

## NON-COMPETE AGREEMENT

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This Non-Compete (the "Agreement") is made as of this \_\_\_\_\_, (the "Effective Date") by and between \_\_\_\_\_ ("Company"), located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ ("Employee"), residing at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. Employee will be serving as \_\_\_\_\_. Employee may have access to or may generate or otherwise come into contact with proprietary and/or confidential information of the Company or the Company's clients. The Company wishes to enter into a non-compete agreement in the event Employee terminates his employment. In consideration of the promises and mutual covenants herein, the parties agree as follows:

- 1. Employee Covenants.** In consideration of continued employment with the Company, Employee covenants that during their employment with the Company and for a period of \_\_\_\_\_ or the longest period of time allowed by state law, whichever is shorter, after said employment is ended for any reason, including but not limited to the termination of their employment due to inadequate performance or resignation, to:

  - a. not engage in, own, control, or be employed by any firm or corporation that is engaged in a venture or business substantially similar to or in competition with the Company;
  - b. Employee shall not induce, directly or indirectly, any other employees of the Company to terminate their employment;
  - c. Employee shall not solicit the business of any client of the Company.
- 2. Confidentiality Agreement.** Employee shall not, without written consent, share or use any information relating to the Company that has not been previously publicly released including but not limited to patent and patent applications; trade secrets; proprietary and confidential information, designs, inventions, research, development, design details and specifications, engineering, and all related documentation; financial information, financial plans, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the Company provides regarding third parties; and any and all other information that Employee knew, or reasonably should have known, was confidential.
- 3. Injunctive Relief.** Employee acknowledges that disclosure of any confidential information or breach of any of the noncompetitive covenants will give rise to irreparable injury to the Company. Employee acknowledges that such injuries are not adequately compensable by damages and that injunctive relief against such breach is available as a legal remedy. Employee agrees that the covenants herein are necessary for the protection of the Company's legitimate business interests.
- 4. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.
- 5. Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement.
- 6. Governing Law.** The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_, not including its conflicts of law provisions.
- 7. Dispute Resolution.** Any dispute arising out of or related to this Agreement that the parties are unable to resolve by themselves shall be settled by arbitration in the State of \_\_\_\_\_ in

accordance with the rules of the American Arbitration Association. The written decision of the arbitrator(s), as applicable, shall be final and binding. Judgment on a monetary award or enforcement of injunctive or specific performance relief granted by the arbitrator(s) may be entered in any court having jurisdiction over the matter.

8. **Headings.** The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision in this Agreement.
9. **Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes and cancels all prior agreements of the parties, whether oral or written, with respect to such subject matter.
10. **Amendment.** This Agreement may be amended or modified only by a written agreement signed by all of the parties.
11. **Notices.** Any notice or other communication given or made to any party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that parties may subsequently designate by notice and shall be deemed given on the date of delivery.
12. **Waiver.** No party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by any Partner of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered as of the date first written above.

\_\_\_\_\_  
**Company Representative Signature**

\_\_\_\_\_  
\_\_\_\_\_  
**Company Representative Name and Title**

\_\_\_\_\_  
**Employee Signature**

\_\_\_\_\_  
**Employee Name**

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## GENERAL INSTRUCTIONS

### What is a Non-Compete Agreement?

A non-compete agreement is a legal document stipulating that one party will not compete in the same industry or geographical area with another party. Often, a non-compete agreement is signed at the time a company hires an employee. The contract can also be used between companies and vendors, freelancers, and entered into after an employee has already worked with the company for any amount of time.

Generally, a non-compete protects a business' relationships with customers and their intellectual property. This keeps a former employee or contractor from taking contacts or information they learned through the company and opening their own business. It also protects the company from having former employees take contacts or information and going to work for a competitor.

### When Do I Need One?

A non-compete agreement goes into effect once the employee or contractor severs ties with the company. There are a few ways that a company can draw up non-compete agreements and a few scenarios in which they would be useful:

- When a new employee is hired.
- When a company finds they need the agreement due to the sensitive nature of information an employee sees.
- When purchasing a company from a previous owner.

### The Consequences of Not Using One

Employees are the most valuable part of your company. Depending on the level and specialization of the employee, they often know your business and industry intricately. This knowledge helps them to make your company successful. But given to a competing entity, it could prove to be a distinct disadvantage to your organization.

Without a non-compete agreement in place, a key employee could leave and would likely stay in the area and in the same industry. While companies can't stop

employees from moving on or working in the field, they also shouldn't risk intellectual property or insider knowledge being used against them. Here are some possible outcomes without this document in place:

- An employee could leverage their knowledge of your company to secure a high ranking position with your direct competition.
- An employee could use knowledge gained through your company to open their own competing enterprise.
- An employee could leave and hire away key employees.

### The Most Common Uses

Traditionally, non-compete agreements were created for high ranking employees and those with specialized knowledge of your business. More and more, companies are using non-compete agreements for a larger swath of their staff. Often new hires will need to sign a non-compete agreement in order to secure the position.

Non-compete agreements need to be very specific in what they prohibit. A company can't stand in the way of a former employee's ability to earn an income - that wouldn't be enforceable nor should it be. For this reason, the non-compete needs to specify a region and specific industry or type of position that the staff member couldn't take up directly after leaving. For instance, if you had a non-compete agreement in the city of Chicago, it might only include companies within city limits and not the extended suburbs. The time limit on the non-compete agreement should also be reasonable - usually one year or two year terms.

### What Should the Agreement Include?

An enforceable non-compete agreement needs to be drafted carefully. Agreements that are too wide geographically or restrictive without clear reasoning may not be enforced should the situation ever arise. Here are some things that must be considered:

- Compensation
- Geographic Region
- Industry
- Employee Specialization
- Assignment Provision