Employee Non-Compete Agreement—Construction

Purpose of the Form. This prevents an employee, whether a crew member, bookkeeper, office manager, job foreman, project manager, job superintendent, or any other employee from competing with your business. The prohibition applies during employment and for two years after termination. Examples of prohibited competition would be working for a competitor, operating your own business that competes, divulging confidential information, soliciting customers and vendors, enticing away your employees, and a variety of other more indirect methods of competition outlined in the Agreement.

How to Fill-Out. All needed clauses are already included. Simply add the personal information as prompted in the blank spaces or lines.
Employee Non-Compete Agreement

This Employee Non-Compete Agreement is entered into by in between:

**Employee:**

(Name)
(Address)

**Company:**

(Company name)
Organized and doing business in the state of
(Describe State), with its principal place of business
Located: (Address)

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**RECITALS**

Whereas, Company has invested substantial time, money, and resources in the development and retention of confidential information, which Employee acknowledges will be received during the course of employment, and

Whereas, Employee acknowledges that during that during the course of employment Company will provide unique and specialized training,

Whereas, Employee acknowledges that while employed it will receive valuable benefits and compensation, and

Whereas, Employee acknowledges that competing against Company or using such confidential information against the interests of the Company would be unfairly detrimental to operations, goodwill, and profit,

**IT IS SPECIFICALLY AGREED AS FOLLOWS:**

For good and adequate consideration in the form of the rights under this Agreement, compensation and benefits provided, training available, and the use of confidential information, if such employment is later terminated for any cause, Employee shall not, for the periods more specifically described below, after leaving employment, either directly or indirectly, by being “engaged personally” or “engaged in a business”, compete with Company. The non-compete provisions in this Agreement are a condition and essential inducement for Company to hire Employee.
DEFINITIONS

Engaged personally: Defined as the Employee involved individually, including but not limited to the role of: an employee, associate, partner, joint venturer, manager, agent, representative, advisor, supervisor, staff member, consultant, or independent contractor.

Engaged in a business: Defined as the Employee involved in a business venture, including but not limited to: a corporation, limited liability company, sole proprietorship, partnership, joint venture, self-employed independent contractor, or any other business venture or structure. This shall apply to any Employee involvement, either in his or her own business or in concert or participation with any other business, whether as owner, co-owner, principal, incorporator, partner, shareholder, officer, director, employee, agent, representative, advisor, associate, manager, investor, consultant, independent contractor, or other position, interest, or role.

Competitor. Any business enterprise or social media organization which is or may be directly competitive with Company, to any substantial degree, including the design, development, acquisition, processing, sale, promotion, production, marketing, operation, licensing, or distribution of a product, service, or technology (hereinafter termed “product”) the same or similar to what is currently available or under development by Company on the date of termination or within a two year period prior thereto. Such protected products shall be of the type that are conducted, authorized, offered, or provided by Company and of which a potential competitor on the date of termination is engaged in or actively pursuing.

Competitive business. Any business enterprise in which Employee is involved or participates, directly or indirectly, (including any group, division, or franchise of a larger organization) currently or planned for the future, in any form or structure, for the purpose of competition with Company for profit, including but not limited to: a corporation, limited liability company, sole proprietorship, partnership, joint venture, consultants, independent contractor, or any other business venture or structure. This shall apply to any Employee involvement, either in his or her own business or in concert or participation with any other business, whether as owner, co-owner, principal, incorporator, partner, shareholder, officer, director, employee, employer, member, agent, representative, advisor, associate, manager, investor, consultant, independent contractor, provider of assistance, or other position or role. This shall also apply to a business that helps facilitate the financing, operation, management, or control of any business competing with Company.

This prohibition shall apply to all geographical regions in which Company operates and has received orders and profits within one year of termination, including the design, development, acquisition, processing, sale, promotion, production, marketing, operation, licensing, or distribution of a product, service, or technology that is currently available or under development by Company on the date of termination. Such protected products shall be of the type that are conducted, authorized, offered, or provided by Company to one or more customers in that region.

If Company operates in one or more major cities, the restriction shall be for the greater
metropolitan area or a 30 mile radius, whichever is greater. If company operates in one or more towns or non-major cities, the restriction shall be within city limits. If Company operates substantially throughout a county, it will be within the jurisdiction of that county. The restriction shall be applied to an entire state only if the presence of Company is so widespread and pervasive to make it impractical to carve out unrestricted sections. If the products or services of Company are sold online with one or more ecommerce websites, it shall be the precise geographical area (for example city, county, or state), in which marketing is conducted and if nationwide, only in those cities, counties, and states in which substantial revenue is received.

Confidential information. Company has and will develop certain proprietary and Confidential Information that has great value to its business and customers. The Company will also will have access to the Confidential Information of its clients. Confidential Information includes information developed by Company, information from outside sources disclosed by the Company or its clients to Employee, and also information developed or learned by employee from any source during the course of his or her employment with the Company. Confidential Information is broadly defined to include all information that has or could have commercial value or other utility. It also includes all information which would be detrimental to the interests of the Company or its clients if there is an unauthorized disclosure. Confidential Information includes, but is not limited to any and all information concerning the product and/or services of the Company, processes, Company documentation and files (in any language), materials, formulas, trade secrets, inventions, discoveries, improvements, research or development, test results, specifications, data, know-how, formats, marketing plans, reports, coded information, diagrams, flow-charts, business plans, strategies, forecasts, published or unpublished financial information, budgets, projections, customer and supplier identities, customer and supplier characteristics, agreements, and any other tangible and intangible materials of any type whatsoever relating to the Company and its clients.

Termination: Shall be defined as Employee leaving Company employment for any reason, whether based on disability, resignation, termination for cause, termination at-will, leaving voluntarily or involuntarily, as a result of consolidation, closure, or revamping of any division of the Company, or any other reason.

AGREEMENT

Accordingly, Employee agrees as follows:

1. Employment with a competitor. For (Period of time, for example six months to two years) after termination, Employee shall not be “engaged personally” to seek, suggest, offer, request, apply for, solicit, or secure employment with a “competitor” (as defined in the definitions above), fulltime or part time, temporary or permanent.

This prohibition shall apply to any job with a competitor that utilizes a former position, title, responsibility, role, or capacity the employee acquired while working for Company and in which he or she gained any particular knowledge, expertise, or experience.
Employee shall be restricted from employment with a competitor in the following geographical territories: a) in regions where Employee performed work in-house for a customer, in the field, on projects, solicited and received customer orders, made proposals, contacted or met with customers or potential customers, performed due diligence or investigation, provided services to customers, had account responsibility, and other functions, or b) in regions Employee was actively pursuing prospective customers or establishing an additional Company territory.

This prohibition shall apply to any job title or role assumed with the competitor, as long as it is reasonably related to the nature of the work performed with Company.

2. Competitive business. During employment and for the stated (Period of time, for example six months to two years) period after termination, as to the geographical territory described in the definition of “competitive business” above, while Employee is “engaged in business”, it shall not participate in such a “competitive business” against Company. This shall include research or development efforts aimed at ultimately benefiting a competitive business.

This prohibition shall apply to any business in which employee utilizes a former position, title, responsibility, role, or capacity acquired while working for Company and in which he or she gained any particular knowledge, expertise, or experience.

3. Solicitation of customers. For (Period of time, for example six months to two years) after termination, while “engaged in business” or “personally engaged”, Employee shall not, for the purpose of competing with Company, approach, contact, divert, appropriate, interfere with, take away, or solicit a Company customer. This shall include, but not be limited to, buying, selling, furnishing services, and entering into any agreements, orders, contracts, purchase orders, or otherwise establishing business relationships.

This prohibition shall apply to any geographical territory and to customers which the employee has had contact, dealings with, performed services, or otherwise interrelated with, during his or her employment with Company.

Additionally, such prohibition applies whether or not Employee is operating a competing business that utilizes Employee’s past experience, involvement, or account responsibility acquired while working for Company.

The term “customers” shall include Company’s customers, clients, vendors, and suppliers as of the date of termination and within two years prior thereto, who participate or use the activities, products, or services of the Company. This shall also include a potential customer, client, vendor, or supplier that Company is actively pursuing as of the date of termination of Employee.

4. Solicitation of Company employees. Employee acknowledges the importance to the business carried on by Company of the human resources engaged and developed. Therefore, for (Period of time, for example six months to two years) after termination, while “engaged in a business” or “engaged personally”, Employee shall not, directly or indirectly,
whether for its own account or on behalf of an any other business entity, a) solicit, recruit, hire, induce, encourage, or cause to be hired away any employees, consultants, service providers, or manpower contractors (collectively "employees") of Company that were employees on the date of termination or six months proceeding, b) cause any Company employees to leave the employment of Company, or c) cause any Company employees to terminate, breach, or modify the terms of their employment arrangement.

However, this paragraph shall not be breached by the placing of advertisements soliciting employees of the type then employed by Company in newspapers, Internet jobsites, and similar media generally accessible to the public.

5. Confidential information. During employment and for three years after termination as to any geographical region in which Company operates on the date of termination and two years preceding, while “engaged in business” or “personally engaged”, Employee shall not use, sell, assign, disclose, or appropriate any confidential information of Company, for any business purpose, without its prior written consent. Employee agrees to take a reasonable security measures to prevent accidental disclosure and industrial espionage. Employee further agrees and confirms the continued validity of any separate nondisclosure agreement he or she may have signed.

The geographical area subject to this restriction and shall also encompass any region that, on the date of termination, Company was actively pursuing as far as expansion or a possible customer base.

6. Company opportunities. Employee understands and agrees that all business opportunities he or she were involved in, directly or indirectly, during employment constitute valuable assets of Company and may not be diverted or converted to Employee’s own use or to the use of any other person or entity. Accordingly, Employee agrees that during the term of employment and for (Period of time, for example six months to two years) after termination, whether directly or indirectly, for its own account or any other person or entity, shall not interfere with, solicit, pursue, or it in any manner make use of such business opportunities. This shall apply to activities “engaged in personally” or “engaged in a business”.

This prohibition shall apply to any geographical territory and to customers which the employee has had contact, dealings with, performed services, or otherwise interrelated with, during his or her employment with Company.

Additionally, such prohibition applies whether or not Employee is operating a competing business that utilizes Employee’s past experience, involvement, or account responsibility acquired while working for Company.

The Company’s rights described in this sub-paragraph shall be based upon the principles of the following causes of action, described by example but not by limitation: intentional interference with prospective economic advantage, intentional interference with contract, conversion of corporate opportunities, breach of fiduciary duty, and misappropriation.

7. Company projects. From time to time Employee may be expected to work on projects for customers both in-house and at the customer’s premises. In so doing, the
Employee will be an independent contractor of the customer and employee for Company. As a result, Employee will have access to confidential information of Company and the customer. For this reason, Employee agrees that during employment and for (Period of time, for example six months to two years) after termination as to any geographical area in which employee is performing services or the customer has offices, it shall not: a) accept a position full time or part time as employee, b) solicit or receive any work as an independent contractor or consultant, for any such customer.

This prohibition shall apply to any business in which employee utilizes a former position, title, responsibility, role, or capacity acquired while working for Company and in which he or she gained any particular knowledge, expertise, or experience.

8. **Trade libel.** At anytime after termination and for any geographical area, Employee, shall make no false, defamatory, misleading, inaccurate, half truth, malicious, false innuendo, or disparaging statements which will injure the reputation of Company, its employees, or its products and services. Nor shall Employee take any action or make statements that disturb a customer or otherwise cause a customer to cease or limit doing business with Company.

9. **Unique value.** Employee acknowledges the services provided to Company are of a special and unique nature. The work and experience with Company, together with its on job training, will enhance the Employee’s value to a competitor or in a competitive business. That unique value is directly attributable to the time and expense conferred by Company and would be fundamentally unfair and prejudicial if misused by employee. Further, Employee has access to confidential information which would make it difficult to engage in a competitive business or work for a competitor without disclosing or using that confidential information. As such, Employee acknowledges its work and experience with Company places him or her in a position of trust and confidence. As a result of these considerations, monetary damages may be an inadequate remedy at law, and it is agreed that for breach of this Agreement, injunctive relief would be appropriate, together with any monetary damages to be determined by court or arbitration.

10. **Reasonable restraints.** Employee agrees the restraints imposed under this Agreement are necessary for the reasonable and proper protection of Company and such restraints are reasonable with respect to subject matter, length of time and geographical area. Any provision which is considered unenforceable shall not affect the viability of any other provision. In the event a provision is determined by a court or arbitrator of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographical area, or too great a range of activities, such provision shall be deemed modified to permit its enforcement to the maximum extent permitted by law.

11. **Exceptions.** The terms of this Agreement shall not apply to the following situations:

   A. Employee may own securities of any company, including a competitor, traded on any national securities exchange, provided that Employee is not a controlling person of, or a member of the group which controls such entity and does not beneficially own more than 5% of any class of securities for such company.

   B. Employee may loan money or act as a guarantor for any company, including a competitor.
C. Employee may solicit customers who were not a customer of Company during employment or within two year preceding employment of Employee.

D. Employee may solicit customers or be employed by a competitor which employee knew and had done business with before being employed by Company.

12. Rights retained. Nothing in this Agreement shall prevent or limit the Employee's continuing interest or participation in any plan, program, project, policy, or practice provided by Company and for which Employee may qualify, and shall not affect such rights as Employee may have under any other contract or agreement with Company. Amounts which are vested benefits or compensation of which the employee is otherwise entitled to receive at or subsequent to termination, shall be payable in accordance with Company policy and shall not be forfeited by virtue of a breach of this Agreement.

13. Severability. If any provision of this Agreement is deemed unenforceable, it will not prevent enforcement of any other provision.

14. Remedies. It is acknowledged by Employee that any remedy for breach or threaten breach of the provisions of this Agreement would be inadequate, and therefore it is agreed Company shall be entitled to injunction relief, declaratory relief, and other equitable remedies, in addition to such monetary damages as may be awarded by arbitration or any court of appropriate jurisdiction.

15. Standard of proof. In any action or proceeding between the parties as to any provision of this Agreement, whether enforcement is sought by Company or a challenge is made by Employee, Company shall have the initial burden of proving a prima facie case that this Agreement is enforceable. Thereafter, the burden of proof shall shift to Employee to prove unenforceability.

16. Notices. Any notices to be given by either party shall be in writing and may be transmitted by personal delivery, fax, email, or by first class mail or certified, postage prepaid.

17. Arbitration. Any and all disputes between the parties, on any basis, whether at law or equity, and pertaining to any causes of action, whether equitable, contractual, or tortuous, and pertaining to any alleged damages, whether general, compensatory, special, consequential, or punitive shall be determined by private, binding arbitration. This shall include issues as to the interpretation, enforcement, breach, and performance of this Agreement.

Said binding arbitration shall be conducted by a single arbitrator. Parties waive discovery under any Discovery Act with the exception of (1) each side having the right to propound a single set of Request for Production of Documents and (2) each side having one day set for depositions of the other parties' representatives and employees. The parties confer jurisdiction upon the arbitrator for any and all pre-judgment provisional remedies, including but not limited to temporary restraining orders, preliminary injunctions, reformation, and specific performance. The parties waive their rights to any law and motion matters, including but not limited to demurrers, motions to strike, summary judgment or adjudication.
and judgment on the pleadings. Motions in limine, not exceeding 5 per side, shall be presented 10 days before the trial.

Any award from the arbitrator shall become a judgment of any court of competent jurisdiction. All parties will bear equally the cost paid to the arbitrator which will be considered costs of suit to the prevailing party.

18. Attorney’s fees. In any action or arbitration arising out of this Agreement or the employment relationship, as well as to enforce or interpret the terms of this Agreement, regarding any claim or cause of action, in contract or tort, the prevailing party shall be entitled to reasonable attorney’s fees, costs, and arbitration expenses.

19. Integration. This agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Employee by Company and contains all of the agreements between the parties with respect to that employment in any manner whatsoever. Each party acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding on either party.

20. Modification. Any modification of this agreement, except as ordered by court or arbitration, will be effective only if it is in writing and signed by the party to be charged.

21. Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right at any one time or times be deemed a waiver or relinquishment of that right for all or any other times.

22. Governing law. At the sole election of the Company, this Agreement shall be governed by and construed in accordance with the laws of the state in which the Company: 1) has its principal place of business, 2) in which the employee resides, 3) in which the Company has an office which was used or occupied by employee, or 4) in which the acts or omissions giving rise to any cause of action occurred.

As to venue, the appropriate state shall first be determined as described above. As to any court proceeding, the Company in its sole discretion shall choose the court and county within that state. As to any arbitration proceeding, the Company in its sole discretion shall choose the city within the state which has the appropriate office to be used by the arbitrator.

23. Successors. This Agreement and the rights and obligations of the parties shall bind and inure to the benefit of any successor of Company, whether by reorganization, merger, consolidation, sale, or otherwise, except that neither this Agreement or any of its rights may be assigned by Employee.

24. Effective date. Employee shall have fourteen calendar days after delivery to review this Agreement. Employee acknowledges it has been given the opportunity to review this Agreement with independent counsel. Accordingly, this Agreement will take effect after that fourteen day and the signature by the Employee.
Notice of Condition of Employment

To Prospective Employee:  (Name)

From Company: (Name)

Please take notice the enclosed Agreement imposes certain restrictions that are conditions to employment. Those restrictions relate to an agreement and acknowledgement that you will not compete with Company either during or after termination as to certain periods and geographical areas.

Please carefully review the provisions of this Agreement for more details.

You have the right to seek independent legal counsel before signing this Agreement.

You are given 7 calendar days to review this Agreement. After signing the Agreement, you shall also be given 36 hours to cancel in writing for any reason.

Dated: _______________________

_________________________________________________
(Signature and title of authorized representative of Company)

Acknowledgment by Employee:

Dated: _______________________

_____________________________________
(Signature of employee)