

SAMPLE NON-COMPETITION/NON-SOLICITATION AGREEMENT

This is an agreement made between ABC Company (“Employer”) and _____ (“Employee”) on _____, 20___. In consideration of Employee’s continued employment, Employer and Employee agree as follows:

Employee’s non-solicitation of Employer customers and personnel.

A. Employer and Employee agree that, due to the company’s efforts, Employer is the owner of numerous trade secrets and the possessor of sensitive business information about Employer’s business, finances, operations, processes, business development, customers or potential customers, vendors or potential vendors, employees, consultants and/or contractors and other matters that could be very valuable to an Employer Competitor. (For the purposes of this agreement, “Employer Competitor” means any business or entity engaged in the same or substantially similar business as Employer, including (but not limited to) such companies as _____ and _____.) Employee will be given (or have access to) such types of sensitive information during his employment and he may develop valuable contacts and relationships with Employer’s employees, customers or potential customers, vendors or potential vendors, consultants and contractors. Therefore, Employee and Employer agree that:

(i) During Employee’s employment and for a _____ period thereafter, Employee will not (directly or indirectly) solicit or persuade, or attempt to solicit or persuade, any Employer customer or other person that has an actual or potential business relationship with Employer not to do business with or to cease doing business with Employer, to reduce the amount of business anticipated or historically done with Employer, or to otherwise alter the actual or potential business relationship with Employer; and

(ii) During Employee’s employment and for a _____ period thereafter, Employee will not (directly or indirectly) solicit or persuade, or attempt to solicit or persuade, any Employer employee, contractor or consultant, or persons in the process of being recruited to be an Employer employee, contractor or consultant, to end or to modify any existing relationship with Employer or not to enter a relationship with Employer; and

(iii) During Employee’s employment and for a _____ period thereafter, Employee will not (directly or indirectly) be employed by or be engaged as a consultant or contractor to or agent for any Employer Competitor (or any of the Employer Competitor’s direct or indirect affiliates).

B. The restrictive covenant contained in the preceding subparagraph shall be construed as an agreement and as an independent covenant. The existence of any Employee cause of action against Employer shall not constitute a defense to Employer’s enforcement of the restrictive covenant.

C. Employee consents to the entering of an injunction to enforce this paragraph. If Employer shall make application to a court of competent jurisdiction for injunctive relief to enforce this paragraph, then and in that event the period of time for the

application of the restrictive covenant shall be tolled for a period commencing with Employee's acts which create the claim for injunctive relief and terminating with the date of final adjudication of the petition for injunctive relief, if granted.

Employee's non-competition with Employer.

A. Employer and Employee agree that, due to the company's efforts, Employer is the owner of numerous trade secrets and the possessor of highly-sensitive business information about its finances, operations, business development/acquisition methods and strategies, actual customers, vendors, employees, contractors and consultants and other matters that could be very valuable to Employer's competitors. Employee is (or will be) in possession of certain such sensitive information acquired during his employment and, further, he has developed (or will develop) valuable contacts and relationships with certain Employer customers, vendors, employees, contractors and consultants. Therefore, Employee and Employer agree that, for a ____ period after the end of employment by Employer (irrespective of the reason for the end of the employment), Employee will not:

(i) Be employed by or be engaged as a consultant or contractor to or agent for, or sit on the board of directors of, any other [describe business] entities or any of their direct or indirect affiliates ("affiliates" to include any entity in which the named entity has or from time to time may have a majority equity interest) including but not limited to: [competitor companies]; and

(ii) Be employed by or be engaged as a consultant or contractor to or agent for, or sit on the board of directors of, any of the following entities or any of their direct or indirect affiliates ("affiliates" to include but not be limited to any entity in which the named entity has or from time to time may have a majority equity interest): [competitor companies].

B. The restrictive covenant contained in the preceding subparagraph shall be construed as an agreement and as an independent covenant. The existence of any cause of action by Employee against Employer shall not constitute a defense to Employer's enforcement of the restrictive covenant.

C. Employer and Employee agree that, if any portion of this paragraph is held to be unreasonable, arbitrary, or against public policy by any court or tribunal, or if the applicable law on which such covenant is founded is changed in any manner as to limit the enforceability of this paragraph, the paragraph shall be enforced against Employee for a shorter period of time or in a smaller geographic area or otherwise as is determined by the tribunal to be reasonable, non-arbitrary and not against public policy.

D. Employee consents to the entering of an injunction to enforce this paragraph. If Employer shall make application to a court of competent jurisdiction for injunctive relief to enforce this paragraph, then and in that event the period of time for the application of the restrictive covenant shall be tolled for a period commencing with Employee's act which creates the claim for injunctive relief and terminating with the date of final adjudication of the petition for injunctive relief, if granted.

E. Employee agrees that he will provide notice to his subsequent potential employers of Employee's confidentiality and non-competition obligations to Employer under this Agreement.

Enforcement. In the event it should become necessary for Employer to retain the services of an attorney (a) to enforce the terms of this Agreement or (b) to appear in any proceeding seeking a declaration of the parties' rights under this Agreement, Employee agrees to pay the costs of any legal proceedings and Employer's reasonable attorneys' fees including any attorneys' fees and costs incurred by Employer in appellate proceedings (regardless of the party initiating the appeal).

[Signature lines and dates]