

RESTRICTIVE COVENANTS AGREEMENT

THIS RESTRICTIVE COVENANTS AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into this ____ day of _____, 20__, by and between [Insert company name], Inc. (hereinafter referred to as “Company”) and _____ (hereinafter referred to as “Employee”).

WHEREAS, the Company is engaged in the business of _____, [Insert applicable services or products provided] and has established a fine reputation and substantial goodwill in that business;

WHEREAS, the Company desires to appoint Employee to perform services in furtherance of the Company’s business;

WHEREAS, the Company and Employee acknowledge that the Company has a substantial and legitimate business interest in, among other things, its confidential business information, trade secrets, customer and vendor lists, pricing, methods of business operation, substantial relationships with specific prospective and existing customers, customer good will, and extraordinary and specialized training to Employee;

WHEREAS, the Company and Employee recognize and acknowledge that in the performance of Employee’s services, and in the performance of this Agreement, Employee will acquire certain trade secrets, confidential information, sensitive business information, marketing data, business expertise, and information concerning customer and vendor relationships of the Company. Employee further acknowledges that the foregoing information is a legitimate, valuable and basic business property right of the Company, and that the same is information and knowledge not generally known in the public domain;

WHEREAS, Employee acknowledges that the business of the Company is a very competitive business;

WHEREAS, the Company desires to be able to impart said confidential information and trade secrets to Employee with the knowledge that such confidential information and trade secrets will be solely and strictly used for its sole benefit and not in competition with or to the detriment of the Company, directly or indirectly, by Employee, or any of his/her agents; and

WHEREAS, the Company and Employee desire to enter into or continue their relationship(s) subject to and conditioned upon the establishment of this Agreement, which is a condition precedent to Employee performing services in furtherance of the Company’s business.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and restrictions contained herein, and other valuable consideration, the receipt of which is hereby acknowledged, each of the parties, their respective personal representatives, heirs, successors and assigns, intending to be legally bound hereby agree as follows:

1. **CONFIDENTIALITY AGREEMENT.**

a. “Confidential information” consists of any information, written or oral, that is not publically known, such as, without limitation, [Insert nature of confidential information and trade secrets]; and other proprietary information, including but not limited to information disclosed by a third party to the Company, or to a third party by the Company, which is reasonably understood by the Company and/or the third-party to be treated as confidential (hereinafter “Confidential Information”); Employee acknowledges and agrees that the Company’s Confidential Information includes not only information disclosed by the Company (or its customers, affiliates, or vendors) to Employee during the course of Employee’s employment with the Company, but also information developed or learned by the Employee themselves during the course of Employee’s employment with Company.

b. With respect to this Confidential Information, Employee agrees as follows:

i. Employee will not, directly or indirectly, use, disclose, or make accessible to any person, firm, corporation, or association or other entity for any reason whatsoever any Confidential Information, except while in an employment relationship with the Company and for the sole benefit of the Company, without prior written permission of the Company;

ii. Employee will not make copies, transmit, reproduce, summarize, quote, make any commercial or other use whatsoever of the Confidential Information, except as authorized by the Company; and

iii. Upon separation from employment, without request by the Company, or upon the request of the Company, Employee shall return all tangible evidence of such Confidential Information, including, but not limited to, any manuals, papers, lists, books, files, and computer diskettes, USB storage devices, other portable storage devices, and DVDs or CDs, to Company.

c. Employee acknowledges and agrees that a violation of the provisions of this Paragraph 1 would cause irreparable harm to the Company. In the event there is a breach or a threatened breach by Employee of the provisions of this Paragraph 1, the Company shall be entitled to an injunction restraining Employee from disclosing, in whole or in part, such Confidential Information, generating a benefit from such Confidential Information, or rendering a service to any person, firm, corporation, association, or other entity, to whom such Confidential Information has been disclosed. Nothing herein shall be construed as prohibiting the Company from pursuing such other remedies as may be available to it for such breach or threatened breach, including recovery of damages from Employee.

2. **NON-SOLICITATION AGREEMENT.**

a. Employee agrees that, while employed with the Company, and for a period of [Insert temporal scope] from and after termination, for whatever reason, of the Employee's employment relationship with the Company, Employee shall not:

i. directly or indirectly, recruit, engage, hire, employ, or solicit or attempt to recruit, engage, hire, employ, or solicit any employee or contractor of the Company, or any subsidiary or affiliate of the Company, to terminate their employment or contractor relationship or otherwise alter their employment or contractor relationship with the Company;

ii. provide the name and/or contact information of a Company employee or contractor to the Employee's potential or subsequent employer(s) or entities with whom Employee may have a potential or subsequent business relationship.

iii. except during Employee's employment relationship with the Company and in furtherance of the Company's sole benefit, directly or indirectly, solicit or attempt to solicit, any customer or specific prospective customer of the Company, or any customer or specific prospective of any Company subsidiary or affiliate, or directly or indirectly interfere with the Company's relationship, or any Company subsidiary's or affiliate's relationships, with any of their customers or vendors, where such customer, specific prospective customer, or vendor was a customer or vendor or was a specific prospective customer or vendor of the Company during Employee's employment relationship with Company; or

iv. except during Employee's employment relationship with the Company and in furtherance of the Company's sole benefit, accept the business of or provide services to any Company customer, former customer, or specific prospective customer, where such customer, former customer, or specific prospective customer was a Company customer or specific prospective customer of the Company during Employee's employment relationship with the Company.

3. **NON-COMETITION AGREEMENT.**

a. Employee agrees that, during Employee's employment relationship with the Company, and for a period of [Insert temporal scope] months from and after termination, for whatever reason, of Employee's employment relationship with the Company, Employee shall not: directly or indirectly, engage in or be employed or associated in any way, in any business or other activity related to the same or similar services or products offered by the Company [Inert geographical scope], regardless of whether Employee conducts such prohibited activities while physically in or outside such geographical areas; nor shall Employee plan or organize any competitive business activity during such time.

4. **REMEDIES.** The Company and Employee acknowledge that the remedies at law for any breach of Paragraphs 1, 2 or 3 shall be inadequate and that the Company shall be entitled to injunctive relief without notice to Employee, and all costs and expenses, including reasonable attorneys' fees, from Employee, should Employee breach the provisions of Paragraphs 1, 2 or 3. Such injunctive relief shall not be exclusive, but shall be in addition to any rights or remedies the Company or its successors may have for such breach. The Company and Employee recognize and agree that damages in such event are difficult of ascertainment, though great and irreparable, and that no alternative remedy for damages referred to in this Agreement shall in any event prevent the Company from obtaining injunctive relief. Each and all of the several rights and remedies provided for in this Agreement shall be cumulative. No one right or remedy shall be exclusive of the others or of any right or remedy allowed in law or equity.

5. **INVALID PROVISION.** In the event any provision of this Agreement should be or become invalid or unenforceable, such facts shall not affect the validity and enforceability of any other provision of this Agreement. Similarly, if the scope of any restriction or covenant contained herein should be or become too broad or extensive to permit enforcement thereof to its full extent, then any such restriction or covenant shall be enforced to the maximum extent permitted by law, and Employee hereby consents and agrees that the scope of any such restriction or covenant may be modified accordingly in any judicial proceeding brought to enforce such restriction or covenant.

6. **ATTORNEY'S FEES AND COSTS.** In the event a dispute arises between the parties under this Agreement and suit is instituted, the prevailing party shall be entitled to recover its costs and attorneys' fees from the non-prevailing party. As used herein, costs and attorneys' fees include any costs and attorneys' fees in any appellate proceeding. The parties hereto further agree that should suit be instituted and then voluntarily dismissed by the plaintiff, for whatever reason, the defendant to the suit is not a "prevailing party" for the purpose of recovering attorneys' fees and costs as a result of the voluntary dismissal.

7. **CONSTRUCTION.** Language in all parts of this Agreement shall be construed as a whole according to its fair meaning. The parties agree that this Agreement is the product of joint authorship, and in the event of any ambiguity, the Agreement shall not be construed against any party.

8. **APPLICABLE LAW AND VENUE.** This Agreement shall be interpreted under and governed by the laws of the State of [Insert state]. The exclusive venue of any action brought under this Agreement shall be [Insert county] County, [Insert state]], and the parties hereby agree to, and waive all objections to, personal jurisdiction and venue in [Insert county] County, [Insert state].

9. **COMPLETE AGREEMENT.** Employee acknowledges and agrees that no representation, promise, or agreement regarding the subject matter of this Agreement has been made to or with Employee that is not set forth in this Agreement. This Agreement represents the complete agreement between the parties regarding Employee's obligations regarding the subject matter of this Agreement. Any representations or agreements regarding the subject matter of this

Agreement, as related to Employee and his/her obligations hereunder, that are not explicitly included in this Agreement are considered waived and thus unenforceable. Any previous agreements between the Company and Employee regarding the subject matter of this Agreement are hereby superceded by execution of this Agreement, and shall be devoid of any continuing force or effect. This Agreement is in no way dependent upon the performance of any other contract or agreement that may have been or may be entered into between the parties and the breach or alleged breach of any other contract or agreement is no defense to enforcement of this Agreement.

10. **AMENDMENTS OR MODIFICATIONS.** No amendments or modifications to this Agreement shall be binding on any of the parties unless such amendment or modification is in writing and executed by all of the parties to this Agreement. No term, provision, or clause of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and executed by the [Insert applicable Company position(s)] of the Company.

11. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the Company's successors and assigns, parents, subsidiaries, and affiliated companies and be enforceable by the Company's successors and assigns, parents, subsidiaries and affiliated companies, without the need for any additional action by Employee. Employee hereby agrees to the automatic assignment of this agreement to a successor of the Company. For purposes of this Agreement, the term "successor" of the Company shall include any person or entity that acquires or controls, whether directly or indirectly, whether by stock purchase, asset purchase, merger, consolidation, operation of law, assignment or otherwise: (i) all or substantially all (for the avoidance of doubt, at least 75%) of the assets of the Company; or (ii) fifty-one percent (51%) or more of the total voting stock of the Company. Each and every reference to the "Company" in this Agreement shall be construed as including the Company's successors and assigns.

12. **TOLLING.** The time restrictions applicable to Paragraphs 1, 2, and 3 shall each be tolled during the period of any breach of either Paragraphs 1, 2, or 3 of this Agreement.

13. **CHANGE OF TITLE, POSITION OR RELATIONSHIP.** Should Employee's title or position change and/or Employee's employment relationship with the Company change to, or be deemed, that of an employment relationship or any other non-employee relationship, such change shall not affect the validity and enforceability of any provision of this Agreement and all references to "Employee" and "employee relationship" shall be construed as if such terms were replaced by the appropriate title and/or relationship.

14. **SURVIVING PROVISIONS.** All of the provisions of this Agreement, including but not limited to, the restrictions and remedies, survive the termination of Employee's employment relationship, irrespective of the grounds or reasons for such termination, including termination by the Company for any reason, or no reason at all.

15. **REASONABLENESS.** Employee acknowledges and agrees that the restrictions imposed in this Agreement are fair and reasonable and are reasonably required for the protection

of the Company. Employee has voluntarily and knowingly entered into this Agreement and agrees that this Agreement will not prevent Employee from finding suitable employment or another employment relationship should the Employee's employment relationship with the Company terminate for any reason.

16. **NO OTHER RESTRICTIVE COVENANTS OR INTERFERENCE.**

Employee acknowledges and agrees that Employee represented to the Company, and/or hereby reaffirms such representation, that Employee is aware of no restrictive covenants or other agreements that would prohibit Employee from being employed by, a contractor for, or otherwise affiliated with Company in any capacity. Employee further acknowledges and agrees that Employee has not been encouraged or otherwise induced in any manner by the Company or its agents to take any acts or omissions that may violate any restrictive covenants or other agreements Employee may have with any third-parties. Employee further acknowledges and agrees that no employee or agent of the Company may encourage or otherwise induce in any manner Employee to take any acts or omissions that would violate any restrictive covenants or other agreements Employee may have with any third-parties. Employee further acknowledges and agrees that that Employee will not disclose to the Company, or induce the Company to use, any confidential information or trade secrets of others.

17. **DISCLOSURE OF AGREEMENT.** Employee shall, and the Company may, disclose this Agreement and its terms to any future or prospective businesses, persons, or entities that provide the same or similar services or products offered by the Company, and from which Employee seeks to, or is sought to, become engaged, employed, contracted, or associated with in any way.

18. **INDEPENDENT RESTRICTIVE COVENANTS.** Employee agrees the restrictive covenant provisions contained in this Agreement shall be construed as independent of any other provisions in this Agreement and independent of the existence of any claim or cause of action of the Employee against the Company, whether predicated upon this Agreement or otherwise. Employee acknowledges and agrees that the Company has fully performed all obligations entitling it to the protection of the restrictive covenant provisions in this Agreement, and that such provisions are therefore not subject to rejection under the Bankruptcy Code.

19. **WAIVER OF JURY TRIAL.** Employee and the Company hereby knowingly, voluntarily and intentionally waive any right either may have to a trial by jury with respect to any litigation related to or arising out of, under or in conjunction with this Agreement, or Employee's employment relationship with the Company.

20. **ACKNOWLEDGEMENT.** Employee acknowledges having read this Agreement in full and completely understands all of its terms and obligations and enters into this Agreement freely and voluntarily. Employee acknowledges and agrees the consideration extended to Employee and received in exchange for the execution of this Agreement, such as employment or continued employment, to be fair, reasonable and valuable.

21. **NOTICE.** If, at any time, Employee believes that for any reason Employee is no longer bound by this Agreement, Employee must notify the Company in writing within thirty (30) days of the circumstance or event which forms the basis for such belief. Such notice shall state with particularity the circumstance or event that forms the basis for Employee's belief. Failure to strictly comply with this notice requirement on a timely basis shall serve as a waiver of Employee's contention of no longer being bound by this Agreement. After receipt of such notice, the Company shall have thirty (30) days to remedy the circumstance or event. If the Company remedies the circumstance or event, this shall serve as a waiver of Employee's contention that Employee is no longer bound by this Agreement. Any effort by the Company to remedy the circumstance or event shall in no way be construed as any sort of admission that the circumstance or event relieves Employee of Employee's obligations under the Agreement. Any notice to the Company shall be delivered by U.S. Mail, postage prepaid, return receipt requested, to the following address:

[Insert title/address]

22. **NON-COERCION.** Employee acknowledges and agrees that Employee was not pressured, misled or induced to enter into this Agreement based upon any representation by Company or its agents not contained herein. Employee acknowledges and agrees that Employee entered into this Agreement voluntarily, and after having sufficient opportunity to consult with representatives of Employee's own choosing and that Employee's agreement is freely provided.

23. **WAIVER.** The failure of either party to this Agreement to insist in one or more circumstances on performance by another in strict accordance with the terms and conditions of this Agreement shall not be deemed a waiver or relinquishment of any right granted in this Agreement or the future performance of any such term or condition or of any other term or condition of this Agreement, unless such waiver is contained in writing signed by the party making the waiver.

24. **HEADINGS.** The headings contained in this Agreement are for the purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

25. **EMPLOYMENT AT WILL.** This Agreement is not an employment agreement. Subject to any additional rights the Employee may have as a result of execution of a written employment agreement with the Company, Employee acknowledges and agrees that Employee's employment can be terminated, with or without cause, and with or without notice at any time. Nothing contained in this Agreement limits or otherwise alters the foregoing.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

Company

By: [Insert name/title]

Witness: _____

Date: _____

(Print Name) Employee

(Signature)