

[LOGO]

COVENANT NOT TO COMPETE AND CONFIDENTIALITY AGREEMENT

SAMPLE

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JOINT MARKETING AND COMMISSION AGREEMENT

This Covenant Not To Compete And Confidentiality Agreement (hereinafter referred to as “Agreement”) is made by and between JJJJ MMMMM (hereinafter referred to as “JM”), and OOOOOOOO (hereinafter referred to as “OOO”). All parties to this Agreement referred to above shall hereinafter be referred to collectively as “the Parties.” The Parties enter into this Agreement on behalf of themselves, their representatives, heirs, executors, administrators, trustees, predecessors, successors, affiliates, subrogors, subrogees, lessees, lessors, grantees, assignees, assignors, subsidiaries, parent corporations, agents, employees, servants, officers, directors, members, shareholders, owners, alter egos, attorneys, general partners, limited partners, and representatives.

1. Recitals

- 1.01 WHEREAS, JM is an individual with substantial experience in the retail industry, and;
- 1.02 WHEREAS, OOO specializes in servicing the retail industry by providing retailers with merchandising and loss prevention computer systems and;
- 1.03 WHEREAS, OOO shall hire JM as an employee concurrently with this Agreement;
- 1.04 NOW, THEREFORE, in consideration of their mutual promises, the parties have mutually agreed to the following terms and conditions:

1.04.1 Covenant Not to Compete

JM agrees to not carry on, engage in, market, or sell services that compete with OOO for the period of eighteen (18) months following the termination of this Agreement for any reason in any area within a 100-mile radius of (a) any of OOO’s offices now established or which may be established in the future prior to said termination or (b) JM’s residence at any time during the term of this Agreement. Further, JM agrees to not carry on, engage in, market, or sell services that compete with OOO to any third party who was an OOO customer at any point in time for the period of eighteen (18) months following the termination of this Agreement for any reason, without limitation as to the location of said customers. This Covenant includes and binds not only JM individually, but also any entity either in existence as of the effective date of this Agreement or which may be established thereafter, in which JM owns or has control over more than 10%.

1.04.2 Enforcement of Covenant Not to Compete

The parties hereto expressly re-affirm section 21.04, below, with respect to section 1.04.1 and their right to immediate injunctive relief. Further, given the difficulty in ascertaining damages in the event of a breach of section 1.04.1, JM expressly agrees that OOO may elect, at its sole discretion, an award of \$250,000.00 as liquidated damages per instance of breach. Said liquidated damages are not intended to be punitive, but are rather an attempt by the parties hereto to establish and fix a set monetary amount for damages which are not otherwise readily ascertainable. Election to seek an award of these liquidated damages shall not in any way limit any other remedies. JM expressly recognizes OOO’s right to seek any form injunctive relief pursuant to section 21.04, below, in addition to the liquidated damages, including, but not limited to, temporary restraining orders, preliminary injunctions, and permanent injunctions. It is expressly agreed by JM that any obligations arising under this section are nondischargeable in bankruptcy, nor are they assignable to any other individual or entity.

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1.04.3 Agreement to Execute Further Documents as Necessary

The parties agree to execute any documents as may further be necessary to effect the terms and conditions of this Agreement.

1.04.4 Effective Date and Custody of Originals

This Agreement shall be effective as of the date of the latest signature, below. The original Agreement shall be maintained by OOO’s attorneys of record, who shall provide JM with a copy within one (1) week of the effective date.

1.04.5 Term and Termination

This Agreement shall terminate by mutual agreement to do so or by material breach.

1.04.6 Incorporation by Reference of Employment Agreement

The parties hereto shall execute and or/have executed an employment agreement as between each other. All terms and conditions of that employment agreement are incorporated herein by this reference as though set forth in full. In case of a conflict between this Agreement and the employment agreement, this agreement shall control.

1.04.7 Termination/Winding Down of Other Entity

Prior to his employment relationship with OOO, JM owned and/or operated an independent business which performed much of the same tasks as are included in JM’s job duties with OOO. As part and parcel to this Agreement and the employment agreement, JM shall wind down or otherwise terminate that independent business and provide proof to OOO’s satisfaction of said winding down and/or termination within ninety (90) days of the Effective Date.

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2. Warrantees and Representations

In further consideration for the terms and conditions set forth herein, the Parties also agree, represent and warrant as follows:

2.01 Sole Authority to Execute

Each party hereto expressly warrants and represents that as of the date of this Agreement, they have the sole right and authority to execute this Agreement on their own behalf and on behalf of their representatives or those they represent, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand relating to any rights surrendered by virtue of this Agreement.

2.02 Legal Competence

Each party hereto expressly warrants and represents that the person executing this Agreement on his, her or its behalf is legally competent to and is authorized to enter into this Agreement and to bind said party to his, her or its representations, terms, conditions and covenants as set forth herein.

2.03 Transfer or Assignment

Each party hereto expressly represents and warrants that it has not sold, assigned or otherwise transferred any rights or duties pursuant to this Agreement and that it shall not, at any time in the future, attempt to sell, assign or otherwise transfer any rights or duties pursuant to this Agreement. Any such sale, assignment or other transfer constitutes a modification of this Agreement, which modification is void without the written assent of both parties.

3. Assumption of Risk

In entering into this Agreement, each party assumes the risk of any misrepresentation, concealment, or mistake except for the representations and statements expressly made in this Agreement. If any party should subsequently discover that any fact relied upon by him, her or it in entering into this Agreement is untrue, or that any fact or facts were concealed from him, her or it, or that his, her or its understanding of the facts or of the law was incorrect, or that the law presently in effect has changed in a manner which would otherwise affect such party's rights, such party shall not be entitled to any relief whatsoever in such connection or otherwise, including, without limitation on the intended generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between the parties, regardless of any claims of fraud, misrepresentation, promise made without the intention of performing, concealment of fact, mistake of fact or law, change of law, or of any other circumstance whatsoever.

4. Captions

The captions used herein are for identification purposes only and are not a part of this Agreement.

5. Free and Informed Consent

Counsel for each of the parties to this Agreement has fully explained to his/her client(s) the legal effect of this Agreement and of the exhibits hereto, and the parties have freely consented to and authorized this Agreement.

6. Sufficiency, Mutuality and Receipt of Consideration Acknowledged

The parties hereby stipulate, acknowledge and agree that the consideration had and received for this Agreement is sufficient, mutual, and has been received by the parties. This Agreement is integral and material consideration for OOO to enter into the employment agreement with JM, and OOO would not enter into said employment agreement with JM without the protections provided for herein.

7. Entire Agreement

This Agreement contains the entire agreement and understanding concerning its subject matters between the parties, and supersedes and replaces any prior negotiations and any proposed agreement and agreements, written and oral. Each of the parties acknowledges that no other party, nor any agent or attorney of another party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, concerning the subject matters hereof, to induce them to execute this Agreement in reliance upon any such promise, representation or warranty not contained herein.

8. Jurisdiction

The parties hereby stipulate and agree that jurisdiction for the resolution of any dispute arising from this Agreement is proper in the State of California.

9. Venue

The parties hereby stipulate and agree that the venue for the resolution of any dispute arising from this Agreement is proper in the Superior Court of the State of California, Unlimited Jurisdiction, County of Los Angeles, West District.

10. Choice of Law

This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. In the event that any statute, judicial precedent or other laws of the State of California shall require or otherwise dictate that the laws of another State or jurisdiction be applied in any such action or proceeding, they shall be superseded by this paragraph and the remaining laws of the State of California shall nonetheless be applied in such action or proceeding.

11. Attorneys' Fees and Costs

The parties hereby stipulate and agree that in resolving any dispute arising from this Agreement, the party adjudged to be in breach or at fault shall pay the other party's attorneys' fees and all costs related thereto. In the event that both parties are adjudged to be in breach, each party shall bear its own attorneys' fees and any costs related thereto.

12. Waiver or Modification

Neither this Agreement, nor any provision thereof, can be modified or waived in any way, except by an agreement in writing signed by each of the parties affected thereby, expressly consenting to such modification or waiver.

13. Severability

The parties and signatories, and each of them, agree and acknowledge that if any portion of this Agreement is declared invalid or unenforceable by a final judgment of any Court of competent jurisdiction, such determination shall not affect the balance of this Agreement, which shall remain in full force and effect, as such invalid portion shall be deemed severable.

14. Counterparts

This Agreement may be signed in one or more counterparts, which shall each constitute an original of this Agreement. It will be deemed effective when the respective attorneys of record for each party to this Agreement each have in their possession counterparts which together bear the dated signatures of each party and their attorneys.

15. Due Diligence

Each party to this Agreement represents and warrants to all other parties to this Agreement that he, she or it has investigated the facts pertaining to this Agreement, and of all matters pertaining thereto, as he, she or it deems necessary.

16. Cooperation in Drafting

Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction of this Agreement, it shall not be construed against any party.

17. Binding on Successors and Assigns

This agreement and the promises and covenants herein shall be binding on, inure to the benefit of, and be enforceable by any and all predecessors, heirs, beneficiaries, successors, assigns and transferees of each of the Parties hereto.

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