

# SAMPLE NON-CIRCUMVENTION AGREEMENT

- I. **THE PARTIES.** This Non-Circumvention Agreement (“Agreement”) made this February 1<sup>st</sup>, 2022 is by and between:

Disclosing Party: New York Flour Company, with a mailing address of 1500 Broadway, Buffalo, NY 14212 (“Disclosing Party”), and

Recipient: H&H Bagels Inc., with a mailing address of 1551 2<sup>nd</sup> Ave New York, NY 10028 (“Recipient”).

The Disclosing Party and the Recipient are each referred to herein as a “Party” and collectively as “Parties.”

- II. **NON-CIRCUMVENTION.** The following are prohibited from circumventing the other Party under this Agreement: (choose one)

- **Both Parties** (Disclosing Party and Recipient). The Disclosing Party and the Recipient agree not to circumvent each other directly or indirectly, or its affiliates, with respect to any relationships introduced or made known to each Party as a direct or indirect result of this Agreement, including but not limited to, clients, customers, contractors, or affiliates without the prior consent of the other Party. In the event of a breach of this section by either Party, the violated Party shall have all injunctive and equitable relief available, as well as all other remedies at law or in equity.

- **One (1) Party** (Recipient only). The Recipient agrees to refrain from contacting, initiating contact with, or attempting to conduct business, for the purposes of circumventing the Disclosing Party, with any contacts referred by the Disclosing Party or with any affiliates of the entity or entities specified in the Business Opportunity, including but not limited to officers, directors, shareholders, consultants, attorneys, employees, and agents. Circumvention, which is here understood to mean a conducting of business between the Recipient and any of the above-mentioned contacts which could prevent the Disclosing Party from realizing a profit, fees, or other gains, is only to be carried out with explicit, written permission from the Disclosing Party on a case-by-case basis.

- III. **BUSINESS OPPORTUNITY.** This Agreement is acknowledged as necessary by both Parties in order that:

- a. the Disclosing Party may share a business opportunity (“Business Opportunity”) with the Recipient, including any and all other opportunities from which may derive, that Business Opportunity being: New York Flour Company agrees to sell flour to H&H Bagels Inc. under the agreement that H&H Bagels cannot purchase flour from any other distributor.

- b. both Parties maintain their proprietary claim to and sole benefit from the relationships with clients and others which are necessary to their conduct and profitability, which are for, the purposes of this Agreement, considered Trade Secrets, and
- c. the Parties can legally bind, in writing, specific requirements for the conduct of the other regarding each Party's above-mentioned relationships.

**IV. TERM AND CANCELLATION.** The effective term of this Agreement shall begin on **February 1<sup>st</sup>, 2022** and end on **January 31<sup>st</sup>, 2023** ("Term"). The obligations of non-circumvention outlined below will survive the Term. Either Party may terminate this Agreement at any time with written notice to the other Party. Termination will not affect confidentiality obligations vis-à-vis any confidential information or business contacts obtained prior to the date of termination.

**V. COMMISSION OR FEE AGREEMENT.** In the case of a breach of this Agreement by the Recipient, the Recipient will pay to the Disclosing Party a monetary penalty that is equal to the commission(s), fee(s), or other gain(s) the Disclosing Party would have realized in such a transaction.

**VI. CONFIDENTIAL INFORMATION.** All names and other personal information of contacts made known through the course of business by either Party to the other are to be considered confidential information ("Confidential Information") and shall be kept confidential by both Parties. If any Confidential Information is disclosed without prior written permission by either Party, the other retains the right to obtain an injunction to restrain disclosure, whether in part or in full, of said Confidential Information. Such an injunction would not prevent said Party from pursuing additional remedies, including claims for losses or damages.

**VII. TRADE SECRETS.** For the purposes of this Agreement, all information exchanged between the Disclosing Party and the Recipient are to be considered trade secrets ("Trade Secrets"), including but not limited to information packets, documents, financials, potential acquisitions, contacts, deal sources, and deal structures and financial considerations. Through this Agreement, both Parties legally bind themselves to protect the confidentiality of each other's Trade Secrets, only disclosing said information with advance written permission from the other.

**VIII. SUBPOENAS OR COURT ORDERS.** In the case of either Party receiving a subpoena or other court order mandating that they disclose the Trade Secrets or Confidential Information of the other Party, they are obligated to inform said Party immediately of both the obligation to disclose and the specific information demanded.

**IX. RETURN OF CONFIDENTIAL INFORMATION.** The Disclosing Party can request from the Recipient a complete return of any and all written materials

containing Confidential Information or Trade Secrets the Recipient might have, along with a signed written statement by the Recipient certifying that all said materials have been returned within five (5) days of the request.

- X. GOVERNING LAW.** This Agreement shall be construed and governed in accordance with the laws located in the State of **New York**.
- XI. ASSIGNMENT AND DELEGATION.** The Disclosing Party and the Recipient will each defend, indemnify, and hold the other harmless (including all affiliates, successors, assigns, employees, agents, officers and the like) against all losses, damages, deficiencies, liabilities, awards, penalties, or expenses of any kind, including attorneys' fees and related legal fees, incurred by themselves in connection with any claims, suits, actions, demands, or judgments arising out of this Agreement.
- XII. SEVERABILITY.** If any portion of this Agreement shall be held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- XIII. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties. No modification or amendment of this Agreement shall be effective unless in writing and signed by both Parties. Both Parties agree that the terms of this Agreement extend to all employees, officers, and other representatives of each of their respective entities.
- XIV. EXECUTION.** The Disclosing Party and the Recipient each represent and warrant to the other that each person executing this Agreement on behalf of each party is duly authorized to execute and deliver this Agreement on behalf of that party.
- XV. ADDITIONAL TERMS & CONDITIONS.** **This Agreement will automatically renew unless termination is provided with at least thirty (30) days' notice.**

Disclosing Party's Signature: Jon Hamm

Print Name: **Jon Hamm of New York Flour Company**

Date: **January 29<sup>th</sup>, 2022**

Recipient's Signature: Albert Gray

Print Name: **Albert Gray of H&H Bagels Inc.**

Date: **January 29<sup>th</sup>, 2022**