

## NON-COMPETITION AGREEMENT

**THIS AGREEMENT** is made by and between each of \_\_\_\_\_ and \_\_\_\_\_ (each, a “Key Stockholder” and collectively “Key Stockholders”) and \_\_\_\_\_, a \_\_\_\_\_ corporation (the “Purchaser”).

**WHEREAS**, pursuant to that certain Agreement between \_\_\_\_\_ (the “Company”), Purchaser and the Key Stockholders dated \_\_\_\_\_ (the “Agreement”), the Key Stockholders agreed to enter into a Non-Competition Agreement as a condition to the Purchaser’s obligations under the Agreement; and

### AGREEMENTS

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Purchaser and the Key Stockholders agree as follows:

1) **Restrictive Covenant.**

- (a) **No Competition.** Each Key Stockholder agrees for a period of \_\_\_\_\_ (\_\_\_\_) years following the date hereof (the “Non-Compete Period”) that he or she shall not directly or indirectly, either individually or with any other person, firm, partnership, corporation or other entity, have any interest, as an owner, employee, representative, agent, consultant, advisor or otherwise, in any business which is similar to the business of the Company. These covenants shall be deemed separate and enforceable in each and every state, country and any other government jurisdiction in which they are made by the non-compete obligation and in the event the covenants in more than one such jurisdiction is determined to be unenforceable, the covenants in the remaining jurisdictions shall continue to be effective. These covenants shall be intended to prevent any Key Stockholder from using his general business, professional, technical, experience, skill and know-how in a manner that is not consistent with the best interests provided the Key Stockholder does not use, disclose, disseminate or otherwise communicate any Confidential Information (as hereinafter defined) to any person, firm, partnership, corporation or other entity.
- (b) **No Hiring of Others.** Further, each Key Stockholder agrees that during such Non-Compete Period, he shall not solicit nor employ any person who is or was employed by the Purchaser or the Company during the Non-Compete Period.
- (c) **No Solicitation.** Each Key Stockholder further agrees that during the Non-Compete Period he shall not solicit the Purchaser’s customers on behalf of him or any other business or entity, or attempt to do so, with the business then conducted by the Purchaser or the Company.

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2) **Confidential Information**

(a) **Definition.** For purposes of this Paragraph 2, the term “Confidential Information” means, in addition to its meaning under applicable law, information which is not generally known in the Purchaser’s industry, which has been proprietary to the Company and which has been subject to efforts by the Company to maintain its confidentiality, including but not limited to (i) trade secrets and (ii) information relating to the business of the Company at any time within the previous five years and to any of the Company’s past or current products, including, without limitation, information relating to the Company’s purchasing, accounting, marketing, selling, or distribution. Without limitation of the foregoing, all information which is disclosed to a Key Stockholder has a reasonable basis to consider Confidential Information which has been treated by the Company as being Confidential Information shall be presumed to be Confidential Information whether disclosed by a Key Stockholder or by others, and without regard to the manner in which a Key Stockholder obtains access to such information.

(b) **No Disclosure.** No Key Stockholder shall, at any time during the Compete Period, use or disclose any Confidential Information to any person not employed by the Purchaser without the prior written authorization of the Purchaser except as required by law, regulation, or governmental demand, provided that the Key Stockholder shall provide the Purchaser prompt, written notice that he believes he is required to do so so that the Purchaser has had reasonable opportunity to seek a protective order or other appropriate remedy. Each Key Stockholder shall exercise prudence and the highest degree of care to safeguard and to prevent the unauthorized disclosure of, all such Confidential Information. The parties hereto stipulate that all Confidential Information has been acquired by the Purchaser at great expense and effort and is and will be important and material and does and will contribute significantly to the successful conduct of the Purchaser’s business and its goodwill. Information shall not be considered confidential to the extent, but only to the extent, that such information is: (a) disclosed to the receiving party free of any restriction at the time it is disclosed to the other party; (b) subsequently learned from an independent source free of any restriction and without breach of this Agreement; (c) becomes publicly available through no wrongful act of either party; (d) independently developed by one party without reference to the Confidential Information of any other party or (e) required to be disclosed pursuant to a requirement of a governmental agency or law. The parties provide each other with timely written prior notice of any such requirements.

3) **Remedies.** The parties agree each Key Stockholder’s relationship with the Assets is unique and special; that in the event of any Key Stockholder

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breach of this Agreement or any of its provisions, money damages shall be an inadequate remedy; that any breach by a Key Stockholder of the provisions of Paragraphs 1 and 2 would cause immediate and irreparable harm to the Purchaser. In the event of any breach of this Agreement by a Key Stockholder, in addition to any remedies the Purchaser may have at law, shall have the right to seek relief, including injunctive relief, against the Key Stockholder without the need to post a bond.

4) **Third Party Beneficiaries.** Each Key Stockholder acknowledges and agrees that the covenants contained in Paragraphs 1 and 2 hereof are expressly intended to benefit the Purchaser and all of its Affiliates, and that for purposes of such Paragraphs 1 and 2, the term “Purchaser” shall include all of the Purchaser’s Affiliates. The term “Affiliate” shall mean any entity that directly or indirectly through one or more intermediaries is controlled by or under common control with the Purchaser, and any joint venturer or partner of the Purchaser, and “control” means the power, director or otherwise, to cause the direction of management and policies, whether through ownership of securities, by contract or otherwise.

5) **Miscellaneous.**

- (a) No Key Stockholder may assign all or any portion of its rights or obligations under this Agreement, nor may any of them delegate their duties and obligations, under this Agreement, without the written consent of the Purchaser. The Purchaser may assign this Agreement and its rights (but not its obligations) hereunder. Any other purported assignment or delegation made without such written consent shall be null and void.
- (b) Except as otherwise provided herein, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer any benefit or right on any person other than the parties hereto and their respective successors and permitted assigns, any rights or remedies shall be enforceable only for the reason of this Agreement.
- (c) Each party at any time and from time to time, whether before or after the date hereof, agrees upon the request of the other party to execute, acknowledge, and deliver any further documents or instruments that may be necessary or desirable to carry out the terms of this Agreement, and to take any action reasonably requested by the other party, and to take any action to give full effect to the purpose of this Agreement.
- (d) All of the terms and provisions of this Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- (e) If any provision of this Agreement is held to be invalid or unenforceable, it shall be modified to conform with the law rather than rendered inoperative, in order to achieve the intent of the parties to this Agreement.

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