

MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (“**Agreement**”), dated and effective as of _____, 20__ (“**Effective Date**”), is made and entered into by and between the Association of Washington Cities Employee Benefit Trust, a trust created under Washington law, with its principal place of business at 1076 Franklin Street SE, Olympia, WA 98501 (“**Company**”), and _____. Company and _____ are individually referred to as a “**Party**,” and collectively as the “**Parties**”. The Parties agree that, to facilitate discussions between them relating to potential business opportunities for the Parties’ mutual benefit, it may be necessary for each Party to disclose certain information on a confidential basis. The Parties hereby agree as follows:

Section 1. Definitions

“**Confidential Information**” means any nonpublic confidential or proprietary information, whether oral, written, visual or otherwise, which is marked or identified by the Discloser as secret, proprietary, or confidential when disclosed by or on behalf of the Discloser to the Recipient, whether before or after the Effective Date of this Agreement. Confidential Information includes, without the need to mark it as such, any of either Party’s: requests for proposals, requests for information, project plans, IT strategies, forecasts, presentations, slide decks, employee and vendor information, software (including all documentation, code, and specifications), hardware and system designs, architectures, structure and protocols, products, product roadmaps, processes, devices, inventions, methods, trade secrets, information related to either Party’s retailing, distribution, or administrative facilities and related information, financial information, sales and marketing research, commercial or strategic planning, pricing, customer lists, customer-specific information and data, customer employee-specific information and data, and such other information that either Party considers confidential or proprietary regardless of the form or manner of disclosure to the Receiving Party. Confidential Information also includes any information that has been made available to Discloser by third parties that Discloser is obligated to keep confidential. Confidential Information does not include any information that: (a) is or was acquired by Recipient from a third party and is not subject to an unexpired obligation to such third party restricting Recipient’s use or disclosure thereof; (b) is independently developed by Recipient without reliance upon or use of any of the Confidential Information; or (c) is or has become generally publicly available through no fault or action of Recipient or misconduct of a third party. In addition, for purposes of this Agreement, the Parties do not intend to disclose, and neither Party shall disclose, information constituting “protected health information” within the meaning of the Health Insurance Portability and

Accountability Act of 1996 (HIPAA), including any amendments thereto.

“**Confidential Materials**” means any document, diskette, tape, writing or other tangible item that contains any Confidential Information, whether in printed, handwritten, coded, magnetic or other form and whether delivered by Discloser or made by Recipient.

“**Discloser**” means a Party that discloses any of its Confidential Information to the other Party under this Agreement.

“**Disclosure Period**” means the period beginning with the date of this Agreement and ending ten (10) days after either Party gives the other written notice ending the Disclosure Period.

“**Recipient**” means a Party that receives any Confidential Information from the other Party under this Agreement.

Section 2. Confidentiality

2.1 Confidential Information and Confidential Materials are made available to Recipient solely for evaluating the Parties’ business opportunity or other purpose or relationship for which it was disclosed. Recipient will not use, disclose, disseminate, or distribute any Confidential Information or Confidential Materials for any other purpose without the prior written consent of Discloser. Without limitation of the foregoing, Recipient will not use any Confidential Information or Confidential Materials to design, develop, provide, or market any product or service that would compete with any product or service of Discloser.

2.2 Recipient will protect any Confidential Information and Confidential Materials from any unauthorized use, disclosure, copying, dissemination or distribution. Without limitation of the foregoing, Recipient will: (a) make the Confidential Information and Confidential Materials available only to those of its employees, agents, and other representatives who have a need to know the same for the purpose specified in Section 2.1, who have been informed that the

Confidential Information and Confidential Materials belong to Discloser and are subject to this Agreement, and who have agreed or are otherwise obligated to comply with this Agreement; (b) not disclose the Confidential Information to any third party except as provided in clause (a) above; (c) make or copy the Confidential Materials only as reasonably required for the purpose specified in Section 2.1, and ensure that confidentiality is maintained in the copying process; (d) not deliver, distribute, display, demonstrate, or otherwise make available the Confidential Materials to any third party except as provided in clause (a) above; (e) not reverse engineer, decompile, or disassemble any computer program included in such Confidential Materials; (f) use, and require its employees, agents, and other representatives described in clause (a) above to use, the same degree of care, which shall in no event be less than a standard reasonable care, as is used with the Recipient's own Confidential Information; (g) not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature; and (h) segregate all such Confidential Materials from the confidential materials of others to prevent commingling.

2.3 Notwithstanding Section 2.2, Recipient may disclose or produce any Confidential Information or Confidential Materials if and to the extent required by any subpoena, court order, or governmental action, provided Recipient gives Discloser reasonable advance notice of the same (e.g., so as to afford Discloser a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure).

2.4 All Confidential Information and Confidential Materials are the property of Discloser. This Agreement will not be interpreted or construed as granting any license or other right under any patent, copyright, trademark, trade secret or other proprietary right. Recipient will hold all Confidential Materials in trust for Discloser and will promptly destroy them or deliver them to Discloser upon the earlier of Discloser's request or when they are no longer needed for the purpose described in Section 2.1. Upon Discloser's request, Recipient will certify in writing its destruction of such Confidential Materials. Notwithstanding the foregoing, and upon mutual agreement between the Parties, the Recipient may retain one copy of the Confidential Information solely for evidentiary purposes in the event of any dispute regarding this Agreement, the purpose of this Agreement as described in Section 2.1, or the Confidential Information or Confidential Materials.

2.5 Recipient will comply with any and all applicable laws relating to the use, disclosure, copying, dissemination and distribution of any Confidential Information or Confidential Materials (including, but not limited to, any and all laws relating to Discloser's proprietary rights or the export of any technical data included in such Confidential Information).

Section 3. Miscellaneous

3.1 No warranties of any kind are given with respect to the Confidential Information, except that the Discloser warrants that it has the authority to make the disclosures contemplated under this Agreement. Discloser does not make any other representation or warranty, express or implied, with regard to any Confidential Information and Confidential Materials. Without limitation of the foregoing, the Confidential Information and Confidential Materials are made available under this Agreement "**AS IS,**" **with all defects, errors and deficiencies, and without any representation or warranty as to completeness or accuracy.**

3.2 In the event of any breach of this Agreement, Discloser may suffer irreparable harm and have no adequate remedy at law. In such event or the threat of any such event, Discloser will be entitled (in addition to any and all other remedies) to injunctive relief, specific performance and other equitable remedies without proof of monetary damages or the inadequacy of other remedies, and without necessity of posting a bond or other security.

3.3 The prevailing Party will be entitled (in addition to any and all other remedies) to recover any and all costs and expenses (including, without limitation, reasonable attorneys' fees) that it may incur in connection with any legal action to enforce this Agreement or to recover damages or other relief on account of any breach of this Agreement.

3.4 The protections afforded to the Confidential Information and Confidential Materials under this Agreement are in addition to, and not in lieu of, the protections afforded under any applicable trade secrets laws, including the Uniform Trade Secrets Act.

3.5 This Agreement will be interpreted, construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law principles to the contrary. Each Party hereby irrevocably consents to the jurisdiction and venue of any state or federal court located in King County, Washington, with regard to any

legal or equitable action or proceeding relating to this Agreement.

3.6 This Agreement (a) is not a commitment to any business relationship, contract or future dealing with the other Party, and (b) does not prevent either Party from conducting similar discussions with third parties or developing concepts similar to the purpose described in Section 2.1, so long as such discussions or work do not violate this Agreement. Nothing in this Agreement shall be deemed to restrict either Party from entering into agreements with competitors of the other Party.

3.7 The Parties are independent contractors and nothing herein will be deemed to create any agency relationship, joint venture or partnership between the Parties. Neither Party will have the power to commit, contract, or otherwise obligate the other Party. Each Party will be responsible for disclosures of Confidential Information made by its employees, agents, or other representatives in violation of this Agreement.

3.8 Neither Party is granting the other Party a license to use any of its patents, copyrights, trademarks, trade secrets, or other proprietary rights except to evaluate the purpose described in Section 2.1 in accordance with the terms of this Agreement.

3.9 This Agreement may not be assigned by either Party without the prior written consent of the other Party. No permitted assignment will relieve the Recipient of its obligations under this Agreement with respect to Confidential Information disclosed to the Recipient prior to its assignment. Any purported assignment in violation of this Section 3.9 is void.

3.10 This Agreement may be executed in as many counterparts as may be required to reflect all Parties' assent and all such counterparts shall collectively constitute a single agreement, notwithstanding the fact that all Parties did not sign the same counterpart. This Agreement may not be amended, except by a writing signed by both Parties.

**The Association of Washington Cities
Employee Benefit Trust**

Signature

By: _____

Title: _____

Signature

By: _____

Title: _____