**Noncompetition and Nonsolicitation Agreement**

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Noncompetition and Nonsolicitation Agreement

This Noncompetition and Nonsolicitation Agreement (this “**Agreement**”) is entered into as of [\_\_\_\_\_], (the “**Effective Date**”), between [\_\_\_\_\_], a [STATE] corporation (the “**Company**”) and [\_\_\_\_\_], an individual residing in [STATE] (the “**Seller**”).

The Seller and [BUYER] have entered into the Stock Purchase Agreement dated [\_\_\_\_\_] (the “**Purchase Agreement**”), under which the Seller is on the Effective Date selling and transferring to [BUYER] all of the issued and outstanding capital stock of the Company.

It is a condition to the obligation of [BUYER] to consummate the transactions contemplated by the Purchase Agreement that the Seller execute this Agreement.

The Seller acknowledges that [BUYER] would not effect the closing of the transactions contemplated by the Purchase Agreement unless the Seller agrees to the terms of this Agreement and executes and delivers this Agreement to the Company at the closing of the transactions.

The parties, therefore, agree as follows:

# **Definitions.** The following terms, as used in this Agreement, have the following meanings:

“**Business**” means the [\_\_\_\_\_] business conducted by the Company.

“**Confidential Information**” means any information which is proprietary or unique to the Company, including but not limited to trade secret information, matters of a technical nature such as processes, devices, techniques, data and formulas, research subjects and results, marketing methods, plans and strategies, operations, products, services, revenues, expenses, profits, sales, key personnel, customers, suppliers, pricing policies, and any information concerning the marketing and other business affairs and methods of the Company which is not readily available to the public.

“**Person**” means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

“**Restricted Business**” means any business activity relating to the Business.

“**Restricted Location**” means anywhere in the United States.

# **Confidential Information.** The Seller acknowledges that in connection with the Seller’s ownership of or employment by the Company or both, the Seller has obtained Confidential Information, and the Seller agrees that [s]he will not disclose to any Person or entity any Confidential Information or use any Confidential Information, except with the Company’s express prior written consent. The confidentiality obligations imposed by this Section 2 will cease to apply to any item of Confidential Information after the earliest of the date on which the Seller provides the Company with written evidence clearly establishing that the item of Confidential Information: (1) was publicly available before the Seller’s receipt of the item of Confidential Information from the Company, or (2) has become generally known to the public in the United States through no fault of the Seller.

# **Noncompetition, Nonsolicitation and Non-disparagement.** The Seller acknowledges and agrees with the Company that during the course of the Seller’s ownership of or employment by the Company, or both, the Seller has had the opportunity to develop relationships with existing employees, customers, and other business associates of the Company, which relationships constitute goodwill of the Company, and the Seller acknowledges and agrees that the Company would be irreparably damaged if the Seller were to take actions that would damage or misappropriate such goodwill. The Seller accordingly covenants and agrees as follows:

## The Seller acknowledges that the Company currently conducts the Business throughout the Restricted Location. Accordingly, in consideration of the Buyer closing the transactions contemplated by the Purchase Agreement, from the Effective Date until the [fifth] anniversary of the Effective Date (the “**Restricted Period**”), the Seller shall not, within the Restricted Location, directly or indirectly, enter into, engage in, assist, give or lend funds to or otherwise finance, be employed by or consult with, have an ownership or equity interest in, or have a financial or other interest in, any business which engages in any aspect of the Restricted Business, whether for or by [himself/herself] or as an independent contractor, agent, shareholder, member, partner or joint venturer for any other Person, provided that the aggregate ownership by the Seller of no more than five percent of the outstanding equity securities of any Person, which securities are traded on a national or foreign securities exchange, quoted on the Nasdaq Stock Market or other automated quotation system will not be deemed to be giving or lending funds to, otherwise financing or having a financial interest in a competitor. If any Person in which the Seller has any financial or other interest directly or indirectly enters into the Restricted Business during the Restricted Period, the Seller shall divest all of [his/her] interest (other than any amount permitted under this section) in such Person within 30 days after such Person enters into any aspect of the Restricted Business.

## The Seller covenants and agrees that, during the Restricted Period, the Seller will not, directly or indirectly, either for [himself/herself] or for any other Person (1) solicit any employee of the Company to terminate his or her employment with the Company or employ any such individual during his or her employment with the Company and for a period of one year after such individual terminates employment with the Company, (2) solicit any supplier to the Company to purchase or distribute information, products, or services of or on behalf of the Seller or such other Person that are competitive with the information, products, or services provided by the Company, or (3) take any action, including without limitation the making of disparaging statements concerning the Company or its officers, directors, or employees, that is reasonably likely to cause injury to the relationships between the Company or any of its employees and any lessor, lessee, vendor, supplier, customer, distributor, employee, consultant, or other business associate of the Company, as such relationship relates to the Company’s conduct of the Restricted Business.

## The Seller understands that the foregoing restrictions may limit the Seller’s ability to earn a livelihood in a business similar to the Restricted Business, but the Seller nevertheless believes that [s]he has received and will receive sufficient consideration and other benefits as a result of the closing of the transactions contemplated by the Purchase Agreement to clearly justify such restrictions which, in any event (given the Seller’s education, skills, and abilities), the Seller does not believe would prevent [him/her] from otherwise earning a living.

## The Restricted Period will be extended to include a period of time equal to the period of time during which the Seller engaged in conduct constituting a breach of this Section 3.

# **Remedies.** If the Seller violates, or threatens to violate, any of the covenants contained in this Agreement, in addition to any other remedy available at law or in equity, the Company will have (1) the right and remedy of specific enforcement, including injunctive relief, it being acknowledge and agreed that any such violation or threatened violation will cause irreparable injury to the Company and that monetary damages will not provide an adequate remedy, and (2) the right to any and all damages available as a matter of law, and costs and expenses incurred by the Company in pursuing its rights under this Agreement, including reasonable attorney fees and other litigation expenses.

# **Severability.** Should any covenant, term, or condition contained in this Agreement become or be declared invalid or unenforceable by a court of competent jurisdiction, the parties agree that the court will be requested to judicially modify such unenforceable provision consistent with the intent of this Agreement so that it will be enforceable to the fullest extent possible.

# **Amendment and Modification.** No amendment, modification, supplement, termination, consent, or waiver of any provision of this Agreement, nor consent to any departure therefrom, will be effective unless it is in writing and is signed by the party against whom enforcement is sought. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given.

# **Assignments.** The Seller shall not (1) assign or transfer any of [his/her] rights under this Agreement, either voluntarily or involuntarily, whether by operation of law, or any other manner, or (2) delegate any performance under this Agreement, except with the prior written consent of the Company. Any purported assignment of rights or delegation of performance in violation of this section is void.

# **Counterparts.** This Agreement may be signed by the parties on any number of separate counterparts, and all such counterparts so signed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart. A signature delivered by facsimile, email, or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of this Agreement.

# **Failure or Delay.** No failure on the part of any party to exercise, and no delay in exercising, any right, power, or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege. No notice to or demand on any party in any case entitles such party to any other or further notice or demand in similar or other circumstances.

# **Governing Law and Designation of Forum.**

## The laws of the State of [\_\_\_\_\_] (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance (including the details of performance), and enforcement.

## Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement or the transactions it contemplates shall bring the legal action or proceeding in either the United States District Court for the [\_\_\_\_\_] District or in any court of the State of [\_\_\_\_\_] sitting in [\_\_\_\_\_] County. Each party to this Agreement consents to the exclusive jurisdiction of the United States District Court for the [\_\_\_\_\_] District and its appellate courts, and any court of the State of [\_\_\_\_\_] sitting in [\_\_\_\_\_] County and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this Agreement or the transactions it contemplates and agrees that the exclusive choice of forum set forth in this section does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

## Each party waives, to the fullest extent permitted by law, any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Agreement or the transactions it contemplates brought in the United States District Court for the [\_\_\_\_\_] District or in any court of the State of [\_\_\_\_\_] sitting in [\_\_\_\_\_] County and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

# **Notices Between the Parties.** All notices, consents, requests, demands, and other communications hereunder are to be in writing, and are deemed to have been duly given or made: (1) when delivered in person; (2) three days after deposited in the United States mail, first class postage prepaid; (3) in the case of overnight courier services, one Business Day after delivery to the overnight courier service with payment provided; (4) in the case of fax, when sent, verification received; or (5) in the case of electronic transmission such as email, when sent; in each case addressed as follows, or to such other address as any party may designate by notice to the other party in accordance with the terms of this section:

If to the Company: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

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

Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

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

Email: \_\_\_\_\_

If to the Seller \_\_\_\_\_

or the Owner: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

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

Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

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

Email: \_\_\_\_\_

Notices sent to a party’s counsel do not constitute notice under this section.

# **Successors and Assigns. This Agreement binds and benefits the parties and their respective heirs, executors, administrators, legal representatives, and permitted successors and assigns.**

# **Construction.** Section headings are for convenience only and shall not be considered a part of the terms and provisions of the Agreement.

*[Signature page follows.]*

The parties are signing this Noncompetition and Nonsolicitation Agreement as of the Effective Date.

[COMPANY]

By:

[NAME]

[TITLE]

[SELLER]

By:

[NAME]

[TITLE]

[OWNER’S NAME]