

## NONDISCLOSURE, NON-CIRCUMVENTION AND NON-COMPETITION AGREEMENT

This Nondisclosure, Non-Circumvention and Non-Competition Agreement (hereinafter referred to as the "Agreement") is made and entered into by and among \_\_\_\_\_, a \_\_\_\_\_ - business (hereinafter referred to as "\_\_\_\_\_"), and \_\_\_\_\_ its/their parents, subsidiaries, affiliates, employees, officers, directors, shareholders, principals, brokers, associates, clients and other representatives (hereinafter collectively referred to as "Confidant").

### WITNESSETH THAT:

**WHEREAS**, Confidant does hereby represent and warrant that it has no interest in using any information it might hereby obtain to circumvent or compete against \_\_\_\_\_; and

**WHEREAS**, Confidant and \_\_\_\_\_ do hereby acknowledge, admit and confess that the non-competition aspects of this Agreement are ancillary to the otherwise enforceable nondisclosure and non-circumvention aspects of this Agreement; and

**WHEREAS**, Confidant has and does hereby acknowledge, admit and confess that this agreement contains reasonable limits as to time, geographical area and scope of activity to be restrained; and

**WHEREAS**, Confidant has and does hereby acknowledge, admit and confess that any restraints imposed upon Confidant are not greater than is necessary to protect the goodwill and/or other interests of \_\_\_\_\_; and

**WHEREAS**, \_\_\_\_\_ desires to provide Confidant with access to the subject information, but also desires that the information and records remain confidential and that Confidant not use any such information to circumvent or compete against \_\_\_\_\_, or disseminate any such information to any third party or entity to enable them to circumvent or compete against \_\_\_\_\_; and

**WHEREAS**, Confidant and \_\_\_\_\_ are entering into this Nondisclosure, Non-Circumvention and Non-Competition Agreement to evidence their understanding, agreements and covenants with respect to the examination of information which is to be disclosed by \_\_\_\_\_; and

**WHEREAS**, Confidant and \_\_\_\_\_ - do hereby agree that the recitations contained herein are contractual in nature and not mere recitations of fact:

**NOW, THEREFORE**, for and in consideration of the premises, recitations, agreements and covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, admitted and confessed, \_\_\_\_\_ and Confidant do hereby agree as follows:

1. Confidant hereby acknowledges, admits and confesses that all of such covenants and agreements are necessary for the protection of the business of \_\_\_\_\_ and their information, and that any violation of the terms hereof by Confidant will result in irreparable harm to \_\_\_\_\_ and that any losses or damages resulting to \_\_\_\_\_ and/or its customers and suppliers from any breach of such agreements by Confidant may not be susceptible of determination, and that as a result, \_\_\_\_\_ may not have an adequate remedy at law for the redress of any such violation, and shall be entitled to injunction or other equitable relief without being required to post any bond. In the event, a court of competent jurisdiction nonetheless requires such a bond, it is expressly agreed that it shall not be required to be in an amount greater than fifty dollars (\$50.00).

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2. Confidant hereby acknowledges, admits and confesses that all of the covenants and agreements contained herein are necessary for the protection of their business, contacts, customers, clients, and potential purchasers, and that any violation of the terms hereof may result in losses or damages which may not be readily susceptible of determination. Consequently, Confidant hereby acknowledges, admits and confesses that it shall be liable to \_\_\_\_\_, at \_\_\_\_\_' sole and exclusive option, to liquidated damages in an amount equal to fifty-one percent (51%) of the consideration (whether in cash, interest(s), property or otherwise) acquired by Confidant in violation of the terms hereof.

3. Confidant and \_\_\_\_\_ affirm that the association and relationship between \_\_\_\_\_ - and Confidant is one of trust and confidence and that such association and relationship would not have been offered or otherwise continued but for the fact that such trust and confidence had been reposed by \_\_\_\_\_ in Confidant. In view of said association and relationship, Confidant hereby promises and agrees that during said association and relationship and continuing for a period of twenty-four (24) months from the termination of said association and relationship, Confidant shall not in \_\_\_\_\_' area of market coverage on behalf of anyone other than \_\_\_\_\_-, solicit or divert, or take away or attempt to take away from \_\_\_\_\_ or any of its affiliates, any customer or client of any of them with a competitive product, service or technology.

4. Unless otherwise agreed by \_\_\_\_\_ in writing, Confidant agrees that upon completion of its review of \_\_\_\_\_' information and business records, Confidant will immediately surrender to \_\_\_\_\_ all originals and all copies made of any of \_\_\_\_\_' Information (confidential or otherwise), computer disks, cassettes, video cassettes, compact disks, papers, notes, documents, agreements, writings, software, equipment and other property given to Confidant or coming into Confidant's possession by, through, or as a result of its review of \_\_\_\_\_' records. Confidant further expressly agrees, understands and acknowledges that, for purposes of this Agreement, all such materials are at all times the sole and exclusive property of \_\_\_\_\_.

5. The failure of \_\_\_\_\_ to insist upon strict compliance by Confidant with one or more covenants and restrictions contained herein, whether on one or more occasions, shall not be construed as a waiver, nor shall such a course of action deprive \_\_\_\_\_ of the right thereafter to require strict compliance herewith. If the parties hereto waive any of the conditions, terms or provisions contained herein, or any of the duties or obligations of the other party hereunder, such waiver shall be effective only if in writing and signed by the party waiving any such item.

6. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, including, but not limited to, an action for injunctive relief and/or a suit for damages, \_\_\_\_\_ shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which it may be entitled.

7. The rights and remedies set forth in this Agreement are cumulative of all other rights and remedies existing at law or in equity, and shall not be deemed to deprive \_\_\_\_\_ of any such other legal or equitable right or remedy, by judicial proceedings or otherwise, necessary or appropriate to enforce the terms, provisions, conditions and covenants contained in this agreement, or the employment of any remedy hereunder, or otherwise, and shall not prevent the concurrent or subsequent employment of an other appropriate remedy or remedies.

8. If any agreement or restrictive covenant contained herein should be held by any court or other legal authority to be void or unenforceable in any respect, then this Agreement shall thereby be amended (without the need for any action by the parties) so as to bring it into conformity with applicable law. In other words, the matter which is adjudicated to be void or unenforceable shall be modified or severed out of this Agreement, and the other terms of this Agreement shall continue to be in full force and effect and govern the rights and obligations of the parties hereto.

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9. No waiver, modification or amendment of the terms of this Agreement shall be of any force or effect unless made by an instrument in writing and executed by all parties hereto.

*THIS AGREEMENT IS MADE AND IS TO BE PERFORMED IN \_\_\_\_\_ AS. IN THE EVENT THAT ANY DISPUTE ARISES HEREUNDER, IT IS SPECIFICALLY STIPULATED THAT THE RIGHTS AND DUTIES OF THE PARTIES HERETO, AND THE VALIDITY, CONSTRUCTION AND ENFORCEMENT OF THIS AGREEMENT, SHALL BE INTERPRETED AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF \_\_\_\_\_ AND THE UNITED STATES OF AMERICA.*

*THIS AGREEMENT IS MADE AND IS TO BE PERFORMED IN \_\_\_\_\_ IN THE EVENT OF A DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OF THE OTHER DOCUMENTS EXECUTED IN CONNECTION HEREWITH, THE PARTIES HERETO IRREVOCABLY AGREE AND CONSENT IN ADVANCE TO ANY NECESSARY TRANSFERS OF VENUE, SO THAT VENUE FOR ANY SUCH DISPUTE SHALL LIE IN ANY COURT OF COMPETENT JURISDICTION IN \_\_\_\_\_.*

**ACCEPTED BY:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_

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

**Name:**

**Title:**

**Date:**

**Name**

Address

City, State Zip

Tel: ( )

Fax: ( )

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_