**Employee Non-Compete Agreement**

This Employee Non-Compete Agreement ("**Agreement**") is entered into by and between [EMPLOYER NAME], a [STATE OF INCORPORATION OR LOCATION] [TYPE OF ENTITY], with [a/its principal] place of business located at [ADDRESS] (the "**Employer**")[, on behalf of itself, its subsidiaries, and other corporate affiliates (collectively referred to herein as, the "**Employer Group**")], and [EMPLOYEE NAME] (the "**Employee**"), residing at [ADDRESS] (the Employer and the Employee are collectively referred to herein as the "**Parties**"), as of [DATE] (the "**Effective Date**").

 In consideration of [the Employee's employment by the Employer as [JOB TITLE]] [and] [OTHER CONSIDERATION OFFERED], which the Employee acknowledges to be good and valuable consideration for the Employee's obligations hereunder, the Employer and the Employee hereby agree as follows:

1. Confidential Information. The Employee understands and acknowledges that during the course of employment by the Employer [Group], the Employee will have access to and learn about Confidential Information, as defined below.

 (a)                Confidential Information Defined.

For purposes of this Agreement, "**Confidential Information**" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium of the Employer or its businesses [or any existing or prospective customer, supplier, investor, or other associated third party], or of any other person or entity that has entrusted information to the Employer in confidence.

The Employee understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified or treated as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

The Employee understands and agrees that Confidential Information includes information developed by the Employee in the course of the Employee's employment by the Employer as if the Employer furnished the same Confidential Information to the Employee in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to the Employee, provided that such disclosure is through no direct or indirect fault of the Employee or person(s) acting on the Employee's behalf.

In addition, this Agreement does not restrict or impede, in any way, and shall not be interpreted or understood as restricting or impeding, the Employee from discussing the terms and conditions of Employee's employment with co-workers or union representatives/exercising Employee's rights under Section 7 of the National Labor Relations Act (NLRA)/exercising protected rights to the extent that such rights cannot be waived by agreement.

(b)               Employer Creation and Use of Confidential Information.

The Employee understands and acknowledges that the Employer has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer base, generating customer and potential customer lists, training its employees, and improving its offerings in the field of [DESCRIPTION OF INDUSTRY]. The Employee understands and acknowledges that as a result of these efforts, Employer has created, and continues to use and create Confidential Information. This Confidential Information provides Employer with a competitive advantage over others in the marketplace.

(c)                Disclosure and Use Restrictions.

The Employee agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Employer) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Employer and, in any event, not to anyone outside of the direct employ of the Employer except as required in the performance of the Employee's authorized employment duties to the Employer or with the prior consent of [POSITION NAME] acting on behalf of the Employer in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Employer [Group], except as required in the performance of the Employee's authorized employment duties to the Employer or with the prior consent of [POSITION NAME] acting on behalf of the Employer in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. The Employee shall promptly provide written notice of any such order to [POSITION NAME].

The Employee understands and acknowledges that the Employee's obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Employee first having access to such Confidential Information (whether before or after beginning employment with the Employer [Group]) and shall continue during and after the Employee's employment by the Employer until such time as such Confidential Information has become public knowledge other than as a result of the Employee's breach of this Agreement or breach by those acting in concert with the Employee or on the Employee's behalf.]

1. Restrictive Covenants.

(a)                Acknowledgment.

The Employee understands that the nature of Employee's position gives the Employee access to and knowledge of Confidential Information and places the Employee in a position of trust and confidence with the Employer. The Employee understands and acknowledges that the intellectual or artistic [or] [OTHER] services the Employee provides to the Employer are unique, special, or extraordinary [because] [DESCRIPTION OF UNIQUE, SPECIAL, OR EXTRAORDINARY SERVICES].

The Employee further understands and acknowledges that the Employer's ability to reserve these for the exclusive knowledge and use of the Employer is of great competitive importance and commercial value to the Employer, and that improper use or disclosure by the Employee is likely to result in unfair or unlawful competitive activity.

(b)               Non-Competition.

Because of Employer's legitimate business interest as described herein and the good and valuable consideration offered to the Employee, [the [receipt and] sufficiency of which is acknowledged, ]during the term of Employee's employment and for the [TERM OF YEARS OR MONTHS], to run consecutively, beginning on the last day of the Employee's employment with the Employer [Group], [for any reason or no reason and whether employment is terminated at the option of the Employee or the Employer [Group],] the Employee agrees and covenants not to engage in Prohibited Activity within the [DESCRIPTION OF SCOPE OF GEOGRAPHIC RESTRICTION AND/OR SUBSECTION OF INDUSTRY OR CUSTOMER LIST].

For purposes of this non-compete clause, "**Prohibited Activity**" is activity in which the Employee contributes the Employee's knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, advisor, consultant, agent, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar business as the Employer, including those engaged in the business of [DESCRIPTION OF BUSINESS]. Prohibited Activity also includes activity that may require or inevitably require disclosure of trade secrets, proprietary information, or Confidential Information.

The Employer regards as its primary, but not exclusive, competitors the following [LIST OF PRIMARY COMPETITORS].

Nothing herein shall prohibit Employee from purchasing or owning less than five percent (5%) of the publicly traded securities of any corporation, provided that such ownership represents a passive investment and that the Employee is not a controlling person of, or a member of a group that controls, such corporation.

This Section does not, in any way, restrict or impede the Employee from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. The Employee shall promptly provide written notice of any such order to [AUTHORIZED OFFICER].

(c)                Non-Solicitation of Employees.

The Employee agrees and covenants not to directly or indirectly solicit, hire, recruit, or attempt to hire or recruit, any employee of the Employer [Group][ or any employee who has been employed by the Employer in the [TERM OF MONTHS] preceding the last day of Employee's employment] ([collectively, ]"**Covered Employee**"), or induce the termination of employment of any employee of the Employer for a period of [TERM OF YEARS OR MONTHS], beginning on the last day of the Employee's employment with the Employer [Group].

[This non-solicitation provision explicitly covers all forms of oral, written, or electronic communication, including, but not limited to, communications by email, regular mail, express mail, telephone, fax, instant message, and social media, including, but not limited to, Facebook, LinkedIn, Instagram, and Twitter[, and any other social media platform, whether or not in existence at the time of entering into this Agreement]. [However, it will not be deemed a violation of this Agreement if the Employee merely updates the Employee's LinkedIn profile[ or connects with a Covered Employee on Facebook or LinkedIn,] without engaging in any other substantive communication, by social media or otherwise, that is prohibited by this section.] [This Section does not restrict or impede, in any way, and shall not be interpreted or understood as restricting or impeding, the Employee from [discussing the terms and conditions of Employee's employment with co-workers or union representatives/exercising Employee's rights under Section 7 of the National Labor Relations Act (NLRA)/exercising protected rights to the extent that such rights cannot be waived by agreement.]]

(d)               Non-Solicitation of Customers.

The Employee understands and acknowledges that because of the Employee's experience with and relationship to the Employer [Group], [he/she] will have access to and learn about much or all of the Employer[ Group]'s customer information. "**Customer Information**" includes, but is not limited to, names, phone numbers, addresses, email addresses, order history, order preferences, chain of command, pricing information, and other information identifying facts and circumstances specific to the customer and relevant to [sales/services].

The Employee understands and acknowledges that loss of any such customer relationship and/or goodwill will cause significant and irreparable harm to the Employer.

The Employee agrees and covenants, for a period of [TERM OF YEARS OR MONTHS], beginning on the last day of the Employee's employment with the Employer not to directly or indirectly solicit, contact, or attempt to solicit or contact, using any other form of oral, written, or electronic communication, including, but not limited to, email, regular mail, express mail, telephone, fax, instant message, or social media, including but not limited to Facebook, LinkedIn, Instagram or Twitter, [or any other social media platform, whether or not in existence at the time of entering into this agreement, ], or meet with the Employer[ Group]'s current[, former, or prospective] customers for purposes of offering or accepting goods or services similar to or competitive with those offered by the Employer [Group]. [However, it will not be deemed a violation of this Agreement if the Employee merely updates the Employee's LinkedIn profile[, or connects with a covered customer or former customer on Facebook or LinkedIn,] without engaging in any other substantive communication, by social media or otherwise, that is prohibited by this section.]

[This restriction shall only apply to:

* Customers or prospective customers the Employee contacted in any way during the past [NUMBER OF MONTHS].
* Customers about whom the Employee has trade secret or confidential information.
* Customers who became customers during the Employee's employment with the Employer.
* Customers about whom the Employee has information that is not available publicly.]

1. Non-Disparagement. The Employee agrees and covenants that the Employee will not at any time make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Employer or its businesses, or any of its employees, officers[, and existing and prospective customers, suppliers, investors, and other associated third parties].

This Section does not, in any way, restrict or impede the Employee from exercising protected rights to the extent that such rights cannot be waived by agreement, including but not limited to Employee's Section 7 rights under the NLRA, or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. The Employee shall promptly provide written notice of any such order to [AUTHORIZED OFFICER].

1. Acknowledgment. The Employee acknowledges and agrees that the Employee's services to be rendered to the Employer are of a special and unique character; that the Employee will obtain knowledge and skill relevant to the Employer's industry, methods of doing business, and marketing strategies by virtue of the Employee's employment; and that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interests of the Employer.

The Employee further acknowledges that the amount of the Employee's compensation reflects, in part, the Employee's obligations and the Employer's rights under this Agreement; that the Employee has no expectation of any additional compensation, royalties, or other payment of any kind not otherwise referenced herein in connection herewith;[ and] that the Employee will not be subject to undue hardship by reason of the Employee's full compliance with the terms and conditions of this Agreement or the Employer[ Group]'s enforcement thereof[; and that this Agreement is not a contract of employment][ and shall not be construed as a commitment by either of the Parties to continue an employment relationship for any certain period of time].

**Nothing in this Agreement shall be construed to in any way terminate, supersede, undermine, or otherwise modify the "at-will" status of the employment relationship between the Employer and the Employee, pursuant to which either the Employer or the Employee may terminate the employment relationship at any time, with or without cause, and with or without notice.**

1. Remedies. In the event of a breach or threatened breach by the Employee of any of the provisions of this Agreement, the Employee hereby consents and agrees that the Employer shall be entitled to, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

1. Successors and Assigns.

(a)                Assignment by the Employer [Group].

To the extent permitted by state law, the Employer may assign this Agreement to any subsidiary or corporate affiliate [in the Employer Group or otherwise], or to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Employer [Group]. This Agreement shall inure to the benefit of the Employer and permitted successors and assigns.

(b)               No Assignment by the Employee.

The Employee may not assign this Agreement or any part hereof. Any purported assignment by the Employee shall be null and void from the initial date of purported assignment.

1. [Arbitration. Any dispute, controversy, or claim arising out of or related to this Agreement or any breach of this agreement shall be submitted to and decided by binding arbitration. Arbitration shall be administered exclusively by [SELECTED ARBITRATION ORGANIZATION] and shall be conducted consistent with the rules, regulations, and requirements thereof as well as any requirements imposed by state law. Any arbitral award determination shall be final and binding upon the Parties.]

1. Warranty. Employee represents and warrants that the Employee is not a party to any non-compete restrictive covenant or related contractual limitation that would interfere with or hinder the Employee's ability to undertake the obligations and expectations of employment with the Employer [Group].

1. Governing Law: Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of [STATE] without regard to conflicts-of-law principles. Any action or proceeding by either of the Parties to enforce this Agreement shall be brought only in any state or federal court located in the state of [STATE][, county of [COUNTY]]. The Parties hereby irrevocably submit to the [non-]exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

1. Entire Agreement. Unless specifically provided herein, this Agreement contains all the understandings and representations between the Employee and the Employer pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

1. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Employee and by the [POSITION NAME] of the Employer. No waiver by either of the Parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the Parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

1. [Severability. Should any provision of this Agreement be held by a court [or arbitral authority] of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding on the Parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The Parties further agree that any such court [or arbitral authority] is expressly authorized to modify any unenforceable provision of this Agreement in lieu of severing the unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making any other modifications as it deems warranted to carry out the intent and agreement of the Parties as embodied herein to the maximum extent permitted by law.

The Parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.]

1. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

1. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. [Delivery of an executed counterpart['s signature page] of this Agreement[, by facsimile, electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document,] has the same effect as delivery of an executed original of this Agreement.]

1. [Tolling. If the Employee violates any of the terms of the restrictive covenant obligations articulated herein, the obligation at issue will run from the first date on which the Employee ceases to be in violation of such obligation.]

1. [Attorneys' Fees. If the Employee breaches any of the terms of the restrictive covenant obligations articulated herein, to the extent authorized by state law, the Employee will be responsible for payment of all reasonable attorneys' fees and costs that Employer incurred in the course of enforcing the terms of the Agreement, including demonstrating the existence of a breach and any other contract enforcement efforts.]

1. [No Preparation for Competition. During the term of the Employee's employment, Employee agrees not to undertake preparations for competitive activity prohibited by this Agreement.]

1. [Notice. If and when Employee's employment with Employer terminates, [whether voluntarily or involuntarily,] Employee agrees to provide to any subsequent employer a copy of this Agreement. In addition, Employee authorizes Employer to provide a copy of this Agreement to third parties, including but not limited to, Employee's subsequent, anticipated, or possible future employer.]

[signature page follows]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date above.

|  |  |
| --- | --- |
|   | [EMPLOYER NAME] |
|   | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: [NAME OF AUTHORIZED OFFICER]Title: [TITLE OF AUTHORIZED OFFICER] |

|  |  |
| --- | --- |
| EMPLOYEE |   |
| Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |