all materials containing Confidential Information and any copies thereof, or (b) return to the Disclosing Party all materials containing Confidential Information and any copies thereof. In either case, the Recipient will confirm in writing to the Disclosing Party that all such material has been destroyed or returned, as applicable, in compliance with this Agreement. Any Confidential Information stored in an intangible or electronic format which cannot be removed, erased, or otherwise deleted from archival systems (also known as “computer or system back-ups”) will continue to be protected under this Agreement, and the Recipient and its Affiliates and Representatives will continue to be bound by the obligations of confidentiality under this Agreement. The destruction or returning of materials containing Confidential Information shall not relieve the Recipient from compliance with the other terms and conditions of this Agreement.
6. [Non-Solicitation.[[10]](#footnote-10) For a period of two (2) years from the date of this Agreement, neither Party nor any of its Affiliates who are provided with Confidential Information will, directly or indirectly, solicit for employment or employ any individual serving as (a) an officer of the other Party, or (b) any employee of the other Party, in each case without obtaining the prior written consent of the other Party; provided, that either Party may make general solicitations for employment not specifically directed at the other Party or its employees and employ any person who responds to such solicitations.]
7. No Representation or Warranty. Although each Party endeavors to include in the evaluation materials Confidential Information which it believes to be relevant for the purpose of investigating a Possible Transaction, neither Party nor its respective Affiliates or Representatives has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. Neither Party nor its respective Affiliates or Representatives shall have any liability to the other Party or any of its Affiliates or Representatives resulting from the selection, use, or content of the Confidential Information.
8. Irreparable Harm.[[11]](#footnote-11) Each Party acknowledges and agrees that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause the other Party irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the other Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach, without proof of damages, and for such other relief as the other Party shall deem appropriate. Each Party further agrees to waive, and to use its best efforts to cause its Affiliates and Representatives to waive, any requirement for the securing or posting of any bond in connection with an action for specific performance or injunction. Such right of each Party is to be in addition to the remedies otherwise available to that Party at law or in equity.
9. No Additional Agreements: Unless and until a definitive agreement between the Parties with respect to the Possible Transaction has been executed and delivered, neither Party will be under any legal obligation with respect to any transaction by virtue of this or any written or oral expression except for the matters specifically agreed to in this Agreement. Each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or its Representatives with regard to the Possible Transaction and to terminate discussions and negotiations with the other Party at any time. Additional agreements of the Parties, if any, shall be in writing signed by both Parties.
10. No Waiver. No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, and no modification hereof shall be effective, unless in writing and signed by an officer of the waiving Party or other authorized person on its behalf.
11. Survival. This Agreement shall continue in full force and effect at all times.
12. Successors and Assigns. This Agreement and each Party's obligations hereunder shall be binding on the representatives, assigns, and successors of such Party and shall inure to the benefit of the assigns and successors of such Party.
13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE],[[12]](#footnote-12) without regard to conflict of law principles. The parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the courts of the State of [STATE] for any action, suit or proceeding arising out of or relating to this letter agreement or the proposed transaction, and agree not to commence any action, suit or proceeding related thereto except in such courts.
14. Counterparts and Right. This Agreement may be signed in counterparts, which together shall constitute one agreement.
15. Entire Agreement. This Agreement expresses the full and complete understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement does not, however, limit any rights that either Party may have under trade secret, copyright, patent or other laws that may be available to that Party. This Agreement may not be amended or modified except in writing signed by the authorized representative of each of the Parties.

**[INSERT NAME OF PARTY #1]**

By:   
Name:  
Title:

Date:

**[INSERT NAME OF PARTY #2]**

By:   
Name:  
Title:

Date:

1. The purpose of this Agreement is to allow organizations that are exploring the possibility of merging, sharing services, or entering into other types of business collaborations to share information with one another as part of the due diligence process. This Agreement requires that both parties use the information only for purposes of evaluating the transaction and keep information it receives from the other party confidential. This Agreement is drafted to be fairly mutual, so both parties are subject to the same obligations. Prior to using this Agreement, please delete all footnotes and fill in the information in brackets. [↑](#footnote-ref-1)
2. This Agreement envisions that both parties will be sharing confidential information with each other. Thus, both parties are referred to as “Parties” and both will be subject to the obligations of the “Disclosing Party” and the “Recipient,” depending on the circumstances. When Party 1 shares information, it acts as the “Disclosing Party” and Party 2 is the “Recipient.” Similarly, when Party 2 shares information, it acts as the “Disclosing Party” and Party 1 is the “Recipient.” [↑](#footnote-ref-2)
3. This exception covers confidential information that the Recipient receives from a third party (i.e., not the Disclosing Party or any of its Affiliates or Representatives), so long as the Recipient does not have knowledge that the third party has an obligation to the Disclosing Party to keep the information confidential. [↑](#footnote-ref-3)
4. This exception covers confidential information that is made public (other than information that the Recipient or its Representatives disclose in violation of this Agreement). [↑](#footnote-ref-4)
5. This section says that unless a disclosure is permitted in Sections 3 or 4, the Recipient must keep Confidential Information shared by the Disclosing Party confidential. Further, the Recipient can only use the Confidential Information for purposes of evaluating the Possible Transaction, and not for any other purpose. [↑](#footnote-ref-5)
6. This section requires both Parties to keep confidential the fact that they are discussing a Possible Transaction, as well as any proposed terms or conditions of the transaction. [↑](#footnote-ref-6)
7. This section allows Parties to disclose Confidential Information to its Representatives (which includes directors, i.e., board members, officers, employees, agents, or financial or legal advisors), but only on a need-to-know basis and only if the Representatives are advised that the information is confidential and agree to be bound by the terms of this Agreement. Parties are responsible for any breach of the Agreement by their Representatives. [↑](#footnote-ref-7)
8. This section permits a Party to disclose Confidential Information if required by law or court order. However, before doing so, the Party must notify the other Party and give that Party the opportunity review the disclosure and seek a protective order from the court. [↑](#footnote-ref-8)
9. This section allows a Party to request the return or destruction of Confidential Information any time. If the Possible Transaction does not go through, each Party will return or destroy the other Party’s Confidential Information. [↑](#footnote-ref-9)
10. This section is optional and thus bracketed. It prohibits either Party from soliciting officers or employees of the other Party for employment. However, either Party can post general employment opportunities and hire individuals who respond, so long as they are not specifically directing the solicitation to a covered employee. Depending on the relationship between the two parties, it may not be appropriate to include this provision in the Confidentiality Agreement. [↑](#footnote-ref-10)
11. This provision allows a Party to seek an injunction to prevent the other Party from disclosing Confidential Information in violation of this Agreement. Other remedies (including monetary damages) are also available. [↑](#footnote-ref-11)
12. Insert the state where the CAAs conduct their operations. This Agreement will be governed by that state’s laws. [↑](#footnote-ref-12)