

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of _____, 200_, by and between _____, a _____ ("Company"), and _____, ("Employee").

- A. _____ is engaged in the business of _____ and desires to retain an individual for the position of _____.
- B. _____ represents that [s]he is well qualified to perform the duties of _____, and will devote the necessary time, effort and energy to perform those duties; and
- C. Based on these representations, _____ desires to hire _____ as _____.

NOW, THEREFORE, in consideration of the above recitals and the respective agreements of Company and Employee set forth below, Company and Employee, intending to be legally bound, agree as follows:

1. **Employment.** Company shall employ Employee as _____, and Employee shall accept such employment and perform the services herein described for Company, upon the terms and conditions set forth in this Agreement.

2. **Term of Employment.** Unless terminated at an earlier date in accordance with Section 5 below, the term of Employee's employment with Company ("Term of Employment") shall commence on _____ and shall continue for a period of two years ("Initial Term"). This agreement shall automatically renew on its anniversary date for successive additional one (1) year periods ("Subsequent Terms") unless either party provides written notice of their intention not to renew this Agreement to the other at least thirty (30) days in advance of the anniversary date.

3. **Position and Duties.** Employee shall perform such duties and responsibilities as Company shall reasonably assign to Employee from time to time generally consistent with Employee's position as _____ as determined in the sole discretion of Company. Employee shall report to the _____--- or such other senior executive of Company as its Board of Directors may designate. **[additional definition of duties is suggested – if to be an exempt employee, set forth duties which support exemption].**

4. **Compensation.**

a. **Salary.** Company shall pay Employee an annual salary of \$_____. Employee's salary shall be paid in accordance with Company's normal payroll policies and procedures including legal withholding requirements and other Employee requested deductions.

b. **Bonus.** Company may pay to Employee an annual discretionary bonus for each fiscal year **[which both begins and ends during the Term of Employment]** in an

amount that will be determined by _____ based on such factors as Employee's performance and the performance of Company. Unless Employee's employment is terminated pursuant to expiration of the Term of Employment as set forth in Paragraph 2 above, Employee must remain employed by Company on the date upon which the annual discretionary bonus is to be paid in order to be eligible for an annual discretionary bonus.

c. Employee Benefits. While Employee is employed by Company hereunder, Employee shall be entitled to participate in all employee benefit plans and programs of Company for executive employees to the extent that Employee meets the eligibility requirements for each individual plan or program. Company provides no assurance as to the adoption or continuance of any particular employee benefit plan or program, and Employee's participation in any such plan or program shall be subject to the provisions, rules and regulations applicable thereto.

d. Stock Options. Company will, within ten (10) days of Employee's signature on this Agreement, grant to Employee options to purchase _____ shares of Company's common stock ("Options") at the exercise price of _____, in accordance with and subject to the _____ Stock Option Plan. ____% of the Options granted pursuant to this Agreement will vest as of _____, provided Employee remains employed by Company on that date. The remaining Options will vest at the rate of _____, until all Options granted pursuant to this Agreement have vested, provided Employee remains employed by Company on all such dates on which Options would vest. Unless specifically provided in this Agreement, vesting and exercise provisions and all other terms and conditions governing the Options shall be as set forth in the plan documents and such option agreements as may be entered into with Employee.

e. Expenses. While Employee is employed by Company hereunder, Company shall reimburse Employee for all reasonable out-of-pocket business, travel and entertainment expenses incurred by Employee in the performance of Employee's duties and responsibilities hereunder, subject to Company's normal policies and procedures for expense verification and documentation.

f. Vacation. Employee shall be entitled to paid vacation in accordance with Company's practices and policies for executive employees.

5. Termination of Employment.

a. Termination For Cause. Employee may be terminated for cause upon written notice. Cause justifying termination of employment includes, but is not limited to: theft attempted theft of Company property or property of Company's vendors, employees or customers; dishonesty to Company or Company's vendors, employees or customers related to Company's business or Employee's employment; drug or alcohol abuse on Company premises or on Company business or otherwise adversely affecting Employee's ability to perform her employment duties; willful or persistent violation of Company's policies; conviction of a felony; gross dereliction of employment duties; material breach of this Agreement; and unauthorized and unreported absence from work for more than three days. Employee will receive no severance pay or benefits in the event Employee is terminated for cause.

b. Termination Without Cause. Company may terminate Employee's termination without cause at any time upon thirty (30) days written notice to Employee. In the event Company exercises its right to terminate Employee's employment under this Subsection 5(b) during the Initial Term, Employee shall be entitled to severance pay in the amount of _____. In the event Company exercises its right to terminate Employee's employment under this Subsection 5(b) during any Subsequent Term, Employee shall be entitled to severance pay in the amount of _____ [**These do not need to be different, some employers do it this way.**]

c. Employee's death. Employee's employment with Company and all of Company's obligations under this Agreement terminate immediately upon Employee's death.

6. Duty Of Loyalty. As an employee of Company, Employee will devote his best efforts to the interests of Company. Employee agrees to devote all of his working time and attention to his duties hereunder, except for such reasonable amounts of time for personal, charitable, investment and professional activities that do not interfere with the service to be rendered by Employee hereunder. During Employee's employment with Company, Employee will not, except with the written consent of the _____, engage in any activity, investment, interest or association (1) which is hostile or adverse to or competitive with Company, or (2) which so occupies Employee's attention as to interfere with the proper and efficient performance of his duties at Company, or (3) which interferes with the independent exercise of Employee's judgment in Company's best interests.

7. Confidential Information.

a. Definition. For the purpose of this Agreement, the confidential or proprietary information of Company includes but is not limited to "know-how;" formulae; software; processes or machines; inventions; matters of a business nature, such as information about costs, profits, markets, sales, lists of customers, administrative procedures and manuals, business plans and proposals, operating projections and results, lists of customers, employees and suppliers, and terms and conditions of Company's contracts; all books, records, reports, research notes, charts, graphs, computations, analysis, recordings, photographs, computer programs and documents thereof, samples of materials, and other graphic computer or written data relating to the business of Company utilized or utilizable by Company in its business and learned by Employee during his employment with Company; and information of a similar nature, to the extent not available to the public. Employee agrees to consult with _____ concerning any questions that Employee may have as to what comprises such confidential or proprietary information.

b. Restrictions on Disclosure and Use. In view of the fact that Employee's work as an employee of Company will bring Employee into close contact with many confidential affairs of Company, Employee will, at all times both during and after employment with Company, hold in strictest confidence, and not use or disclose to anyone other than Company's employees on a reasonable and legitimate need-to-know basis for purposes in furtherance of Company's objectives, any confidential or proprietary information of Company, except as otherwise authorized in a writing signed by _____. Employee further understands and acknowledges that all such confidential or proprietary information of Company, or any copy, extract, summary thereof, whether originated or

prepared by or for Employee, or otherwise coming into Employee's knowledge or possession, is and shall remain the exclusive property of Company.

c. Injunctive Relief. Employee acknowledges and agrees that the confidential and proprietary information of Company which is subject to this Agreement is of a special, unique, unusual, extraordinary, and intellectual character, which gives such confidential and proprietary information a particular value, the loss of which cannot be reasonably compensated in damages in an action at law. Employee understands and acknowledges that in addition to any other rights or remedies that Company may possess, Company shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by the undersigned.

8. Inventions.

a. Assignment. All rights, title and interest in and to any and all inventions (including new contributions, improvements, designs, developments, ideas, discoveries, copyrightable material, or trade secrets) which Employee may solely or jointly conceive, develop, or reduce to practice during the period of Employee's employment by Company will be assigned to Company automatically and immediately upon invention, and shall be the sole property of Company. Employee's obligation to assign shall not apply to any invention as to which Employee can prove:

(1) was developed entirely on Employee's own time and did not involve the use of equipment, supplies, facility, or trade secret information of Company, and

(2) does not relate to the business of Company or to the actually or demonstrably anticipated research or development of Company, or does not result from any work performed by Employee for Company.

b. Existing Inventions. In the event Employee claims to have any right, title or interest in any inventions existing as of the date of this Agreement, Employee shall attach to this Agreement a non-confidential list of all such inventions. If no such list is attached, Employee represents and agrees that there are no such inventions. If, while employed by Company, Employee incorporates into a product, process, machine, or otherwise uses an invention owned by Employee or in which Employee has an interest, Company shall be and hereby is granted a royalty-free, irrevocable, worldwide license to make, have made, use and sell that invention, without restriction, to the extent of Employee's ownership and interest.

c. Records of Inventions. Employee will advise Company promptly in writing of any inventions, discoveries, developments, improvements or trade secrets that are subject to this Agreement, including those that Employee believes meet the criteria in subparagraphs 3(a), (b) and (c), above; and Employee will at that time provide to Company in writing all evidence necessary to substantiate that belief. Company will keep in confidence and will not disclose to third parties without Employee's consent any confidential information Employee discloses in writing to Company relating to inventions which meet the criteria of subparagraphs 3(a), (b) and (c), above.

d. Assistance in Connection with Inventions. Employee will execute any required oath or verify any appropriate document in connection with carrying out the terms of this Agreement. In the event Company is unable, because of Employee's mental or physical incapacity, or for any other reason whatsoever, to secure Employee's signature to apply for, or to pursue, any application for any United States or foreign patent, covering inventions assigned to Company as stated above, Employee hereby irrevocably designates and appoints Company and its duly authorized officers and agents as Employee's agent and attorney-in-fact to act in his behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of United States and foreign patents and copyrights thereon with the same legal force and effect as if executed by Employee. Employee further agrees to testify at Company's request and expense in any interference, litigation, or other legal proceeding which may arise during or after Employee's employment with Company.

9. Third Party Trade Secrets. Employee will not, during his employment with Company, improperly use or disclose any proprietary information or trade secrets of any third party, including Company's customers and suppliers, or of any of Employee's former or concurrent employers or companies, if any. Employee shall not bring to the premises of Company any unpublished documents or any property belonging to such third parties, unless consented to in writing by such third party. Employee's employment with Company does not and will not breach any agreement or duty which Employee has concerning confidential information belonging to others. If Employee is asked to work on any project for Company which raises a concern regarding third party confidential information, Employee will, as soon as this is apparent to Employee, discuss the situation with the Chief Executive Officer of Company without disclosing any confidences.

10. Return Of Property. Upon termination of Employee's employment with the Company, Employee shall deliver promptly to Company all of the following things which are in Employee's custody or control: (1) all records, files, manuals, books, forms, documents, letters, memoranda, data, customer lists, tables, photographs, video tapes, audio tapes, computer disks and other computer storage media and copies thereof, whether or not containing confidential or proprietary information, that are the property of Company or that relate in any way to the business, products, services, personnel, customers, prospective customers, suppliers, practices, or techniques of Company; and (2) all other property of Company, including but not limited to computers, personal digital assistants, cellular telephones, pagers, credit cards, and keys.

11. Prohibited Post Termination Activities. In addition to Employee's continuing duty to maintain the confidentiality of Company's confidential and proprietary information, Employee will not, for a period of one year following the termination of Employee's employment, induce any employee of, or consultant to, Company to engage in any business in which Company is engaged or contemplates engaging, or solicit any employee to leave the employment of Company.

12. Miscellaneous.

a. Amendments. No amendment or modification of this Agreement shall be deemed effective unless made in writing and signed by the parties hereto.

b. No Waiver. No term or condition of this Agreement shall be deemed to have been waived, except by a statement in writing signed by the party against whom enforcement of the waiver is sought. Any written waiver shall not be deemed a continuing waiver unless specifically stated, shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

c. Counterparts. This Agreement may be executed in any number of counterparts, and such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

d. Severability. To the extent that any portion of any provision of this Agreement shall be invalid or unenforceable, it shall be considered deleted herefrom and the remainder of such provision and of this Agreement shall be unaffected and shall continue in full force and effect.

e. Captions and Headings. The captions and paragraph headings used in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any of the provisions hereof.

f. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) upon receipt, if delivered personally or via courier, (ii) upon confirmation of receipt, if given by facsimile provided that another copy is sent by another means permitted by this subsection within two (2) business days thereafter, and (iii) on the third business day following mailing, if mailed first-class, postage prepaid, registered or certified mail as follows:

If to Company to:

If to Employee to:

Any party may by notice given in accordance with this subsection to the other party to designate another address or person for receipt of notices hereunder.

g. Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover such reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled, as may be awarded by the court or arbitrator.

h. Governing Law. The parties agree that this Agreement will be governed by the laws of the State of _____ and that venue for the hearing of any disputes

regarding this Agreement shall be proper only in the County of _____, State of _____.

i. Entire Agreement. This Agreement contains the entire agreement of the parties relating to Employee's employment with Company and supersede all prior agreements and understandings with respect to such subject matter.

IN WITNESS WHEREOF, Employee and Company have executed this Agreement as of the date first set forth above.

"COMPANY"

By: _____

Its: _____

"EMPLOYEE"
