

IMPORTANT DISCLAIMER:

THIS TEMPLATE IS INTENDED ONLY TO PROVIDE GENERAL INFORMATION AND IS NOT INTENDED TO BE LEGAL ADVICE ON WHICH YOU SHOULD RELY. APPLICABLE FEDERAL OR STATE LAWS MAY DEEM SOME OR ALL OF THIS TEMPLATE UNENFORCEABLE. ANY USE OF THIS DOCUMENT IS AT DONE AT YOUR OWN RISK. YOU ARE ENCOURAGED TO SEEK LEGAL ADVICE FROM AN ATTORNEY IN YOUR STATE COMPETENT TO ADVISE ON SUCH MATTERS PRIOR TO USING THIS TEMPLATE.

BY DOWNLOADING OR USING THIS TEMPLATE IN ANY MANNER, YOU AGREE AND CONSENT TO INDEMNIFY AND HOLD HARMLESS HUDSON LEGAL, LLC DBA SAGE BUSINESS COUNSEL FOR ANY HARM THAT MAY RESULT FROM YOUR USE OF THIS TEMPLATE.

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (**Agreement**) is effective on the date of the last signature of any party to this Agreement and is between _____ (**Company**), and _____ (**Employee**).

BACKGROUND

In connection with Employee's employment with Company, Employee acknowledges that the Employee will have access to Confidential Information and that Company:

- has invested and continues to invest significant time, expense, and specialized knowledge in developing this Confidential Information;
- enjoys a competitive advantage in the marketplace based on the Confidential Information; and

- would be irreparably harmed if competitors obtained the Confidential Information or if it became publicly available.

The parties therefore agree as follows.

SECTION 1 NONDISCLOSURE AGREEMENT

Without limiting the applicability of any other agreement to which Employee is subject, Employee may not directly or indirectly disclose or use any Confidential Information at any time during or after Employee's employment with Company. This restriction includes the use of Confidential Information for personal, commercial, or proprietary advantage or profit. Employee shall take all appropriate steps to safeguard the information and to protect it against disclosure, misuse, espionage, loss, and theft. Upon Company's request, Employee will promptly return or destroy all copies of the Confidential Information.

SECTION 2 CONFIDENTIAL INFORMATION DEFINED

For purposes of this Agreement, *Confidential Information* means trade secrets, proprietary information, and other information belonging to Company that are not generally known to the public, including information about business plans, financial statements, and other information provided under this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists, or other business documents that Company treats as confidential, in any format whatsoever including oral, written, and electronic.

SECTION 3 CERTAIN INFORMATION NOT CONSIDERED CONFIDENTIAL

The restrictions of Section 1 do not apply to Confidential Information that:

- is or becomes generally available to the public other than as a result of a disclosure by Employee in violation of this Agreement;
- is or becomes available to Employee on a nonconfidential basis before its disclosure to Employee in compliance with this Agreement; or
- is or has been independently developed or conceived by Employee without using Confidential Information.

SECTION 4 PERMITTED DISCLOSURES

Nothing in Section 1 prevents Employee from disclosing Confidential Information:

- upon the order of any court or administrative agency, upon the request or demand of any regulatory agency or authority having jurisdiction over Employee, or to the extent compelled by legal process or required or requested under subpoena, interrogatories, or other discovery requests;
- as necessary in connection with exercising any remedy under this Agreement; or
- in connection with Employee's employment with Company, to Employee's legal counsel and accountants who, in Employee's reasonable judgment, need to know the Confidential Information and agree to be bound by the provisions of Section 1 as if a party.

SECTION 5 MODIFICATION FOR LEGAL EVENTS

If any court of competent jurisdiction determines that any provision or any part of a provision set forth in this Agreement is unenforceable because of its duration or geographic scope, the court has the power to modify the unenforceable provision instead of severing it from this Agreement in its entirety.

SECTION 6 GENERAL MATTERS

(a) No Representation or Warranty as to Accuracy

Employee acknowledges that neither Company nor its representatives make any representation or warranty as to the accuracy or completeness of the Confidential Information. Any representations or warranties will be in a separate, definitive agreement between the parties.

(b) No Waiver

A party's failure to insist upon strict performance of any provision or obligation of this Agreement for any period of time is not a waiver of that party's right to demand strict compliance in the future. An express or implied consent to or waiver of any breach or default in the performance of any obligations under this Agreement is not a consent to or waiver of any other breach or default in the performance of the same or of any other obligation.

(c) Governing Law; Venue

This Agreement is governed, construed, and administered according to the laws of the State of _____, and any applicable federal law. No effect is given to any choice-of-law or conflict-of-law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of _____.

The parties agree that any suit, action, or proceeding—whether in contract, tort, or otherwise—arising out of this Agreement must be brought in a state or federal court located in the State of _____ and in the county of or nearest to Company's principal office if one of these courts has subject-matter jurisdiction over the suit, action, or proceeding. Any cause of action arising out of this Agreement is deemed to have arisen from a transaction of business in the State of _____.

(d) Equitable Remedies

Each party to this Agreement acknowledges that its breach or threatened breach of any of its obligations under this Agreement would give rise to irreparable harm to the other parties and monetary damages would not be an adequate remedy. Therefore, each party to this Agreement agrees that if any party breaches or threatens to breach any of its obligations, each of the other parties to this Agreement will be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other equitable relief available from a court of competent jurisdiction (without any requirement to post bond). These equitable remedies are in addition to all other rights and remedies that may be available in respect of the breach.

(e) Attorneys' Fees

If any party to this Agreement institutes any legal cause of action—including arbitration—against another party arising out of or relating to this Agreement, the prevailing party will be entitled to the costs incurred in conducting the cause of action, including reasonable attorneys' fees, expenses and court costs.

(f) Remedies Cumulative

Except to the extent this Agreement expressly provides otherwise, the rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, in equity, or otherwise.

(g) Notices

Unless otherwise stated, all notices, requests, consents, claims, demands, waivers, and other communications called for under this Agreement must be in writing.

The written notice must be sent to the respective parties at the party's last known address (or at the address a party has specified in a notice given in accordance with this Subsection).

(h) Severability

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement.

(i) Separate Counsel

By signing this Agreement, each party acknowledges that this Agreement is the product of arms-length negotiations between the parties and should be construed as such. Each party acknowledges that he or she has been advised to seek separate counsel and has had adequate opportunity to do so.

(j) Entire Agreement

This Agreement constitutes the sole and entire agreement of its parties with respect to the Agreement's subject matter. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties with respect to the subject matter.

(k) Amendments

No provision of this Agreement may be amended or modified except by a written instrument executed by the parties.

(l) Multiple Originals; Validity of Copies

This Agreement may be signed in any number of counterparts, each of which will be deemed an original. Any person may rely on a copy of this Agreement that any party certifies to be a true copy to the same effect as if it were an original.

I hereby consent to and agree to be bound by this Agreement in consideration of my employment with the Company.

Signed:

[INSERT EMPLOYEE NAME HERE]

Date: _____