

# Non-Circumvention Agreement

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## PARTIES

This Non-Circumvention Agreement ("Agreement") hereinafter is made and entered into

\_\_\_\_\_ is by and between;

Dislosing Party: \_\_\_\_\_

\_\_\_\_\_

Recipient: \_\_\_\_\_

\_\_\_\_\_

The Disclosing Party and the Recipient are each referred to herein as a "Party" and collectively as "Parties".

WHEREAS, The Disclosing Party has a business opportunity to share with the Recipient and any and all other opportunities relating to or derived from such opportunity, and

WHEREAS, all parties have protective and actual relationships with clients and others which hold to be essential to the conduct and profitability of its enterprise, and

WHEREAS, all parties recognize that mutual benefit may be derived when one party is introduced to or becomes acquainted with a third party identified to it by the other party, and

WHEREAS, all parties recognize that any such identification or location or introduction is a trade secret and is the exclusive and sole property of the Disclosing Party,

WHEREAS, all parties desire to be bound legally as to the requirement for maintaining the privacy and security of the aforementioned relationships; and

WHEREAS, the Disclosing Party and Recipient have agreed to engage in a potential business opportunity which involves the following:

Now, therefore, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, it is mutually agreed as follows:

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## **NON-CIRCUMVENTION**

- **Non-Circumvention:** The respective Parties involved in this Agreement, agree not to circumvent each other. The Parties agree that they will not make any contact, directly or indirectly, written, oral, electronic or by any medium of contact whatsoever, with any sources without the express written consent of the other introducing Party. Each of the listed Parties hereto, accepts and understands that any overt or covert action of circumvention, or unauthorized disclosure shall constitute a breach of trust and shall be considered a breach of the terms and conditions of this agreement. Such action shall be subject to judicial action, and recompense. If either Party shall bring an action to recover payment or other compensation pursuant to the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and expenses as may be awarded, including legal fees and costs, and recovery for liquidated damages and punitive damages as may be awarded by and through any legal process or jurisdiction.
- **Trade Secrets:** Much of the business information communicated to the Disclosing Party by the Recipient and by the Recipient to the Disclosing Party may be trade secrets to such party. Each of the Recipient and the Disclosing Party agrees to preserve the secrecy of said information. All information which becomes known through the course of business conducted by and between the Disclosing Party and the Recipient shall be deemed trade secrets. Said trade secrets include, but are not limited to, prepared information packages; financials; related documents; names of potential acquisitions, intermediaries, contacts and deal sources; deal structures and financial considerations. Each of the Recipient and the Disclosing Party agrees to preserve and protect the secrecy and confidentiality of such information and shall disclose the same to no third party without the express written permission from the other. This prohibition shall be enforced from the date of this agreement and for a period of \_\_\_\_\_ years thereafter.
- **Applicability of the Agreement:** the Disclosing Party and the Recipient both agree that the provisions of this Agreement extend to the employees and officers of their respective companies/businesses. Said principle further agrees to provide the requisite internal security of the subject data within their respective organizations.

## **TERM AND CANCELLATION**

The Effective Term of this Agreement shall begin on \_\_\_\_\_ and end on \_\_\_\_\_ ("Term"). The obligations of non-circumvention outlined in this Agreement shall continue to survive the Term.

Either Party may terminate this Agreement for any reason at any time by providing a 30 days prior notice to the other Party. Termination shall not affect confidentiality obligations vis-a-vis any confidential information or business contacts obtained prior to the date of termination.

## **CONFIDENTIALITY**

### ▪ **Confidential Information**

The Disclosing Party and the Recipient will keep confidential the names and other personal information of any contracts introduced or disclosed to the other party, and that their corporations, partnerships, divisions, associates, firm, employees, contractors, agents, joint ventures, assigns, consultants, or designed will not contact, participate or negotiate in any transactions with any of the contacts without first signing a written agreement with the party who provided such contact unless that party gives prior written consent.

### ▪ **Unauthorized Disclosure of Confidential Information - Injunction**

If it appears that the Recipient has disclosed (or has threatened to disclose) confidential information in violation of this Agreement, the Disclosing Party shall be entitled to obtain an injunction to restrain the Recipient from disclosing the confidential information in whole or in part. The Disclosing Party shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

### ▪ **Return of Confidential Information**

Upon the written request of the Disclosing Party, the Recipient shall return all written materials containing confidential information. the Recipient shall also deliver to the Disclosing Party written statements signed by the Recipient certifying that all materials have been returned within \_\_\_\_\_ days of receipt of the request.

## **MISCELLANEOUS**

### ▪ **Subpoenas or Court Orders**

In the case of either Party receiving a subpoena or other court order mandating that they disclose the Trade Secrets of Confidential Information of the other party, they are obligated to inform the other Party immediately of both the obligation to disclose and the specific information demanded.

### ▪ **Relationship of the Parties**

Neither party has an obligation under this Agreement to purchase any service or item from the other party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

### ▪ **No Warranty**

The Recipient acknowledges and agrees that the confidential information is provided on an "AS IS" basis. THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE DISCLOSING PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. The Disclosing Party does not represent or warrant that any product or business plans disclosed to the Recipient will be marketed or carried out as disclosed, or at all. Any actions taken by the Recipient in response to the disclosure of the confidential information shall be solely at the risk of the Recipient.

### ▪ **Attorney's Fees**

In any legal action between the Parties concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

### ▪ **Assignment and Delegation**

The Disclosing Party and the Recipient shall each defend, indemnify and hold the other harmless (including all affiliates, successors, assigns, employees, agents, officers etc.) against all losses, damages, deficiencies, liabilities, awards, penalties, or expenses of any kind, including attorneys' fees and related legal fees, incurred by themselves in connection with any claims, suits, actions,

▪ **Severability**

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

▪ **Entire Agreement**

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

▪ **Execution**

The Disclosing Party and the Recipient each represent and warrant to the other that each person executing this Agreement on behalf of each Party is duly authorized to execute and deliver this Agreement on behalf of that Party.

▪ **Governing Law**

This Agreement shall be construed and governed in accordance with the laws of the state of \_\_\_\_\_.

**The Disclosing Party Representative  
Signature**

**The Recipient Representative  
Signature**



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