

## CONFIDENTIALITY AND NON-COMPETE AGREEMENT

THIS CONFIDENTIALITY AND NON-COMPETE AGREEMENT (this "Agreement"), effective this day of \_\_\_\_\_, 20\_\_\_, is by and between Corporation and ("Client"), a resident of the State of XXXXXX. Corporation and Client may be referred to collectively as "parties" or singularly as a "party."

Representatives of Corporation plan to meet with Client to review a possible business transaction, consideration of Client's employment, the providing of technical services, or for the acquisition of technologies (collectively, the "Transaction"). In connection with the discussions of Corporation and the Client concerning this Transaction, Corporation may disclose certain confidential information to Client. As a condition of disclosing confidential information, Client has agreed to treat such information as stated in this Agreement.

IN CONSIDERATION of the mutual covenants and conditions set forth herein, the parties hereto hereby agree as follows:

1. "Confidential Information" Defined. "Confidential Information" means all information disclosed by or on behalf of Corporation to or obtained by Client concerning Corporation's business or any product or service developed (or proposed to be developed) by Corporation, whether such information is disclosed before or after the date of this Agreement, and whether disclosed in writing, orally or by inspection. Confidential Information may include, but is not limited to, web site designs, financial data, business plans, employees or vendors, marketing plans, trade secrets, processes, methods, know-how, and techniques. Notwithstanding the foregoing, Confidential Information shall not include:
  - a) Information that at the time of disclosure is in the public domain or is otherwise available to Client other than on a confidential basis;
  - b) Information that, after disclosure, becomes a part of the public domain by publication or otherwise through no fault of Client or any third party under a confidential agreement with Corporation;
  - c) Information disclosed to Client by a third party not under an obligation of confidentiality to Corporation; or
  - d) Information that is or has been developed by Client, as evidenced by Client's records, independent of the disclosures by Corporation.
2. Covenant of Confidentiality. Client agrees to retain in confidence, and, if any, to require its directors, officers, employees, independent contractors, consultants, professional representatives and agents (collectively, its "Representatives") to retain in confidence, all Confidential Information disclosed to it by Corporation. Client further agrees that it will not use or disclose to any third party, nor permit the use or disclosure to any third party, of any Confidential Information obtained from or disclosed by Corporation, except that each party may make the Confidential Information available to those of its Representatives who agree to be bound to the terms of this Agreement and who reasonably need the information for performance of their duties to evaluate the feasibility of the Transaction, and, if the parties agree to undertake a Transaction, for the performance of their duties in connection with such Transaction. Client further agrees not to furnish or make available to any third party (other than to its respective Representatives) any report, document, equipment, material or tangible object of any kind utilizing, embodying or made by, in whole or in part, any Confidential Information received or developed hereunder. The parties may not use in any advertising, publicity, or other marketing activities any name, trade name, trademark of or reference to the other party unless authorized in writing by other party.

3. Covenant to Return Confidential Information. In the event the parties' discussions terminate, or upon the earlier request of Corporation, Client agrees to immediately return to Corporation all tangible and intangible documents and files obtained from Corporation containing Confidential Information and any materials created or derived from Confidential Information, by whomever or whenever made, without retaining any copies thereof. Once returned, Client agrees to delete all electronic copies of the documents and files from Client's systems.
4. Non-Analysis. Client agrees not to analyze or have analyzed any material or sample supplied to Client under this Agreement to determine its composition, qualities, characteristics, or specifications, unless authorized in writing by Corporation.
5. Amendments. This Agreement shall not be amended or supplemented other than by a written instrument referring specifically to this Agreement and signed by all parties, except as explicitly provided herein.
6. Advance Notice. In the event that Client considers any disclosed information designated by Corporation as Confidential Information to be excluded from the above obligations of secrecy and non-use and intends to use the Confidential Information other than as set out in this Agreement, Client shall give Corporation at least thirty (30) days advance written notice of the Confidential Information to be disclosed and the basis upon which such information is believed to be excluded from the obligations hereunder.
7. Tangible Objects. The receiving party shall not, without prior written permission of the disclosing party, furnish to or make available to any third party any report, document, equipment, material or tangible object of any kind utilizing, embodying or made by, in whole or in part, any Confidential Information received or developed hereunder, nor use such information for purposes other than internal evaluation so long as receiving party must maintain the Confidential Information as confidential. All Confidential Information in tangible form, disclosed or created hereunder, shall be sent to the disclosing party at its written request or within 30 days after termination, which ever shall first occur.
8. Non-Competition. The parties agree that Corporation regularly draws its customers from a widely dispersed area, both nationally and internationally. As the result of the exchange of Confidential Information under this Agreement, Client agrees for a period of two (2) years from the date of this Agreement, either internationally or domestically: (a) to refrain from competing with Corporation, (b) not to be engaged, directly or indirectly, as an agent, shareholder, consultant, partner, joint venture, or in any other manner in Client's own name or in conjunction with or on behalf of any person or entity, that otherwise competes with Corporation's business, and (c) to refrain from calling upon, soliciting, servicing, interfering with or diverting in any way any Corporation customer.. Client acknowledges and agrees that Client's experience and capabilities are such that it can obtain business in other lines and of a different nature than those prevented under this Agreement, and that the enforcement of this Agreement by injunction will not prevent it from earning a livelihood or impose upon it any undue hardship, economic or otherwise. Client's obligation not to compete with Corporation, pursuant to this provision, shall not extend to the following activities of Client:  
  

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9. Survival of Confidentiality and Non-Compete Obligations. The obligations of confidentiality, and non-competition contained herein shall survive the termination of such discussions and negotiations.
10. Remedies for Violation. (a.) Confidentiality. The parties acknowledge that all Confidential Information disclosed by Corporation to Client is significant, confidential and materially affects the effective and

successful conduct of the business and goodwill of Corporation. Client expressly understands and acknowledges that a violation of this Agreement by Client will cause irreparable injury to the disclosing party, which injury will not be fully compensable by money damages. The parties therefore agree that in the event Client breaches or threatens to breach the covenants concerning confidentiality contained herein, Corporation shall be entitled as a matter of right to a restraining order, an injunction, a decree or decrees of specific performance, or other adequate relief from a court of competent jurisdiction. (b) Non-Competition. The parties therefore agree that in the event Client breaches or threatens to breach the covenants concerning non-competition contained herein, Corporation shall be entitled as a matter of right to a restraining order, an injunction, a decree or decrees of specific performance, or other adequate relief from a court of competent jurisdiction. (c) The provisions of this paragraph shall survive the termination of the parties' discussions and negotiations pertaining to any Transaction. In the event of Client's breach, Client agrees to indemnify Corporation for all costs of enforcement, including reasonable court costs and attorney fees, incurred while enforcing Corporation's rights under the Agreement.

11. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future law effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance here from. If any court construes the restrictive covenants relating to confidentiality or non-competition, or any part thereof, to be unenforceable because of the duration of such provision, scope of the activities encompassed or the area covered thereby, such court shall have the power to reduce the duration, activities or area of such provision and, in its reduced form, such provision shall be enforced.

12. Jurisdiction. This Agreement has been made pursuant to and shall be governed by, construed and interpreted in accordance with laws of the Commonwealth of Virginia without regard to any choice of law principles that could result in the application of any other jurisdiction.

13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14. Right of Assignment. Corporation may assign all of its rights under this Agreement to another business entity for purposes of pursuing the same possible business transaction discussed between Corporation and Client. Such assignment may be made by written notice from Corporation to Client.

15. Delivery of Notices. All notices or other communications required under this Agreement shall be in writing and shall be deemed sufficiently given if (a) delivered to the addressee in person or (b) sent by private, reliable, overnight delivery service with next day delivery; or upon the expiration of three (3) business days after being sent by certified mail, postage prepaid to the other Party at the address listed below, or at such other address as may be from time to time furnished hereunder.

If to Corporation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Client:  
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date firstabove written.

By: \_\_\_\_\_ (SEAL)