

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

OMNI DIRECT, INC.,  
a Florida corporation  
10800 Biscayne Blvd., Suite 510  
Miami, Florida 33161,

Plaintiff,

v.

CREATIVE DIRECT RESPONSE, INC.,  
d/b/a CDR FUNDRAISING GROUP,  
a Maryland corporation  
16900 Science Drive, Suite 210  
Bowie, Maryland 20715,

Defendant.

Case No.

V452873

**RECEIVED**

AUG 14 2018

Clerk of the Circuit Court  
Montgomery County, Md.

COMPLAINT

Omni Direct, Inc. ("Omni Direct"), as and for its claims against Creative Direct Response, Inc., d/b/a CDR Fundraising Group ("CDR"), hereby alleges:

1. On July 29, 2016, Omni Direct and CDR entered into a nondisclosure agreement (the "Agreement") in order to partner in "a contemplated transaction between the Parties regarding Hispanic Marketing business development collaboration." (A copy of the Agreement is annexed as Exhibit A.) Under the Agreement, Omni Direct, the leading full service direct response company specializing in Hispanic and direct response marketing, agreed to permit CDR, a mainstream direct marketing company then without knowledge and experience in the Hispanic market, access to Omni Direct's proprietary, confidential and trade secret information regarding Hispanic direct response marketing. The purpose and intent of this collaboration was for CDR to expand its relationships with clients operating in the not-for-profit, charitable fundraising space by combining CDR's direct marketing fundraising experience and client base

with Omni Direct's Hispanic marketing expertise. The Agreement had a two-year term, from July 29, 2016 through July 29, 2018.

2. Instead of the confidential collaborative partnership that CDR promised under the Agreement, for the past two years CDR has instead been vacuuming up the details of Omni Direct's confidential, proprietary, trade secret knowledge of Hispanic direct response marketing and using them for its own benefit and to Omni Direct's detriment to achieve a valuable head start in creating its own in-house Hispanic direct marketing operation.

3. CDR not only committed a wholesale breach of its nondisclosure and confidentiality commitments under the terms of the Agreement, but it conducted a massive misappropriation of Omni Direct's trade secrets punishable under the Maryland Uniform Trade Secrets Act and the federal Defend Trade Secrets Act, as well as conversion and unfair competition actionable under common law. Omni Direct seeks actual damages on these claims plus, where authorized, an accounting, punitive, exemplary and statutory enhanced damages, and attorneys' fees.

4. CDR acted in bad faith in carrying out this misappropriation from the outset of its relationship with Omni Direct. CDR fraudulently induced Omni Direct to enter into the Agreement through false and misleading representations that CDR lacked and had no interest in developing its own Hispanic direct marketing operation. Information now available to Omni Direct establishes that CDR and its corporate parent, Moore DM Group, led by its owner/CEO Jim Moore, had an active but undisclosed plan before and at the time CDR entered into the Agreement with Omni Direct to lull Omni Direct into reasonably relying on CDR's Agreement and good faith to lure Omni Direct into believing its proprietary, confidential, trade secret information would be safe in pursuit of a clearly stated mutual goal of developing a long term

and profitable partnership for both parties. Instead, CDR intentionally misled Omni Direct into providing it with increasingly valuable and proprietary information, while concealing its strategic intent to go-to-market with its own Hispanic direct response offering. Always intending to completely bypass Omni Direct beyond an initial pilot, CDR planned and carried out its scheme to suck up Omni Direct's very valuable know-how, proprietary data and expert consultation and use it to fast track the development and launch of CDR's own Hispanic direct response marketing operation.

5. CDR began internal efforts to execute on a U.S. Hispanic business significantly before the media launch of the first pilot project between the two parties, gaining access to key competitive information, including business processes, data and expertise under fraudulent pretenses and to the detriment of Omni Direct's competitive market standing. Omni Direct seeks actual and punitive damages for this constructive fraud by CDR.

### **PARTIES**

6. Plaintiff Omni Direct, Inc. is a Florida corporation with a principal place of business located at 10800 Biscayne Blvd., Suite 510, Miami, Florida 33161.

7. Defendant Creative Direct Response, Inc., d/b/a CDR Fundraising Group, is a Maryland corporation with its principal place of business located at 16900 Science Drive, Suite 210, Bowie, Maryland 20715.

### **JURISDICTION & VENUE**

8. This Court has jurisdiction over the subject matter of this civil action pursuant to Md. Code Ann., Cts. & Jud. Proc. § 1-501.

9. CDR is subject to personal jurisdiction in Maryland because the parties agreed in the Agreement to submit to the exclusive jurisdiction of the courts of the State of Maryland,

CDR's principal place of business is located in the State of Maryland and the claims arose in the State of Maryland.

10. Venue in this Court is proper pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201(a) because CDR carries on regular business in Montgomery County.

### **FACTUAL ALLEGATIONS**

11. Omni Direct and CDR first met at a direct marketing industry trade show, "Response Expo 2016," sponsored by the Direct Response Marketing Alliance and held in San Diego, May 7-9, 2016. Omni Direct Chief Operating Officer Denira Borrero met Kim McIsaac of CDR at that show. There had been no prior contacts between the companies. At the conference, Ms. McIsaac approached Ms. Borrero immediately after an industry expert panel session facilitated by Ms. Borrero to ask her questions regarding U.S. Hispanic direct response behavior. Ms. McIsaac stated during this conversation that CDR did not provide U.S. Hispanic marketing services. The conversation ended with Ms. McIsaac requesting additional market trend data on the U.S. Hispanic market and information about Omni Direct's capabilities as a company with the intent of evaluating a potential partnership with Omni Direct to provide Hispanic marketing services to CDR's client base. Ms. Borrero followed up with that information upon returning from the conference and emphasized that "U.S. Hispanics are known to be a very good segment of the donor market with ASPCA, St. Jude and American Red Cross (to name a few)."

12. On July 27, 2016, CDR Senior Director Jeanne O'Meara sent Ms. Borrero an email stating that CDR had three existing not-for-profit clients interested in considering direct marketing fundraising campaigns targeting Hispanic markets. She indicated that all three clients

were non-profits and that CDR would “Love to follow up with you.” Ms. O’Meara did not at that time identify the CDR clients who presented Hispanic marketing opportunities.

13. Two days later, on July 29, 2016, the parties’ respective Presidents, Alex Agurcia for Omni Direct and Angela Struebing for CDR, signed the nondisclosure Agreement. The purpose of the Agreement was to protect confidential information exchanged by CDR and Omni Direct while discussing their anticipated partnership to develop Hispanic marketing business together. The Agreement specifically states that “[t]he Parties are executing this Agreement for the purposes of discussing a contemplated transaction between the Parties regarding Hispanic Marketing business development collaboration (the ‘Contemplated Transaction’).” Ex. A at 1.

14. Under the Agreement, all of Omni Direct’s “customer lists,” “marketing sources and strategies and distribution techniques,” and “business plans, technical and strategic plans, financial and budget information” are protected as Confidential Information, as well as Omni Direct’s information relating to the “conceptualization,” “sales, costs, pricing, forecasts, distribution, financing, advertising and/or marketing” of its business. *Id.* at ¶ 1. The Agreement also protects any other Omni Direct trade secrets or other proprietary information. *Id.*

15. The Agreement defines “Confidential Information” as follows:

For purposes of this Agreement, “Confidential Information” is defined to include, without limitation, any and all information about the Party and/or relating to the Party’s business, whether communicated orally, in writing, or in any other format, whether in tangible or intangible form, arising out of or related to any of the following: (i) trade names, trademarks, service marks, graphics, logos, product and/or service concepts and/or lines, customer lists, regulatory information and affairs of the disclosing Party and its marketing sources and strategies and distribution techniques; (ii) business plans, technical and strategic plans, financial and budget information or other subject matter pertaining to any business of the disclosing Party or any of its customers, prospective customers, competitors, sponsors, suppliers, collaborators, consultants or licensees; (iii) information relating to conceptualization, design, manufacture, production, sales, costs, pricing, forecasts, distribution, financing, advertising and/or marketing of the business of the disclosing Party; and (iv) all other proprietary information or trade secrets of the disclosing Party. Confidential Information also includes all information disclosed to a

receiving Party which the disclosing Party has received from any third party which the disclosing Party is obligated to treat as confidential or proprietary or about any third party or which is the subject of a business opportunity identified by either Party to the other Party that, but for this Agreement, the receiving Party would have no right to receive any disclosure of or to use any portion of the Confidential Information in any manner whatsoever.

*Id.*

16. CDR and Omni Direct agreed that the only permitted use of the Confidential Information was for their collaboration to develop business together. The Agreement provided: “Neither Party will use Confidential Information belonging to the other Party for any purpose whatsoever except as required for the discussions among the Parties about the Contemplated Transaction.” *Id.* at ¶ 3.

17. CDR also agreed in the Agreement that the Confidential Information that Omni Direct provided to CDR constitutes trade secrets:

Confidential Information. Each of the Parties acknowledges in the course of the Contemplated Transaction or discussions related thereto, each of the Parties may make available to the other Party valuable information belonging to such Party which is not generally known to the public, is protectable and which constitutes trade secrets of such Party.

*Id.* at ¶ 1. The parties understood that the information exchanged in their collaboration is proprietary, and that its value is derived in part from being not generally known to the public or competitors. *Id.*

18. The Agreement further provided that Omni Direct’s Confidential Information is owned exclusively by Omni Direct and that CDR did not have any right, title or interest in Omni Direct’s Confidential Information whatsoever. *Id.* at ¶ 6. The Agreement also set forth that CDR does not have any right to any materials developed from Omni Direct’s Confidential Information:

Ownership. Each Party's Confidential Information is owned solely and exclusively by such Party, as the case may be, shall remain the exclusive property of such Party, and the recipient shall have no right, title or interest in, to or under any of the Confidential Information or any material developed from the Confidential Information.

*Id.* Under the Agreement, any materials or information that CDR generated from Omni Direct's Confidential Information remains the property of Omni Direct alone. *Id.*

19. CDR further agreed to the immediate return and destruction of any documents provided by Omni Direct, including but not limited to Confidential Information, upon Omni Direct's request. The provision of the Agreement states:

Documents. All documents of any kind furnished pursuant or relating to the Contemplated Transaction or discussions of the Contemplated Transaction shall remain the property of the disclosing Party [Omni Direct]. The receiving Party [CDR] shall return such documents, Confidential Information and all copies thereof to the disclosing Party [Omni Direct], or certify that such documents, Confidential Information and all copies thereof, have been destroyed, upon the request of the disclosing Party. The receiving Party [CDR] shall safeguard all such documents and copies with the same degree of care, but in any event not less than a reasonable standard of care, that it uses to avoid unauthorized disclosure of its own confidential private information.

*Id.* at ¶ 7. CDR was required to return and destroy Omni Direct's documents and Confidential Information immediately at Omni Direct's request. *Id.*

20. The same day that the parties signed the Agreement, July 29, 2016, Omni Direct sent CDR a media plan for conducting a Hispanic direct marketing campaign for an unidentified CDR client. Execution of the Agreement was a necessary step before Omni Direct could provide CDR with its proposal for the not-for-profit campaign as the proposal included confidential, proprietary, trade secret information that it was critical for Omni Direct to protect.

21. Throughout this period, CDR continued to ask rudimentary questions regarding direct marketing to Hispanic audiences, demonstrating the company's lack of experience and basic know-how in this demographic segment and using its confidential relationship with Omni

Direct as a tutorial in Hispanic direct marketing. For example, on August 1, 2016, CDR's Jeanne O'Meara emailed Mr. Agurcia asking: "So does the Hispanic marketplace follow English in 'seasonality' with 4<sup>th</sup> and 1<sup>st</sup> quarter being the strongest DRTV [Direct Responsive Television] response months?"

22. On August 11, 2016, Ms. O'Meara emailed Ms. Borrero seeking to move the CDR/Omni Direct collaboration forward by setting up a joint meeting of the two companies' senior executive teams:

We feel you could be a great partner with us not only for DRTV but direct mail and other ventures.

We can talk more tomorrow, but the head honcho's [sic] would like to meet you and get learn [sic] about all that you bring to the table in both DRTV and in direct mail, we have other non-TV clients in which those could be a partnership as well.

23. In advance planning for the meeting, CDR provided Omni Direct with a list of CDR's clients that were interested in running direct marketing campaigns targeting Hispanic audiences. On August 25, 2016, Ms. O'Meara identified the Shriners Hospitals for Children ("Shriners"), Disabled American Vets and USA for UNHCR [the United Nations Refugee Agency] as the CDR clients that CDR wanted to collaborate with Omni Direct to service. Omni Direct prepared for and presented on the basis of CDR's promise to explore a collaboration regarding Hispanic campaigns for the three CDR non-profit, charity clients.

24. The companies held an initial meeting at CDR's offices on August 31, 2016. Ms. Borrero attended that meeting with Omni Direct's President Alex Agurcia. The CDR meeting was attended by a sizable senior management team including Ms. McIsaac, CDR Associate Director of Direct Response Television ("DRTV"); Angela Struebing, President of CDR; Jeanne O'Meara, Senior Director and media buyer at CDR; Bryan Lank, President of ResourceOne



Fundraising Group (a separate company under the Moore DM Group); Katy Jordan, Vice President of Integrated Marketing at CDR and Misti Dragano, a strategic consultant.

25. At the meeting, Omni Direct presented its unique capabilities to enable a mainstream agency like CDR to partner with Omni Direct to reach new markets for its clients by conducting direct response marketing targeted to Hispanic audiences. Among other pertinent information, Omni Direct presented unique market trends, characteristics and donor behaviors specific to the U.S. Hispanic market. CDR made clear at that initial meeting that it lacked experience and know-how in conducting direct marketing fundraising campaigns targeting the Hispanic market.

26. The meeting lasted over three hours, during which time CDR questioned Ms. Borrero and Mr. Agurcia extensively on various and specific case scenarios for its existing clients, including requesting counsel on the use of celebrity talents, U.S. Hispanic donor behavior, media channel usage, direct mail behaviors, and competitive activity, among other topics. In discussing the need to offer Hispanic-focused marketing to its client base, CDR personnel made clear to Omni Direct that it was looking to Omni Direct for strategic planning and counsel on how to target Hispanic audiences, with CDR President Angela Struebing telling Omni Direct: "You tell us – You're the experts." Ms. Struebing concluded the meeting asking for copies of the power point decks presented plus additional information detailing the main cultural and consumer differences between the Anglo market and the U.S. Hispanic market.

27. At the initial meeting, Omni Direct made a point of asking CDR about its own media buying capabilities and explicitly stated during the meeting that Omni Direct does not provide marketing services on an ad hoc basis and only provides full service offerings to the client, which must include media buying. Omni Direct was looking for assurances that the parties

were discussing a potential mutually beneficial relationship and not one in which CDR, a larger, mainstream agency, would be seeking to use Omni Direct simply to learn the Hispanic market. As Ms. O'Meara escorted the visitors from Omni Direct out after the meeting, she indicated to them that she was "overwhelmed" in her work for CDR because she was the only company official responsible for media buying. Ms. O'Meara also mentioned that she had only limited and dated experience buying Hispanic media and was relieved to know that CDR was actively considering outsourcing these capabilities to Omni Direct. Ms. O'Meara's comments in this exit conversation reassured Omni Direct that CDR needed an operational partner like Omni Direct because it did not have and was not looking to develop its own in-house Hispanic media planning and buying capabilities.

28. The CDR/Omni Direct partnership progressed quickly after the initial meeting. CDR contacted Omni Direct to create and implement a comprehensive Hispanic media marketing campaign for a CDR client, USA for UNHCR ("UNHCR"). CDR and Omni Direct anticipated that this client would be the first of many in their long-term partnership to provide marketing services in the Hispanic media industry.

29. Reinforcing the scope of the intended partnership specifically with multiple clients, Ms. McIsaac sent a follow up email on September 1, 2016, the day after the management meeting, to Ms. Borrero and Mr. Agurcia and copying all meeting attendees, stating:

We are excited at the prospect of working with you and your team in many diverse areas we discussed. Angela [Struebing] will definitely be in touch about that in the very near future. In the meantime, if you wouldn't mind sending the deck you shared yesterday. We are preparing our deck for the Shriners presentation this week and would love to include some of those slides as well as that additional slide Angela [Struebing] was looking for.

Denira, I will be in touch by week's end to start working on some things for USA for UNHCR.

30. On September 19, 2016, Ms. McIsaac informed Ms. Borrero via email that CDR received official approval from UNHCR to develop a Hispanic media campaign. Ms. McIsaac requested from Omni Direct a “completely integrated plan for this program” along with an itemized budget for the program. Ms. Borrero agreed to discuss such a plan with Ms. McIsaac via phone that evening.

31. Pursuant to the protections afforded by the Agreement and their joint anticipation of a long-term business relationship, Ms. Borrero provided CDR with a comprehensive strategy for the UNHCR campaign on that phone call. Ms. McIsaac took detailed notes during the call which lasted nearly two hours, documenting Ms. Borrero’s expertise and ideas for Omni Direct’s creative DRTV campaign, its media planning and buying plan, digital support, its plan to fulfill donations and pledges to UNHCR, the call center that UNHCR would institute to support the campaign, social media and other outreach, and research into potential donors to the campaign.

32. On September 23, 2016, Ms. Borrero summarized the services that Omni Direct would provide, including media buying and planning and all creative campaign services including the management, production, and cultural content of the Hispanic media campaigns. Ms. Borrero wrote to Ms. Struebing:

The longer term goal is to work on several initial projects together so as to build a larger volume of mutual business activity across clients and then look to move to a more strategic partnership between CDR and Omni regarding fee and working models.

33. Ms. Struebing responded to Ms. Borrero the same day, agreeing that CDR is “looking forward to a partnership” and that she “think[s] this partnership can be good for both sides and [that she is] looking forward to working together.”

34. In addition to this proprietary business information and industry knowledge, Ms. Borrero also provided CDR with a detailed statement of work for Omni Direct’s marketing

services. Ms. Borrero sent Omni Direct's complete plan and budget for the UNHCR campaign to CDR on October 5, 2016. Again, Ms. McIsaac asked Ms. Borrero to discuss Omni Direct's plan and budget via phone—they agreed on Omni Direct's statement of work and budget during a phone call on October 10, 2016.

35. On November 15, 2016, Ms. Borrero and Ms. Struebing spoke via phone to discuss the parties' media fee splitting arrangement and to confirm their partnership model for the pilot UNHCR campaign. After negotiating their fee split, the parties agreed to "meet in the middle" and confirmed this arrangement on November 23, 2016. Ms. Struebing added that "I think once we get past the pilot we would also need to reassess as we scale. Obviously that's where both of us start making money – not necessarily in the pilot phase." Omni Direct and CDR agreed to the fee split with the understanding that their collaboration was part of a long-term business relationship beyond the initial UNHCR pilot.

36. From December 2016 to October 2017, Omni Direct guided CDR through the specific and complex steps necessary to launch a pilot test campaign in Hispanic media for UNHCR. Omni Direct and CDR were in frequent communication throughout this period. During this time, Omni Direct and CDR developed a relationship of trust and confidence where CDR purported to act only to further Omni Direct's interests as part of their anticipated long-term and mutually beneficial relationship.

37. Beginning on or around December 9, 2016, Omni Direct and CDR also held a series of regularly scheduled conference calls to discuss putting Omni Direct's Hispanic media marketing plan into action.

38. While Omni Direct was guiding CDR through the rollout of the media campaign that Omni Direct created, CDR repeatedly requested substantial additional information, including

clarification and strategy rationale from Omni Direct about digital marketing and behaviors, social media, celebrity talent acquisitions and negotiations, call center proposals and qualifications, follow up marketing tactics and remarketing efforts, creative production tactics and media approaches. Again, in reliance on the protections afforded by the Agreement and in anticipation of their long-term business relationship, Omni Direct sent the additional requested information to CDR and responded to countless inquiries on the market and strategic rationale for the plan.

39. As part of Omni Direct's comprehensive media services for CDR, Omni Direct agreed to provide reports to CDR containing the ongoing status and results of the UNHCR pilot test once it was up and running. CDR contacted Omni Direct on September 29, 2017 to request unusually detailed and proprietary information from Omni Direct in those reports, including airing reports, clearance reports, station invoices, and booking sheets. CDR made further repeated requests for this specific information throughout the UNHCR campaign.

40. Omni Direct does not typically provide this information to other partner marketing agencies. Providing this level of proprietary knowledge and information is contrary to industry norms. This information is proprietary and extremely valuable because it discloses actual negotiated rates with media outlets at a very detailed airing level, and Omni Direct uses this data to optimize and deliver the best results for a given campaign. This information includes the bidding and clearing rates for airing a media campaign, which is based on Omni Direct's knowledge of market demand, its long-standing relationships, volume considerations, opportunistic deals, pre-negotiated packages and its historical results from previous campaigns. The depth and value of this information is not publicly available—to the contrary, it gives a marketing agency its competitive advantage over others.

41. Omni Direct provided this information to CDR, always subject to the confidentiality protections of the Agreement, because the media plan was being executed and the parties were at the completion of a nearly one-year set up and planning period.

42. Omni Direct also agreed to provide optimization services for CDR during the UNHCR campaign, providing and analyzing Omni Direct's own proprietary data about participating media stations to improve the performance of the campaign. Omni Direct included that information in its weekly reports to CDR, which also included key performance indicators of the campaign, integrating call volume, donation results, and web data with media spend details. Omni Direct also conducted audits of the phone calls to potential donors to UNHCR, recommending any necessary changes to the call center scripts and conducting additional trainings for the call center personnel for increased conversions.

43. In pressing Omni Direct for additional proprietary information about Hispanic media, CDR repeatedly deferred to Omni Direct because of its "expertise in this market."

44. The pilot test program began airing on Spanish language networks on October 2, 2017. On October 9, CDR and Omni Direct discussed the results of the test program by phone, and set up weekly phone calls on Tuesday afternoons to review the results of the campaign during this test period. Those phone calls lasted for at least an hour each week. Attendance on the weekly calls included Ms. McIsaac, Ms. O'Meara and Rebecca Backus of CDR, as well as a number of other CDR personnel on an ad hoc basis, including Janet Tonner, a member of CDR senior management. Unbeknownst to Omni Direct, Ms. Tonner had been appointed to lead CDR direct response TV efforts in mid-2017 and was eventually appointed as President of Direct Donor TV, a new subsidiary of the Moore DM Group created to plan and buy DRTV. Every conference call included detailed discussions of media results, strategy, call center performance

and improvement recommendations from Omni Direct. The first pilot program ran for approximately three weeks, until October 29, 2017.

45. After the first pilot, Omni Direct began working on a proposed media plan for “phase two” of the UNHCR campaign. In creating the phase two plan, Omni Direct analyzed the results of the first pilot, assessing and detailing for CDR which aspects of the pilot were successful and where the pilot could be improved. Omni Direct continued to work with CDR on the phase two campaign over the next two months, and began running the improved phase two media campaign on December 25, 2017.

46. Omni Direct sent its weekly reports containing proprietary data and business knowledge to CDR throughout the phase two campaign as well, and continued to participate in weekly conference calls with CDR during this period.

47. On February 9, 2018, Ms. Backus of CDR informed Omni Direct that UNHCR decided to extend the test campaign for an additional six weeks due to its success thus far. Ms. Backus told Omni Direct that “we’ll need to keep a close eye on performance and the client reserves the right to pull back if the results start to drop. But we’re optimistic that won’t happen. This extra 6 weeks will give us time to fine-tune our recommendations and go forward strategies. . . . Keep up the good work!”

48. On March 6, 2018, Ms. Backus requested from Omni Direct a media plan to increase the UNHCR campaign to over \$35,000 a week. This plan, which Omni Direct provided on the same day of the request, essentially gave CDR a scaled volume plan that included new stations and spend levels for the further successful rollout of the campaign.

49. Omni Direct continued working for CDR on the UNHCR campaign over the next several weeks, sending additional proprietary information and recommendations to CDR for improving the campaign based on its unique expertise in the Hispanic media market.

50. Over this approximately 19-month period, CDR pressed Omni Direct for a perfect roadmap for creating, instituting, tracking, scaling and even improving upon a turnkey Hispanic media marketing campaign. Omni Direct participated in weekly conference calls with CDR's large account team comprised of media, operations and creative representatives; provided weekly operational and media reports to CDR as well as frequent informal guidance and counsel at CDR's behest; conducted a full assessment including call auditing of the first UNHCR pilot program; and even provided proposals for an improved and scalable phase two campaign, showing CDR how to make any necessary adjustments to a Hispanic campaign to improve its performance and efficiently increase media spend amounts.

51. Meanwhile, throughout the latter half of 2017, Omni Direct diligently fulfilled all of CDR's mandates for the UNHCR account. It provided an ever-increasing amount of confidential, proprietary, trade secret information in response to CDR's escalating demands, ostensibly protected under the Agreement, for details regarding the UNHCR campaign – details that other partner agencies never request and Omni Direct never provides. Omni Direct provided all of this proprietary information to CDR based on the trust and confidence that arose between the parties throughout the course of their relationship, and in reliance on CDR's assurances that it did not intend to develop its own Hispanic marketing offering. Unbeknownst to Omni Direct, however, throughout this period, CDR was taking active steps to build a competing independent DRTV group under the umbrella of Moore DM Group to conduct its own in-house Hispanic direct media planning and buying.



52. As of July 2017, months before the media launch of the UNHCR Hispanic pilot campaign and before Omni Direct started providing media plans and proprietary data to CDR, but while Omni Direct was far along and actively executing the detailed campaign set up plan and strategy, Jim Moore and CDR management decided to act on their long-term strategic plan to bring Hispanic direct marketing in-house and to no longer outsource that capability. CDR withheld from Omni Direct any information regarding this strategic decision or any organizational or business model changes that resulted from it, preventing Omni Direct from opting-out of an arrangement that would be detrimental to its business interests.

53. From the onset of their relationship, CDR and Omni Direct discussed another client, the Wounded Warrior Project. The parties agreed that Wounded Warrior would be part of their collaboration, and Omni Direct asked CDR several times for the status of that client during the parties' weekly conference calls throughout 2016 – 2017. Omni Direct depended on CDR because CDR maintained exclusive control over all information and communication with their current and prospective clients, including Wounded Warrior.

54. On December 15, 2017, in response to yet another status request from Omni Direct, CDR informed Omni Direct that Wounded Warrior was ready to begin the process of moving towards a Hispanic marketing campaign. Acknowledging that Omni Direct was to participate in the execution of that campaign, CDR's Kim McIsaac asked Omni Direct for a proposal for pricing and a timeline for translating certain Wounded Warrior Project marketing materials. Ms. McIsaac then implied that Wounded Warrior was running a campaign test using its own internal resources, telling Omni Direct that the Wounded Warrior Project "is doing a tiny Spanish test. Apparently they have some internal resources . . .".

55. On the morning of December 18, 2017, Omni Direct provided CDR with the requested proposal for translation services in support of the start-up of a test campaign for the Wounded Warrior Project. Later that day, after Omni Direct had provided the proposal, Ms. McIsaac informed Omni Direct that CDR had recently hired a new account executive, Luz Kanner, who “is bilingual and will be working in partnership with our other account executives who have clients expanding into the Hispanic market. . . . As you know, we are going to be testing Hispanic spots for Wounded Warrior Project this February. Luz will be overseeing this rollout in partnership with Emily who is the [account executive] on the [Wounded Warrior] account. . . . Thank you so much for your continued support.” Both Ms. Kanner and Emily Helstrom had been actively involved in the pilot of the Hispanic UNHCR campaign, consistently attending Omni Direct/CDR weekly conference calls and requesting consult on Hispanic strategy, learning Omni Direct’s road map for a Hispanic marketing campaign. Once again, CDR suggested that it planned for Omni Direct’s active involvement in the Wounded Warrior campaign, continuing to pump Omni Direct for information while concealing its long-standing intention to provide media planning and buying services to that organization on its own.

56. On December 31, 2017, Omni Direct completed and submitted the several documents of translations and certifications for the Wounded Warrior Spanish language site to CDR, all the while anticipating that further activity on the project would commence shortly.

57. In response to an Omni Direct request for an update on the Wounded Warrior Project on January 16, 2018, Ms. McIsaac again failed to disclose to Omni Direct that it planned to cut Omni Direct out of that project and others going forward. Ms. McIsaac told Omni Direct: “I do know that this will be a very small test . . . I really feel this is literally a ‘toe in the water’ scenario to see if there is any response at all. . . . We’ll certainly keep you posted.”

58. Shortly thereafter, without any further information from CDR, Omni Direct noticed Wounded Warrior advertisements running on Spanish language television channels and learned through its industry contacts that CDR was in fact placing media buys directly on Hispanic stations for the Wounded Warrior and Shriners campaigns. Omni Direct confronted CDR about its discovery on their weekly conference call on March 20, 2018. Mr. Agurcia asked Ms. O'Meara, Ms. Backus and Ms. Kanner of CDR to confirm that CDR was in fact secretly running its own ads for the Wounded Warrior campaign. CDR personnel were silent in response. Mr. Agurcia then reiterated Omni Direct's clearly stated requirement that Omni Direct would buy media for the Wounded Warrior campaign based on the parties' prior work submissions to the client and overall communications with senior management to that effect. The CDR team did not respond to Mr. Agurcia and only sat silently on the call, which ended quickly thereafter.

59. Omni Direct made further inquiries with its Hispanic television station contacts and was informed that CDR, specifically Ms. O'Meara, was buying time directly since January 2018 for both the Shriners and Wounded Warrior organizations and asking station contacts for Hispanic production capabilities. Omni Direct's contacts also confirmed that none of the stations had any previous contact with CDR or Ms. O'Meara and that CDR had never purchased time on Hispanic stations in the past. Omni Direct learned that CDR had been contacting the stations that had tested best for the UNHCR campaign and that there was a close correlation between the media plan that Omni Direct developed and had been implementing for UNHCR and CDR's media purchasing for the Wounded Warrior Project and Shriners. Because CDR had insisted on being provided with detailed bidding and buying documentation for the UNHCR campaign pursuant to the protections afforded by the Agreement, CDR knew what bidding rates, spend

levels, stations, times, dayparts and days that Omni Direct had been successfully placing media. CDR used this information to execute the Wounded Warrior and Shriners campaigns. Given the structure of the direct response media market, this information can allow CDR to outbid Omni Direct for the purchase of advertising time on those same Hispanic outlets. CDR is using Omni Direct's own proprietary information to become a direct competitor to Omni Direct for Hispanic media clients and reduce the effectiveness of all of Omni Direct's media buying activities.

60. Omni Direct ultimately confronted CDR senior management, including Janet Tonner, now the President of Direct Donor TV (the new subsidiary of Moore DM Group and the lead for all DRTV efforts), and Angela Struebing, CDR President, regarding CDR's undisclosed strategy to supplant Omni Direct and misappropriate its planning and buying information for use on the Wounded Warrior Project and Shriners campaigns. Both Ms. Tonner and Ms. Struebing separately admitted to Omni Direct on March 30 and April 10, 2018 respectively that Jim Moore and CDR had started the prior summer, in July 2017, to build an independent DRTV group to offer Hispanic marketing services itself, that hiring activities for that group began around that same time, and that CDR underwent a reorganization shortly thereafter to put their plan into effect. Both Ms. Tonner and Ms. Struebing also separately admitted that Omni Direct should have been informed at the time about CDR's strategic decision to form its own Hispanic marketing division, giving Omni Direct an opportunity to "opt-out" of the relationship and avoid the further compromise of proprietary information before the launch of the UNHCR pilot. Furthermore, Ms. Struebing claimed that she did not personally intend to mislead Omni Direct, that she did not know why Omni Direct was not told of this major change in strategic direction by CDR management even after Omni Direct made several inquiries to the team regarding the status of the other campaigns, and she apologized for the lack of communication stating that it

got “lost in [the organizational] transition.” At that point, of course, the CDR/Omni Direct relationship broke down.

61. By notice dated April 24, 2018, Omni Direct exercised its right under the Agreement to demand the return of all “documents, Confidential Information and all copies thereof” to Omni Direct or for CDR to “certify that such documents, Confidential Information and all copies thereof, have been destroyed. . . .” Omni Direct further demanded that “[i]n addition to full and strict compliance with the requirement to return or destroy all documents and Confidential Information, Omni Direct demands that CDR [] cease and desist from any [and] all use or dissemination of Omni Direct Confidential Information.” CDR did not comply with this demand.

62. On May 2, 2018, Omni Direct’s counsel sent a notice directly to Jim Moore informing him of the cease and desist demand made on CDR and CDR’s lack of compliance with the requirement under the Agreement to return or certify the destruction of all Omni Direct documents and Confidential Information. CDR nevertheless continued to defy Omni Direct’s demands under the Agreement, and remained in possession of Omni Direct’s Confidential Information detailing its Hispanic market planning and buying strategy during a period when CDR continued to roll out the Wounded Warrior Project and Shriners campaigns.

63. Despite Omni Direct’s repeated demands, CDR did not comply with its obligations to immediately return or certify destruction of Omni Direct’s documents and Confidential Information until two months later, on June 21, 2018. CDR’s unlawful possession of Omni Direct’s information allowed it to conduct the Wounded Warrior and Shriners campaigns without Omni Direct and to use Omni Direct’s confidential and proprietary business information with any additional Hispanic marketing clients.

64. Because of CDR's misappropriation of Omni Direct's trade secret information, its breaches of the confidentiality requirements under the Agreement and its willful failure to disclose its long-held plan to build an in-house Hispanic direct marketing capability at the time that it entered the Agreement and continually misled Omni Direct into disclosing increasingly valuable and proprietary media data as well as every detail of and rationale for its Hispanic marketing and media strategy, Omni Direct has no choice but to bring this action seeking to be made whole for the extensive commercial injuries that CDR's conduct has inflicted on Omni Direct's business and reputation.

**COUNT I**  
**Breach Of Contract**

65. Omni Direct repeats and re-alleges each of the allegations made in Paragraphs 1 - 64 of the Complaint as if fully stated here.

66. At all relevant times and to date, Omni Direct has performed, and continues to perform, its duties under the Agreement.

67. The Agreement is a lawful contract. CDR knowingly, and for valid mutual consideration, entered into the Agreement with Omni Direct.

68. Pursuant to the Agreement, Omni Direct provided confidential and proprietary business information to CDR, but retained ownership of and restricted CDR's use or disclosure of such information. CDR promised to safeguard Omni Direct's confidential and proprietary business information from disclosure, and not to use such information for any purpose other than discussing a contemplated transaction between the parties.

69. Through the conduct alleged above, CDR has breached the Agreement. CDR's unauthorized use and disclosure of Omni Direct's confidential and proprietary information as set forth in the Agreement is a breach of the Agreement.

70. CDR's failure and refusal to return Omni Direct's confidential and proprietary information to Omni Direct upon Omni Direct's express written requests is a breach of the Agreement.

71. As a direct and proximate result of CDR's numerous breaches of the Agreement, Omni Direct has suffered, and will continue to incur, substantial monetary damages and loss of market value, and is entitled to compensatory damages, including actual, consequential, and incidental damages, in amounts to be determined at trial.

**COUNT II**  
**Misappropriation Of Trade Secrets**  
**Under The Maryland Uniform Trade Secrets Act, Md. Code Ann., Com. Law § 11-1201**

72. Omni Direct repeats and re-alleges each of the allegations made in Paragraphs 1 - 71 of the Complaint as if fully stated herein.

73. Omni Direct is the owner of certain confidential and proprietary business information, including media plans and media buying information, that gives Omni Direct a demonstrable competitive advantage over its competitors such as CDR which do not possess such confidential information.

74. This confidential and proprietary business information constitutes a formula, pattern compilation, method, technique and/or process.

75. Omni Direct has invested substantial time, money and effort to diligently compile and maintain this confidential and proprietary business information that has allowed Omni Direct

to significantly expand its business, giving Omni Direct an advantage over its competitors, including CDR.

76. Omni Direct's confidential and proprietary business information could not be generally known or readily ascertainable by its competitors, including CDR, because it reflects Omni Direct's years of experience, expertise, its database of historical media rates, results, demographics and trending information, and the detailed specifications and preferences of Omni Direct's clients.

77. Omni Direct takes and has taken reasonable measures to keep its confidential and proprietary business information secret, including instructing its employees to keep the information confidential and entering into confidentiality agreements, such as the Agreement with CDR, to protect such information from disclosure or misuse.

78. The Agreement between Omni Direct and CDR contained a provision that prohibited any use of Omni Direct's confidential and proprietary business information for any purpose except as required for them to develop Hispanic marketing business together.

79. CDR acquired Omni Direct's confidential and proprietary business information through improper means, including theft, misrepresentation, and/or the breach of its duty to maintain the secrecy of Omni Direct's trade secrets by entering into the Agreement with Omni Direct and subsequently using Omni Direct's confidential and proprietary business information to compete directly with Omni Direct for its own benefit and without Omni Direct's consent.

80. CDR willfully, intentionally, and maliciously misappropriated, for its own use and benefit, Omni Direct's valuable confidential and proprietary business information.



81. As a direct and proximate result of CDR's misappropriation of Omni Direct's trade secrets, CDR has been unjustly enriched.

82. As a direct and proximate result of CDR's misappropriation of Omni Direct's trade secrets, Omni Direct has suffered, and will continue to incur, monetary damages and loss of market value, in amounts to be determined at trial.

83. Omni Direct is entitled to recover exemplary damages and attorneys' fees from CDR under Md. Code Ann., Com. Law §§ 11-1203 and 11-1204 as a result of CDR's willful and malicious misappropriation of Omni Direct's trade secrets.

**COUNT III**  
**Misappropriation of Trade Secrets**  
**Under The Federal Defend Trade Secrets Act, 18 U.S.C. § 1836**

84. Omni Direct repeats and re-alleges each of the allegations made in Paragraphs 1 - 83 of the Complaint as if fully stated here.

85. Omni Direct is the owner of certain confidential and proprietary business information, including media plans and media buying information, that gives Omni Direct a demonstrable competitive advantage over its competitors such as CDR which do not possess such confidential information.

86. This confidential and proprietary business information constitutes a formula, pattern, compilation, method, technique and/or process.

87. Omni Direct has invested substantial time, money and effort to diligently compile and maintain this confidential and proprietary business information that has allowed Omni Direct to significantly expand its business, giving Omni Direct an advantage over its competitors, including CDR.

88. Omni Direct's confidential and proprietary business information could not be generally known or readily ascertainable by its competitors, including CDR, because it reflects Omni Direct's years of experience, expertise, its database of historical media rates, results, demographics and trending information, and the detailed specifications and preferences of Omni Direct's clients.

89. Omni Direct takes and has taken reasonable measures to keep its confidential and proprietary business information secret, including instructing its employees to keep the information confidential and entering into confidentiality agreements, such as the Agreement with CDR, to protect such information from disclosure or misuse.

90. The Agreement between Omni Direct and CDR contained a provision that prohibited any use of Omni Direct's confidential and proprietary business information for any purpose except as required for them to develop Hispanic marketing business together.

91. CDR acquired Omni Direct's confidential and proprietary business information through improper means, including theft, misrepresentation, and/or the breach of its duty to maintain the secrecy of Omni Direct's trade secrets by entering into the Agreement with Omni Direct and subsequently using Omni Direct's confidential and proprietary business information to compete directly with Omni Direct for its own benefit and without Omni Direct's consent.

92. CDR willfully, intentionally, and maliciously misappropriated, for its own use and benefit, Omni Direct's valuable confidential and proprietary business information.

93. As a direct and proximate result of CDR's misappropriation of Omni Direct's trade secrets, CDR has been unjustly enriched.

94. As a direct and proximate result of CDR's misappropriation of Omni Direct's trade secrets, Omni Direct has suffered, and will continue to incur, monetary damages and loss of market value, in amounts to be determined at trial.

95. Omni Direct is entitled to recover exemplary damages and attorneys' fees from CDR under 18 U.S.C. § 1836(b)(3)(C), (D) as a result of CDR's willful and malicious misappropriation of Omni Direct's trade secrets.

#### **COUNT IV** **Conversion**

96. Omni Direct repeats and re-alleges each of the allegations made in Paragraphs 1 - 95 of the Complaint as if fully stated here.

97. Omni Direct provided certain confidential and proprietary business information, including documents and other materials, to CDR pursuant to the Agreement.

98. CDR exerted physical ownership and dominion over Omni Direct's documents and materials in a manner inconsistent with Omni Direct's right to its property, denying Omni Direct its right to retain ownership over and possess its own documents and materials.

99. CDR initially acquired Omni Direct's property and retained Omni Direct's property for longer than Omni Direct permitted. Omni Direct demanded that CDR return its property, yet CDR refused to comply for a two-month period.

100. CDR intended with actual malice to exercise dominion and control over Omni Direct's property, inconsistent with Omni Direct's rights. CDR converted Omni Direct's property with a consciousness of the wrongfulness of its actions.

101. As a direct and proximate result of CDR's conversion of Omni Direct's property, Omni Direct has suffered, and will continue to incur, monetary damages and loss of market value, in amounts to be determined at trial. Omni Direct is entitled to compensatory damages, including actual, consequential, and incidental damages, and punitive damages resulting from CDR's conversion.

**COUNT V**  
**Fraudulent Inducement Of Contract**

102. Omni Direct repeats and re-alleges each of the allegations made in Paragraphs 1 - 101 of the Complaint as if fully stated here.

103. CDR falsely represented to Omni Direct that it sought to collaborate with Omni Direct on Hispanic marketing business development, that it did not have its own capacity or experience with Hispanic marketing, and that it would rely entirely on Omni Direct's Hispanic marketing expertise. CDR also falsely represented that it had existing and potential Hispanic marketing clients that Omni Direct and CDR would service together. CDR falsely represented that it sought to enter into the Agreement to protect the exchange of confidential information between the parties because, in addition to such existing and potential clients, it anticipated a long-term business relationship with CDR to develop Hispanic marketing business together.

104. CDR made these false representations to Omni Direct knowingly and for the purpose of defrauding Omni Direct. In reality, CDR had an undisclosed "long-term strategic plan" to develop its own Hispanic marketing business before it entered into the Agreement with Omni Direct, and induced Omni Direct to enter into the Agreement in order to misappropriate Omni Direct's confidential and proprietary business information and compete directly with Omni Direct.

105. Omni Direct reasonably relied on CDR's false representations because prior to entering into the Agreement, Omni Direct informed CDR that it would not collaborate with any company already running or planning to run its own competing Hispanic marketing business. In response, CDR assured Omni Direct that it did not have its own Hispanic marketing business and did not plan to develop its own business.

106. CDR's false representations were material to the Agreement because CDR's assurances that it did not have or plan to develop its own Hispanic marketing business, together with the proposed collaboration between the parties and the promise of the scalability of at least three specific clients, were the very reasons why Omni Direct agreed to enter into the Agreement and to provide CDR with its confidential and proprietary business information.

107. CDR's actions were motivated by actual and implied malice because it acted with ill will toward Omni Direct and intended to harm Omni Direct's business while maximizing its own profits in knowing disregard of Omni Direct's interests.

108. As a direct and proximate result of CDR's fraudulent misrepresentations, Omni Direct has suffered, and will continue to incur, monetary damages and loss of market value, in amounts to be determined at trial. Omni Direct is entitled to compensatory damages, including actual, consequential, and incidental damages, and punitive damages resulting from CDR's fraudulent inducement.

**COUNT VI**  
**Constructive Fraud**

109. Omni Direct repeats and re-alleges each of the allegations made in Paragraphs 1 - 108 of the Complaint as if fully stated here.

110. Throughout their relationship, CDR gained Omni Direct's trust and confidence and purported to act only to further Omni Direct's interests. Omni Direct depended on CDR because CDR had exclusive control over all information and communication with their current and potential clients, and Omni Direct relied on CDR to represent Omni Direct's interests and to convey complete and accurate information to and from Omni Direct and those clients. Omni Direct and CDR worked closely together over an extended period and were in constant contact to consummate a close and long lasting business relationship. Omni Direct necessarily had to repose trust and confidence in CDR's good faith and integrity, and CDR exercised influence and superiority over Omni Direct as a result. For these reasons, the parties had a special, confidential relationship and CDR owed Omni Direct a duty of care beyond their contractual Agreement.

111. In violation of these duties that CDR owed to Omni Direct, after entering into the Agreement CDR falsely and repeatedly represented to Omni Direct that it was working on partnerships with additional clients that CDR and Omni Direct would service together, all while soliciting continued confidential and proprietary business information from Omni Direct that CDR used to maintain its existing clients and obtain new business for itself. Omni Direct repeatedly inquired as to the status of such clients, and CDR falsely represented that the clients were nonresponsive or still considering whether to enter into business with CDR and Omni Direct. CDR also falsely represented that it needed detailed proprietary information from Omni Direct for client reasons, such as station invoices and affidavits. In reality, CDR used and is using Omni Direct's information to keep existing clients and obtain new clients for itself,

depriving Omni Direct of any involvement with or profits from those clients. CDR's actions constitute dishonest and immoral conduct.

112. CDR made such false representations to Omni Direct knowingly and for the purpose of defrauding Omni Direct. CDR sought and obtained Omni Direct's confidential and proprietary business information and used that information to obtain clients, gain specialty market knowledge and increase its own market position to Omni Direct's detriment.

113. Omni Direct justifiably relied on CDR's false representations because CDR's continual promises that it neither had nor planned to develop its own Hispanic media capabilities were key motivations for Omni Direct's agreement to provide continual confidential and proprietary business information to CDR. Omni Direct was also justified in believing that CDR would not act in a manner adverse to Omni Direct's interests, because CDR and Omni Direct anticipated a long-term, mutually beneficial relationship.

114. As a direct and proximate result of CDR's fraudulent misrepresentations, Omni Direct has suffered, and will continue to incur, monetary damages and loss of market value, in amounts to be determined at trial. Omni Direct is entitled to compensatory damages, including actual, consequential, and incidental damages, and punitive damages resulting from CDR's constructive fraud.

## **COUNT VII**

### **Unfair Competition**

115. Omni Direct repeats and re-alleges each of the allegations made in Paragraphs 1 - 114 of the Complaint as if fully stated here.

116. CDR took deliberate actions to damage and jeopardize Omni Direct's business by intentionally engaging in fraud and deceit against Omni Direct. CDR convinced Omni Direct

that it was pursuing a long-term business relationship with Omni Direct, when in reality it sought to obtain access to Omni Direct's confidential and proprietary business information so that it could use such information secretly to compete directly with Omni Direct in the U.S. Hispanic media and marketing market.

117. CDR's actions are illegitimate, willful and malicious because CDR intentionally stole Omni Direct's confidential and proprietary business information to use such information for its own unfair advantage.

118. As a direct and proximate result of CDR's unfair competition, Omni Direct has suffered, and will continue to incur, monetary damages and loss of market value, in amounts to be determined at trial.

119. Omni Direct hereby demands an accounting by CDR for all profits arising out of its unfair competition.

120. Omni Direct is further entitled to compensatory damages, including actual, special proof damages and lost profits, and punitive damages resulting from CDR's unfair competition.

#### **JURY DEMAND**

Omni Direct demands trial by jury in this action of all issues so triable.

#### **PRAYERS FOR RELIEF**

WHEREFORE, Omni Direct prays for judgment in its favor against CDR as follows:

1. Award compensatory damages against CDR in amounts to be determined at trial for breaching the Agreement;
2. Award compensatory and exemplary damages and attorneys' fees against CDR for its violation of the Maryland Uniform Trade Secrets Act;
3. Award compensatory and exemplary damages and attorneys' fees against CDR for its violation of the Federal Defend Trade Secrets Act;



4. Award compensatory and punitive damages against CDR in amounts to be determined at trial for its conversion;
5. Award compensatory and punitive damages against CDR in amounts to be determined at trial for fraudulently inducing Omni Direct to enter into the Agreement;
6. Award compensatory and punitive damages against CDR in amounts to be determined at trial for its constructive fraud;
7. Require CDR to account for its profits and award compensatory and punitive damages against CDR in amounts to be determined at trial for its unfair competition;
8. Award pre- and post-judgment interest as allowed by law; and
9. Such other relief as the Court deems just, equitable and appropriate.

Dated: August 14, 2018

BAKER & HOSTETLER LLP

By:

  
Mark I. Bailen

Washington Square, Suite 1100  
1050 Connecticut Avenue, NW  
Washington, D.C. 20036-5304  
(202) 861-1500  
[mbailen@bakerlaw.com](mailto:mbailen@bakerlaw.com)

Of counsel:

John Siegal  
Molly Tranbaugh  
45 Rockefeller Plaza  
New York, NY 10111  
[jsiegal@bakerlaw.com](mailto:jsiegal@bakerlaw.com)  
[mtranbaugh@bakerlaw.com](mailto:mtranbaugh@bakerlaw.com)

# Exhibit A

# **CDR Fundraising Group™** | leading. creating. delivering.

## **AGREEMENT**

This Agreement (the "Agreement") is made effective as of July 29, 2016 by and between Omni Direct Inc. (Omni Direct) and CDR Fundraising Group ("CDRFG (each of Omni Direct and CDRFG, a "Party" and collectively, the "Parties"). The Parties are executing this Agreement for the purposes of discussing a contemplated transaction between the Parties regarding Hispanic Marketing business development collaboration (the "Contemplated Transaction"). In consideration of the mutual covenants and promises contained in this Agreement, the Parties agree as follows:

1. Confidential Information. Each of the Parties acknowledges that in the course of the Contemplated Transaction or discussions related thereto, each of the Parties may make available to the other Party valuable information belonging to such Party which is not generally known to the public, is protectable and which constitutes trade secrets of such Party. For purposes of this Agreement, "Confidential Information" is defined to include, without limitation, any and all information about the Party and/or relating to the Party's business, whether communicated orally, in writing, or in any other format, whether in tangible or intangible form, arising out or related to any of the following: (i) trade names, trademarks, service marks, graphics, logos, product and/or service concepts and/or lines, customer lists, regulatory information and affairs of the disclosing Party and its marketing sources and strategies and distribution techniques; (ii) business plans, technical and strategic plans, financial and budget information or other subject matter pertaining to any business of the disclosing Party or any of its customers, prospective customers, competitors, sponsors, suppliers, collaborators, consultants or licensees; (iii) information relating to conceptualization, design, manufacture, production, sales, costs, pricing, forecasts, distribution, financing, advertising and/or marketing of the business of the disclosing Party; and (iv) all other proprietary information or trade secrets of the disclosing Party. Confidential Information also includes all information disclosed to a receiving Party which the disclosing Party has received from any third party which the disclosing Party is obligated to treat as confidential or proprietary or about any third party or which is the subject of a business opportunity identified by either Party to the other Party that, but for this Agreement, the receiving Party would have no right to receive any disclosure of or to use any portion of the Confidential Information in any manner whatsoever.

2. Non-Solicitation of Customers. During the term of this Agreement and for one year after any termination of this Agreement, Omni Direct will not directly solicit the business of any customer of CDRFG.

3. Use. Neither Party will use Confidential Information belonging to the other Party for any purpose whatsoever except as required for the discussions among the Parties about the Contemplated Transaction.

4. Disclosure. Each Party shall limit disclosure of the Confidential Information only to those employees and agents who need to receive the Confidential Information to further the Contemplated Transaction or discussions of the Contemplated Transaction and then only to the extent necessary to accomplish the purpose(s) of the Contemplated Transaction. Each Party agrees to carry sufficient precautions to maintain confidentiality including obtaining appropriate commitments from such employees and agents to prevent such employees from disclosing to others or using the Confidential Information except on a need to know basis for the Contemplated Transaction or discussions of the Contemplated Transaction.

# **CDR Fundraising Group™** | leading. creating. delivering.

5. Exceptions. The obligation of confidentiality and restrictions on use and disclosure contained in this Agreement shall not apply to any particular item of Confidential Information that was: (i) in the public domain at the time of such disclosure or subsequently came into the public domain, through no fault of the receiving Party, its employees or any of its parents, subsidiaries or other affiliated organizations; (ii) rightfully known to the receiving Party prior to such disclosure; (iii) received by the receiving Party as a matter of right, without a covenant of confidentiality from a source other than the disclosing Party; or (iv) disclosed by the Party in response to a valid order of a court or other governmental authority or otherwise as required under applicable law, but only to the extent and for the purposes of such order or law; provided, however, that the receiving Party will first notify the disclosing Party to provide an opportunity for such Party to seek an appropriate protective order.

6. Ownership. Each Party's Confidential Information is owned solely and exclusively by such Party, as the case may be, shall remain the exclusive property of such Party, and the recipient shall have no right, title or interest in, to or under any of the Confidential Information or any material developed from the Confidential Information.

7. Documents. All documents of any kind furnished pursuant or relating to the Contemplated Transaction or discussions of the Contemplated Transaction shall remain the property of the disclosing Party. The receiving Party shall return such documents, Confidential Information and all copies thereof to the disclosing Party, or certify that such documents, Confidential Information and all copies thereof, have been destroyed, upon the request of the disclosing Party. The receiving Party shall safeguard all such documents and copies with the same degree of care, but in any event not less than a reasonable standard of care, that it uses to avoid unauthorized disclosure of its own confidential and private information.

8. Term. This Agreement shall be effective for a period of two years from the date hereof.

9. Breach. Each of the Parties agrees that remedies at law may be inadequate to protect a disclosing Party against breach of this Agreement and hereby consent to the granting of injunctive relief, whether temporary, preliminary or final, in favor of the disclosing Party without proof of actual damages. The Parties understand that this provision does not waive other actions or remedies.

10. Disclaimer. Except as may otherwise be set forth in a signed, written agreement, the Parties make no representations or warranties as to the accuracy, completeness, condition, suitability or performance of the Confidential Information and a disclosing Party shall have no liability whatsoever to a receiving Party resulting from its use of the Confidential Information. Further, no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement or any disclosure hereunder, except for the right to use such information in accordance with this Agreement.

11. Entirety of Agreement; Severability. This Agreement sets forth the entire understanding of the Parties regarding the subject matter herein. If any provision of this

## **CDR Fundraising Group™** | leading. creating. delivering.

Agreement is held invalid or unenforceable, such provision will be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible achieves the Parties' intent in agreeing to the original provision. The remaining provisions of this Agreement will remain in full force and effect.

12. General Provisions. This Agreement shall be interpreted under the laws of the State of Maryland. The Parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Maryland, for any action, suits or proceedings arising out of or relating to this Agreement, and further agree that service of any process, summons, notice or document by U.S. certified mail shall be effective service of process for any action, suit or proceeding brought in any such court. The terms, conditions and covenants of this Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators and assigns of the parties hereto. The term "Party" as used in this Agreement shall include any person or entity which controls or is controlled by a Party, and each such person or entity is an intended third-party beneficiary of this Agreement. Failure to insist upon strict performance of any term of this Agreement shall not constitute a waiver of such term, or of any other term, at any time in the future. This Agreement may be executed in counterpart originals and exchanged by facsimile or other electronic form, with the same legal effect as if all signatures had appeared in original handwriting on the same physical document. No modification of or amendment to this Agreement shall be binding unless in writing and executed by all Parties to this Agreement.

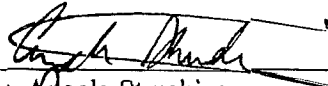
*[Remainder of Page Intentionally Left Blank]*

**CDR Fundraising Group™** | leading. creating. delivering.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.


**"CDRFG"**

CDR Fundraising Group

By:   
Name: Angela Struebing  
Title: President

**"Omni Direct"**

Omni Direct Inc.

By:   
Name: Alex Agurcia  
Title: President

*[Signature Page to Confidentiality and Non-Disclosure Agreement]*