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**ASSET PURCHASE AGREEMENT**

Dated as of May 18, 20\_\_

By and Between

**XYZ GROUP, INC.**

and

**ABC ACTS, INC.**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("*Agreement*") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between ABC Acts, Inc., a \_\_\_\_\_ corporation ("*Seller*"), Abel Abels, the sole shareholder of Seller ("*Shareholder*"), and XYZ Group, Inc., a \_\_\_\_\_ corporation ("*Buyer*").

### RECITALS

- A. Seller owns and operates a janitorial service business ("*Business*") located at \_\_\_\_\_; and
- B. Seller desires to sell substantially all of its assets to Buyer, and Buyer desires to purchase those assets, on the terms and subject to the conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

**1. Purchase and Sale of Assets.** On the Closing Date (as that term is defined in Section 5) Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and accept from Seller, free and clear of all liens, claims, security interests and encumbrances, all of Seller's right, title and interest in and to all assets of Seller (other than "Excluded Assets" as defined herein) used or useful in the operation of the Business, including, without limitation, the following (the "*Purchased Assets*"):

(a) all machinery and equipment ("*Equipment*") including, without limitation, equipment with cleaning crews, at commercial sites, in warehouse, etc., including all Equipment listed on Schedule 1(a) attached hereto;

(b) all other tangible assets ("*Tangible Assets*"), including, without limitation, all office and other furnishings, computer equipment, computer software, inventories of cleaning supplies, office supplies, three motor vehicles, including the Tangible Assets identified on Schedule 1(b) attached hereto;

(c) all contracts and agreements with Customers of the Business ("*Customers Agreements*"), including, without limitation, all Customer Agreements for the customers identified on Schedule 8(i) attached hereto, and all service, supply, maintenance, utility, operating, consulting, advertising, promotion, public relations, equipment leases and other contracts specifically identified on Schedule 1(c) attached hereto (together with the Customer Agreements, the "*Contracts*") to the extent that Buyer specifically agrees in writing to assume such Contracts on the Closing Date (such Contracts that Buyer specifically agrees in writing to assume being hereafter referred to as the "*Assumed Contracts*");

(d) all accounts receivable ("*Accounts Receivable*") of Seller;

(e) all governmental licenses and permits ("*Permits*") necessary to operate the Business, which are identified on Schedule 1(e), as and to the extent the same are assignable to Buyer; and

(f) all of Seller's customer and supplier lists, telephone numbers, yellow page advertising, internet web page and domain name, lease security deposit with \_\_\_\_\_ for \$\_\_\_\_\_ and miscellaneous other deposits for \$\_\_\_\_\_, trademarks, servicemarks, tradenames, logos and designs, trade secrets, proprietary databases, goodwill, and books and records including, without limitation those items listed on Schedule 1(f) ("*Other Assets*").

**2. Excluded Assets.** Notwithstanding anything in Section 1 to the contrary, the Purchased Assets shall not include, and Seller shall retain, the following:

- (a) all cash and marketable securities of Seller;
- (b) all contracts, leases and other agreements of Seller other than the Assumed Contracts ;
- (c) any tax refunds, insurance proceeds, or insurance dividends relating to Seller for periods prior to the Closing Date; and
- (d) any corporate or tax records of Seller (provided that Seller shall make copies such records available to Buyer upon Buyer's reasonable request).

**3. Assumed Liabilities.** Except as provided in the following sentence, Buyer and Seller agree that Buyer shall not assume, nor shall Buyer in any way be responsible for, any liability, obligation, claim or commitment, contingent, actual or otherwise, known or unknown, of Seller or any of its Shareholder, directors, officers, employees or agents, it being expressly understood and agreed that Seller shall continue to be responsible for any and all liabilities, obligations, claims or commitments of Seller or the Business entered into on or prior to the Closing Date, including but not limited to, any sales, income, payroll or other taxes, obligations to other creditors including vendors, employees and customers or other liabilities, obligations, claims or commitments of the Seller incurred in connection with the transactions contemplated hereby. Notwithstanding the preceding sentence, Buyer agrees that it will, on the Closing Date, assume and agree to perform and discharge solely and only the obligations under Assumed Contracts arising from and after the Closing Date and those certain accounts payable and accrued expenses in the amounts and to the payees specifically identified on Schedule 3 attached hereto (the "*Assumed Liabilities*").

**4. Purchase Price and Payment.** The purchase price for the Purchased Assets and the agreements of Seller and Shareholder contained herein (including the non-competition and non-solicitation agreement set forth in Section 13 hereof) (the "*Purchase Price*") shall be \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), as hereafter adjusted. The Purchase Price shall be payable as follows:

(a) \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) (“Cash Purchase Price”), payable in the form of a certified or cashier’s check, or by wire transfer, to or at the direction of Seller at Closing.

(b) At Closing, Buyer shall deliver to Seller Buyer's Promissory Note in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) in substantially the form attached hereto as Exhibit A (“Note”) which provides for interest at the prime rate as published in The Wall Street Journal plus two percent (2%) per annum, to be amortized over the following thirty-six (36) months, with principal and interest to be paid in thirty-six (36) equal and consecutive installments commencing thirty (30) days subsequent to Closing. The Note shall be secured by a pledge of all of the assets of Buyer pursuant to the terms of a Junior Security Agreement (“Security Agreement”) substantially the form attached hereto as Exhibit B.

(c) Buyer at closing shall assume and agree to discharge obligations and liabilities of Seller having an agreed aggregate stated value of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) reported as part of Seller’s working capital as of December 31, 20\_\_.

(d) The parties shall mutually agree to allocate the Purchase Price among the Purchased Assets in accordance with Exhibit C attached hereto and to file Form 8594 with their 20\_\_ Federal income tax returns reflecting the information reported on Exhibit C.

**5. Closing.** The consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place on \_\_\_\_\_, 20\_\_, to be effective as of the close of business on \_\_\_\_\_, 20\_\_ (the “Closing Date”), at 10:00 a.m. at the offices of Buyer’s lender, or at such other time and place as the parties may mutually agree.

**6. Closing Deliveries.**

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a bill of sale, or such other good and sufficient instruments of assignment, transfer and conveyance as Buyer shall reasonably request, to convey and to transfer to Buyer all of Seller’s right, title and interest in and to the Purchased Assets free and clear of all security interests, liens, claims and encumbrances, other than liens arising in connection with the Note;

(ii) an assignment of all tradenames and any other trademarks or servicemarks of Seller;

(iii) state and county level UCC lien searches indicating that the Purchased Assets are free from any liens or encumbrances, other than liens arising in connection with the Note;

(iv) an assignment of the Assumed Contracts;

(v) any Required Consents (as that term is defined in Section 10(b));

(vi) a recent good standing certificate from the \_\_\_\_\_ Secretary of State;

(vii) certified resolutions of Seller's Board of Directors and Shareholder approving this Agreement and the transactions contemplated hereby;

(viii) duly executed \_\_\_\_\_ Secretary of State Cancellation of Assumed Name forms (BCA- 4.15/4.20) for the Seller's two assumed names;

(ix) a certificate executed by Seller and Shareholder dated as of the Closing Date stating: (A) that all of the representations and warranties of Seller and Shareholder set forth in this Agreement are materially true and correct with the same force and effect as if such representations and warranties were made on the Closing Date, and (B) that Seller has performed and complied with all of the covenants and obligations to be performed or complied with by it under the terms of this Agreement on or prior to the Closing Date;

(x) Bulk Sales Stop order issued by the \_\_\_\_\_ Department of Revenue and the \_\_\_\_\_ Department of Employment Security in accordance with Section 12(d) hereof; and

(xi) such other documents as Buyer may reasonably request in order to evidence and effectuate the obligations and duties of Seller pursuant to this Agreement.

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the cash portion of the Purchase Price pursuant to Section 4;

(ii) an assumption of the Assumed Contracts;

(iii) the Note;

(iv) the Security Agreement;

(v) a recent good standing certificate from the \_\_\_\_\_ Secretary of State;

(vi) certified resolutions of Buyer's Shareholder confirming that this Agreement and the transactions contemplated hereby have been approved;

(vii) a certificate executed by Buyer dated as of the Closing Date stating: (A) that all of the representations and warranties of Buyer set forth in this Agreement are materially true and correct with the same force and effect as if such representations and warranties were made on the Closing Date, and (B) that Buyer has performed and complied with all of the covenants and obligations to be performed or complied with by it under the terms of this Agreement on or prior to the Closing Date; and

(viii) such other documents as Seller may reasonably request in order to evidence and effectuate the obligations and duties of Buyer pursuant to this Agreement.

**7. Post-Closing Adjustment.** Within ninety (90) days after Closing, the Buyer and/or its representative shall, at Buyer's expense, prepare an audited or reviewed balance sheet as of the Closing Date (the "Closing Balance Sheet"); provided, that, such balance sheet shall reflect the period of time immediately prior to the Closing. The parties agree that the amount of the Purchase Price shall be adjusted upwards or downwards (the "Post-Closing Adjustment"), as the case may be, on a dollar-for-dollar basis for the following:

- (a) ***Working Capital Adjustment*** – upwards or downwards, as the case may be, on a dollar-for-dollar basis to the extent that current net working capital as of Closing Date is greater than or less than December 31, 20\_\_ net working capital of \_\_\_\_\_ dollars (\$\_\_\_\_\_). Net working capital is defined as the amount of the current assets (excluding cash) that exceeds the current liabilities;
- (b) ***Bad Debt Adjustment*** – downwards on a dollar-for-dollar basis to the extent that the amount of accounts receivable sold to Buyer by Seller and not collected within ninety (90) days of Closing exceeds \$\_\_\_\_\_. Seller shall have the right to collect such accounts receivable after ninety (90) days; provided, however, that Seller may not use litigation as a means of collection unless approved in advance by Buyer. Unless otherwise directed by customer, all collections shall be applied against the oldest invoice first.

Any and all adjustment amounts resulting from this section shall, at Buyer's sole option, increase or be offset against the balance due and owing on the Note.

**8. Representations and Warranties of Seller and Shareholder.** Seller and Shareholder hereby jointly and severally represent and warrant to Buyer as follows:

(a) **Organization and Authority.** Seller is a corporation, duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_. Seller has all requisite corporate power and authority to carry on its business as it is presently being conducted, to enter into this Agreement, and to carry out and perform the transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized and approved by its Shareholder and its Board of Directors, and will not violate its Articles of Incorporation, By-Laws, or any agreement to which it is a party or by which it is bound or any law, rule, regulation or court order. This Agreement, and all other instruments, documents and agreements to be delivered by Seller in connection therewith, are the legal, valid and binding obligation of Seller enforceable in accordance with its, and their, terms.

(b) Title/Condition. Seller has good and marketable title to the Purchased Assets, free and clear of any liens, claims, security interests or encumbrances. Each item of tangible Purchased Assets is in good working order and repair, ordinary wear and tear excepted.

(c) Financial Statements. All financial statements (including balance sheets and income statements) previously delivered to Buyer by Seller, including the balance sheets and statements of income dated December 31, 20\_\_, December 31, 20\_\_, December 31, 20\_\_, ("*Financial Statements*"), fairly present the financial condition of Seller for the time period presented. All Financial Statements have been prepared in conformity with generally accepted accounting principles consistently applied ("*GAAP*") (except (i) that such statements are on the cash basis method of accounting and (ii) for interim statements which are subject to normal year-end adjustments) and present fairly in all material respects the financial condition and results of operations of the Seller for the respective periods indicated.

(d) No Material Liabilities. Seller is not subject to any material liability (including, without limitation, unasserted claims whether known or unknown), whether absolute, contingent, accrued or otherwise, which is not shown or which is in excess of amounts shown or reserved for in the respective Financial Statements, other than (a) liabilities of the same nature as those set forth in such balance sheet and incurred in the ordinary course of Seller's business after the date indicated and (b) those items not required to be accrued, footnoted or otherwise reserved for or disclosed under GAAP.

(e) No Material Adverse Changes. Since December 31, 20\_\_, there has been: (i) no material adverse change in Seller, the Business or its financial condition or prospects except as may be noted in the Financial Statements; and (ii) no material damage, destruction, loss or claim, whether or not covered by insurance, or condemnation or other taking adversely affecting in any material respect the assets or properties of the Seller or the Business, including the Purchased Assets. Since December 31, 20\_\_, Seller has conducted the Business in the ordinary course and in conformity with past practice.

(f) Taxes. Seller has timely filed all required federal, state, county and local income, withholding, property, sales, use, franchise and other tax returns, declarations and reports which are required to be filed in connection with the Business on or before the date of this Agreement, and has paid or reserved for all taxes which have become due pursuant to such returns or pursuant to any assessment which has become payable in connection with the Business except for taxes which it has contested in good faith.

(g) Employees. Seller is not a party and has never been a party to any collective bargaining agreement. Seller has complied in all material respects with all applicable laws, rules and regulations which relate to prices, wages, hours, employee documentation, immigration, discrimination in employment and collective bargaining and to the operation of the Business and is not liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing. To the best of Seller's or Shareholder's knowledge, there has been no union organizing effort within the last five (5) years. There have been no strikes,

lockouts, slowdowns or similar work stoppages affecting Seller's employees. Schedule 8(g) lists all employees of Seller, dates of hire, current job titles and current compensation levels.

(h) Employee Benefits. All employee benefit plans maintained by Seller comply in all material respects with applicable law, including reporting and disclosure requirements, and have been administered in accordance with their respective provisions and applicable law in all material respects.

(i) Customers. Schedule 8(i) attached hereto lists all current customers of the Business. Schedule 8(i) also contains a true and correct description of (i) all classes of customers, and (ii) the number of existing customers each class of customers.

(j) Litigation. There is no litigation or proceeding or governmental investigation pending or, to the knowledge of Seller or Shareholder, threatened, against Seller relating to the Purchased Assets or the Business.

(k) Compliance with Laws; Approvals. Seller has complied in all material respects with all federal, state and local laws, statutes, rules, regulations, ordinances and codes, and has received no written notice from any governmental agency asserting that a violation has or may have occurred. No consent, approval, order or authorization of, or negotiation, declaration or filing with, any governmental authority or entity or other party is required of the Seller in connection with the execution, delivery and performance of this Agreement or the consummation of any of the transactions contemplated hereby or thereby.

(l) Governmental Permits, Licenses. Seller and the Business possess all necessary governmental permits, licenses, franchises and authorizations (collectively, "Permits") to conduct the Business. The Permits are listed on Schedule 1(f) and those which are not transferable are also designated in said schedule. The Permits are in full force and effect and there are no defaults or breaches, or events which but for notice or lapse of time or both would constitute a breach or default under the Permits and all Permits are transferable without obtaining the consent of the issuing body, except as set forth on Schedule 1(f).

(m) No Defaults Under Assumed Contracts. All of the Assumed Contracts are currently in full force and effect, and there are no events of default existing thereunder or events which, with the passing of time or the giving of notice, would become events of default.

(n) Intellectual Property. Seller owns all of the trade secrets, patents, copyrights, business methods, trade names, trademarks, service marks, corporate names, inventions, trade secrets, sensitive and confidential business information (such as customer lists, pricing, gross margins, telephone numbers), mailing lists, know-how and proprietary and confidential information (collectively, "Intellectual Property") free and clear of all liens, claims, security interests, encumbrances and restrictions, and all Intellectual Property is in full force and effect and has not been licensed from or to or used by any person. Seller has not, to its or Shareholder's knowledge, infringed on any Intellectual Property of another. There is no



claim pending, or to the knowledge of Seller and Shareholder, threatened against the Seller with respect to alleged infringement of any Intellectual Property owned by another nor, to the best knowledge of Seller and the Shareholder, does the operation of the Business in the manner in which it has been operated give rise to any such claim.

(o) Accounts Receivable. All Accounts Receivable arose in the ordinary course of business of Seller.

(p) Brokers. Except for the brokerage commission payable to EBIT Associates, Ltd., which shall be paid in full by Seller, neither Seller nor any party acting on its behalf has any obligation or liability to pay any fee or commission to any broker or finder in connection with this Agreement or the transactions contemplated by this Agreement.

(q) Schedules. All schedules presented by Seller are true, complete and correct and such schedules will be true, correct and complete as of the Closing Date.

**9. Representations and Warranties of Buyer**. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Authority. Buyer is a corporation, duly formed, validly existing, and in good standing under the laws of the State of \_\_\_\_\_. Buyer has all requisite power and authority to carry on its business as it is presently being conducted, to enter into this Agreement, and to carry out and perform the transactions contemplated by this Agreement. The execution, delivery, and performance of this Agreement by Buyer has been duly authorized and approved by its members, and will not violate its Articles of Incorporation or constitute a default under any agreement or instrument to which Buyer is a party or by which it is bound. This Agreement, and all other instruments, documents and agreements to be delivered by Buyer in connection therewith, are the legal, valid and binding obligation of Buyer enforceable in accordance with its, and their, terms.

(b) Brokers. Neither Buyer nor any party acting on its behalf has any obligation or liability to pay any fee or commission to any broker or finder in connection with this Agreement or the transactions contemplated by this Agreement.

(c) There is no litigation, proceeding or governmental investigation (whether federal or state) pending or, to the best of Buyer's knowledge, threatened against or relating to Buyer.

**10. Actions Prior to the Closing Date**. The parties covenant and agree to take the following actions between the date of this Agreement and the Closing Date:

(a) Investigation of Seller by Buyer. Seller shall afford to the officers, employees and authorized representatives (including, without limitation, independent public accountants and attorneys) of Buyer a full and complete opportunity to conduct and complete its acquisition review and analysis of the Purchased Assets and Assumed Liabilities, including:

(i) a review of Seller's relevant books and records, financial information, and agreements; (ii) an inspection and review of the physical operations of Seller's business, and the right to contact and communicate with the Seller's vendors, creditors, customers, employees, independent contractors and others having a business relationship with Seller in connection with the Business. Provided, however, that Buyer will keep and maintain any and all information relating to Seller confidential, and will not make use of any such information other than for its evaluation of the proposed transaction.

(b) Consents and Approvals. Seller shall use its best efforts promptly to obtain all consents and amendments from parties to leases, contracts, licenses, permits and other agreements set forth on Schedule 1(c) which require consent (as so indicated on Schedule 1(c) or Schedule 10(b) attached hereto), together with estoppel letters from parties to material agreements (the "*Required Consents*").

(c) Preservation of Representations and Warranties. Each of the parties shall refrain from taking any action which would render any of the representations and warranties contained in Section 8 or Section 9 inaccurate as of the Closing Date.

(d) Exclusive Dealing. Provided Buyer has not breached its obligations hereunder or this Agreement has not terminated, Seller, Shareholder and their affiliates shall deal exclusively with the Buyer with respect to the sale of the Purchased Assets and the Business. Neither Seller nor Shareholder shall solicit, encourage or entertain offers or inquiries (nor shall Seller, Shareholder or any of their affiliates authorize or permit any director, officer, employee, attorney, accountant or other representative or agent to solicit, encourage or entertain offers or inquiries) from other possible acquiring companies, persons or entities, provide information to or participate in any discussions or negotiations with any companies, persons or entities with a view to an acquisition of all or substantially all of Seller's assets or stock or any interest therein

#### **11. Continuance of Business Operations in the Ordinary Course.**

(a) Between the date of this Agreement and the Closing Date, Seller shall continue to conduct the Business in the ordinary course and shall not, except with Buyer's prior written consent (which will not unreasonably be withheld) or as may be required by law: (i) move its offices or the Purchased Assets; (ii) change its billing practices; (iii) increase the salaries, bonuses or compensation structure of any employee or consultant other than in the ordinary course of business and consistent with past practices; (iv) offer any customer interests at any promotional or discounted fee; (v) terminate any employee; (vi) terminate or amend any of the Assumed Contracts; (vii) sell or otherwise dispose of any of the Purchased Assets except in the ordinary course of business consistent with past practices; or (viii) make any commitment to do any of the foregoing. Seller shall not purchase any new or used Equipment without Buyer's prior written consent, which consent shall not be unreasonably withheld, provided that such purchase is required to replace an existing piece of Equipment that is no longer functional.

(b) Between the date of this Agreement and the Closing Date, Seller will: (i) provide Buyer with updated monthly current balance sheets and statements of income and loss relating to the Business, which such statements shall be subject to the same representations and warranties as contained in Section 8(c); (ii) pay accounts payable and collect accounts receivable in accordance with past practices; (iii) maintain the Purchased Assets in good operating condition and repair, ordinary wear and tear excepted; and (iv) maintain existing insurance coverage.

## 12. Other Agreements.

(a) Seller's Employees. On and as of the Closing Date, Seller will take all actions necessary to terminate the employees of the Business and shall pay such employees all sums (whether payroll, bonus, severance, vacation or otherwise) due to them through the close of business on the Closing Date. Notwithstanding the foregoing, Seller shall make post closing payroll payments to employees who are entitled to pre-closing wages and to make appropriate and timely filings with the governmental agencies. If such payments are made by the Seller, they will not be considered as part of the working capital adjustment under Section 7(a). Prior to Closing Date, Buyer may, at its sole discretion, interview and discuss employment opportunities with Seller's employees, and within ten (10) days prior to Closing Buyer may offer employment to any of such employees on terms and conditions unilaterally determined by Buyer, effective on the Closing Date.

(b) Transfer Taxes. Any sales, transfer, use or similar taxes or fees (but not income or gains taxes) imposed as a result of the sale of the Purchased Assets shall be borne by Seller.

(c) Transaction Expenses. Except as may otherwise be provided by Section 12(b), each of the parties to this Agreement shall bear its own costs and expenses (including legal and accounting fees) incurred in connection with this Agreement and the transactions contemplated by this Agreement.

(d) Bulk Sales Compliance. As soon as practicable from the date hereof, Seller shall give a report of sale to (a) the \_\_\_\_\_ Department of Revenue ("IDOR") as contemplated under Section 902(d) of the \_\_\_\_\_ Income Tax Act and Section 5(j) of the \_\_\_\_\_ Retailers' Occupation Tax Act and (b) and the \_\_\_\_\_ Department of Employment Security ("IDES") as contemplated under Section 750 of the \_\_\_\_\_ Unemployment Compensation Act. At the Closing, Seller shall provide to Buyer either (i) evidence of a stop order from the IDOR and a receipt from the IDES evidencing that no amounts are owed by Seller to either or both departments, (ii) statements from either or both departments stating the amounts which are owed by Seller (the "Deficiency") or (iii) an estimate mutually agreed to by the parties of such liability (the "Estimate"). The Deficiency or Estimate, if any, shall be withheld from the cash portion of the Purchase Price due at Closing and shall be paid to Buyer's attorney as the Escrow Agent. Upon receipt of a final order from the IDOR or IDES, as the case may be, Escrow Agent shall either (1) release all or a portion of the Deficiency or Estimate to IDOR or IDES, as the case may be, in satisfaction of such final order or (2) if no amounts are due to

IDOR or IDES pursuant to such final order, the Deficiency and/or Estimate shall be released to Seller.

(e) **Consulting Services.** Shareholder agrees that for a period of ninety days following the Closing he shall provide consulting services to Buyer on an as needed basis during normal business hours. Such consulting services shall involve training Buyer and its employees and owners on all aspects of operations of the Business. As consideration for consulting services rendered, Shareholder shall receive \$25 per hour. The Buyer shall reimburse all expenses of Shareholder directly associated with the Buyer, including travel and entertaining expenses, provided, however, that all expenses in excess of One Hundred Dollars (\$100) must be pre-approved by the President of Buyer. In addition, Shareholder shall be reasonably available by telephone for consulting services not to exceed one (1) hour per month (at no charge) for the months \_\_\_\_\_ 20\_\_ through \_\_\_\_\_ 20\_\_. As part of the consulting services, Buyer shall provide Shareholder with family health coverage in accordance with the COBRA guidelines and at the Shareholder's sole cost and expense.

**13. Non-Competition and Non-Solicitation.** For a period of five (5) years following the Closing Date, neither Seller nor its affiliates, including Shareholder, shall (individually or as a consultant, shareholder, partner, venturer, director, officer, agent or otherwise) (a) engage in the business of operating a janitorial business or any related enterprise that is competitive with the facilities or services offered by the Business within a hundred (100) mile radius from Anytown, USA, or (b) solicit, call on or contact any past (within the past 12 months) or present customers, suppliers or employees of Seller with respect to the Business.

In addition, Seller and Shareholder shall keep and maintain all confidential and proprietary information of Seller, including without limitation, financial statements, customer and supplier lists, pricing information, sales and purchases margins and practices, methods of telephone solicitation and similar information regarding the business and affairs of Seller, confidential and shall not disclose such information to any third person or exploit such information personally except as required under law, or if such information is in the public domain.

In the event that Seller breaches this Section 13, Buyer shall have the non-exclusive right and remedy to have this section specifically enforced to the extent permitted by any court of competent jurisdiction, it being acknowledged and agreed that any breach or threatened breach might cause immediate irreparable injury to Buyer and that monetary damages may not provide an adequate remedy at law. If any of the provisions of this Section 13 are construed to be invalid or unenforceable in any jurisdiction, the remainder of this section shall not be affected, and the court making such a determination shall have the power to modify this Section 13 and substitute the maximum duration, scope, or area permissible under the circumstances for the stated duration, scope, or area.

**14. Conditions Precedent to Obligations of Seller.** The obligations of Seller under this Agreement shall be subject to the satisfaction, on or prior to the Closing Date, of the conditions set forth below, unless waived by Seller:

(a) The representations and warranties of Buyer set forth in this Agreement shall be true and correct as of the date of this Agreement, and shall also be true and correct in all material respects (without giving effect to any qualification of materiality already contained in any particular representation or warranty, and except for such changes as are contemplated by the terms of this Agreement) on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and Buyer shall have delivered to Seller a certificate to that effect dated as of the Closing Date.

(b) Buyer shall have performed and complied with, in all material respects, all covenants and obligations required to be performed or complied with by it under this Agreement on or prior to the Closing Date, and Buyer shall have delivered to Seller a certificate to that effect dated as of the Closing Date.

(c) Seller shall have received the items listed in Section 6(b);

(d) Seller shall have received such other documents and agreements necessary to effect the transactions contemplated by this Agreement, in each case in form and substance reasonably satisfactory to Seller's counsel, as Seller may reasonably request.

(e) No action, suit, investigation or proceeding shall have been instituted or threatened by any third party, governmental or regulatory agency to restrain, prohibit or otherwise challenge the legality or validity of the transactions contemplated by this Agreement.

**15. Conditions Precedent to Obligations of Buyer.** The obligations of Buyer under this Agreement shall be subject to the satisfaction, on or prior to the Closing Date, of the conditions set forth below, unless waived by Buyer:

(a) The representations and warranties of Seller and Shareholder set forth in this Agreement shall be true and correct as of the date of this Agreement, and shall also be true and correct in all material respects (without giving effect to any qualification of materiality already contained in any particular representation or warranty, and except for such changes as are contemplated by the terms of this Agreement) on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and Seller and Shareholder shall have delivered to Buyer a certificate to that effect dated as of the Closing Date.

(b) Seller shall have performed and complied with, in all material respects, all covenants and obligations required to be performed or complied with by it under this Agreement on or prior to the Closing Date, and Seller shall have delivered to Buyer a certificate to that effect dated as of the Closing Date.

(c) Seller shall have furnished Buyer with copies of resolutions duly adopted by Seller's Board of Directors and Shareholder approving the execution and delivery of this

Agreement, and all other necessary or proper corporate action to enable Seller to comply with the terms of this Agreement.

(d) From the date of this Agreement through the Closing Date, Seller shall not have suffered any material adverse changes to the business, operations or financial condition of the Business (other than changes generally affecting the industries in which Seller operates, or changes relating to the transactions contemplated by this Agreement).

(e) Buyer shall complete its investigation of Seller in accordance with Section 10(a) prior to \_\_\_\_, 20\_\_ provided that Seller fully cooperates. In the event that such investigation discloses a breach of a representation or warranty of Seller contained in Section 8 hereof, Buyer shall so notify Seller in writing on or before \_\_\_\_, 20\_\_ and provide Seller with the full details of such claimed breach. In such event, Seller and Buyer shall work together in good faith to rectify such claimed breach;

(f) Buyer shall have received the items listed in Section 6(a);

(g) Buyer shall have received such other documents and agreements necessary to effect the transactions contemplated by this Agreement, in each case in form and substance reasonably satisfactory to Buyer's counsel, as Buyer may reasonably request.

(h) No action, suit, investigation or proceeding shall have been instituted or threatened by any third party, governmental or regulatory agency to restrain, prohibit or otherwise challenge the legality or validity of the transactions contemplated by this Agreement.

(i) Buyer entering into a commercial/office lease on terms acceptable to Buyer with \_\_\_\_, the landlord, for the premises located at \_\_\_\_\_, for a term commencing \_\_\_\_, 20\_\_. If the transaction has not closed by that date, Seller shall pay the per diem rent from \_\_\_\_, 20\_\_ through the Closing Date.

## 16. Termination.

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by the mutual consent of Seller and Buyer;

(ii) by either Seller or Buyer if the Closing shall not have occurred before \_\_\_\_, 20\_\_ (unless the failure to close by such date shall be due to the action or failure to act of the party seeking to terminate this Agreement); or

(iii) by either Seller or Buyer if: (A) the other party has materially breached any representation, warranty, covenant, or agreement in connection with this Agreement, and such breach has not been cured within fourteen (14) days following receipt of written notice of the existence of such breach; or (B) any permanent injunction or other order of a court or other competent authority

preventing the consummation of the transactions contemplated by this Agreement shall have become final and non-appealable.

**17. Survival of Representations and Warranties.** The representations and warranties of Seller and Buyer contained in Section 8 and 9, respectively, shall survive the Closing Date for five (5) years and shall then terminate, except that the representation and warranties contained in Sections 8(a), (b)(first sentence only) and 9(a) and (b) shall survive in perpetuity and the representations and warranties contained in Section 8(f) (“Taxes”) shall survive until the expiration of the applicable statute of limitation with respect to the underlying claim to which such representation and warranty relates.

**18. Risk of Loss.** The risk of loss to the Purchased Assets shall remain with Seller until the completion of the Closing. If the Purchased Assets are materially damaged or destroyed by fire or other casualty prior to the Closing, Buyer may either: (a) terminate the Agreement without liability to either party; (b) proceed to Closing, in which event such casualty shall not constitute a breach by Seller of any representation, warranty or covenant in this Agreement and Buyer shall be entitled to receive any insurance proceeds arising from such casualty; or (c) delay the Closing up to three (3) months while the affected Purchased Assets are repaired or restored.

**19. Indemnification.**

(a) Subject to the remainder of this Section 19, Seller and Shareholder, jointly and severally, hereby agrees to hold harmless and indemnify Buyer from and against any action, suit, proceeding, loss, damage, or expense (including, without limitation, reasonable attorneys’ fees and court costs), arising out of, or relating to, (i) any breach by Seller or Shareholder of this Agreement or any of the representations, warranties, covenants or obligations of Seller or Shareholder contained herein, and (ii) any liability or obligation of Seller existing prior to, or arising after, the Closing Date other than the Assumed Liabilities.

(b) Subject to the remainder of this Section 19, Buyer hereby agrees to hold harmless and indemnify Seller from and against any action, suit, proceeding, loss, damage, or expense (including, without limitation, reasonable attorneys’ fees and court costs), arising out of, or relating to, (i) any breach by Buyer of this Agreement or any of the representations, warranties, covenants or obligations of Buyer contained herein, and (ii) any Assumed Liabilities.

(c) Buyer shall have the right to offset any amounts due to Buyer under Section 19(a) above against any amounts due and payable to Seller under the Note.

(d) Notwithstanding anything contained herein to the contrary, except as set forth in this sentence and the following sentence, Seller shall be obligated to indemnify the Buyers and their Indemnitees for Losses pursuant to Section 19(a) only if the aggregate amount of such Losses exceeds \$\_\_\_\_\_ (the “Basket”). In the event that the aggregate amount of such Losses exceeds such amount, Sellers shall be obligated to indemnify the Buyers and their Indemnitees for the entire amount of such Losses, provided, however, that in no event

will Sellers be obligated to pay any amounts to the Buyers in excess of the Purchase Price (the "Cap"). Nothing contained herein shall in any way limit, or be deemed to limit, or otherwise affect the rights of the Buyers and their Indemnitees to indemnification under or with respect to, and the Basket shall not apply to, Losses arising from breaches of the representations and warranties of Sellers in Sections 8(a), (b), (f), (k) and (p) hereof.

**20. Miscellaneous.**

(a) **Notices.** Any notice or other communication required or desired to be served, given, or delivered under this Agreement shall be deemed validly served, given, or delivered upon actual receipt or: (i) five (5) days following the deposit thereof in the United States mail, registered or certified, with proper postage prepaid; (ii) the next business day following transmission thereof in a legible facsimile transmission; or (iii) the next business day following prepaid deposit thereof with a nationally recognized overnight courier, in each case addressed to the person to be notified at the address or facsimile number listed below. The address of any party may be changed by written notice to the other parties duly served in accordance with this Section 20(a).

If to Seller or Shareholder:

ABC Acts, Inc.  
Main Street  
Anytown, USA  
Attn: Abel Abels  
Fax No.: \_\_\_\_\_

With a copy to:

If to Buyer:

XYZ Group, Inc.  
Main Street  
Anytown, USA  
Fax No.:

With a copy to:

(b) **Entire Agreement/Modifications.** This Agreement, together with the schedules, exhibits and the documents delivered pursuant hereto, contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the parties hereto. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the parties hereto.

(c) **Attorneys' Fees.** The prevailing party in any action brought in connection with this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.



(d) **Assignability.** No party may assign any of its rights or obligations under this Agreement (directly, indirectly, or by operation of law through a merger, sale of equity interest, or otherwise) without the other party's express written consent, and any attempt to do so shall be void.

(e) **Application of Illinois Law.** This Agreement, and its application and interpretation, shall be governed exclusively by its terms and by the internal laws of the State of \_\_\_\_\_ without regard to the choice of law principles of that state.

(f) **Construction.** When required by the context, whenever the singular number is used in this Agreement the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

(g) **Headings.** The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions.

(h) **Waivers.** The failure of any party to seek redress for the violation of or to insist upon the strict performance of, any covenant or condition of this Agreement shall not prevent a subsequent act that originally would have constituted a violation from having the effect of an original violation.

(i) **Severability.** If any provision of this Agreement, or its application to any person or circumstance, shall be found invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and its application shall not be affected, and shall remain enforceable to the fullest extent permitted by law.

(j) **Heirs, Successors, and Assigns.** Each of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

(k) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement,  
as of the date first above written.

SELLER:

ABC ACTS, INC.

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

Its: \_\_\_\_\_

SHAREHOLDER:

\_\_\_\_\_  
Abel Abels

BUYER:

XYZ GROUP, INC.

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

Its: \_\_\_\_\_

LAWYERS' MENTOR

## SCHEDULES

Schedule 1(a)	Equipment
Schedule 1(b)	Tangible Assets
Schedule 1(c)	Contracts
Schedule 1(e)	Permits
Schedule 1(f)	Other Assets
Schedule 3	Assumed Liabilities
Schedule 8(g)	Employees
Schedule 8(i)	Customers
Schedule 10(b)	Required Consents

## EXHIBITS

Exhibit A	Note
Exhibit B	Security Agreement
Exhibit C	Allocation of Purchase Price

**EXHIBIT A**  
**SECURED**  
**INSTALLMENT NOTE**

\$ \_\_\_\_\_ (subject to adjustment) \_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned XZY GROUP, INC, a \_\_\_\_\_ corporation (“Borrower”), promises to pay to ABC ACTS, INC., a \_\_\_\_\_ corporation (“Payee”), the principal of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), together with interest on the unpaid principal sum outstanding from time to time at a rate equal to the prime rate as announced from time to time by The Wall Street Journal plus 2%, adjusted monthly on the first day of the month following such adjustment. Borrower agrees to make successive monthly payments, including principal and interest based on a three (3) year amortization commencing \_\_\_\_\_, 20\_\_. The outstanding principal amount due and owing hereunder and all accrued interest due and owing thereon shall be due and payable in full on \_\_\_\_\_, 20\_\_. Any payments received under this Note shall first be applied to any accrued and unpaid interest and thereafter to the outstanding principal balance.

Borrower shall have the right to prepay, without premium or penalty, at any time, any part or all of the indebtedness evidenced by this Note. Any prepayment shall include interest accrued to the date of such prepayment.

All payments under this Note shall be paid to Payee at the offices of Payee, \_\_\_\_\_, or at such other place or places as the Payee may from time to time designate in writing.

At the election of Payee or the legal holder of this Note and without notice, the full remaining unpaid indebtedness under this Note shall become at once due and payable in case of any of the following (a "Default"): (i) a default in the payment, when due and payable, of any amounts due under this Note in accordance with its terms, where such Default continues for ten (10) days after written notice from Payee of the amount due; (ii) the insolvency of Borrower, the filing by or against Borrower of a voluntary or involuntary petition in bankruptcy under the Bankruptcy Reform Act of 1978, as amended or succeeded by a similar statute, or an assignment for the benefit of creditors by Borrower; the application for the appointment or the appointment of any receiver of Borrower or of any substantial part of Borrower's properties; the admission in writing by Borrower of its inability to pay its debts as they become due; the failure by Borrower, within thirty (30) days from the entry thereof, to pay any final judgment or to bond or otherwise discharge any attachment or (iii) sale of substantially all of the assets or in excess of fifty percent (50%) of the equity interests of Borrower or (iv) merger, consolidation or reorganization of Borrower where Borrower does not own a majority of the issued and outstanding voting stock or general partnership interests of the merged, consolidated or reorganized entity or (v) upon the occurrence of an Event of Default, as described in the Security Agreement (as defined below). In the event of a Default, Payee or the legal holder of this Note shall be entitled to (a) interest on all overdue payments at a rate equal to the Rate plus two percent (2%), and (b) reasonable costs of collection, including reasonable attorneys' fees.

**IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY THE PAYEE AND BORROWER THAT THE OBLIGATIONS EVIDENCED BY THIS NOTE MAY BE SUBORDINATED TO AND JUNIOR IN ALL RESPECTS TO THE OBLIGATIONS OF THE BORROWER TO AN OUTSIDE FINANCIAL INSTITUTION PURSUANT TO THE TERMS AS DESCRIBED IN THE SECURITY AGREEMENT.**

As security for the payment of Borrower's obligations to Payee under this Note, Borrower has granted to Payee a continuing junior security interest in and to the assets of the Borrower pursuant to a Junior Security Agreement dated as of \_\_\_\_\_, 20\_\_ (“Security Agreement”) between Borrower and Payee.

All remedies afforded by law shall be cumulative, and all shall be available to Payee at all times until this Note has been paid and performed in full. No delay or omission of Payee to exercise any right or power under this Note shall impair such right or power or be construed to be a waiver of any Default or acquiescence therein, and any single or partial exercise of any such right or power shall not preclude any other or further exercise thereof or the exercise of any other right or power, and no waiver whatsoever shall be valid unless it is in a writing signed by Payee and then only to the extent specifically set forth in such writing.

Borrower agrees that any legal action or proceeding with respect to this Note may be brought by Payee in the courts of \_\_\_\_ County in the State of \_\_\_\_ or of the United States of America for the \_\_\_\_ District of \_\_\_\_ as Payee may elect and Borrower hereby irrevocably submits to each such jurisdiction and waives any objection Borrower may now or in the future have thereto.

The amounts due and owing under this Note may be increased and are subject to set-off and rights of offset of Borrower pursuant to Sections 7 and 19(c) of that certain Asset Purchase Agreement dated \_\_\_\_\_, 20\_\_ between Borrower and Payee, et.al.

The terms and provisions of this Note shall inure to the benefit of any assignee, transferee, or holder of this Note, and in the event of such transfer or assignment, each of the rights, powers, privileges and benefits conferred upon Payee by this Note shall automatically be vested in such transferee, assignee, or holder.

The terms and provisions of this Note shall be binding upon Borrower and its successors, assigns, and transferees, but any such assignment or transfer shall not relieve Borrower of its obligations under this Note.

Borrower hereby waives presentment, demand, notice of nonpayment, protest, and all other demands or notices in connection with the acceptance, performance, or enforcement of this Note.

The invalidity or unenforceability of any of the provisions of this Note shall not affect the validity or enforceability of the remainder hereof.

This Note shall be construed and enforced in accordance with the laws of the State of \_\_\_\_\_.

IN WITNESS WHEREOF, Borrower has duly executed this Note on the date first above written.

XYZ GROUP, INC.

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

LAWYERS' MENTOR

## EXHIBIT B

### JUNIOR SECURITY AGREEMENT

XYZ GROUP, INC., a \_\_\_\_\_ corporation, (herein called "Debtor"), to secure payment of Debtor's obligations under a certain Secured Installment Note dated \_\_\_\_\_, 20\_\_ in the principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) (herein called the "Note") hereby assigns, conveys and grants to ABC ACTS, INC., a \_\_\_\_\_ corporation (herein called "Secured Party"), a security interest in and to all of its now owned and hereafter acquired assets, including the following (collectively referred to herein as the "Collateral"):

- (a) all accounts receivable, contract rights, general intangibles, chattel paper, notes, drafts, acceptances, and all other debts, obligations and liabilities in whatever form owing to Debtor from any person, firm, corporation or other legal entity whether now existing or hereafter arising or acquired (collectively, "Accounts");
- (b) all now owned or hereafter acquired and wherever located goods, merchandise and other personal property which are held for sale or lease or to be furnished under contracts of service or held as raw materials, work in process or finished goods and supplies or materials used or consumed in Debtor's business or used in connection with the manufacture, packing, shipping, advertising or furnished of such goods (collectively, "Inventory");
- (c) all now existing or hereafter acquired machinery, equipment, furniture and fixtures, including replacements, substitutions, additions or accessions thereto, wherever located (collectively, "Equipment");
- (d) all documents, policies and certificates of insurance and classes in action, whether now or hereafter existing;
- (e) all instruments, securities and cash owned by Debtor or in which Debtor has an interest, which now or hereafter are at any time in possession or control of Secured Party or in transit by mail or carrier to or from Secured Party or in the possession of any third party acting in Secured Party's behalf, without regard to whether Secured Party received the same in pledge, for safekeeping, as agent for collection or transmission or otherwise or whether Secured Party has conditionally released the same;
- (f) all books, records, ledger sheets and other records relating to the foregoing;
- (g) all customer lists, purchase orders, contract rights, trademarks, trade names, copyrights, patents, processes, and all applications therefore, know-how, trade secrets, confidential information, goodwill, assumed names, and all other intellectual property; and
- (h) all proceeds, products, offspring, rents and profits of the foregoing, including, without limitation, proceeds of insurance.

The security interest granted to Secured Party shall secure the following (“Obligations”):

1. The payment of Debtor’s indebtedness on the Note.
2. The payment of a promissory note or evidence of indebtedness executed by the Debtor in renewal, substitution or extension of the Note.
3. All other indebtedness, liabilities or obligations of Debtor to Secured Party, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising;
4. All future, credit or advances made by Secured Party to or for the account of Debtor; and
5. All costs and expenses incurred in the collection of the same, including reasonable attorney’s fees and legal expenses.

**Warranties, Covenants and Agreements of Debtor**

Debtor warrants, covenants and agrees as follows:

1. Debtor is the sole owner of the Collateral, free from any lien, security interest or encumbrance, has the right to grant Secured Party a security interest therein and will defend the Collateral against the claims and demands of all persons. Notwithstanding the foregoing or anything contained herein to the contrary, Secured Party agrees to subordinate the security interest granted hereby solely and only to any independent financial institution that hereafter provides financing to Debtor that is necessary and required for the continuing operation of Debtor's business. Such subordination shall be on commercially reasonable terms and conditions as required by such independent financial institution.
2. Debtor shall not sell, transfer, assign, encumber or grant any further security interest in the Collateral without the prior written consent of the Secured Party (except as contemplated in the preceding paragraph), and shall not sue or permit the Collateral to be used in violation of any law or ordinance.
3. Except as otherwise contemplated in Section 1 of this Section, no financing statement covering the Collateral or any part thereof, is on file in any public office; and Debtor agrees that Secured Party may file a Financing Statement pursuant to the Uniform Commercial Code and Debtor shall pay the fee for filing and searching the same in all public offices where filing may be deemed necessary by Secured Party.
4. Debtor shall pay any indebtedness which may be secured by a lien or charge upon the Collateral and upon request, exhibit satisfactory evidence of such payment to the Secured Party. Upon default of such payment, the Secured Party, may, but need not, make any



payment required of the Debtor in the protection of the Collateral and purchase, discharge, compromise or settle any tax lien or other lien or title or claim, or redeem from any tax sale or forfeiture effecting the Collateral or contest any tax or assessment. All money advanced by the Secured Party for any of the purposes stated in this agreement, or for the protection of the Collateral or of the lien of the Secured Party therein (whether or not described in this agreement), and all expenses paid or incurred in connection therewith, including attorneys' fees, shall be additional indebtedness secured by the security interest created by this agreement.

5. Debtor will, in addition to and not in limitation of and without being limited by any other provision of this Agreement:

- (a) take good care of the Collateral;
- (b) permit no other lien to attach to the Collateral (except as set forth above);
- (c) pay all costs necessary to obtain, preserve, and enforce the Security Interest and preserve the Collateral, including (but not limited to) taxes, assessments, insurance premiums, repairs, reasonable attorneys' fees and legal expenses, rent, storage costs, and expenses of sale;
- (c) maintain complete and accurate books and records, maintain all of its financial records in accordance with general accepted accounting principles consistently applied, and furnish Secured Party with any information on the Collateral reasonably requested by Secured Party;
- (d) allow Secured Party to inspect the Collateral and inspect and copy all records relating to the Collateral and the Obligations at all reasonable times;
- (e) sign any papers furnished by Secured Party which are reasonably required to obtain, maintain or perfect the Security interest in any of the Collateral;
- (f) take all reasonably necessary steps to preserve the liability of account debtors, obligors and secondary parties whose obligations are part of the Collateral, and to collect all such obligations;
- (g) promptly notify Secured Party of any attachment, lien, judicial process, encumbrance or claim affecting any of the Collateral, or of any loss, damage or other change in or to the Collateral, or of any fact or circumstance warranted or represented by Debtor in this Agreement or any other document that becomes untrue, or if any Event of Default occurs;
- (h) pay on demand all expenses and expenditures of Secured Party including reasonable attorney's fees and court costs and expenses of litigation incurred or paid by

Secured Party protecting and enforcing or exercising its interests, rights or remedies created by, connected with or incidental to, or provided for in this Security Agreement;

(i) furnish to Secured Party a copy of each invoice evidencing any Collateral within 5 days after the issuance of such invoice; and

(j) at its own expense, do, make, procure, execute and deliver all acts, things, writings and assurances as Secured Party may from time to time reasonably require to protect, assure or enforce any of the interests, rights, or remedies of Secured Party created by, provided in, emanating from or incidental to this Security Agreement.

### **Events of Default**

The occurrence of any of the following events or conditions shall, at the option of the Secured Party and without notice or demand on the debtor, constitute an "Event of Default hereunder:

1. Default in the payment or performance of Debtor's obligations under the Note.
2. Failure of the Debtor to perform any covenant or agreement made by the Debtor herein; or,
3. Breach of any warranty or falsity of any representation made by Debtor to Secured Party herein; or,
4. Attachment, seizure, foreclosure, forfeiture or levy upon the Collateral; or,
5. Institution of any proceeding by or against Debtor or Debtor's business under any bankruptcy or insolvency statute or an assignment by Debtor for benefit of creditors or appointment of a receiver for debtor or the Collateral or filing of a tax lien notice by the United States or any State; or
6. The accrual of any lien or charge against the Collateral whether prior to or subsequent to the security interest of the Secured Party and the failure of the Debtor to discharge such lien upon demand.

## Remedies

Upon the occurrence of any default, Secured Party may declare Debtor's obligation and all other indebtedness secured hereby immediately due and payable and thereupon all of the rights, powers and privileges of the Debtor under the Collateral shall cease and terminate and the Secured Party may, without notice or demand take possession of the Collateral and exercise all rights of ownership, assume the management thereof and collect the proceeds there from. Secured Party shall have all other rights and remedies of a Secured Party under the Uniform Commercial Code.

Secured Party may, either before or after taking possession of the Collateral:

- (a) Sell the Collateral, at public or private sale, with or without advertisement in accordance with the provisions of the Uniform Commercial Code; Debtor hereby agrees that the requirements of the Uniform Commercial Code shall be met if notice is mailed to the Debtor at the address shown above not less than ten (10) days prior to the sale or other disposition; or,
- (b) Institute a judicial proceeding in aid of the right of the Secured Party to exercise Debtor's rights, powers and privileges to the Collateral, to foreclose the security interest and lien conferred by this agreement and to effect a sale of the Collateral.

The reasonable expense of the Secured Party in assuming possession of the Collateral and in exercising Debtor's rights, powers and privileges therein, including attorney's fees, court costs and other legal expense shall be additional indebtedness which the Debtor agrees to pay upon demand.

The Secured Party may endorse the Debtor's name on all notes, checks and commercial paper of any kind whatsoever, and on any other documents received in connection with the assigned accounts, or any accounts hereafter assigned to the Secured Party, and the Secured Party or any officer or employee thereof, for the foregoing purpose, is hereby irrevocably appointed the agent and attorney in fact for the Debtor; and any bank or trust company is hereby irrevocably authorized to permit the Secured Party to withdraw the proceeds thereof without inquiry as to the circumstances of endorsement, without inquiring as to the purpose of withdrawal, and without responsibility for the application by the Secured Party of the monies so withdrawn.

The Secured Party may, without notice to the Debtor, extend the time of payment of, compromise or settle for cash, credit or otherwise, any of the assigned accounts, and thereby discharge or release the person or persons liable for the payment of such accounts. The Secured Party shall be fully indemnified in so doing, and shall not be liable for its failure to collect or endorse the payment of any assigned accounts.

The Secured Party may hold any money received by it under this Agreement as collateral security for the payment of the liability of the Debtor to the Secured Party; and it may from time to time at its election, and without notice to the Debtor, apply all or any part of such money to the payment of the principal and interest of such liability.

The Debtor hereby expressly waives presentment, protest and notice of dishonor of any negotiable or commercial paper to which it is or may become a party, or that may at any time come into the hands of the Secured Party. The Secured Party shall not, by any act, delay or omission, waive any rights or remedies hereunder unless such waiver is in writing, signed by the Secured Party, and then only to the extent therein set forth. A waiver by the Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to, or waiver of, any such right or remedy which the Secured Party would otherwise have on any subsequent occasion.

Except as otherwise provided, any notice given by the Secured Party may be delivered personally or sent by mail, telegram or mailgram addressed to the last known post office address of the person for whom such notice is intended.

**General Provisions**

1. The Debtor's place of business is Main Street, Anytown, USA and the Debtor will promptly notify the Secured Party of any change of location of said place of business or of the addition of any new place of business.
2. The rights herein conferred upon the Secured Party are in addition to and not in derogation of, the rights conferred upon Secured Party by law and all such rights and remedies herein or by law conferred, may be exercised at such time or times and in such order as the Secured Party may elect.
3. This Security Agreement shall be construed according to the laws of the State of Illinois. Waiver of any default shall not constitute waiver of any subsequent default. All rights of Secured Party shall inure to the benefit of its successors and assigns and all obligations of Debtor shall bind its heirs, executors, personal representatives, successors or assigns. This agreement shall be effective when signed by the Debtor.
4. Debtor acknowledges receipt of a completed copy of this Security Agreement.

Signed at Anytown, USA, this \_\_\_\_ day of \_\_\_\_, 20\_\_.

DEBTOR:

XYZ GROUP, INC.

By \_\_\_\_\_  
Its: President

SECURED PARTY:

ABC ACTS, INC.

By: \_\_\_\_\_  
Its: President