

## **KITTY HAVEN SANCTUARY OF UTAH CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-Disclosure Agreement (this "Agreement") is entered into as of \_\_\_\_\_ Kitty Haven Sanctuary of Utah, a Utah corporation and IRS 501(c)(3) nonprofit organization (Disclosing Company) and Volunteer Applicant (Recipient) (each referred to as a "Party" and collectively referred to as the "Parties"). In consideration of the premises and covenants herein set forth and other good and valuable consideration, the legal sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Treatment of Confidential Information.** The Confidential Information (as defined in Section 2), whether transmitted orally, in writing or in any other form, and whether prepared by a Party or its employees, agents, advisors or other representatives, shall be preserved in strict confidence by the receiving Party, shall not be disclosed, disseminated or distributed by the receiving Party other than as expressly authorized herein, and shall be used exclusively for the purposes or transactions contemplated by this Agreement. Disclosure of the Confidential Information may be made only to employees, agents or independent contractors of a Party who are directly involved in consideration of the transaction, which is the subject of this Agreement and who are bound to maintain its confidence.
2. **Definition of Confidential Information.** The term "Confidential Information" shall mean for purposes of this Agreement, any and all sensitive business, financial and technical information provided prior to the execution of this Agreement and to be provided after the execution of this Agreement by a transmitting Party to the receiving Party, including, without limitation, financial statements, reports and data, customer lists, trade secrets, technical data, proprietary information, and any other confidential information regarding the transmitting Party, its subsidiaries and its respective businesses. Confidential Information does not include information, which is shown by clear and convincing evidence to be (i) publicly available without breach by the receiving Party of its obligations to the disclosing Party under this Agreement; (ii) known to the receiving Party prior to the disclosing Party's disclosure of such information to the receiving Party; (iii) known to the receiving Party other than by the breach of an obligation of confidentiality owed to the disclosing Party under this Agreement from a source other than the disclosing Party; (iv) independently developed by the receiving Party; (v) disclosed by the disclosing Party to a third party free of any duty of confidentiality on the third party; (vi) disclosed under operation of law provided the receiving Party gives the disclosing Party reasonable notice prior to such disclosure and cooperates with the disclosing Party in its efforts to keep the Confidential Information confidential; (vii) disclosed by the receiving Party with the prior written approval of the disclosing Party; or (viii) inherently disclosed in products or services being developed or marketed by the receiving Party prior to the receipt of pertinent Confidential Information from the disclosing Party.
3. **Ownership of Confidential Information.** The disclosing Party shall retain all right, title and interest in and to the Confidential Information, including all intellectual property represented thereby or associated therewith, and no license or assignment, by implication, estoppel or otherwise, is granted by the disclosing Party to the receiving Party to make, have made, use, or sell any product using the Confidential Information, or a license under any patent, patent application, utility model, copyright, trade secret, trademark, service mark or any other similar industrial or intellectual property right. At no time and under no circumstances shall the receiving Party reverse-engineer, decompile or disassemble any part of the Confidential Information .
4. **Responsibility for Breach.** Each Party agrees to be responsible for any breach of this Agreement by any third party to whom such Party has provided Confidential Information, or any portion thereof. If a Party or any third party to whom such Party has provided Confidential Information becomes legally compelled (by oral question, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process or by rule, regulation or other applicable law) to disclose any Confidential Information, such Party shall promptly notify the other Party of such requirement before any disclosure is made so that the other Party may seek a protective order or other appropriate remedy or may waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, or if a Party waives compliance with the provisions hereof, each Party agrees that only that portion of the Confidential Information which it is legally required to disclose (as advised by a written opinion of counsel) will be disclosed, and each Party agrees to exercise its best efforts to obtain assurance that the Confidential Information will be treated confidentially upon disclosure.

5. Term. This Agreement will continue in full force and effect until both parties agree in writing to terminate this agreement and for one-year thereafter. The Parties agree that if the negotiated transaction does not proceed within a reasonable time, or upon any request from either Party, each Party shall promptly deliver to the other Party all written Confidential Information and any other written material containing or reflecting Confidential Information and will not retain any copies, extracts or other reproductions in whole or in part of such written material. All documents, memoranda, notes and other writings whatsoever prepared by each Party, or respective representatives, based on the information included in the Confidential Information shall be promptly destroyed, and such destruction shall be certified in writing by an authorized officer supervising such destruction. Notwithstanding the return or destruction of any Confidential Information, each Party shall continue to be bound by its obligations of confidentiality and other obligations hereunder.

6. Form of Relief. The Parties hereby acknowledge and agree that, in the event of any breach of this Agreement by either Party, including, without limitation, the actual or threatened disclosure of a Party's Confidential Information without the express prior written consent of that Party, such Party will suffer irreparable harm and injury and no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, each Party hereby agrees that, in any such event, the harmed Party shall be entitled to seek specific performance of the other Party's obligations under this Agreement, as well as such further injunctive relief as may be granted by a court of competent jurisdiction.

7. Confidentiality of Discussions. Unless otherwise required by law, without the prior written consent of the other Party, neither a Party nor its representatives shall disclose to any person (including any corporation, company, partnership or individual) either the fact that discussions or negotiations are taking place concerning a possible transaction between the Parties or any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.

8. Assignment. This Agreement and the rights and obligations of either Party under this Agreement may be assigned or transferred only upon the prior written approval of the other Party hereto. The rights and obligations of the Parties hereto will inure to the benefit of, will be binding upon, and will be enforceable by the Parties hereto, their representatives and their permitted successors and assigns.

9. Modifications. No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in writing signed by the Party against whom it is sought to be enforced.

10. Choice of Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH, EXCLUDING CHOICE OF LAW AND CONFLICTS OF LAW PRINCIPLES WHICH DIRECT THE APPLICATION OF THE LAWS OF A DIFFERENT STATE. The rule of construction that contracts are to be construed strictly against the drafter is expressly made inapplicable to this Agreement.

11. Severability. If any provision of this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one Party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the Parties' respective rights and obligations hereunder.

12. Counterparts. This Agreement may be executed in any number of counterparts and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when all counterparts taken together shall have been executed and delivered by the Parties. A telecopied facsimile of an executed counterpart of this Agreement shall be sufficient to

evidence the binding agreement of each Party to the terms hereof.

13. **RELEASE.** As consideration for being permitted by Kitty Haven to participate in activities and provide Services, I hereby agree that I, my assignees, heirs, distributees, guardians, and legal representatives will not make a claim against, sue, or attach the property of Kitty Haven Sanctuary of Utah for injury or damage resulting from any act, omission, negligence or other acts, howsoever caused, by any employee, agent, contractor, or representative of Kitty Haven as a result of my participation in activities and performance of the Services and any A-V Recordings. I hereby release Kitty Haven from all actions, claims, or demands that I, my assignees, heirs, distributees, guardians, and legal representatives now have or may hereafter have for injury or damage resulting from my participation in activities and performance of the Services and any A-V Recordings.

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**Signature of Visitor or Volunteer**

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**Date**

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**Kitty Haven Sanctuary of Utah Representative Signature**