

# CONFIDENTIALITY AND NON-COMPETE AGREEMENT

This AGREEMENT is between the company and the person whose signature appears below (the “Employee”)

## Background

1. The Employee wants to become an employee of the company and the company wants to hire him.
2. In the course of his employment, the Employee will receive training in the company’s business, and instruction in the company’s methods of operation. In addition, he will come into contact with the company’s clients, customers and others having business dealings with it.
3. The company and the Employee agree that it would be unfair for the Employee to use in a manner which would damage the company, the training, instruction and information provided by the company to the Employee at the company’s expense.
4. The Employee acknowledges that but for this Agreement, the company would not hire him, and would not provide the employment and professional opportunities which he desires.

## NOW, THEREFORE:

Given the background, and in consideration of the mutual covenants and agreements hereinafter set forth, the company and the Employee agree as follows:

- Section 1     The Employee acknowledge that he has been given full and free opportunity to review this Agreement, has read and understood it, and enters into it willingly. The company encourages him to consult with lawyer of his choice, to discuss the Agreement’s scope, meaning, application and impact. The Employee agrees to comply with both its letter and its spirit.
- Section 2.     The Employee shall become an employee of the company effective on or shortly after the date of this Agreement. To the best of his abilities, he will perform his assignments and responsibilities in a prompt, efficient, trustworthy and professional manner. He will receive such supervision, instruction and control by the officers and employees of the company as the company considers appropriate. During the term of this Agreement, the Employee shall not be engaged in any other business activity.
- Section 3.     The Employee’s compensation, benefits, working location, hours, duties and responsibilities, and all other terms and conditions of employment shall be as agreed from time to time by the company and the Employee. The Employee’s employment is “at will” and may be terminated at any time by either party for any reason.
- Section 4.     The Employee agrees that during the Restricted Period (defined below), he will not

communicate, divulge, disclose or give to anyone else (except to the company, its successors, assigns or designees) or use for his direct or indirect personal benefit, any private or confidential information or material acquired in the course of his employment by the company (the "Information"). The term Information includes, but is not limited to, the names or addresses of the company's customers, clients, patrons and suppliers, or others having business dealings with it. Information does not include anything generally known or available to the public. If there is any reasonable doubt about whether something is Information, it is.

- Section 5. The Employee agrees that, except to the extent of services rendered to and on behalf of the company under this Agreement: (a) for a period of one (1) year, he will not directly or indirectly solicit business or patronage from any person or entity who was a customer or client of the company during the course of the Employee's employment hereunder; and (b) for a period of one (1) year and within a \_\_\_\_\_ mile radius, he will not directly or indirectly carry on or be involved in any activity or business similar to or competitive with the business of the company on the date on which the Employee ceases for any reason to be an employee of the company ( the "Termination Date").
- Section 6. This Agreement shall bind and be for the benefit of the parties and their respective heirs, successors and assigns. Its benefits shall inure to any third party which succeeds to the business of the company, whether by way of consolidation, merger or otherwise, or to which all or substantially all of its assets (including its rights under this Agreement) may be transferred or assigned.
- Section 7. The parties agree that, in addition to an award of money damages, an order of specific performance will be required to properly protect the company under this Agreement. The Employee understands that if he breaches this Agreement, the company may bring legal proceedings under it. The Employee will pay the company's cost of suit and enforcement, including reasonable attorney fees, if the company brings such proceedings and obtains a verdict or judgment in its favor.
- Section 8. The dates on which the periods of restriction specified in Section 4 and 5, above, otherwise would expire shall be extended by one (1) full week for each week or any portion thereof during which the Employee shall have failed in whole or in part to honor and abide by all of the terms and provisions of such Sections. Further, if the company obtains a verdict or judgment for any legal or equitable relief as a result of litigation arising in connection with this Agreement, the Employee will pay to the company, in addition to any other damages to which the company may be entitled, the sum of \$\_\_\_\_\_ for each day between the date on which the Employee ceased to be an employee of the company and the date on which such litigation is finally resolved and on or during which the Employee was not fully in compliance with his obligations and duties under this Agreement. Nothing in this Section 8 or in Section 7 shall limit or restrict the company's right to recover its costs of suit and enforcement as provided in

Section 7, above, its rights to specific performance, or its right to any other remedy to which it may be entitled.

Section 9. This is the entire agreement between the parties relating to the Employee's employment. All prior discussions are merged herein. No provision of this Agreement shall be altered, modified or waived, except in writing. If any term, clause or provision of this Agreement is judged to be invalid, the validity of any other term, clause or provision of this Agreement shall not be affected.

Section 10. No action, waiver or forbearance by the company on any one occasion in pursuing any right or remedy to which it may be entitled under this Agreement shall operate to waive, modify or in any way affect or restrict the rights of the company on any subsequent occasion, nor shall any action, waiver or forbearance by the company under or with respect to any similar or dissimilar agreement with any past, present or future employee of the company in any way modify, affect or restrict the rights of the company under this Agreement.

Section 11. This Agreement shall be enforced and construed in accordance the laws of the State of \_\_\_\_\_ .

Section 12. Anything elsewhere in this Agreement to the contrary notwithstanding, in the event the Employee's employment by the company is terminated by the Employee's resignation or for any other reason within 30 days from the date hereof, the provisions of Section 4 and Section 5 shall be null and void, and of no effect.

IN WITNESS WHEREOF, the Employee and the company have executed this Agreement, in duplicate, at \_\_\_\_\_ , this \_\_\_\_\_ day of \_\_\_\_\_ , 20 \_\_\_\_ .

("Employee")

("Company")

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