

## **NON-COMPETITION AND NON-SOLICITATION AGREEMENT**

**THIS Non-Competition and Non-Solicitation Agreement** (the "Agreement"), made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, LLC (the "Company"), and \_\_\_\_\_ (the "Employee").

**WHEREAS**, the Employee's service with the Company is beginning and Employee and the Company are entering into a formal business relationship;

**WHEREAS**, the Company desires to (i) protect the Company's confidential and proprietary information, and (ii) restrict Employee's post-termination employment and solicitation activities;

**WHEREAS**, the Employee's continued employment with the Company is contingent upon execution of this agreement.

**NOW, THEREFORE**, intending to be legally bound, the parties agree to the following terms and conditions:

### **Section 1. Consideration**

In consideration of Employee's covenants of non-competition and non-solicitation contained in this Agreement, the Company agrees to employ Employee as its \_\_\_\_\_ at a salary of \$\_\_\_\_\_ per year with two weeks of non sequential vacation and other benefits as agreed to from time to time.

### **Section 2. Non-Competition; DETRIMENTAL ACTIVITY**

Employee agrees that for a period of twenty-four (24) months following the termination of her employment with the Company, she will not, without the express written permission of the Chief Executive Officer (or President as the case may be) of the Company, (1) engage directly or indirectly in any manner or capacity as principal, agent, partner, officer, director, employee or otherwise in any business or activity competitive with the business conducted by the Company; or (2) perform any other act or engage in any other activity that is determined by the Company based upon its business judgment, to be detrimental to the best interests of the Company. This would include, but is not limited to, actions such as soliciting or encouraging any existing or former employee, director, contractor, consultant, customer or supplier of the Company to terminate his or its relationship with the Company for any reason, or otherwise violate any contracts or covenants existing between them and the Company; making defamatory statement about the Company, its businesses, officers, directors, or employees; or taking any other actions which might reasonably be expected to cause or lead to unwanted or unfavorable publicity, or otherwise cause harm to the Company or any of the foregoing.

### **Section 3. Enforcement of Covenants, Equitable Relief, Tolling.**

Employee acknowledges and agrees that compliance with the covenants set forth in Section 2 of this Agreement is necessary to protect the business and goodwill of the Company and that any breach of these covenants will result in irreparable and continuing harm to the Company, for which money damages may not provide adequate relief. Accordingly, in the event of any breach or anticipatory breach of these covenants by Employee, the Company and Employee agree that the Company shall be entitled to the following particular forms of relief as a result of such breach, in addition to any liquidated damages or other remedies available to it at law or equity: (1) injunctions, both preliminary and permanent, enjoining or restraining such breach or anticipatory breach, and Employee hereby consents to the issuance thereof forthwith and without bond by any court of competent jurisdiction; and (2) recovery of all reasonable sums and costs, including attorney's fees, incurred by the Company if it successfully enforces the covenants.

The restrictive periods set forth in this Agreement shall not expire and shall be tolled, during any period in which Employee is in violation of the restricted period.

### **Section 4. Disclosure of Agreement AND New Employment**

Employee agrees that she will promptly disclose the existence of this Agreement to all subsequent employers until the covenants have expired.

### **Section 5. Interpretation of Provisions**

The parties agree that they have attempted to limit the scope of the post-employment restrictions contained herein to the extent necessary to protect the Company's Confidential Information, client relationships and goodwill.

### **Section 6. Waiver of Breach**

The waiver by the Company of a breach of any provision of this Agreement by Employee, or the failure of the Company to take action against any other employee(s) or former employer(s) for similar breach(es) on their part, shall not operate or be construed as a waiver of any subsequent breach by Employee or be construed as a waiver of a breach by Employee.

### **Section 7. Binding Agreement**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company and the heirs, executors and administrators of Employee. The Company shall have the right to transfer and assign all or any portion of its rights and obligations hereunder to any third party. This Agreement may not be assigned by Employee.

#### **Section 8. Applicable Law and Choice of Forum**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of \_\_\_\_\_, without reference to conflicts of law principles, except to the extent governed by federal law in which case federal law shall govern. The parties agree that any action or proceeding with respect to this Agreement shall be brought in a court of competent jurisdiction in the State of Georgia, and the parties hereby agree to the personal jurisdiction thereof, and irrevocably waive any claim they may now or hereafter have that any such action brought in such Georgia court(s) has been brought in an inconvenient forum.

#### **Section 9. Severability**

In the event that any of the foregoing clauses may be deemed or determined to be a breach of any law, rule or regulation or otherwise unenforceable, such determination shall not affect any of the other clauses of this Agreement, but such other clauses shall remain in full force and effect.

#### **Section 10. Termination of Agreement**

This Agreement shall terminate on the earlier of i) the date on which the Company provides written notice to Employee that it is terminating this Agreement due to Employee's breach of his obligations hereunder, in which case no payment of the consideration more fully described under Section 1 of this Agreement shall be owed to Employee; ii) the date of Employee's death, in which case the amount of the consideration provided for under Section 1 of this Agreement shall be pro-rated by the number of full months during the original 24-month period prior to the Employee's death, and such pro-rated payment shall be made to the estate of the Employee within 15 days of the date on which the Company has received notice of Employee's death, and copies of all tax and probate documents necessary to effect such payment, but in no event will such pro-rata payment be made later than the end of the year following the year in which the Employee's death occurs; or iii) the date on which the restrictive covenants provided for in Sections 2 and 3 of this Agreement expire, which shall be February 28, 2019, unless extended as a result of the tolling provisions in Section 4 of this Agreement, in which case the consideration provided for in Section 1 of this Agreement shall be paid in full, within 15 days thereof.

**Section 11. SURVIVAL OF PROVISIONS.**

The obligations relating to Confidentiality, Company Developments and Return of Materials described in Section 2 of this Agreement shall survive the expiration of this Agreement and shall continue for so long as the Employee continues to have knowledge of Confidential Information or have Company materials in her custody or control, or for so long as her assistance is reasonable necessary to secure and protect Company Developments. In addition, those rights of the Company under Section 12 of this Agreement shall survive the termination of this Agreement, and shall remain in effect for an additional two (2) years following the termination of this Agreement.

**Section 12. Modification of Agreement, Effect on Other Agreements.**

This Agreement is in addition to certain other agreements which may also apply to restrict Employee from engaging in those actions prohibited hereunder, and the enforceability of those other agreements, and any obligations of the Employee and/or rights of the Company arising thereunder shall not be modified or otherwise impaired by this Agreement. This Agreement may be amended only by a writing signed by both parties. Employee acknowledges that he has not relied on any representations, promises or agreements of any kind made to him in connection with his decision to sign this Agreement, except for those set forth in this Agreement.

**THE EMPLOYEE ACKNOWLEDGES THAT [S]HE HAS READ AND UNDERSTANDS THE FOREGOING PROVISIONS, AND THAT SUCH PROVISIONS ARE REASONABLE AND ENFORCEABLE.**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement or caused this Agreement to be executed the day and year first above written.

[COMPANY]

By:

Its: PRESIDENT

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**- And -**

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[EMPLOYEE]