**Confidentiality Agreement**

**(Proprietary Matters Agreement)**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **[Insert Year]**, by and between **[Insert Company Name]**, hereinafter “Employer” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter “Employee”.

**WITNESSETH:**

WHEREAS, Employer has invested substantial time, effort, and money in the development of its trade secrets, business practices, and other confidential and proprietary information which has enabled Employer to compete successfully in its business, and the disclosure of such secrets, practices, or information would be greatly damaging to Employer and the continued success of its business; and

WHEREAS, during the court of Employee’s employment, Employer will disclose to Employee knowledge concerning its customers, trade secrets, business practices, and other specific confidential and proprietary information, all of which constitute the property of Employer.

NOW, THEREFORE, consistent with the above Recitals, which are hereby incorporated in this Agreement by this reference, and in consideration of Employee’s employment by Employer and the continuation thereof, and to induce Employer to employ Employee, continue Employee’s employment, and to allow Employee to have access to and use of Employer’s confidential and proprietary information, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employer and Employee hereby agree as follows:

1. **Termination Pay**. As part of the consideration for Employee’s execution of this Agreement and the promises contained herein, Employer shall, if Employee’s employment is terminated by Employer without cause as determined by Employer, pay Employee the equivalent of one (1) week of base compensation for each full year of service to Employer, up to a maximum of ten (10) weeks, subject to a signed general release from Employee to Employer, in a form to be determined by Employer (“Termination Pay”). In no event shall Employee’s Termination Pay exceed ten (10) weeks base compensation. For purposes of this section, Employee’s weekly base compensation shall be calculated by taking annual base salary, divided by fifty-two (52). Base salary shall not include commissions, incentive pay, or bonuses. However, if Employee is paid commissions only, such annual base salary shall be determined by taking the weekly average of the prior twenty-four (24) months commissions. Employee’s Termination Pay, if any, shall be paid in installments over Employer’s regular pay periods beginning on the effective date as defined in the general release described above.
2. **Nondisclosure of Confidential Information**.
   1. *Access*. Employee acknowledges that employment with Employer necessarily involves exposure to, familiarity with, and opportunity to learn highly sensitive, confidential, and proprietary information of Employer and its customers, which may include, without limitation, information about banking and trust products and services, referral sources, customers and prospective customers, vendors and suppliers, various investment products, pricing, billing, and collection procedures, proprietary software and the source code thereof, financial and accounting data, audit reports, personnel and compensation, data processing and communications, technical data, marketing strategies, training materials, policy and procedural manuals and bulletins, specific know-how regarding the business of Employer and its products and services, and personal and business information of customers, including, but not limited to, names, addresses, telephone numbers, assets and debts, loans, deposit accounts, balances, credit ratings, experiences, or information concerning any other transaction with Employer (collectively referred to herein as “Confidential Information”).
   2. *Valuable Asset*. Employee further acknowledges that the Confidential Information is a valuable, special, and unique asset of Employer, such that the unauthorized disclosure or use by Employee or persons or entities outside Employer may cause irreparable damage to the business of Employer. The relationship between Employer and its customers, prospective customers, suppliers, directors, and shareholders is based on trust and confidence. Accordingly, Employee agrees that, during and after Employee’s employment with Employer, Employee shall not directly or indirectly disclose to any person or entity or use for any purpose or permit the exploitation, copying, or summarizing of any Confidential Information of Employer, except as specifically required in the proper performance of Employee’s duties for Employer. Employee is prohibited from removing Confidential Information from Employer’s premises in any form or medium, except in the ordinary course of business of Employer, subject to approval by senior management.
   3. *Confidential Relationship*. Employer considers much of its Confidential Information to constitute “Trade Secrets”, which have independent value, provide Employer with a competitive advantage over its competitors who do not know the Trade Secrets, and are protected from unauthorized disclosure under applicable law. However, whether or not the Confidential Information constitutes Trade Secrets, Employee acknowledges and agrees that the Confidential Information is protected from unauthorized disclosure or use due to Employee’s obligations under this Agreement and Employee’s fiduciary duties as an employee of Employer.
   4. *Duties*. Employee acknowledges that Employer has instituted, and will continue to institute, update, and amend policies and procedures designed to protect the confidentiality and security of Employer’s Confidential Information. Employee agrees to take all appropriate action, whether by instruction, agreement, or otherwise to ensure the protection, confidentiality, and security of Employer’s Confidential Information, to protect the status of Employer’s Trade Secrets, and to satisfy Employee’s obligations under this Agreement.
   5. *Return of Documents*. Employee acknowledges and agrees that the Confidential Information is and at all times shall remain the sole and exclusive property of Employer. Upon the termination of Employee’s employment with Employer or upon request by Employer at any time, Employee will promptly return to Employer in good condition all documents, data, and records of any kind, whether in hard copy or electronic form, which contain any Confidential Information or which were prepared based on Confidential Information, including any and all copies thereof, as well as all data and materials furnished to or acquired by Employee during the course of Employee’s employment with Employer.
3. **Development of Intellectual Property**.
   1. *Definition of Intellectual Property*. As used herein, the term “Intellectual Property” shall include, without limitation, any inventions, technological innovations, discoveries, designs, formulas, know-how, processes, patents, trademarks, service marks, copyrights, computer software, ideas, creations, writings, lectures, illustrations, photographs, motion pictures, scientific and mathematical models, improvements to all such property, and all recorded material defining, describing, or illustrating all such property, whether in hard copy or electronic form.
   2. *Employer’s Rights in Intellectual Property*. Employee agrees that all rights, title, and interest of every kind and nature, whether now known or unknown, in and to any Intellectual Property invented, created, written, developed, conceived, or produced by Employee during Employee’s employment with Employer (i) whether using Employer’s equipment, supplies, facilities, and/or Confidential Information, (ii) whether alone or jointly with others, (iii) whether or not contemplated by the terms of Employee’s employment, and (iv) whether or not during normal working hours, that are within the scope of Employer’s actual or anticipated business operations or that relate to any of Employer’s actual or anticipated products or services, shall be the exclusive property of Employer. To the extent any such Intellectual Property is copyrightable, it shall be deemed a “work made for hire” within the meaning of the copyright laws.
   3. *Employee’s Obligations*. Employee agrees to take all reasonably necessary actions to enable Employer to obtain, register, perfect, and/or otherwise protect its rights in the Intellectual Property in the United States and all foreign countries. Without limiting the generality of the foregoing, Employee hereby consents and agrees to: a) promptly and fully disclose to Employer any and all Intellectual Property; b) assign to Employer all rights to such Intellectual Property without limitation or royalty; and c) execute all documents necessary for Employer to obtain, register, perfect, or otherwise protect its rights in the Intellectual Property. Consideration for Employee’s assignment to Employer is hereby acknowledged. In the event Employer is unable, after reasonable effort, to secure Employee’s signature on any documents necessary to effectuate this provision, Employee hereby irrevocably designates and appoints Employer as its agent and attorney-in-fact, to act for and on Employee’s behalf, and to execute any such documents and to do all other lawfully permitted acts to further the protection of such Intellectual property with the same legal force and effect as if executed by Employee. Employee further agrees to assist Employer in connection with any demands, reissues, oppositions, litigation, controversy, or other actions involving any item of Intellectual Property. Employee agrees to undertake the foregoing obligations both during and after Employee’s employment with Employer, without charge, but at Employer’s expense with respect to Employee’s reasonable out-of-pocket costs. Employee further agrees that Employer may, in its sole discretion, deem such Intellectual Property as a Trade Secret, in which case Employee will comply with the Confidential Information provisions of this Agreement.
4. **Acknowledgment of Employer’s Goodwill**. Employee acknowledges that Employer has expended and will continue to expend considerable time, effort, and resources to development and market its products and services, that the relationships between Employer and its employees, independent contractors, customers, prospective customers, vendors, and suppliers are valuable assets of Employer and key to its success, and that employees of Employer establish close professional relationships with other employees, independent contractors, customers, vendors, and suppliers of Employer in the course of their relationship with Employer, all of which constitute goodwill of Employer (“Goodwill”). These strong business relationships developed over time allow Employer to provide the best possible solutions for its customers by providing Employer with an unequaled and valuable understanding of its customers’ individual needs.
5. **Non-solicitation of Customers**. In order to prevent the improper use of Confidential Information and the resulting unfair competition and misappropriation of Employer’s Goodwill and other proprietary interests, Employee agrees that while Employee is employed by Employer and for a period of twelve (12) months following termination of Employee’s employment with Employer for any reason whatsoever, whether such termination is voluntary or involuntary, and regardless of cause, Employee will not, directly or indirectly, on Employee’s own behalf or by aiding any other individual or entity, call on or solicit the business of any of Employer’s customers with whom Employee had personal contact and did business within the twelve (12) month period immediately prior to the termination of Employee’s employment with Employer for the purpose of providing the customer with products and/or services of the type or character typically provided by Employer.
6. **Non-solicitation of Vendors/Employees**. In order to prevent the improper use of Confidential Information and the resulting unfair competition and misappropriation of Employer’s Goodwill and other proprietary interests, Employee agrees that while Employee is employed by Employer and for a period of twelve (12) months following termination of Employee’s employment with Employer for any reason whatsoever, whether such termination is voluntary or involuntary, and regardless of cause, Employee will not, directly or indirectly, on Employee’s own behalf or by aiding any other individual or entity, employ or solicit for employment any Employer employee with whom Employee had personal contact during the twelve (12) month period immediately prior to the termination of Employee’s employment with Employer.
7. **Reasonable Restrictions**. Employee acknowledges and agrees that the post-employment obligations of this Agreement shall be applicable to Employee regardless of whether Employee engages in any such unfair business activity as an individual or as a sole proprietor, stockholder, partner, member, officer, director, employee, agent, consultant, or independent contractor of any other entity.

In signing this Agreement, Employee is fully aware of the restrictions that this Agreement placed upon Employee’s future employment or contractual opportunities with an entity other than Employer. However, Employee understands and agrees that Employee’s employment by Employer, Employee’s privileged position with Employer, and Employee’s access to Confidential Information of Employer makes such restrictions both necessary and reasonable. Employee acknowledges and agrees that the restrictions hereby imposed constitute reasonable protections of the Employer’s legitimate business interests and that these restrictions will not unduly restrict Employee’s opportunity to earn a reasonable living following termination of Employee’s employment with Employer.

1. **Confidential Information of Competitors**. Employer does not want to receive and does not want Employee to utilize any confidential or proprietary information belonging to Employee’s former employer(s) or other third parties. Employer expects Employee to comply with Employee’s obligations to third parties relating to such information. Employer also expects Employee to comply with any legally enforceable obligations that Employee may have to former employers or third parties regarding the non-solicitation of customers, vendors, and employees.
2. **Notification**. Employer and Employee acknowledge the confidentiality of this Agreement. Nevertheless, Employee acknowledges and agrees that Employer may notify anyone employing or contracting with Employee or evidencing an intention to employ or contract with Employee as to the existence and provisions of this Agreement if Employer, in good faith, believes Employee to be in violation of this Agreement.
3. **Enforcement, Termination Pay, and/or Reimbursement**. If Employee violates any of the terms of this Agreement, all Employer obligations to Employee regarding Termination Pay shall cease. In addition to the foregoing, to the extent that Employee violates any provisions of this Agreement following receipt of Termination Pay, Employee shall be required to refund such amounts to Employer. Employee and Employer agree that said Termination Pay forfeitures and/or reimbursements represent only a small portion of the actual irreparable damages Employer would experience if Employee violates the terms of this Agreement.

Employee acknowledges and agrees that, by reason of the sensitive nature of the Confidential Information, Intellectual Property, Trade Secrets, and Goodwill of Employer referred to in this Agreement, a breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to Employer for which there may not be an adequate remedy at law. As such, Employee acknowledges and agrees that, in addition to the foregoing and the recovery of any additional damages and any other legal relief to which Employer may be entitled in the event of Employee’s violation of this Agreement, Employer shall also be entitled to equitable relief, including such injunctive relief as may be necessary to protect the interests of Employer in such Confidential Information, Intellectual Property, Trade Secrets, and Goodwill and as may be necessary to specifically enforce this Agreement. Employee further acknowledges that the remedies of forfeiture, reimbursement, and/or injunctive relief are cumulative and the Termination Pay forfeiture/reimbursement is not intended as a “buyout” option for Employee or as a substitute for Employee’s performance under this Agreement.

1. **Severability**. Employee and Employer intend and agree that if a court of competent jurisdiction determines that the scope of any provision of this Agreement is too broad to be enforced as written, the court should reform such provision(s) to such narrower scope as it determines to be enforceable. Employee and Employer further agree that if any provision of this Agreement is determined to be unenforceable for any reason and such provision cannot be reformed by the court, such provision shall be deemed separate and severable and the unenforceability of any such provision shall not invalidate or render unenforceable any of the remaining provisions hereof.
2. **Entire Agreement**. Employee acknowledges and agrees that this Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous oral or written agreements between the parties relating to its subject matter. NO supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by Employee and Employer.
3. **Miscellaneous**.
   1. *At-will Employment*. Nothing contained in this Agreement shall be deemed to alter or modify Employee’s status as an at-will employee of Employer.
   2. *Governing Law*. This Agreement shall be construed under and in accordance with the laws of the State of **[Insert State]**.
   3. *Survival*. Any provisions of this Agreement providing post-employment obligations will survive the termination of this or any agreement or relationship between Employee and Employer.
   4. *Assignability*. This Agreement and the rights, interests, and obligations of Employer hereunder shall be assignable to and shall inure to the benefit of any person, corporation, partnership, or entity that succeeds to all or substantially all of the business or assets of Employer. The foregoing notwithstanding, if Employer attempts to assign this Agreement to any nonrelated (not under common ownership or control) person, corporation, partnership, or entity, such assignment shall require the written consent of Employee. This Agreement is not assignable by Employee.
4. **Employee’s Copy**. EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS RECEIVED A COPY OF THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO REVIEW THIS WITH LEGAL COUNSEL OF EMPLOYEE’S CHOOSING, THAT EMPLOYEE HAS READ, UNDERSTOOD, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED IN THE AGREEMENT.

Executed as of the date first written above.

**[Insert Company Name]**

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Employee

Witness to Employee’s Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_