|  |
| --- |
| IMPORTANT NOTICE (*Delete This Box Before Signing*)  **General Disclaimer**. This document should not be construed as legal, financial, tax, or investment advice for any particular facts or circumstances. This document is designed to be a starting point only and should be tailored to meet your specific requirements. Consult an attorney before entering into any binding legal obligations in connection with this document. The use of this document is further subject to our Terms of Use available here: <https://www.degoverned.com/terms>.  **Specific Disclaimer**. Employee non-compete agreements are restricted or even prohibited in many jurisdictions. You should carefully consider the possible legal challenges to enforcement of this non-compete agreement and engage a competent local legal counsel. |

**EMPLOYEE NON-COMPETE AGREEMENT**

The parties whose details are provided below (“**Employer**” and “**Employee**”, respectively, each “**Party**” and together the “**Parties**”) have entered into this Employee Non-Compete Agreement (“**Agreement**”) on the date of the later signature (“**Effective Date**”).

Employer enters into this Agreement on behalf of its Employer Group (as defined below), which should be deemed a third-party beneficiary under this Agreement.

| **KEY TERMS** | |
| --- | --- |
| **Business** | [INSERT] |
| **Restricted Period** | [INSERT] months |
| **Restricted Territory** | [INSERT] |
| **Governing Law** | The law of the State of New York |

Other capitalized terms appearing in this document are defined below.

[*Signature Page Follows*]

**SIGNATURES OF THE PARTIES**

|  |  |
| --- | --- |
| **EMPLOYER** | |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Entity Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Email: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Address: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |  |
| --- | --- |
| **EMPLOYEE** | |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Email: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Address: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

\* \* \*

# DEFINITIONS

## “**Confidential Information**” includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic, or any other form or medium, relating directly or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, technologies, databases, compilations, device configurations, embedded data, metadata, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, manufacturing information, factory lists, distributor lists, and buyer lists of the Employer Group or its businesses or any existing or prospective customer, supplier, investor, or other associated third party, or of any other person or entity that has entrusted information to the Employer in confidence. 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. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to the Employee, provided that the disclosure is through no direct or indirect fault of the Employee or person(s) acting on the Employee’s behalf.

## “**Customer Information**” includes, but is not limited to, names, phone numbers, addresses, email addresses, order history, order preferences, chain of command, pricing information, and other information identifying facts and circumstances specific to the customer and relevant to sales or services.

## “**Employer Group**” means the Employer’s current, past, and future parents, subsidiaries, and other corporate affiliates and its or their successors or assigns.

## “**Prohibited Activity**” means an activity in which Employee contributes the Employee’s knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, advisor, consultant, contractor, agent, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar business as the Employer Group, including those engaged in the Business within the Restricted Territory. Prohibited Activity also includes activity that may require or inevitably require disclosure of trade secrets, proprietary information, or Confidential Information.

## “**Restricted Period**” means the term of Employee’s employment and the number of months thereafter as defined in the Key Terms, to run consecutively, beginning on the last day of the Employee’s employment with the Employer Group, whether terminated for any reason or no reason.

## Certain other terms are defined in the Key Terms.

# ConFIDENTIAL INFORMATION

## **Employer Group Creation and Use of Confidential Information**. Employee understands and acknowledges that the Employer Group has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer base, generating customer and potential customer lists, training its employees, and improving its offerings in the field of the Business. Employee understands and acknowledges that as a result of these efforts, the Employer Group has created, and continues to use and create Confidential Information. This Confidential Information provides the Employer Group with a competitive advantage over others in the marketplace.

## **Disclosure and Use Restrictions**. Employee agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Employer Group) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Employer Group and, in any event, not to anyone outside of the direct employ of the Employer Group except as required in the performance of the Employee’s authorized employment duties to the Employer Group; and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Employer Group, except as required in the performance of the Employee’s authorized employment duties to the Employer Group. Employee understands and acknowledges that the Employee’s obligations under this Agreement regarding any particular Confidential Information begins immediately when the Employee first has access to the Confidential Information (whether before or after beginning employment with the Employer Group) and shall continue during and after the Employee’s employment by the Employer Group until the time that the Confidential Information has become public knowledge other than as a result of the Employee’s breach of this Agreement.

## **Permitted Disclosure**. Nothing in this Agreement shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Employee shall promptly provide written notice of any such order to an authorized officer of the Employer Group. Nothing in this Agreement prohibits or restricts the Employee (or Employee’s attorney) from initiating communications directly with, responding to an inquiry from, or providing testimony before the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), any other self-regulatory organization, or any other federal or state regulatory authority regarding this Agreement or its underlying facts or circumstances or a possible securities law violation.

# RESTRICTIVE COVENANTS

## **Acknowledgment**. Employee understands that the nature of Employee’s position gives Employee access to and knowledge of Confidential Information and places Employee in a position of trust and confidence with the Employer Group. The Employee understands and acknowledges that the intellectual or artistic services Employee provides to the Employer Group are unique, special, or extraordinary. Employee further understands and acknowledges that the Employer Group’s ability to reserve these for the exclusive knowledge and use of the Employer Group is of great competitive importance and commercial value to the Employer Group, and that improper use or disclosure by Employee is likely to result in unfair or unlawful competitive activity.

## **Non-Competition**. Because of Employer Group’s legitimate business interest as described in this Agreement and the good and valuable consideration offered to the Employee, during the Restricted Period, Employee agrees and covenants not to engage in the Prohibited Activity within the Restricted Territory. Nothing herein shall prohibit Employee from purchasing or owning less than 5% of the publicly traded securities of any corporation, provided that such ownership represents a passive investment and that Employee is not a controlling person of, or a member of a group that controls, such corporation. This Section does not, in any way, restrict or impede Employee from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency. Employee shall promptly provide written notice of any such order to an authorized officer of the Employer Group.

## **Non-Solicitation of Employees**. During the Restricted Period, Employee agrees and covenants not to directly or indirectly solicit, hire, recruit, or attempt to solicit, hire, or recruit, any employee of the Employer Group or any employee who has been employed by the Employer Group in the 6 months preceding the last day of Employee’s employment (collectively, “**Covered Employee**”), or induce the termination of employment of any Covered Employee. This Section does not restrict or impede, in any way, and shall not be interpreted or understood as restricting or impeding, Employee from discussing the terms and conditions of Employee’s employment with union representatives.

## **Non-Solicitation of Customers**. Employee understands and acknowledges that because of the Employee’s experience with and relationship to the Employer Group, Employee has had or will continue to have access to and has learned or will continue to learn about much or all of the Employer Group’s Customer Information, including, but not limited to, Confidential Information. Employee understands and acknowledges that: (i) the Employer Group’s relationships with its customers is of great competitive value; (ii) the Employer Group has invested and continues to invest substantial resources in developing and preserving its customer relationships and goodwill; and (iii) the loss of any such customer relationship or goodwill will cause significant and irreparable harm to the Employer Group. During the Restricted Perion, Employee agrees and covenants not to directly or indirectly solicit, contact, or attempt to solicit or contact, using any other form of oral, written, or electronic communication, including, but not limited to, email, regular mail, express mail, telephone, fax, or instant message, or social media, including but not limited to Facebook, LinkedIn, Instagram or Twitter, or any other social media platform, whether or not in existence at the time of entering into this agreement, or meet with the Employer Group’s current, former, or prospective customers for purposes of offering or accepting goods or services similar to or competitive with those offered by the Employer Group. However, it will not be deemed a violation of this Agreement if the Employee merely updates the Employee’s LinkedIn profile or connects with a current, former, or prospective customer on Facebook or LinkedIn, without engaging in any other substantive communication, by social media or otherwise, that is prohibited by this section.

## **Non-Disparagement**. Employee agrees and covenants that Employee will not at any time make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Employer Group or its businesses, or any of its employees, officers, and existing and prospective customers, suppliers, investors, and other associated third parties. This Section does not, in any way, restrict or impede the Employee from exercising protected rights to the extent that such rights cannot be waived by agreement, including but not limited to the Employee’s rights to communicate with securities regulators/any other administrative or regulatory agency to report suspected unlawful conduct or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. The Employee shall promptly provide written notice of any such communication or order to an authorized officer of the Employer Group.

# Acknowledgment

## Employee acknowledges and agrees that: (i) the Employee’s services to be rendered to the Employer Group are of a special and unique character; (ii) that the Employee will obtain knowledge and skill relevant to the Employer Group’s industry, methods of doing business, and marketing strategies by virtue of the Employee’s employment; (iii) that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interests of the Employer Group; (iv) that the Employee will be reasonably able to earn a living without violating the terms of this Agreement; and (v) that the Employee has the right to consult with counsel before signing this Agreement.

## Employee further acknowledges that: (i) the amount of the Employee’s compensation reflects, in part, the Employee’s obligations and the Employer Group’s rights under this Agreement; (ii) that the Employee has no expectation of any additional compensation, royalties, or other payment of any kind not otherwise referenced herein in connection herewith; and (iii) that the Employee will not be subject to undue hardship by reason of the Employee’s full compliance with the terms and conditions of this Agreement or the Employer Group’s enforcement thereof; and (iv) that this Agreement is not a contract of employment and shall not be construed as a commitment by either Party to continue an employment relationship for any certain period of time.

## Nothing in this Agreement shall be construed to in any way terminate, supersede, undermine, or otherwise modify the “at-will” status of the employment relationship between the Employer Group and the Employee, pursuant to which either the Employer Group or the Employee may terminate the employment relationship at any time, with or without cause, and with or without notice.

# Remedies

## In the event of a breach or threatened breach by Employee of any of the provisions of this Agreement, Employee hereby consents and agrees that the Employer Group shall be entitled to, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

# Warranty

## Employee represents and warrants that Employee is not a party to any non-compete restrictive covenant or related contractual limitation that would interfere with or hinder the Employee’s ability to undertake the obligations and expectations of employment with the Employer Group.

# Miscellaneous

## **Successors and Assigns**

### **Assignment by the Employer Group**. To the extent permitted by state law, the Employer Group may assign this Agreement to any subsidiary or corporate affiliate in the Employer Group or otherwise, or to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Employer Group. This Agreement shall inure to the benefit of the Employer Group and permitted successors and assigns.

### **No Assignment by the Employee**. Employee may not assign this Agreement or any part hereof. Any purported assignment by Employee shall be null and void from the initial date of purported assignment.

## **Governing Law**. This Agreement is governed by and construed in accordance with the Governing Law as defined in the Key Terms, excluding its conflict-of-laws provisions.

## **Dispute Resolution**. Any dispute, claim or controversy arising out of or relating to this Warrant, including but not limited to a claim or controversy regarding the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined and resolved by arbitration in New York, New York before an arbitrator chosen by mutual consent of the Parties. The arbitration shall be administered by American Arbitration Association under its rules and procedures. This Section shall not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys’ fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys’ fees reasonably incurred by the prevailing party in connection with the arbitration.

## **Equitable Relief**. The Parties will have the right to seek injunctive or other equitable relief from a court of competent jurisdiction in the context of a bona fide emergency or prospective irreparable harm. The Parties may seek this relief even if an arbitration proceeding involving them is ongoing.

## **Notices**. If notices required by this Agreement to be in writing are provided using the Parties’ contact information on the signature page of this Agreement, such notices will be effective (i) immediately upon personal delivery or e-mail transmission; (ii) three days after being deposited with a nationally recognized carrier assuring overnight delivery; or (iii) five days after being sent by registered or certified mail, return receipt requested, postage prepaid.

## **Entire Agreement**. This Agreement contains the entire understanding of the Parties with respect to the matters contained in it and supersedes all previous agreements and undertakings of the parties relating to the same subject matter.

## **Survival**. Termination of this Agreement does not release any Party from liabilities or obligations set forth in the Agreement which the Parties have expressly agreed would survive termination or remain to be performed.

## **Severability**. If any of the provisions of this Agreement are or become illegal, unenforceable, or invalid, the remainder of this Agreement will remain in full force and effect without being impaired or invalidated.

## **Counterparts**. This Agreement may be executed in two or more counterparts, each of which will be deemed an original for the purposes of this Agreement.

\* \* \*