**Employment Agreement**

**Including Confidentiality Agreement and Limited Non-Compete**

This is an employment agreement between \_\_\_\_\_\_\_\_\_ (“we” or “us”) and the employee signing below (“you”). This is a legally binding agreement, so before signing you should read it carefully and discuss it with your own lawyer.

**1. At Will Employment**

Your employment will be “at will.” This means we can end your employment at any time, with or without cause, for any reason that isn’t against the law, or even for no reason.

Your starting salary will be $\_\_\_\_\_/year, subject to applicable tax withholding. You will also be eligible for bonuses we may decide to pay at our discretion. We may change your compensation with reasonable notice to you.

**2. Confidential Information from Other Employers or Companies**

In deciding to hire you, we have relied on your assurance that you are not a party to any agreement containing non-competition, non-solicitation, or other restrictions that could potentially prohibit or restrict your work for us, and that you will not use or disclose to us any confidential information or trade secrets of any other employer or business.

3**. Your Obligations as Our Employee**

Your obligations while working for us include but are not limited to the following:

While you are employed by us, you will work for us full time, use your best efforts to make our company successful, and only work outside of your job for us if the work is part time and not in our industry.

You understand that as our employee you act as our agent and have certain resulting legal duties, including a duty not to take actions harmful to us.

You agree that while working for us, you will not to take any action inconsistent with your status as our employee and agent that hurts the company, including:

(a) working for or in cooperation with some other business, whether owned by you or not, that is in the same industry as us;

(b) causing or encouraging any customer, client, or prospect to do business with one of our competitors;

(c) receiving any fee, commission, or other compensation for business diverted to another company; and/or

(d) using our resources to plan for or to start some other business in our industry.

You agree to follow our employment policies and procedures, which we may revise from time to time, including any employee manual or similar document that we adopt or revise.

While employed by us, you will not make plans or preparations to take our customers or otherwise compete with us and will inform us if you learn that any employee or independent contractor of ours is doing so.

You understand that if you fail to comply with the obligations in this section, it will be a breach of contract for which we can sue to recover damages and/or an injunction. You also agree that we can recover reasonable and necessary attorney’s fees and expert witness fees for a breach of this section.

**4. Our Confidential Information and Trade Secrets**

**[Option 1 for new employee:]** Because the nature of your job will require it, we will give you confidential information concerning our business while you work for us. **[Option 2 for promotion:]** Because the nature of your new position will require it, we will continue to give you confidential information concerning our business and will also give you new types of confidential information that you did not have access to in your previous position.

Confidential information includes any company information that is not known or readily available to the public. Our confidential information includes the following:

(a) our customer lists,

(b) information about our customers that is not readily available to competitors, such as customer needs and preferences,

(c) our prices and how we set our prices,

(d) our profit margins on particular products or services,

(e) our non-public financial information, and

(f) our confidential business plans.

Our confidential information may also be legally protected as trade secrets.

You acknowledge that it would be unfair for any of our competitors to use our confidential information to compete with us. You agree to keep our confidential information confidential. This includes your agreement that you will not:

(a) disclose our confidential information to any competitor or anyone else outside the company,

(b) email our confidential information to your personal email account,

(c) email our confidential information to any person outside our company, or

(d) transfer our confidential information to a cloud-based folder, USB drive, portable hard drive, or other computer device, or

(e) use our confidential information in any way in competition with us.

You may, of course, use our confidential information while employed by us for our legitimate business purposes in the course of performing your job duties for us. You may also disclose our confidential information when required to do so by law, such as when required by a subpoena or court order. You will give us reasonable advance written notice of any subpoena or discovery request you receive that asks for our confidential information.

You will also comply with all document retention and security policies and procedures, including cyber-security policies, that we may adopt from time to time, including any such policies in an employee handbook or similar document.

If your employment with us ends, you will not take any documents from us that contain our confidential information, and you will promptly return to us all documents in your possession that contain our confidential information. “Documents” includes hard copies as well as emails, computer files, and other electronic records.

As to any documents containing our confidential information that are stored on your personal devices or accounts after the end of your employment, you will comply with the obligation to return such documents by one of the following means, at our option:

1. providing copies of the documents to us and confirming in writing that you have deleted all copies on your personal devices and accounts,

(b) confirming in writing that you have deleted all copies on your personal devices and accounts, or

(c) some other reasonable means we select.

This agreement does not prevent you from using your general knowledge, skill, and experience after leaving us, but you acknowledge that the confidential information you will learn from us is not just general knowledge, skill, and experience.

**5. Specialized Training**

We also agree to provide you with specialized training. This training will include:

[insert specific description of specialized training]

You recognize that we are investing our time and money to provide you this training, and that it would be unfair for any of our competitors to take advantage of this investment at our expense.

**6. Limited Non-Compete Agreement**

To protect our business goodwill, our confidential information, and our investment in your specialized training, we require this reasonably limited non-compete.

**a. Scope of Non-Compete**

You agree not to compete with us or to help anyone compete with us, directly or indirectly, with these reasonable limitations: **[Note: replace “customer” with “client” below if appropriate]**

(1) Reasonable Time Period. This non-compete is limited to a reasonable time period beginning now and ending **one year** after your employment ends.

(2) Reasonable Geographic Area. This non-compete is limited to work you do where you and/or the customer you are doing business with are in the following geographic area: \_\_\_\_\_\_\_\_. This area generally coincides with the area we anticipate you will be responsible for while employed by us.

(3) Reasonable Scope of Activity. The term “compete” as used in this section 6 is limited to the following reasonable scope of activity:

(A) **[Option 1, for sales-level employee:]** doing business with any customer of ours that you had personal contact with or learned confidential information about during your last year of employment with us, **[Option 2, for high-level executive:]** doing business with anyone who was a customer or prospect of ours during your last year of employment with us (because you will be a high-level executive with responsibility for the whole company and access to information regarding all of our business, customers, and prospects),

(B) urging or causing any customer of ours to stop being a customer of ours or to become a customer of a competitor, and/or

(C) urging or causing any person employed by us to leave us and to join a competitor.

**b. Agreements Concerning This Non-Compete and Our Remedies**

You agree that the non-compete agreement in this section 6 is an “independent covenant,” which means that our failure to comply with another part of this agreement does not excuse you from complying with this section.

You agree that the limitations above are reasonable, and that narrower limitations would not be adequate to protect our goodwill, confidential information, and legitimate business interests. But if a court rules that the scope of this non-compete is unreasonable in any way, the court will reform, i.e. rewrite, the non-compete to the minimal extent necessary to make it reasonable. Each provision of this agreement can be separated to the extent necessary for a court to do that.

You agree that if you contend in court that this limited non-compete is unenforceable in any way, you waive any claim for attorney’s fees concerning that claim.

You agree that if you fail to comply with this section and we sue you for breach of contract and prevail, that in addition to the remedies provided for in Section 15.51 of the Texas Business and Commerce Code, we will also be entitled to recover reasonable and necessary attorney’s fees and expert witness fees in connection with that claim. You agree to waive the provisions of Section 15.51 to the extent that they would not allow our recovery of such fees.

**c. You Agree We Can Get an Injunction to Enforce This Non-Compete**

You agree that:

1. the damage caused by a violation of this section 6 would be inherently difficult to quantify by dollar amount,
2. a violation of this section 6 will cause us irreparable harm that cannot be adequately compensated by a judgment for damages,

(3) we can obtain a temporary restraining order or injunction from a court to enforce this agreement,

(4) we will not be required to post a bond for a temporary restraining order or injunction to enforce this agreement,

(5) our right to obtain a temporary restraining order or injunction does not prevent us from obtaining any other form of relief, such as damages, and

(6) if we seek a temporary or preliminary injunction to enforce this non-compete, you will consent to expedited discovery, including taking your deposition prior to the hearing.

**d. Your Good-Faith Compliance with This Non-Compete**

This section 6 will be interpreted in a common-sense way to accomplish its purpose of protecting our goodwill and confidential information. You will comply with this section 6 in good faith and will not use any unfair arrangement to undermine the purpose of this section.

**7. Intellectual Property**

The purpose of this section is to give us ownership of all “Intellectual Property,” which means any intellectual property protected by copyright, trademark, trade dress, patent, trade secret, or other law that you create, develop, or help to create or develop while you are employed by us.

To accomplish this purpose:

(a) you will promptly disclose to us any Intellectual Property you become aware of,

(b) any work you author in the course and scope of your employment belongs to us and will be considered a “work for hire” to the full extent permitted under federal copyright law, and if any such work is not a work for hire despite our intent, you hereby assign any rights you have in such works to us,

(d) all rights relating to patents or trade secrets belong to us, regardless of where the idea is developed, and you hereby assign any such rights to us,

(e) you agree to reasonably cooperate to sign or provide any documentation we may need concerning any Intellectual Property, and

(f) you hereby grant an irrevocable and durable power of attorney to us to execute all documents we may need to accomplish the purpose of this section, and you acknowledge this power is coupled with an interest.

**8. Defend Trade Secrets Act Notice**

We give you notice of the following to comply with the federal Defend Trade Secrets Act:

You cannot be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that:

1. is made

(i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and

(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

(b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

A person who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer’s trade secrets to the attorney and use the trade secret information in the court proceeding if the person:

(a) files any document containing the trade secret under seal; and

(b) does not disclose the trade secret, except pursuant to court order.

**9. Additional Legal Provisions**

This document contains all the terms of your agreement with us regarding your employment. You are not relying on any promises or representations other than what is contained in this document.

This agreement cannot be changed or waived by oral agreement; it can only be changed or waived in writing with our signature. Any waiver of this agreement in one circumstance will not apply to any other circumstance. Our refraining from exercising a right under this agreement will not be considered a waiver.

This agreement and any dispute related to this agreement or your employment with us will be governed by Texas law (excluding Texas choice-of-law rules).

You agree that any rule requiring an agreement to be interpreted against the person who drafted the agreement will not apply to this agreement.

If a court finds any part of this agreement invalid or unenforceable, that part will be reformed to the minimal extent necessary to make it valid and enforceable, and the rest of this agreement is severable and remains binding and enforceable.

If there is a lawsuit between us that in any way relates to your employment or this agreement, the parties to this agreement **WAIVE THE RIGHT TO A JURY TRIAL** and agree that the state or federal courts (as applicable) in \_\_\_\_\_\_\_\_\_\_ County, Texas will have exclusive jurisdiction. You agree that your waiver of the right to a jury trial is voluntary, knowing, and intelligent, with full awareness of the legal consequences.

Your obligation to comply with this agreement, including the confidentiality, non-solicitation, and non-compete provisions, continues to apply after your employment with us ends.

This agreement binds and benefits the parties and their heirs, legal representatives, successors, and assigns. However, you may not assign this agreement without our written consent.

The parties may sign this agreement in one or more counterparts, and the compiled signed counterparts of all parties will have the effect of originals. The parties may sign this agreement electronically and transmit their signature pages electronically.

YOU REPRESENT THAT YOU UNDERSTAND THIS AGREEMENT AND ARE SIGNING IT VOLUNTARILY WITHOUT COERCION OR DURESS.

**10. Open Door Policy**

We look forward to your employment with us and want you to be successful here. We have an “open door” policy, meaning that if you ever have any concern about your employment or the work environment here, you should discuss your concern directly with a member of management. Welcome to our team.

**Agreed:**

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

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

COMPANY NAME