

# CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2005 between the Baton Rouge Area Foundation (the "Foundation"), and \_\_\_\_\_ (the "Employee").

## RECITALS

WHEREAS, the Foundation desires to employ or to continue to employ the Employee on an at-will basis and the employee desires to be employed or to continue such employment; and

WHEREAS, in working to enhance the community, the Foundation has developed relationships with its directors, members, donors, and volunteers and is in possession of certain information, documents and records which are of a private and confidential nature; and

WHEREAS, as part of Employee's employment with the Foundation, the Employee will have access to Confidential Information, as defined herein, with respect to the Foundation, its directors, members, donors, volunteers and services; and

WHEREAS, the Foundation and the Employee recognize that it is in the best interest of the Employee and the Foundation, including its directors, members, donors, and volunteers, to protect the Confidential Information; and

WHEREAS, the parties agree that the Employee's compensation and continued employment on an at-will basis is consideration for this Agreement.

NOW THEREFORE, in consideration of the provisions herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

# AGREEMENT

## 1. Confidential Information

(a) Exclusive Property of Foundation. At all times during and after the date hereof, Employee shall keep in confidence and trust all information which may have been communicated to, acquired, or learned by Employee in the course of or as a result of his/her employment with the Foundation. Employee hereby acknowledges that the Foundation possesses certain Confidential Information that is peculiar to the business or activities in which the Foundation is or may be engaged. Employee affirms that such Confidential Information is the exclusive property of the Foundation, and that the Foundation has proprietary interest in such Confidential Information. For purposes of this Agreement, the term "Confidential Information" shall mean any and all information of any nature and in any form, including but not limited to, the Foundation's existing, future and contemplated: (i) products, funds, and services; (ii) purchasing, accounting, and marketing methods or practices; (iii) development data, and/or methodologies; (iv) membership, customer, donor and/or employee records, information, lists and files; (v) policies and/or business strategy including information obtained by Employee in his/her employment capacity with the Foundation; (vi) samples and/or materials submitted to Employee by the Foundation; and (vii) any and all directly and indirectly related records, documents, specifications, data, and/or other information with respect thereto. Employee acknowledges that such Confidential Information is confidential and proprietary. Employee further acknowledges by signing this Agreement that the Foundation has expended much time, cost, and difficulty in developing and maintaining the Confidential Information.

(b) Unauthorized Use or Disclosure Prohibited. Employee agrees: (i) to use the Confidential Information solely for the purpose of performing his/her duties on behalf of the Foundation and for no other purpose whatsoever; (ii) not to, directly or indirectly, at any time during or after his/her employment by the Foundation, disclose the Confidential Information to any other Person (except to the Foundation's officers in connection with his/her duties on behalf of the Foundation ) or use or otherwise exploit the Confidential Information to the benefit of the Employee or any other Person or to the detriment of the Foundation; and (iii) not to lecture on or publish articles with respect to the Confidential Information. For purposes of this Agreement, the term "Person" means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, trust or other entity or organization, whether or not a legal entity.

(c) Foundation's Retention of Records. Upon the termination of Employee's employment relationship with the Foundation, Employee hereby agrees that the Foundation shall retain possession of all records, documents, computer data and any other Confidential Information, including but not limited to, the names, addresses and telephone numbers of members and donors of the Foundation and all copies thereof (collectively, the "Records") relating to the Confidential Information; and if such

Records are not on the Foundation's premises, Employee hereby unconditionally agrees to return such Records, and all copies thereof, to the Foundation as soon as practical, but in any event no later than the date of termination. Additionally, Employee agrees to return all originals and copies of Records upon demand by the Foundation during the employment relationship.

## **2. Conflicts of Interest**

Employee acknowledges and agrees that he/she shall not use, copy, distribute, install or download any of the Foundation's software or computer files or use any of the Foundation's equipment for personal use, gain or profit or for use, gain or profit by any other Person, without the express written consent of the Foundation (which may be withheld in the Foundation's sole discretion). Employee further agrees that any work, product or service that the Foundation is capable of performing or providing will not be performed or provided by Employee, outside his/her duties and responsibilities to the Foundation, without the express written consent of the Foundation (which may be withheld in the Foundation's sole discretion).

## **3. Equitable Relief**

Employee agrees that the Confidential Information sought to be protected by this Agreement are valuable, unique assets of the Foundation and it would not be possible to measure in monetary terms some of the damages which the Foundation would incur if Employee breaches his/her obligations under this Agreement. Therefore, Employee agrees that in the event of a breach or threatened breach of any of the provisions of this Agreement, the Foundation shall be entitled to an injunction restraining Employee from violating or taking any action contrary to the provisions of this Agreement. Such injunction shall be available without the posting of any bond or other security, and Employee hereby consents to the issuance of such injunction and agrees that he/she will not assert, and that he/she hereby forever waives, the claim or defense that the Foundation has an adequate remedy at law.

## **4. Damages, Indemnity, Costs, Expenses and Attorneys' Fees**

Employee agrees to pay the Foundation all monetary damages caused by Employee's breach or threatened breach of this Agreement, including but not limited to, lost revenues and donations. Employee also agrees to pay the Foundation for all costs and expenses, including reasonable attorneys' fees, incurred by the Foundation in enforcing its rights hereunder, in addition to any other relief to which the Foundation may be entitled.

Employee further agrees to indemnify and defend the Foundation for all damages incurred as a result of claims brought against the Foundation by Persons caused by, flowing from or relating in any

way to Employee's breach or threatened breach of this Agreement. This indemnity provision specifically includes, but is not limited to, indemnification for all costs and expenses, including reasonable attorneys' fees, incurred in defending such claims against the Foundation. Employee specifically acknowledges and agrees that the Foundation is entitled to select legal counsel of its choice regarding claims referenced in this paragraph and that Employee is responsible for indemnifying the Foundation for all reasonable attorneys' fees incurred by such counsel.

Employee specifically acknowledges and agrees that the Foundation's rights set forth in this provision are in addition to the Foundation's right to obtain the equitable and/or injunctive relief provided for in this Agreement.

#### **5. Cumulative Relief**

The provisions of this Agreement shall be cumulative, and not exclusive of any remedies which may be available by law, including, without limitation, specific performance of this Agreement.

#### **6. Invalidity and Severability**

If any clause of this Agreement is illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties hereto that the remainder of the Agreement shall be affected thereby and all other clauses or provisions shall remain in full force and effect. It is also the intention of the parties to this Agreement that each clause and provision of this Agreement be construed in a manner which will make same legal, valid and enforceable, and, if not possible, then reformed only to the extent necessary to render the clause legal, valid and enforceable. It is further the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision invalid, illegal or unenforceable and the other of which would render the provision valid, legal and enforceable, then the provision will be construed to have the meaning that renders it valid, legal and enforceable.

IN WITNESS WHEREOF, the following party and witnesses hereto have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2005.

**WITNESSES:**

**BATON ROUGE AREA FOUNDATION**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

John G. Davies  
Chief Executive Officer

\_\_\_\_\_

Notary Public

Full Printed Name: \_\_\_\_\_

Notary Identification No.: \_\_\_\_\_

My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the following party and witnesses hereto have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2005.

**WITNESSES:**

**EMPLOYEE:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Employee Signature

\_\_\_\_\_

Employee Printed Name

\_\_\_\_\_

Notary Public

Full Printed Name: \_\_\_\_\_

Notary Identification No.: \_\_\_\_\_

My commission expires: \_\_\_\_\_