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**Disclaimer:**

The attached are intended to serve only as sample templates. CLDA recommends conferring with legal counsel to tailor these templates to your specific organization and the laws of your state. CLDA has partnered with the attorneys at Swift, Currie, McGhee, & Hiers, LLP to arrange for a discounted review of these sample documents.

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To schedule a consultation and review in order to tailor these documents to your organization, you may reach out to Cristine Huffine, at Cristine.huffine@swiftcurrie.com or Crystal McElrath, at crystal.mcelrath@swiftcurrie.com

**CONFIDENTIALITY & NON-COMPETE AGREEMENT**

This Agreement made \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company) and \_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as "Employee"), agree as follows:

1. Acknowledgment of the Parties:
	1. RE is presently engaged in the business logistics and transportation in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [states].
	2. Employee, in the course of his association with Company, has and will frequently come into contact with certain customers with whom Company has developed substantial business relationships to such an extent that he is likely to be able to control or influence, in whole or in part, the business and relationships between Company and such customers; and might, upon cessation of Employment with Company, if allowed to do so, take with him or otherwise appropriate such business and relationships to his own benefit or to the benefit of Company’s competitors and potential competitors. But for his association with Company, Employee would not have access or entree to said customers and suppliers of Company.
	3. Employee, during the course of his employment, has and will have frequent and often close contact with Company’s personnel, and will also make frequent and often close contacts with prospective customers. Solely as a result of Employee's position, he will gain detailed confidential information concerning Company’s personnel and of prospective customers, which information is kept strictly confidential by Company and is not generally available to Company’s competitors, or potential competitors.
	4. Company has expended and is continuing to expend considerable time, money and other resources recruiting, training, making instructions available to and compensating its employees and potential employees; and in locating and establishing contacts and business relationships with prospective customers. The loss of their services or potential services and the potential benefits would constitute a substantial and irrevocable injury to Company.
	5. Employee acknowledges that during the course of his employment, he has and will have access to certain valuable proprietary and confidential business information belonging to Company, none of which Employee would have had access to but for his employment by Employee with Company. Employee acknowledges that the confidential matters to which he will have or has had access will give him a detailed and intimate understanding of the overall methods of operation of Company’s business and such understanding constitutes confidential knowledge unavailable to any of Company’s competitors.
	6. Company has developed the proprietary and confidential information at great effort and expense. The safeguarding of such information is necessary for the continued successful operation of its business and Company must be protected from the unauthorized use or divulgence by Employee either directly or indirectly of any such information. Divulgence of any of the above stated information would constitute an irrevocable injury to Company and its customers. The parties further acknowledge that such information, in the hands of a competitor, would give such competitor unfair advantage and could cause irrevocable damage to the Company’s ongoing relationship with its customers, suppliers, vendors and employees, and that Company has a protectable proprietary interest in its relationship with its customers.
	7. Employee acknowledges that he has received and will receive additional consideration and benefits in return for entry into this Agreement; and that he has voluntarily accepted such consideration and has freely chosen to enter into the terms of this Agreement because of his desire to take advantage of the specific and unique employment opportunities available with Company, including but not limited to gaining or having continued access to Company’s confidential information, customers, employees, and other special employment opportunities presented by association with Company. Employee acknowledges that his position is one of great trust and confidence, requiring on his part a high degree of loyalty, trust, honesty and integrity. The parties further agree that the acknowledgments herein contained shall be deemed to be true; and that such acknowledgments are an integral part of this Agreement; and such acknowledgments form part of the mutual considerations exchanged by the parties hereto for the respective covenants contained herein.
2. Non-compete and Nonsolicitation
	1. Non-Compete. Independent of any obligation under any other paragraph of this Agreement, during the term of Employee's employment with Company, and for a period of twelve (12) months following the separation of his employment with Company (the "Non-Compete Term"), regardless of who initiated the termination, Employee shall not, indirectly or directly, invest in (other than a non-controlling ownership of securities issued by a publicly held corporation), own, manage, operate, control, participate in, or be connected with as an officer, partner, agent, consultant, employee or principal, for or with any person or enterprises which is or intends to be engaged in the business of elevator related activities as outlined earlier in this Agreement in the Region limited to customers or suppliers with whom Employee had contact, or as to such other customers and suppliers of related businesses as Company and Employee will hereinafter become involved during Employee's last 2 years of employment with Company. Nor shall Employee solicit business from, interfere with, or endeavor to entice away from Company any person, or entity of any kind whatsoever which was or is a customer or supplier of Company and with whom Company and Employee had contact during the two (2) year period immediately prior to termination of his employment. Likewise, under the same terms, Employee shall not, knowingly cooperate with the taking of any such solicitation of customers or suppliers of Company by any other individual person or entity.
	2. Solicitation/Enticement. Independent of any obligation under any other paragraph of this Agreement, during the term of Employee's employment with Company and for a period of twelve (12) months following the termination of employment with Company, Employee shall not, directly or indirectly, whether as an individual for his own account or with any other person, firm, corporation, partnership, joint venture or entity whatsoever, solicit or endeavor to entice away from Company, any person who is employed by Company, in order to accept employment or association with another person, firm, corporation or entity whatsoever; and Employee shall not, directly or indirectly approach any such person for any such purpose or authorize or knowingly cooperate with the taking of any such action by any individual, person or entity of any kind.
	3. Confidentiality. The parties acknowledge that it is difficult to ascertain exactly how long Company’s confidential information would remain accurate and useful to Company’s competitors and potential competitors subsequent to the termination of Employee's employment, and that some of Company’s confidential information may remain accurate and useful to Company’s competitors for long periods of indefinite duration. The parties further agree that a fair and reasonable balancing of Company’s interest in protecting its confidential information with Employee's interest in securing employment, dictates that a period of sixty (60) months after Employee's separation constitutes a reasonable period for prohibiting Employee from disclosing Company confidential information. Therefore, the parties agree, that independent of any obligation under any other paragraph of this Agreement, Employee shall not, at any time during his employment with Company and for a period of sixty (60) months after separation of Employee's employment, regardless of who initiated such termination, communicate, divulge, or disclose for use by himself or others, any information or knowledge, disclosed or otherwise obtained by him during his employment by Company (including but not limited to information and knowledge conceived, discovered or developed by Employee) which is not generally known in the residential elevator industry or any other industry which Company shall be engaged during the term of Employee's employment , and which relates to the business of Company or the business of Company’s customers or is in the nature of confidential information or a trade or business secret of Company, or Company’s customers.
	4. Business Opportunity. Employee represents and acknowledges that the restrictions contained in paragraphs 2(a), 2(b) and 2(c) above will not prevent him from obtaining gainful employment in his business, occupation or field or expertise or cause him undue hardship; and that there are numerous other venture opportunities available to him for which he is qualified that are not affected by the foregoing restrictions. Employee further acknowledges that the foregoing restrictions are reasonable and necessary in order to protect Company’s legitimate economic and business interests, and that any violation thereof would result in irreparable injury to Company.
	5. Disclosure of Agreement. Employee shall make available the terms and conditions of this Agreement to any business, entity or persons engaged in activities competitive with Company’s business, with which he becomes associated subsequent to his termination of employment with Company. Employee and Company shall have the right to make the terms of this Agreement known to third parties.
	6. Surrender of Books, Records and Other Materials. At the time of Employee's separation, or upon demand by Company (whichever is sooner), Employee shall promptly turn over to Company, whether in print or electronic media, all marketing information and plans and strategies, market surveys and analyses, files, documents, business records, list of customers and potential customers, invoices, purchase orders, promotion materials, employee and potential employee names and addresses, customer strategy information, employee manuals, personnel policy manuals, pricing information and strategies, contracts with customers, subcontractors and others, customer correspondence, resumes of existing and potential employees, customer bids and proposals, employee books and records, other confidential and sensitive information, and any other records, document writing of any kind whatsoever, all assets of any kind whatsoever that belong to Company or Company’s customers. Further, Employee shall not copy or record in any manner whatsoever the information contained in the foregoing materials; and Employee shall turn over to Company at the time of Employee's separation or upon demand by Company (whichever is sooner) any copies or recordings of any kind whatsoever containing information derived directly or indirectly from the aforesaid materials.
3. Remedies. In the event of any violation of paragraphs 2(a), 2(b), 2(c) or 2(f) above, Company shall be authorized and entitled to obtain from any Court of competent jurisdiction preliminary and permanent injunctive relief as well as equitable accounting of all profits or benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which Company may be entitled, including but not limited to, the right to damages directly, indirectly, or consequentially sustained by Company. Said damages shall also include, but shall not be limited to the consequential economic damages suffered by Company and future lost profits and business resulting from the damage to Company’s long term business relationships with its employees and customers are proximately resulting from Employee's violation of the aforesaid covenants. Employee further agrees to pay the reasonable attorney's fees and court costs and litigation expenses incurred by Company in enforcing any provisions of this Agreement, whether incurred during negotiation, trial or on appeal.

The parties agree that if the covenants contained in section 2 above are found to be unenforceable by a Court of any competent jurisdiction, it is the intention of the parties that the covenants of such paragraphs be reformed by such Court in such manner that Employee is restricted from competing with the aforesaid business of Company from the date of execution of this Agreement to the maximum time permissible (but not exceeding the limits set forth in said paragraphs) under the laws of the State of Georgia. If in any judicial proceeding a Court shall refuse to enforce these covenants because the time limit is too long or if other restrictions were more extensive (whether as to geographic area, scope of business or otherwise) than necessary to protect the business of Company, it is expressly understood and agreed between the parties hereto for purposes of such proceeding such time limit or other restrictions shall be deemed reduced to the extent necessary to permit the enforcement of these covenants.

Company

# By: \_

Name:

Position:

Date:

By:

Employee

Date:

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