

# MASSACHUSETTS NON-COMPETE AGREEMENT

1. **THE PARTIES.** This Non-Compete Agreement (the "Agreement") made this \_\_\_\_\_ (mm/dd/yyyy), is made between:

**Employer or Owner:** \_\_\_\_\_ ("Employer"), with a mailing address of \_\_\_\_\_, on behalf of \_\_\_\_\_, shall have Ownership of this Agreement under which:

**Employee:** \_\_\_\_\_ ("Employee"), with a mailing address of \_\_\_\_\_, shall be bound.

Hereinafter the Employer and the Employee shall be known separately as a "Party" and together as the "Parties."

2. **TERM.** The Employee shall be bound to this Agreement for the following term, which may not be longer than twelve (12) months after the termination of employment:

Start Period: (check one)

- ☐ - Date of \_\_\_\_\_ (mm/dd/yyyy).
- ☐ - Beginning immediately after: \_\_\_\_\_.
- ☐ - Other: \_\_\_\_\_.

End Period: (check one)

- ☐ - Date of \_\_\_\_\_ (mm/dd/yyyy).
- ☐ - \_\_\_\_\_ months after: \_\_\_\_\_.
- ☐ - Other: \_\_\_\_\_.

The Start Period and the End Period shall together be known as the "Term."

If the Employee breaches their fiduciary duty to the Employer or unlawfully takes physical or digital property belonging to the Employer, the Term may be extended by one (1) year, but no more than two (2) years total from the termination of employment ("Extension Period").

3. **GEOGRAPHICAL LIMITS.** The Employee shall be bound to this Agreement with: (check one)

- ☐ - NO Geographical Limits.
- ☐ - Geographical Limits. The Employee shall be bound to this Agreement ONLY in the following area(s): \_\_\_\_\_.

Hereinafter known as the "Geographical Limits."

4. **CONSIDERATION.** The Parties agree that the execution of this Agreement is a condition of:

- ☐ - The employment of the Employee.
- ☐ - Other: \_\_\_\_\_.

5. **GARDEN LEAVE CLAUSE.** The parties have agreed that this Agreement shall be supported by the following benefits provided to the Employee during the Term: (check one)

- ☐ - Garden Leave. For the duration of the Term, which may not be more than twelve (12) months from the termination of employment, Employer shall pay Employee the equivalent of at least fifty percent (50%) of their highest base annual salary from the past two (2) years of employment, which is equal to \_\_\_\_\_ (\$ \_\_\_\_\_). These payments will be delivered on a pro-rata basis over \_\_\_\_\_ months, which is equal to \_\_\_\_\_ (\$ \_\_\_\_\_) per month. The Employer is prohibited from discontinuing or otherwise failing or refusing to make these payments until the end of the Term unless the Employee breaches this Agreement. If an Extension Period is implemented in accordance with Section 2 of this Agreement, the Employer is not required to make payments to the Employee during this period.
- ☐ - Other Benefits. \_\_\_\_\_.

6. **NON-COMPETE.** Because of the Employer's legitimate business interests as described in this Agreement and the good and valuable consideration offered to the Employee, during the Term and within the Geographical Limits, the Employee agrees not to engage in the following activity:

7. **NON-SOLICITATION OF EMPLOYEES.** The Employee understands and acknowledges that the Employer has expended and continues to expend significant time and expense in recruiting and training its employees and that the loss of employees would cause significant and irreparable harm to the Employer. The Employee agrees and covenants: (check one)

- ☐ - NO Restrictions on Employees. The Employee shall not be prohibited from directly or indirectly soliciting, hiring, or recruiting, or attempting to solicit, hire, or recruit, for their own benefit or the benefit of any other person during the Term, any employee of the Employer.
- ☐ - Restrictions on SPECIFIC Employees. The Employee shall be prohibited from directly or indirectly soliciting, hiring, or recruiting, or attempting to solicit, hire, or recruit, for their own benefit or the benefit of any other person during the Term, the employee(s) of the Employer described as follows:  
\_\_\_\_\_.

- ☐ - Restrictions on ALL Employees. The Employee shall be prohibited from directly or indirectly soliciting, hiring, or recruiting, or attempting to solicit, hire, or recruit, for their own benefit or the benefit of any other person during the Term, any employee or contractor of the Employer and their business.

**8. NON-SOLICITATION OF CUSTOMERS.** The Employee understands and acknowledges that the Employer has expended and continues to expend significant time and expense in creating and maintaining its business relationships with clients and customers and that the loss of these relationships would cause significant and irreparable harm to the Employer. The Employee agrees and covenants: (check one)

- ☐ - NO Restrictions on Customers. The Employee shall not be prohibited from directly or indirectly soliciting or contacting, or attempting to solicit or contact, for their own benefit or the benefit of any other person during the Term, any current or former client of the Employer with whom the Employee interacted before their termination.
- ☐ - Restrictions on SPECIFIC Customers. The Employee shall be prohibited from directly or indirectly soliciting or contacting, or attempting to solicit or contact, for their own benefit or the benefit of any other person during the Term, the following current or former customer(s) of the Employer with whom the Employee interacted before their termination:
- \_\_\_\_\_.
- ☐ - Restrictions on ALL Customers. The Employee shall be prohibited from directly or indirectly soliciting or contacting, or attempting to solicit or contact, for their own benefit or the benefit of any other person during the Term, any current or former customer of the Employer with whom the Employee interacted before their termination.

**9. PURCHASE OF RELEASE.** The Parties agree that the Employee: (check one)

- ☐ - Cannot Purchase a Release. The Employee has no option, during the Term or any period thereafter, to purchase the rights of this Agreement from the Employer for the purposes of waiving any liability or releasing themselves under this Agreement.
- ☐ - CAN Purchase a Release. The Employee has the option, during the Term or any period thereafter, to purchase and waive all liability under this Agreement for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) as payment to the Employer.

**10. CONFIDENTIAL INFORMATION.** The Parties agree that the Employee shall be prohibited from releasing confidential information. The Employee shall be prohibited from expressing or sharing any and all technical and non-technical information provided by the Employer, including but not limited to: data or other proprietary information relating to products, inventions, plans, methods, processes, know-how, developmental or experimental work, computer programs, databases, authorship, customer lists (including names, buying habits or practices of any clients), names of vendors or suppliers, marketing methods, reports, analyses, business plans, financial information, statistical information, or any other subject matter pertaining to any business of the Employer or any of its respective clients, consultants, or licensees that is disclosed to the Employee under the terms of this Agreement.

The Employee understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified or treated as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

- a) Limitations. Confidential Information shall not include information which:
  - i.) Has become generally known to the public through no wrongful act by the Employee;
  - ii.) Has been rightfully received by Employee from a third party without restriction on disclosure and without breach of an obligation of confidentiality running either directly or indirectly to the Employee;
  - iii.) Has been approved for release to the general public by written authorization of the Employer;
  - iv.) Has been disclosed pursuant to the requirement of a governmental agency or a court of law without similar restrictions or other protections against public disclosure; or
  - v.) Has been independently developed by the Employee without use, directly or indirectly, of the Employer's Confidential Information.
- b) Employees and Contractors. The Employee agrees to disclose Confidential Information to any agents, affiliates, directors, officers, or any other Employees, collectively known as the "Employees," solely on a need-to-know basis and represents that such Employees have signed appropriate non-disclosure agreements or have taken appropriate measures imposing on such Employees a duty to third parties:
  - i.) To hold any third-party proprietary information received by such Employees in the strictest confidence;
  - ii.) Not to disclose such third-party Confidential Information to any other third party; and
  - iii.) Not to use such Confidential Information for the benefit of anyone other than to whom it belongs, without the prior express written authorization of the Employer.
- c) Best Practices. The Employee acknowledges they may or may not have access to the Employer's Confidential Information and agrees that it shall not directly or indirectly divulge, disclose, or communicate any of the Confidential Information to any third party, except as may be required during any formal business association or dealings on behalf of the Employer for any event, with the prior written approval of the Employer. The Employee acknowledges that no license of the Confidential Information, by implication or otherwise, is granted to the Employee by reason of this Agreement. Additionally, the Employee acknowledges that it may only use the Confidential Information in connection with its business dealings with the Employer and for no other purpose without the prior written consent of the Employer.
- d) Records. The Employee further agrees that all Confidential Information, including, without limitation, any documents, files, reports, notebooks, samples, lists, correspondences, software, or other written or graphic records provided by the Employer or produced using the Employer's Confidential Information, will be held strictly confidential and returned upon request to the Employer.

- e) Return of Materials. Upon termination or expiration of this Agreement, or upon written request of the Employer, the Employee shall promptly return to the Employer all physical and digital materials representing the Employer's Confidential Information and all copies thereof. The Employer shall notify the Employee immediately upon discovery of any loss or unauthorized disclosure of the Confidential Information.

**11. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Massachusetts.

**12. SEVERABILITY.** If any provisions of this Agreement or its applications are held to be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of any other provisions and applications herein shall not in any way be affected or impaired.

**13. REMEDIES.** Should the Employee breach any of the provisions of this Agreement, the Employee agrees to reimburse the Employer for any loss or expenses incurred by the Employer as a result of any prohibited use or activity under this Agreement, including, without limitation, court costs and reasonable attorney's fees incurred by the Employer in enforcing the provisions hereof. The Employee further agrees that any unauthorized use or activity shall result in irreparable damage to the Employer and that the Employer shall be entitled to an award by any court of competent jurisdiction of a temporary restraining order and/or preliminary injunction against such unauthorized use or activity by the Employee without the need to post a bond. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of this Agreement but shall be in addition to all other remedies available at law or equity.

**14. ADDITIONAL TERMS (OPTIONAL).**

**15. RIGHT TO LEGAL COUNSEL.** The Employee has the right to consult with an attorney prior to signing this Agreement.

**16. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the Parties and may only be modified by the signature of both Parties hereto.

**Employee Signature:** \_\_\_\_\_

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

Print Name: \_\_\_\_\_

**Employer Signature:** \_\_\_\_\_

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

Print Name: \_\_\_\_\_