



## **Confidentiality, Non-Competition, Non-Solicitation and Arbitration Agreement**

This Confidentiality, Non-Competition, Non-Solicitation and Arbitration Agreement (the "Agreement") is entered into by and between the individual named below ("Employee") and the independently owned Aaron's Home Care operating entity T and D Home Care Inc., licensed to do business as Aaron's Home Care (the "Company") as of the date below.,

1. **Confidentiality.** Employee will not at any time use or disclose any Confidential Information (defined below), except as required in connection with the performance of Employee's duties for the Company, and except to the extent required by law (but only after Employee has provided the Company with reasonable notice and opportunity to take action against any legally required disclosure). As used in this Agreement, "Confidential Information" means all information of a business, financial, marketing, technical or other nature relating to the Company including, without limitation, any client or vendor lists, prospective client names, financial statements and projections, employee compensation information, know-how, pricing policies, methods of doing business, and any information of others that the Company has agreed to keep confidential.

2. **Client Health Information.**

a. Employee agrees to preserve and protect Client Health Information (defined below), whether in electronic, verbal or written form, in accordance with this Section 2.

b. In this Agreement, "Client Health Information" means Protected Health Information, and Electronic Protected Health Information that is created, maintained, transmitted or received by Employee. "Protected Health Information" means individually identifiable information regarding a client's past, present or future physical or mental health condition or treatment, as well as the client's records, test results and conversations concerning such matters and financial information (e.g., physical medical and psychiatric records; insurance and billing records; electronic or computerized client data; visual observations of clients; and verbal information provided by or about a client). "Electronic Protected Health Information" means Protected Health Information in electronic form.

c. Employee shall respect and maintain the confidentiality of all discussions, deliberations and client records that contain Client Health Information in connection with Employee's duties. Employee shall discuss Client Health Information only for work-related purposes and only in a work-related context and may not discuss such Client Health Information outside of work or within hearing of other people who do not have a work-related need to know about it.

d. Employee shall make no use whatsoever, directly or indirectly, of any Client Health Information at any time, except as required in connection with the performance of Employee's duties for the Company or to the extent required by law (but only after Employee has provided the Company with reasonable notice and opportunity to take action against any legally required disclosure).

e. If assigned a user name and password for computer systems that offer access to Client Health Information, Employee shall be responsible for the proper use of such user name and password and shall only access the minimum necessary information to satisfy Employee's work-related duties or the particular request.

f. If Employee knows or suspects that the confidentiality of a user name/password or any Client Health Information has been compromised, Employee shall immediately notify the President of the Company.

g. Upon the termination of Employee's employment, and upon the Company's request at any time and for any reason, Employee shall immediately deliver to the Company all materials (including all electronic and hard copies) in Employee's possession that contain Confidential Information and/or Client Health Information. Employee's obligation to preserve and protect Client Health Information shall continue after termination of Employee's employment.

3. **Non-Competition: Non-Solicitation.** During Employee's employment and for two (2) year after termination thereof for any reason, Employee agrees that s/he will not directly or indirectly, solicit, induce, or attempt to solicit or induce, any Aaron's Home Care client to terminate his/her agreement or other relationship with the Company. During Employee's employment and for two (2) year thereafter, Employee also agrees that Employee will not provide services to any AHC client to whom Employee was assigned during Employee's employment, except through an assignment from Aaron's Home Care. In the event that you violate any part of this Paragraph 3, you agree to pay our attorneys' fees in enforcing these requirements, as well as liquidated damages of \$1,000.00 per client for each violation.

4. **Arbitration.** Any and all disputes, claims or controversies arising out of or relating to this Agreement, Employee services under this Agreement and any and all other disputes, claims or controversies by and between Employee, on the one hand, and the Company, and/or its/their respective employees, agents, clients, customers, and vendors (collectively, the "Aaron's Home Care Parties"), on the other hand, shall be resolved exclusively through final and binding arbitration (and not by way of a court or jury trial) as follows:

a. This agreement to arbitrate shall be governed, construed and enforced pursuant to the Federal Arbitration Act. However, any claims submitted to arbitration regarding other terms of this Agreement shall be governed by the law of the State of employment. The arbitration shall occur in the State of employment, in the city in which the Company is located.

b. An arbitration proceeding shall be commenced by serving a demand for arbitration on the other party by overnight delivery (by Federal Express, Express Mail by the U.S. Postal Service or other overnight delivery Service), by hand delivery or by First Class certified U.S. Mail, postage prepaid to the last known address of Employee or the Aaron's Home Care PARTIES, as the case may be. The demand for arbitration must be served within the applicable statute of limitations period, however, and the arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration.

c. All claims shall be decided by a single neutral arbitrator who shall be a retired judge or justice. If for any reason the parties cannot agree to an arbitrator within forty-five (45) days of receipt of written notice of a claim, either party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted for appointment of a neutral arbitrator. The court shall then appoint an arbitrator, who shall act under this Agreement with the same force and effect as if the Parties had selected the arbitrator by mutual agreement.



d. In arbitration, each party will have the right to conduct adequate civil discovery to extent permitted under the Federal Rules of Civil Procedure, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses. Disputes regarding the scope or substance of discovery, law and motion practice shall be resolved by the arbitrator.

e. In arbitration, disputes shall be brought on an individual basis only, and there shall be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective or representative action or as a class member in any purported class, collective, common or consolidated action or representative proceeding ("Class Action Waiver"). Notwithstanding any other clause contained in this Agreement, this Paragraph 4(f) is not severable from this Agreement in any case in which the dispute to be arbitrated 1) is brought as a class or collective action, and 2) there is a final judicial determination that the Class Action Waiver is unenforceable, unconscionable or voidable. Therefore, if Employee or the AARON'S HOME CARE PARTIES purport to bring a class, collective or representative action and if it is determined that the Class Action Waiver is unenforceable, unconscionable, void or voidable, then any purported class, collective or representative action shall not be arbitrated and shall instead be resolved in court. Notwithstanding any other clause contained in this Agreement, any claim that all or part of the Class Action Waiver is unenforceable, unconscionable, void or voidable shall be determined only by a court of competent jurisdiction and not by an arbitrator.

f. There also shall be no right or authority for any dispute to be brought, heard or arbitrated as a private attorney general action ("Private Attorney General Waiver"). The Private Attorney General Waiver will not apply to any claim Employee brings in arbitration as a private attorney general solely on Employee's own behalf and not on behalf of or regarding others. Notwithstanding any other clause contained in this Agreement, this Paragraph 4(g) is not severable from this Agreement in any case in which the dispute to be arbitrated (1) is brought as a private attorney general action, and (2) there is a final judicial determination that the Private Attorney General Waiver is unenforceable, unconscionable, void or voidable. Therefore, if Employee or the AARON'S HOME CARE PARTIES purport to bring a private attorney general action and if a court determines that the Private Attorney General Waiver is unenforceable, unconscionable, void or voidable, then the private attorney general claim shall not be arbitrated and shall instead be resolved in court. Notwithstanding any other clause contained in this Agreement, any claim that all or part of the Private Attorney General Waiver is unenforceable, unconscionable, void or voidable shall be determined only by a court of competent jurisdiction and not by an arbitrator.

g. In arbitration, each party shall pay the fees for his, her or its own attorneys, subject to applicable law and/or any remedies to which that party may later be entitled under applicable law. However, in all cases where required by applicable law, the AARON'S HOME CARE PARTIES will pay the arbitrator's and arbitration fees. If, however, under applicable law, the AARON'S HOME CARE PARTIES are not required to pay all of the arbitrator's and/or arbitration fees, such fee(s) will be apportioned between the parties in accordance with said applicable law, and any disputes in that regard will be resolved by the arbitrator.

h. Notwithstanding anything in this agreement to arbitrate to the contrary, claims for workers compensation, state disability insurance, and unemployment insurance benefits are not subject to arbitration. Regardless of any other terms of this Agreement, a claim may be brought before and remedies awarded by an administrative agency if applicable law permits the agency to adjudicate the claim notwithstanding the existence of an agreement to arbitrate. Examples of these kinds of administrative claims include, without limitation: claims or charges brought before the Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)), the U.S. Department of Labor ([www.dol.gov](http://www.dol.gov)), the National



Labor Relations Board ([www.nlrb.gov](http://www.nlrb.gov)), or the Office of Federal Contract Compliance Programs ([www.dol.gov/esa/ofccp](http://www.dol.gov/esa/ofccp)). This Agreement does not prevent or excuse a party from bringing an administrative claim before any agency where the party is obliged to exhaust administrative remedies before making a claim in arbitration. Disputes that are not subject to arbitration pursuant to a pre-dispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) and any other disputes that are subject to arbitration under applicable federal law are excluded from the coverage of this agreement to arbitrate.

i. Employee may submit a document or email stating that Employee wishes to opt out and not be bound by this Arbitration Agreement and/or the Private Attorney General Waiver. To Opt Out, Employee must submit a tangible or electronic document containing Employee's name and current address and stating words to the effect that "Employee wishes to Opt Out of the arbitration agreement" and/or "Employee wishes to Opt Out of the Private Attorney General Waiver." To be effective, the Opt Out statement must be sent to the AARON'S HOME CARE PARTIES (at the following address: **1679 Summit Place Way Loganville, Ga 30052** or email address: **todd@aaronshomecare.com** Attention: (**Todd Barker**) within 30 days after Employee has signed this Agreement. If Employee timely opts out, Employee will not be subject to any adverse action as a consequence of that decision and may pursue available legal remedies without regard to this Agreement. Likewise, Employee will not be retaliated against, disciplined or threatened with discipline as a result of his or her exercising his or her rights under Section 7 of the National Labor Relations Act by the filing of or participation in a class, collective or representative action in any forum as may be permitted by law. However, the AARON'S HOME CARE PARTIES reserve the right to lawfully seek enforcement of this Agreement and the Class Action Waiver and Private Attorney General Waiver under the Federal Arbitration Act and seek dismissal of such class, collective or representative actions or claims. Should Employee opt out of this agreement to arbitrate and instead elect to pursue legal or equitable remedies in court, the parties expressly agree that any and all such claims or controversies shall be brought exclusively in the state or federal courts of the State of employment and expressly waive the right to a trial by jury. The parties expressly agree in such event to subject themselves to the personal jurisdiction of said courts. Should Employee not opt out of this agreement to arbitrate within 30 days of Employee's execution of this Agreement, Employee's subsequent services and continued employment shall constitute mutual acceptance of the terms of this agreement to arbitrate. Any Opt Out shall be applicable only to this Section 4 and not to the rest of this Agreement.

j. BY SIGNING THIS AGREEMENT, BOTH AARON'S HOME CARE PARTIES AND EMPLOYEE WAIVE ANY RIGHTS TO HAVE SUCH DISPUTES TRIED BY A JUDGE OR JURY, OR TO APPEAL ANY FINDINGS OF THE ARBITRATOR EXCEPT AS MAY BE VACATED UNDER THE FEDERAL ARBITRATION ACT.

5. **Release.** Employee understands that s/he is being hired by **T and D Home Care Inc.**, an independently owned and operated entity, licensed to do business as Aaron's Home Care.

Employee also agrees to indemnify, defend and hold harmless Aaron's Home Care and its respective owners, directors, officers and employees from any and all claims, liability, loss, damages and/or expense arising out of or related to any injuries to Employee occurring on the job that result from Employee's gross negligence or willful or wanton misconduct, to the extent such injuries are not covered by the applicable state workers' compensation laws.

6. **Enforceability.** If any one or more provisions of this Agreement is, either by itself or themselves or with others, adjudged to be invalid or otherwise unenforceable, then such provision(s) shall be modified as necessary to make them valid and effective, and the remaining parts of this Agreement shall remain unaffected.

7. **Entire Agreement.** This Agreement is the entire agreement and understanding between the Parties and may not be modified except in writing signed by both parties. This Agreement supersedes all prior written and/or oral and all contemporaneous oral agreements, understandings and negotiations regarding the subject matter hereof. This Agreement shall be construed, interpreted, and governed in accordance with the laws of the State of employment, regardless of the laws that might otherwise govern under applicable principles of conflicts of law.

8. **Voluntary Agreement.** Each party to this Agreement acknowledges and represents that: 1) s/he or it (a) has fully and carefully read this Agreement and understands it prior to signing it; (b) has been, or has had the opportunity to be, advised by independent legal counsel of his/her/its own choice as to the legal effect and meaning of this Agreement; (c) is entering into this Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or nature whatsoever; and (d) has not relied on any promises, representations or warranties other than as set forth in this Agreement.

9. **At-Will Employment.** Employee is employed at-will with the Company, meaning that either Employee or the Company may terminate the employment relationship at any time for any reason, with or without cause or notice.

10. **Modification: Waiver.** This Agreement may be modified only in writing signed by Employee and the President of the Company. The waiver of a breach of any provision of this Agreement shall not be construed as a waiver or a continuing waiver of the same or any subsequent breach of any provision of this Agreement.

11. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors and administrators, successors and assigns, except that Employee's rights and obligations hereunder are personal and may not be assigned without the Company's prior written consent.

12. **Gifts from Clients.** You understand and agree that you shall not accept or possess any cash or item of value belonging to a Client without Aaron's Home Care having first received prior written approval from the Client in question.

(Signature Page Follows)



**AARON'S HOME CARE**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EMPLOYEE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date