

# MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Non-Disclosure Agreement (the "Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date"), by and between:

\_\_\_\_\_, an individual residing in the State of Iowa (the "Disclosing Party" or "Seller"), and

\_\_\_\_\_, \_\_\_\_\_ (the "Receiving Party" or "Prospective Buyer").

The Disclosing Party and the Receiving Party are each referred to as a "Party" and collectively as the "Parties."

## RECITALS

WHEREAS, the Disclosing Party owns and operates a marketing services business in Central Iowa, including direct-mail and digital agency operations (the "Business"), and is exploring a potential sale of the Business;

WHEREAS, the Receiving Party has expressed interest in evaluating the potential acquisition of the Business (the "Transaction");

WHEREAS, in connection with such evaluation, the Disclosing Party may share certain confidential and proprietary information with the Receiving Party;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

### 1. Definition of Confidential Information

"Confidential Information" means any and all non-public information disclosed by the Disclosing Party to the Receiving Party, whether disclosed orally, in writing, electronically, or by any other means, including but not limited to: financial statements, tax returns, profit and loss statements, revenue and customer data; client lists, contact information, contract terms, pricing, and account histories; vendor and supplier information; employee information, compensation, and organizational details; trade secrets, proprietary processes, marketing strategies, and operational systems; software, technology, and intellectual property; the identity of the Disclosing Party as a seller; the existence and terms of any potential Transaction; franchise or licensing agreements, including territorial rights; and any other information that a reasonable person would consider confidential under the circumstances.

Confidential Information does not include information that: (a) was lawfully in the Receiving Party's possession before disclosure, as evidenced by written records; (b) is or becomes publicly available through no fault of the Receiving Party; (c) is lawfully obtained from a third party without

confidentiality obligations; or (d) is independently developed by the Receiving Party without use of Confidential Information.

## **2. Obligations of the Receiving Party**

The Receiving Party agrees to:

- (a) Hold all Confidential Information in strict confidence and use the same degree of care to protect it as it uses to protect its own confidential information, but in no event less than reasonable care;
- (b) Use the Confidential Information solely for the purpose of evaluating the Transaction and for no other purpose whatsoever;
- (c) Not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party, except to the Receiving Party's directors, officers, employees, attorneys, accountants, and financial advisors who have a legitimate need to know the information for the purpose of evaluating the Transaction and who are bound by confidentiality obligations at least as protective as those in this Agreement (collectively, "Representatives");
- (d) Be responsible for any breach of this Agreement by its Representatives;
- (e) Not copy, reproduce, or reverse-engineer any Confidential Information except as reasonably necessary for the evaluation of the Transaction;
- (f) Not contact any employee, client, customer, vendor, or supplier of the Disclosing Party regarding the Business or the potential Transaction without the prior written consent of the Disclosing Party. All inquiries shall be directed solely to the Disclosing Party or its designated representative.

## **3. Non-Solicitation**

For a period of three (3) years from the Effective Date, the Receiving Party agrees that it shall not, directly or indirectly, whether for its own account or on behalf of any other person or entity:

- (a) Solicit, recruit, hire, or attempt to solicit, recruit, or hire any employee or independent contractor of the Disclosing Party or the Business, or induce or attempt to induce any such person to terminate their employment or engagement with the Disclosing Party;
- (b) Solicit, divert, or attempt to solicit or divert any client, customer, or account of the Disclosing Party or the Business, or interfere with the business relationship between the Disclosing Party and any such client, customer, or account; or
- (c) Solicit, interfere with, or disrupt the relationship between the Disclosing Party and any of its vendors, suppliers, or strategic partners.

This Section 3 shall not apply to general solicitations of employment not specifically targeted at the Disclosing Party's employees (such as general newspaper or online job postings).

## **4. Term**

This Agreement shall commence on the Effective Date and the obligations of confidentiality and non-solicitation set forth herein shall remain in effect for a period of three (3) years from the Effective Date, except that obligations regarding trade secrets shall continue for as long as such information qualifies as a trade secret under applicable law.

## **5. Return or Destruction of Information**

Upon written request of the Disclosing Party, or upon the termination of discussions regarding the Transaction, the Receiving Party shall promptly return to the Disclosing Party or destroy (and certify in writing the destruction of) all Confidential Information in its possession, including all copies, notes, summaries, and derivative materials, whether in physical or electronic form. The Receiving Party may retain one copy solely for legal and regulatory compliance purposes, which copy shall remain subject to this Agreement.

## **6. No License or Obligation to Proceed**

Nothing in this Agreement grants the Receiving Party any right, license, or interest in or to the Confidential Information or any intellectual property of the Disclosing Party. Neither Party is obligated to enter into any further agreement or to consummate the Transaction. The Disclosing Party reserves the right, in its sole discretion, to terminate discussions at any time and for any reason.

## **7. No Warranty**

All Confidential Information is provided "AS IS," without any warranty, express or implied, as to its accuracy or completeness. The Receiving Party shall not rely on the Confidential Information as the sole basis for any decision regarding the Transaction and acknowledges that any definitive agreement will contain its own representations and warranties.

## **8. Remedies**

The Receiving Party acknowledges that any breach of this Agreement may cause the Disclosing Party irreparable harm for which monetary damages would be inadequate. Accordingly, the Disclosing Party shall be entitled to seek injunctive relief, specific performance, and any other equitable remedies, in addition to all other remedies available at law or in equity, without the necessity of posting a bond. The prevailing Party in any action to enforce this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

## **9. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa, without regard to its conflict of laws principles. The Parties consent to the exclusive jurisdiction of the state and federal courts located in Polk County, Iowa, for any dispute arising under or related to this Agreement.

## **10. Miscellaneous**

This Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous understandings, whether oral or written. This Agreement may be amended only by a written instrument signed by both Parties. If any provision is held unenforceable, the remaining provisions shall remain in full force and effect. The Receiving

Party may not assign this Agreement without the prior written consent of the Disclosing Party. This Agreement may be executed in counterparts, including by electronic signature, each of which shall be deemed an original.

**IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.**

**DISCLOSING PARTY:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**RECEIVING PARTY:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

Company (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_