Employment Agreements

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EMPLOYMENT AGREEMENTS

I. INTRODUCTION

The primary focus of this presentation is the drafting of an executive employment agreement and a retention bonus agreement. This presentation surveys issues to keep in mind when drafting employment agreements. Any one of these sections could be expanded to an entire presentation on employment, tax, benefits, intellectual property, or other issues. Our purpose is to survey and identify areas for thought and consideration, rather than focusing on any single issue.

II. GETTING READY

Before the agreement is drafted, become aware of your client's goals. What are their must-haves in negotiation, what are their negotiating strengths, what are their negotiating weaknesses? Is this an agreement for a "must have" executive or is the employer in a strong bargaining position?

Identify and gather information you need before the agreement is negotiated. You should understand the employer's salary structure, the salary and management structure. Review employment personnel policies and benefit plans. Understand stock option plans to the extent they will be offered. Be aware of outstanding stock. Review employment agreements for similarly-situated employees.

Consider what expert advice you may need in drafting the agreement. Will there be significant tax issues? Are there deferred compensation issues? Do you need to talk with corporate counsel to understand stock options and outstanding stock issues?

III. POSITION AND DUTIES

A. Position and Outline of Duties

An employment agreement should initially set forth the name of the position and the duties involved. The outline of duties should be specific enough to make expectations clear, but should also provide for additions and changes as may be requested by the employer. This protects against later arguments that additions or changes constitute modifications for which new consideration is required, or that a change in duties is a breach of the agreement. The agreement should also set out to whom the employee reports and is responsible.

B. Resignation From the Board of Directors

If the employee is a member of the board of directors, a provision should be included that requires resignation from the board should the employee be terminated for any reason. This will prevent an employee who is removed for cause from continuing to exert any control over the corporation through a position on the board of directors. Where the employee retains the right to terminate the contract at will or for specific reasons, the termination should also trigger the obligation to resign from the board. Indeed, the employer may wish to require resignation from the board upon termination of the agreement for <u>any</u> reason.

C. Location of Position

The agreement should define the company's discretion to move the employee to any of its offices or locations. In some cases, full discretion is retained. In others, either a single location or several specific locations are identified.

D. Limitation on Outside Activities

The agreement should contain a provision directing the employee to devote entire productive time, ability, attention and effort to the employer's business. The employment agreement could allow, however, for activities such as engaging in personal investment activities, serving on the board of directors of noncompeting corporations, or engaging in charitable or community service, so long as the additional activities do not materially interfere with the employee's duties under the agreement.

IV. TERM

A. Fixed Term

The simplest and most common term provision sets forth a specific term of years, after which the contract automatically expires. A fixed term contract allows both the employer and employee to know exactly what the parameters of the agreement are to be. Such provisions leave the parties free at expiration to re-execute the contract, renegotiate its terms, or go their separate ways.

B. Year-to-Year

The employer may wish to provide for an initial one-year contract, with an automatic renewal for an additional one-year period. This generally occurs automatically, absent some notice of "nonrenewal." Notice deadlines may be set far in advance.

V. COMPENSATION

A. Salary

Employment agreements generally set forth a specific base amount and may or may not include bonus or additional compensation provisions. The agreement should ordinarily state the salary before all customary payroll deductions, and provide for payment in equal or substantially equal installments, either monthly or biweekly. If a contract is of indefinite duration, a provision should be included stating who shall determine any increases in the amount of the annual base salary for future years.

The employment agreement may also include provisions for a bonus. Bonus provisions may include: (a) a set dollar amount of the bonus for each year during the term of the agreement; (b) a set percentage of the base salary as bonus for each year; (c) a formula based upon performance of the company or other defined parameters; or (d) a discretionary bonus to be determined by a fixed panel, often the board of directors.

B. Reimbursement of Expenses

The agreement should include a clause setting forth the understanding of the parties on reimbursement of expenses. If the employer already has a reimbursement expense policy, you might provide that expenses will be reimbursed in accord with company policies as they may, from time to time, be amended.

C. Benefits

The agreement should contain a clause setting forth fringe benefits, subject to and in accordance with applicable eligibility requirements. Such benefits often include medical insurance, life insurance, disability insurance, accident plans and medical examinations such as an annual physical. Other fringes may include club memberships, moving expenses, certain types of legal or financial advice, and automobile allowance. Reference may be made to the benefits offered to similarly-situated co-workers.

The agreement may include the employee in a pension or profit sharing arrangement. If the employee is included in a profit sharing arrangement, the agreement should set forth specifically the percentage of profits or the exact means by which the employee's share is to be calculated. Additionally, the agreement should set forth or adopt some separate plan document defining the precise means for determining the "profits" at issue.

D. Stock Issues

Employers can use stock-based compensation to link employees' benefits to the employer's success, and to compensate employees without using cash. Frequently used forms of stock-based compensation include stock options, restricted stock awards, restricted stock units, stock appreciation rights and employee stock purchase plans. All of these plans involve complex tax, accounting and securities issues. You should consult with an equity compensation specialist before putting a plan in place or changing an existing plan.

1. Stock Options

Basically, a stock option is a promise by the employer to sell the employee shares of stock on specific terms. There are two basic types of options – incentive stock options ("ISOs") and nonqualified stock options ("NSOs").

(a) Incentive Stock Options (ISOs)

ISOs have two advantages over NSOs. One is that the gain isn't realized until the option stock is eventually sold and the other is that the gain is taxed as capital gains rather than ordinary income. To enjoy these advantages, however, the employee cannot sell the shares until the later of two years after the option was granted or one year after the date of exercise. Moreover, the option must satisfy a number of statutory requirements, including that the price per share must be 100% of the fair market value on the day granted and the total value of the ISO vesting in any year can't exceed $100,000.

However, there are also a number of disadvantages to ISOs. ISO gain applies to the alternative minimum tax (AMT) calculation, and while the employee may not owe ordinary income with respect to the ISO gain in the year of exercise, the employee is very likely to owe AMT. In addition, with ISOs the company gets no tax deduction for the income recognized by the employee (unless the employee sells the stock before the holding periods are met – a "disqualifying disposition" – and notifies the company. Also, now that the value of stock options granted must be reflected on the face of a company's financial statements as a non-cash compensation expense, the expense recognized for an ISO is higher than the expense recognized for an NSO with the same terms because the company does not get to recognize an offsetting expected tax benefit for an ISO. Furthermore, approximately 97% of all ISOs have disqualifying dispositions, so the employee does not get the full tax benefit.

(b) Nonqualified Stock Options

For NSOs, no specific statutory requirements dictate their terms. However, new internal revenue code section 409a imposes severe adverse tax consequences on

any stock option that has an exercise price less than the full fair market value of the underlying stock or that has any additional deferral feature. The primary drawback to NSOs, is that the employee exercising an option must pay tax at ordinary income rates on the difference between the exercise price and the fair market value of the stock on the date of exercise.

2. Restricted Stock Awards

With a restricted stock award, the employer grants the employee an award of shares of stock subject to a lapsing forfeiture restriction. Typically, the employee does not purchase the shares. Restricted stock awards can have forfeiture restrictions that lapse over time and/or upon the achievement of a performance goal. For example, the company could grant a 1,000 restricted stock award which is subject to a lapsing forfeiture restriction that lapses at the rate of 200 shares for every year of employment. The full 1,000 shares are issued on the grant date. To keep the entire 1,000 shares, the employee would have to remain employed for five years. Before vesting, the employee has all the rights of a shareholder with respect to all 1,000 shares, including to receive dividends and vote the shares. Tax is due at ordinary income rates when the stock grant is made (if the employee files a Section 83(b) election within 30 days after the grant date to elect to be taxed on the value of the full 1,000 shares on the grant date or as the restricted stock vests if the employee does not file a Section 83(b) election). Restricted stock awards are exempt from IRC Section 409a.

3. Restricted Stock Units

Restricted stock units are similar to restricted stock awards, except that the shares of stock subject to the award are not issued until the restricted stock units vest (rather than being issued on the grant date for a restricted stock award). In addition, restricted stock units can be made payable in cash, or a combination of cash and stock, at the election of the employer or at the election of the employee. The employee has no right to make a Section 83(b) election with respect to restricted stock units and is taxed on the value of the shares or cash paid when the restricted stock units vest. Restricted stock units can be structured with or without dividend equivalent rights, but can't be voted until shares are actually issued at vesting. Restricted stock units can be subject to IRC section 409a if not structured properly. Restricted stock units payable in cash, or payable in cash at the employee's election, have less preferential accounting treatment.

4. Stock Appreciation Rights

Stock appreciation rights allow an employee to obtain the difference in market value between a given number of shares at the time the right was granted and the time of exercise. That amount may be paid in shares, in cash, or in a combination of both.

The benefit of stock appreciation rights over options is that the employee pays no exercise price. Stock appreciation rights payable in cash, or payable in cash at the employee's election, have less preferential accounting treatment. Stock appreciation rights can be subject to IRC section 409A if not properly structured.

5. Employee Stock Purchase Plans

A company may set up a plan that allows an employee to use money withheld from the employee's pay to purchase shares of the employer's stock at the current market price or at a discount from the market price. Employee stock purchase plans can be set up as tax-qualified plans under Internal Revenue Code Section 423 (which are exempt from IRC Section 409S).

E. Deferred Compensation and Section 409A

For highly paid employees, deferred compensation is relatively common. Deferred compensation plans permit an employee to defer current pretax income until after retirement or some other agreed date. Payment of taxes can be deferred until the income is actually received, when the employee may be in a lower income tax bracket. The employment agreement must contain a provision as to what happens when an employee terminates. Payout rules upon termination usually change. The amounts received from a nonqualified plan are subject to income tax at normal rates, and may not be put into an IRA or another company's plan.

Section 409A generally provides that amounts deferred under a nonqualified deferred compensation plan that were not vested before January 2, 2005 (or that were vested, but are materially modified after October 3, 2004) are currently includible in income if not previously included and not subject to a substantial risk of forfeiture, unless the plan meets specified design and administration requirements. Failure to comply can result in significant federal income tax consequences, including a 20% additional tax. Any agreement that calls for the deferral of compensation should be reviewed by a tax or benefits attorney for 409A issues and amended, if needed, before the end of 2006. Final regulations are expected in June 2006.

Section 409A of the Internal Revenue Code applies to any severance pay under an agreement entered into or triggered after December 31, 2004 (no grandfathering for pre-existing agreements).

Under the existing guidance on Section 409A, severance payments are <u>not</u> subject to Section 409A if they satisfy the "limited amount and duration" or "short-term deferral" tests. For the limited amount and duration test:

(1) the termination must be involuntary;

(2) the amount of severance payments must not exceed the lesser of (a) 2X annual compensation for prior year, and (b) $840,000 (for 2005); and

(3) payments must be made by 12/31 of second calendar year after year of separation.

For the short-term deferral test, all payments must be made by March 15 of the year following the year of separation (2-1/2 months after year end).

If the severance payments won't fit under one of these tests, then the severance arrangement must be modified to comply with 409A to avoid the adverse consequences. Additional restrictions on severance payments that are subject to 409A include that key employees of a public company can't receive any payments for six months after termination of employment and that the payment dates for any severance payments must be fixed.

In addition, severance payments generally can't be accelerated or deferred.

F. Severance Payment

"Severance on termination" provisions vary widely depending on the bargaining power of the parties. They may include payment of a flat severance amount, payment of all base salary to the end of the contract term, immediate vesting of stock options, incentive bonuses or other compensation, or any other arrangement the parties devise. Severance is often made subject to forfeiture if the employee is terminated for cause. If the compensation provisions of an agreement include incentive bonuses, stock options, or severance payments that mature during employment or upon expiration of the agreement, the employer should consider providing for revocation or recapture of these payments upon termination for cause.

1. Older Workers Benefits Protection Act ("OWBPA")

If you ask for a release of claims, as part of a severance agreement, or any other agreement, and you intend to encompass claims under the Age Discrimination in Employment Act ("ADEA"), you must comply with the requirements of the OWBPA in all severance agreements. Enacted in 1990 as an amendment to the ADEA, the OWBPA limits the manner in which employees can waive their rights under the ADEA.

(a) Knowing and Voluntary Waiver

Under the OWBPA, the waiver signed by the employee must be "knowing and voluntary." This requires, at a minimum, that the waiver be part of a written agreement between the employee and employer and drafted with language that can be

understood by the employee. The waiver must specifically refer to claims under the ADEA and must advise the employee in writing to consult an attorney before signing. 29 U.S.C. § 626(f)(1).

(b) Required Revocation Period

Employees must be given seven days after executing the agreement to revoke the agreement. Therefore, employers should consider delaying any benefits under the severance agreement until after the expiration of the revocation period.

(c) Required Consideration Period

In connection with a single employee termination, the employee must be given 21 days to consider signing the agreement. Additional burdens are placed on employers requesting waivers as part of an exit incentive or other termination program offered to a group or class of employees. In this case, employees must be allowed 45 days to consider signing the agreement and employers must comply with additional informational requirements as required by the statute. *See* 29 U.S.C. § 626(f)(1).

2. IRC § 280G Excise Taxes

Section 280G of the Internal Revenue Code generally provides that, if the total payments to an individual that are "parachute payments" exceed three times the individual's "base amount," then all amounts paid in excess of <u>one</u> times the base amount are nondeductible to the employer and subject to a 20% excise tax payable by the recipient. Parachute payments may include some or all of the value of stock options that are accelerated upon a change in control, severance benefits, or enhanced pension benefits offered upon change in control. Under § 280G, there are essentially three alternative approaches to address the excise tax implications:

(a) Gross-up Payment

The Company may choose to make gross-up payments with respect to severance payments and/or any other payments made to the employee.

(b) "Cap" on Payments

The Company may reduce all parachute payments so that no excise tax would be imposed on any of the payments and benefits. Thus, the total amount of payments is capped at three times the employee's "base amount."

(c) "Alternative Cap"

The Company may provide that payments and benefits payable to an employee would be reduced to the extent necessary so that no excise tax would be imposed if to do so would result in the executive retaining a larger amount, on an after tax basis, taking into account the excise and income taxes imposed on the payments and benefits.

VI. INDEMNIFICATION

Employee agreements frequently contain a provision indemnifying the employee as an officer or director of the company. The company normally agrees, to the extent permitted by law, to indemnify the employee against liability incurred in his or her role as an officer or director of the company.

VII. TERMINATION

The termination provision will depend in large part on the bargaining positions of the parties, but most employment contracts use one or more of the following approaches: (1) termination for cause, (2) termination at will, usually accompanied by a severance payment, and (3) termination upon the occurrence of certain future events beyond the parties' control, such as death or disability of the employee.

A. Death

Normally, an employment agreement terminates upon the death of the employee. Nonetheless, a provision should be included as to whether compensation owed for the remainder of the contract should accrue to the estate, or whether all obligations terminate upon the death of the employee. This particular provision could state that the agreement expires at the end of the month in which death occurs and payment of compensation owing accrues to the employee's estate for pro rata portions of monthly salary for services rendered up to the time of death.

B. Disability

Most employment agreements for employees contain a provision automatically terminating the contract in the event of total disability of the employee. Often, the company continues the employee's salary, possibly adjusted, during any period of disability prior to termination. Agreements have historically defined "total disability" as the inability to perform over a certain fixed period (e.g., 120 days) the material duties and responsibilities of the position. The provision will need to be applied in the context of the ADA and state law, by considering whether a reasonable accommodation will enable the employee to perform the essential function of the job.

C. Notice of Termination

Employers usually seek a clause permitting very short notice prior to termination. The employee, of course, will try to bargain for an extended period of notice, enabling him or her to obtain other work in the interim.

The employer may find some types of employee misconduct more disturbingly objectionable than others. Thus, some agreements provide for "tiers" of cause, where certain misconduct is cause for immediate discharge, while other acts or omissions may ripen into cause if they are left uncured after notice. Of course, defining cause in this manner imposes additional limitations on employer freedom. An employer might consider "notice and cure" provisions, especially where parties retain the right to terminate for breach of the agreement.

D. Termination For Cause

Most employment agreements contain a provision allowing for termination for cause. The employer should reserve the right to terminate, without advance notice and without further obligation to the employee, if "cause" is shown.

The employment agreement can define cause specifically or generally. If not defined in the agreement, the definition applied under Alaska law is "*any business-related reason that is not arbitrary, capricious or illegal and which is based on facts (1) supported by substantial evidence, and (2) reasonably believed by the Board of Directors to be true.*" *Jurgens v. City of North Pole***,** 153 P.3d 321, 334 (Alaska 2007). This standard includes both an objective and subjective component. *Id*., *quoting Cassel v. State, Dep't of Admin.*, 14 P.3d 278, 284 (Alaska 2000) ("Thus, we will uphold a good faith termination upon substantial evidence of an 'objective failure to meet acceptable standards.'").

If a specific listing is used, however, a general, "catch-all" provision should be considered. Some examples of cause are:

- willful and repeated failure or refusal to carry out reasonable orders, instructions, or directives of the board of directors; or

- material acts of dishonesty, disloyalty or competition related to the business of the company or its relationships with employees, suppliers, contractors, customers or others with whom the company does business; or

- refusal or failure to furnish material information concerning the company's affairs as reasonably requested by or under the authority of

the board of directors, or falsification or misrepresentation of such information; or

- conviction of a crime constituting fraud, intentional dishonesty, moral turpitude, or other conduct that materially compromises the reputation of the employee or the company; or

- any other act, course of conduct, or omission that has or is reasonably likely to have a material adverse effect on the company, its business or financial position, or its goodwill or reputation.

If the employee has sufficient bargaining power, there may be provisions allowing for employee termination for cause. Generally these will include such things as significant change in job duties, location, or compensation.

E. "Change in Control"

"Change in control" provisions, sometimes known as "golden parachutes," are contracts or contract sections providing for severance payments to an employee involuntarily terminated after a sale of assets or stock or other transaction which "changes" the "control" of the company. These provisions may also permit an employee to quit and receive severance if a reduction in compensation or duties or a relocation follows a change in control.

Typically, a change in control provision includes continuation of the employee's base salary for a given period of time, often two to three years, or a lump-sum payment valued at two or three times the base salary rate. Normally, retirement and other benefits guaranteed in a contract will be included in the severance package.

Any employment agreement with a change in control provision should define carefully the circumstances that will qualify as a genuine change in control, i.e., a third party's acquisition of a controlling portion of stock, a change in board composition, or a merger.

VIII. PROPRIETARY INFORMATION AND INVENTIONS

Under the "work-for-hire" doctrine, a company retains a copyright in any works prepared by an employee in the regular course of business. With patents and other intellectual property, however, this is not the case. Invention agreements protect the employer's interest in intellectual property created by the employee during the term of employment. The employment agreement should contain a provision providing that all invention and patent rights obtained by the employee in the course of his or her employment become the property of the company. The agreement should also ensure that all concepts, designs, machines, devices, processes, technology, trade secrets,

customer lists, plans, inventions, improvements or related work product, that the employee develops, conceives, or first reduces to practice during his or her term of employment shall be the sole and exclusive property of the employer. A provision should also be included requiring the employee to immediately disclose in writing all such concepts, designs, or processes.

An employee with considerable bargaining leverage may try to extract a royalty agreement from the employer. Such royalty agreements often vest ownership of the patent or other intellectual property right in the employer, but allow the employee to receive a portion of the royalties attributable to a patent that is later licensed. The precise terms of any such royalty agreement should be specifically set forth in the employment contract.

Prior to accepting employment, an employee should prepare and attach a list of all inventions, patent applications and patents made or conceived prior to the date of employment.

IX. NONCOMPETITION

Employment agreements often contain a noncompetition covenant. The courts are looking at noncompetition agreements with growing disfavor. However, in most jurisdictions, including Alaska, they remain enforceable so long as they are reasonable in scope, geographical limitation and time. See Appendix G for a brief summary of state laws of noncompetes.

A. Scope

Employers generally desire to prevent an employee from being employed by, consulting with, or performing services for a competitor. The term "competitor" usually includes any entity that competes, directly or indirectly, with the employer, or who markets, distributes or otherwise derives benefit from the production, marketing, or distribution of products or services provided by the employer.

B. Geographic Limitation

To be reasonable in geographic limitation, a noncompetition agreement must be reasonably calculated to protect the legitimate interests of the employer without imposing undue hardship on the employee. These interests vary from case to case depending on the employer's business.

C. Time Limitation

Again, the time limitation must be reasonably calculated to protect the employer's legitimate interests without imposing undue hardship on the employee.

Time limitations ranging for one to three years are common. Longer limits occur where unusually higher severance is paid.

X. NONSOLICITATION AND NONDISCLOSURE

Employment agreements commonly prohibit solicitation of employees, customers, or suppliers, and are enforceable in Alaska. *See Metcalf Investments v. Garrison*, 919 P.2d 1356 (Alaska 1996). Such provisions apply to any direct or indirect solicitation and usually operate for the same time period as the noncompetition provision.

The agreement should also contain a provision forbidding disclosure of confidential or proprietary information. This provision should state that, during and after employment, the employee agrees not to disclose the company's confidential information to third parties. "Confidential information" should be defined to include any trade secrets, proprietary information, inventions or technology, policies, procedures, research, reports, software, customer lists, marketing or business development plans, or any other information about the company's business or operations maintained confidentially by the company.

The agreement should further provide that upon termination of the employment relationship, the employee will return to the company all the documents, data, software and other materials in his or her possession that pertain to the company's business or that contain confidential information. Nondisclosure obligations should <u>not</u> be limited in duration, and <u>should</u> arise no matter how the agreement terminates.

The Uniform Trade Secrets Act ("UTSA"), extends protection to trade secrets even absent a nondisclosure clause. *See* AS 45.50.910 *et. seq*. The UTSA provides for both injunctive relief and an action for damages upon a showing of misappropriation of trade secrets. However, the UTSA also defines "trade secrets" more restrictively than an employment agreement can. An employer can protect a broader range of information through a well-drafted employment agreement.

XI. INJUNCTIVE RELIEF

Employment agreements also should contain a provision allowing for equitable relief. Basically, the employee should acknowledge that the noncompetition, nonsolicitation, and nondisclosure provisions of the agreement are essential to the company's welfare, and that a breach of these provisions will create a severe unfair business disadvantage which cannot be adequately remedied by traditional legal recourse to damages. The employee should acknowledge that the company is entitled to immediate injunctive relief to enforce the noncompetition, nonsolicitation, and nondisclosure provisions. It may also be useful to have the employee agree that

enforcement of the noncompetition and related covenants will not prevent him or her from pursuing a sole means of support, that enforcement is necessary to protect the employer's legitimate interests, and the enforcement does not confer a benefit on the employer disproportionate to the detriment to the employee.

XII. ARBITRATION

Employers should consider carefully whether to add an arbitration clause. Arbitration is theoretically quicker and less expensive than trial. But many arbitrators are viewed as being "pro-employee." Moreover, hearings and discovery in arbitrations are growing in complexity and cost. Employers should not agree to arbitration unless they are truly willing to have disputes arising from the agreement end there – appeal is not an option except in rare circumstances. Also, arbitration provisions usually make it easier for an employee to bring disputes to a third party. Lawsuits are more formal and perceived to be more expensive; thus they are entered into less lightly.

The U.S. Supreme Court has upheld the use of arbitration agreements in employment contracts. *Circuit City Stores, Inc. v. Adams,* 532 US 105 (2001). So has the Alaska Supreme Court – so long as the arbitration clause is not one-sided in favor of the employer. *Gibson v. Nye Frontier Ford, Inc*., No. S-13064 (Alaska Supreme Court, April 3, 2009).

Note: If an arbitration provision is used, the employer should be sure to exempt from arbitration the injunctive relief provided in the noncompetition, nonsolicitation, and nondisclosure provisions of the agreement. This permits the employer quick access to the courts to enforce these key provisions.

XIII. OTHER GENERAL PROVISIONS

A. Governing Law

The law of the state where the contract was entered into and performed will generally govern an employment contract, regardless pf whether the contract contains a choice of law provision. Nonetheless, the tactical advantage of assuring that any litigation under the agreement will occur in a forum convenient for the employer should not be underestimated. It is useful to include a governing law and venue provision.

B. Entire Agreement

The agreement should also contain an integration clause stating that the agreement constitutes the entire understanding between the employer and employee. All prior or contemporaneous oral or written communications, understandings, or

agreements between the employer and employee should be superseded in the final agreement.

C. Attorney Fees

Employment contracts may provide for award of attorneys' fees to the prevailing party in a dispute under the agreement. In considering an attorneys' fees provision, determine whether state law requires that the attorneys' fee provision be applied in favor of both parties and the effect of such application. *See Gibson v. Nye Frontier Ford, Inc*., No. S-13064 (Alaska Supreme Court, April 3, 2009) (cost of arbitration cannot be charged to employee).

D. Advice of Counsel

Particularly where both parties are in fact represented by counsel, the agreement should say so. Even where a party chooses not to consult attorneys, the agreement should provide that he or she has had full opportunity to do so. This helps to prevent later arguments that a party failed to understand the legal implications of particular language.

EMPLOYMENT AGREEMENT

[CLIENT CORPORATION]

[EMPLOYEE]

Dated as of _____, _____

Employment Agreement

This Employment Agreement (this "Agreement"), dated as of _____, between _____, a _____ corporation ("Employer"), and _____ ("Employee");

W I T N E S S E T H:

WHEREAS, **[**describe structure or key elements of acquisition or other relevant event**]**; and

WHEREAS, Employer desires to **[**retain the services of**] [**continue to employ**]** Employee upon the terms and conditions set forth herein; and

WHEREAS, Employee is willing to provide services to Employer upon the terms and conditions set forth herein;

A G R E E M E N T S:

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Employer and Employee hereby agree as follows:

1. EMPLOYMENT

Employer will employ Employee and Employee will accept employment by Employer as its _____. Employee will have the authority, subject to Employer's Articles of Incorporation and Bylaws, as may be granted from time to time by the Board of Directors of Employer. Employee will perform the duties **[**assigned to the _____ in Employer's Bylaws, the duties**]** customarily performed by the _____ of a corporation which is, in all respects, similar to Employer and such other duties as may be assigned from time to time by the Board of Directors of Employer, which relate to the business of Employer, its subsidiaries, its parent corporation, or any business ventures in which Employer, its subsidiaries or its parent corporation may participate **[**, including, without limitation, the duties set forth in Exhibit ___ hereto**]**.

2. ATTENTION AND EFFORT

Employee will devote all of **[**his or her**]** entire productive time, ability, attention and effort to Employer's business and will skillfully serve its interests during the term of this Agreement**[**; provided, however, that Employee may devote reasonable periods of time to (a) engaging in personal investment activities, (b) serving on the Board of

Directors of other corporations, if such service would not otherwise be prohibited by paragraph 8 hereof, and (c) engaging in charitable or community service activities, so long as none of the foregoing additional activities materially interfere with Employee's duties under this Agreement**]**.

3. TERM

Unless otherwise terminated pursuant to paragraph 6 of this Agreement, Employee's term of employment under this Agreement shall expire on _____.

4. COMPENSATION

During the term of this Agreement, Employer agrees to pay or cause to be paid to Employee, and Employee agrees to accept in exchange for the services rendered hereunder by **[**him or her**]**, the following compensation:

[4.1. Base Salary]

Employee's compensation shall consist**[**, in part,**]** of an annual **[**base**]** salary of _____ ($_____) before all customary payroll deductions **[**, for the period ending _____**]**. Such annual **[**base**]** salary shall be paid in substantially equal installments and at the same intervals as other officers of Employer are paid. The Board of Directors of Employer shall determine **[**any increases in**] [**the amount of**]** the annual **[**base**]** salary in future years.

[4.2. Bonus

Employee may be entitled to receive, in addition to the annual **[**base**]** salary described above, an annual bonus in an amount to be determined by the Board of Directors of Employer, in its sole discretion.**] [**Bonus provision may (a) set dollar amount of bonus for each year during the term of this agreement, (b) set percentage of base salary for bonus for each year, (c) determine formula based upon performance of Employer, (d) state that the method of determining the bonus will be decided upon by the Board of Directors after consultation with Employee, or (e) take another form; Key issue: discretion of the Board of Directors.**]**

5. BENEFITS

During the term of this Agreement, Employee will be entitled to participate, subject to and in accordance with applicable eligibility requirements, in fringe benefit programs **[**may detail such programs here**]** as shall be provided from time to time by, to the extent required, action of Employer's Board of Directors (or any person or

committee appointed by the Board of Directors to determine fringe benefit programs and other emoluments).

[5.1. Key-Man Life Insurance]

At Employer's request, Employee shall cooperate with Employer in obtaining, at Employer's expense, key-man life insurance policies on Executive's life, with Employer to be the beneficiary of any such policies. Employer's inability to obtain such insurance due to lack of insurability of Executive shall not be deemed a breach of this Agreement.

6. TERMINATION

Employment of Employee pursuant to this Agreement may be terminated as follows, but in any case, the provisions of paragraph 8 hereof shall survive the termination of this Agreement and the termination of Employee's employment hereunder:

6.1. By Employer

With or without Cause (as defined below), Employer may terminate the employment of Employee at any time during the term of employment upon giving Notice of Termination (as defined below).

6.2. By Employee

Employee may terminate **[**his or her**]** employment at any time, for any reason, upon giving Notice of Termination.

6.3. Automatic Termination

This Agreement and Employee's employment hereunder shall terminate automatically upon the death or total disability of Employee. The term "total disability" as used herein shall mean Employee's inability, with or without reasonable accommodation, to perform the duties set forth in paragraph 1 hereof for a period or periods aggregating _____ calendar days in any 12-month period as a result of physical or mental illness, loss of legal capacity or any other cause beyond Employee's control, unless Employee is granted a leave of absence by the Board of Directors of Employer. Employee and Employer hereby acknowledge that Employee's ability to perform the duties specified in paragraph 1 hereof is of the essence of this Agreement. Termination hereunder shall be deemed to be effective (a) at the end of the calendar month in which Employee's death occurs or (b) immediately upon a determination by the Board of Directors of Employer of Employee's total disability, as defined herein.

6.4. Notice

The term "Notice of Termination" shall mean at least _ days' written notice of termination of Employee's employment, during which period Employee's employment and performance of services will continue; provided, however, that Employer may, upon notice to Employee and without reducing Employee's compensation during such period, excuse Employee from any or all of **[**his or her**]** duties during such period. The effective date of the termination of Employee's employment hereunder shall be the date on which such ___-day period expires.

7. TERMINATION PAYMENTS

In the event of termination of the employment of Employee, all compensation and benefits set forth in this Agreement shall terminate except as specifically provided in this paragraph 7:

7.1. Termination by Employer

If Employer terminates Employee's employment without Cause prior to the end of the term of this Agreement, Employee shall be entitled to receive (a) termination payments equal to **[**the lesser of (i) _____ months' annual **[**base**]** salary or (ii)**]** the annual **[**base**]** salary Employee would have received if **[**his or her**]** employment hereunder had continued until the end of the term of this Agreement and (b) any unpaid annual **[**base**]** salary which has accrued for services already performed as of the date termination of Employee's employment becomes effective. If Employee is terminated by Employer for Cause, Employee shall not be entitled to receive any of the foregoing benefits, other than those set forth in clause (b) above.

7.2. Termination by Employee

In the case of the termination of Employee's employment by Employee, Employee shall not be entitled to any payments hereunder, other than those set forth in clause (b) of subparagraph 7.1 hereof.

7.3. Expiration of Term

In the case of a termination of Employee's employment as a result of the expiration of the term of this Agreement, Employee shall not be entitled to receive any payments hereunder, other than those set forth in clause (b) of subparagraph 7.1 hereof.

[7.4. Termination Because of Death or Total Disability

In the event of a termination of Employee's employment because of **[**his or her**]** death or total disability, Employee or **[**his or her**]** personal representative shall receive termination payments equal to _____ percent (___%) of the annual **[**base**]** salary Employee would have received if **[**his or her**]** employment had continued during the remaining term of this Agreement.**]**

[7.5. Termination in Connection With a Change in Control

Notwithstanding subparagraphs 7.1 and 7.2 of this Agreement and in full substitution therefor, if Employee terminates **[**his or her**]** employment for any reason or **[**his or her**]** employment is terminated for any reason by Employer, effective within [days/months/years] of a Change in Control (as defined below) of Employer, Employee shall be entitled to receive termination payments in an amount equal to the total cash compensation paid to Employee by Employer during the [How many?] months immediately preceding such Change in Control of Employer; provided, however, that if in such case, either Employer or Employee receives confirmation from **[**Employer's certificate public accounting firm**]**, or such other accounting firm retained as independent certified public accountants for Employer, that any payment by Employer under this paragraph would be considered to be an "excess parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended, or any successor statute then in effect, the aggregate payments by Employer pursuant to this paragraph shall be reduced to an amount which is $1.00 less than the smallest sum which would be deemed to be such an "excess parachute payment" and, if permitted by applicable law, such reduction shall be made to the last payment due hereunder; provided, further, that, if permitted by applicable law, no such adjustment shall be made in any year in which Employee authorizes a reduction in the payment otherwise due Employee hereunder by an amount equal to any loss to be incurred by Employer because such payments would not be deductible by Employer as a business expense for income tax purposes for the reason that such payments constitute an "excess parachute payment" in that year. [Note: This agreement adopts the “Cap” approach to IRC § 280G excise tax. Gross-up and Alternative Cap should also be considered.]

7.6. Definition of Change in Control

A "Change in Control" of Employer shall mean (a) any consolidation or merger of Employer in which Employer is not the continuing or surviving corporation or pursuant to which shares of common stock of Employer ("Common Stock") would be converted into the right to receive cash, securities or other property, other than a merger of Employer in which the holders of Common Stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving

corporation immediately after the merger, (b) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all the assets of Employer, (c) the adoption of any plan or proposal for liquidation or dissolution of Employer, (d) the acquisition by any person (as such term is defined in Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), excluding, for this purpose, Employer or any of its majority-owned subsidiaries) of any shares of Common Stock (or securities convertible into Common Stock), if after making such acquisition, such person is the beneficial owner (as such term is defined in Rule 13d-3 promulgated thereunder), directly or indirectly, of ___% or more of the outstanding Common Stock (calculated as provided in paragraph (d) of such Rule 13d-3 in the case of rights to acquire common stock), or (e) the failure, for any reason, of the persons comprising the Board of Directors of Employer as of the date hereof (the "Incumbent Board") to constitute at least a majority of the Board of Directors of Employer; provided, however, that any person whose election or nomination for election was approved by a majority of the persons then comprising the Incumbent Board (other than an election or nomination of a person whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of directors, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) shall be, for purposes of this Agreement, deemed to be a member of the Incumbent Board.**]**

7.7. Payment Schedule

All payments under this paragraph 7 shall be made to Employee at the same interval as payments of salary were made to Employee immediately prior to termination.

7.8. Cause

Wherever reference is made in this Agreement to termination being with or without Cause, "Cause" **[**is limited to**] [**shall include, without limitation,**]** the occurrence of one or more of the following events:

(a) Failure or refusal to carry out the lawful duties of Employee described in Section 1 hereof or any directions of the Board of Directors of Employer, which directions are reasonably consistent with the duties herein set forth to be performed by Employee;

(b) Conviction of or entering a plea of guilty or no contest to a violation by Executive of a state or federal criminal law involving the commission of a crime against Employer or its employees or a felony;

(c) Misuse of alcohol or controlled substances that materially interferes with Executive's performance of his duties to Employer or use of illegal substances; deception, fraud, misrepresentation or dishonesty by Executive; any incident materially compromising Executive's reputation or ability to represent Employer with the public; any act or omission by Executive that materially impairs Employer's business, good will or reputation; **[**or any other misconduct;**]** or

(d) Any other material violation of any provision of this Agreement.

8. NONCOMPETITION AND NONSOLICITATION

8.1. Applicability

This paragraph 8 shall survive the termination of Employee's employment with Employer or the expiration of the term of this Agreement.

8.2. Scope of Competition

Employee agrees that **[**he or she**]** will not, directly or indirectly, during **[**his or her**]** employment and for a period of __ years from the date on which **[**his or her**]** employment with Employer terminates) for any reason), or this Agreement expires, be employed by, consult with or otherwise perform services for, own, manage, operate, join, control or participate in the ownership, management, operation or control of or be connected with, in any manner, any Competitor. A "Competitor" shall include any entity which, directly or indirectly, competes with Employer or produces, markets, distributes or otherwise derives benefit from the production, marketing or distribution of products **[**or services**]** which compete with products then produced **[**or services then being provided or marketed**]**, by Employer or the feasibility for production of which Employer is then actually studying, or which is preparing to market or is developing products **[**or services**]** that will be in competition with the products **[**or services**]** then produced or being studied or developed by Employer, in each case within the geographical area described in Schedule 1 hereto, unless released from such obligation in writing by Employer's Board of Directors. Employee shall be deemed to be related to or connected with a Competitor if such Competitor is (a) a partnership in which **[**he or she**]** is a general or limited partner or employee, (b) a corporation or association of which **[**he or she**]** is a shareholder, officer, employee or director, or (c) a partnership, corporation or association of which **[**he or she**]** is a member, consultant or agent; provided, however, that nothing herein shall prevent the purchase or ownership by Employee of shares which constitute less than five percent of the outstanding equity securities of a publicly or privately held corporation, if Employee had no other relationship with such corporation.

8.3. Scope of Nonsolicitation

Employee shall not directly or indirectly solicit, influence or entice, or attempt to solicit, influence or entice, any employee or consultant of Employer to cease **[**his or her**]** relationship with Employer or solicit, influence, entice or in any way divert any customer, distributor, partner, joint venturer or supplier of Employer to do business or in any way become associated with any Competitor. This subparagraph 8.3 shall apply during the time period and geographical area described in subparagraph 8.2 hereof.

8.4. Assignment of Intellectual Property

All concepts, designs, machines, devices, uses, processes, technology, trade secrets, works of authorship, customer lists, plans, embodiments, inventions, improvements or related work product (collectively "Intellectual Property") which Employee develops, conceives or first reduces to practice during the term of **[**his or her**]** employment hereunder or within one year after the termination of **[**his or her**]** employment hereunder or the expiration of this Agreement, whether working alone or with others, shall be the sole and exclusive property of Employer, together with any and all Intellectual Property rights, including, without limitation, patent or copyright rights, related thereto, and Employee hereby assigns to Employer all of such Intellectual Property. "Intellectual Property" shall include only such concepts, designs, machines, devices, uses, processes, technology, trade secrets, customer lists, plans, embodiments, inventions, improvements and work product which (a) relate to Employee's performance of services under this Agreement, to Employer's field of business or to Employer's actual or demonstrably anticipated research or development, whether or not developed, conceived or first reduced to practice during normal business hours or with the use of any equipment, supplies, facilities or trade secret information or other resource of Employer or (b) are developed in whole or in part on Employer's time or developed using Employer's equipment, supplies, facilities or trade secret information, or other resources of Employer, whether or not the work product relates to Employer's field of business or Employer's actual or demonstrably anticipated research.

8.5. Disclosure and Protection of Inventions

Employee shall disclose in writing all concepts, designs, processes, technology, plans, embodiments, inventions or improvements constituting Intellectual Property to Employer promptly after the development thereof. At Employer's request and at Employer's expense, Employee will assist Employer or its designee in efforts to protect all rights relating to such Intellectual Property. Such assistance may include, without limitation, the following: (a) making application in the United States and in foreign countries for a patent or copyright on any work products specified by

Employer; (b) executing documents of assignment to Employer or its designee of all of Employee's right, title and interest in and to any work product and related intellectual property rights; and (c) taking such additional action (including, without limitation, the execution and delivery of documents) to perfect, evidence or vest in Employer or its designee all right, title and interest in and to any Intellectual Property and any rights related thereto.

8.6. Nondisclosure; Return of Materials

During the term of **[**his or her**]** employment by Employer and following termination of such employment, **[**he or she**]** will not disclose (except as required by **[**his or her**]** duties to Employer), any concept, design, process, technology, trade secret, customer list, plan, embodiment, or invention, any other Intellectual Property or any other confidential information, whether patentable or not, of Employer of which Employee becomes informed or aware during **[**his or her**]** employment, whether or not developed by Employee. In the event of the termination of **[**his or her**]** employment with Employer or the expiration of this Agreement, Employee will return all documents, data and other materials of whatever nature, including, without limitation, drawings, specifications, research, reports, embodiments, software and manuals to Employer which pertain to **[**his or her**]** employment with Employer or to any Intellectual Property and shall not retain or cause or allow any third party to retain photocopies or other reproductions of the foregoing. **[**Additional provisions may be required if Employer relies heavily on technology, trade secrets or patents.**]**

8.7. Equitable Relief

Employee acknowledges that the provisions of this paragraph 8 are essential to Employer, that Employer would not enter into this Agreement if it did not include this paragraph 8 and that damages sustained by Employer as a result of a breach of this paragraph 8 cannot be adequately remedied by damages, and Employee agrees that Employer, notwithstanding any other provision of this Agreement, including, without limitation, paragraph 15 hereof, and in addition to any other remedy it may have under this Agreement or at law, shall be entitled to injunctive and other equitable relief to prevent or curtail any breach of any provision of this Agreement, including, without limitation, this paragraph 8.

8.8. Effect of Violation

Employee and Employer acknowledge and agree that additional consideration has been given for Employee entering into this paragraph 8, such additional consideration including, without limitation, **[**detail bonus provisions and**]** certain provisions for termination payments pursuant to paragraph 7 of this Agreement. Violation by Employee of this paragraph 8 shall relieve Employer of any obligation it

may have to make such **[**bonus (?) and**]** termination payments, but shall not relieve Employee of **[**his or her**]** obligations, as required hereunder, not to compete.

8.9. Definition of Employer

For purposes of subparagraph 8.2 and subparagraph 8.3 hereof, "Employer" shall include all subsidiaries of Employer, Employer's parent corporation and any business ventures in which Employer, its subsidiaries or its parent corporation may participate; and any successors or assigns of Employer as defined in this paragraph.

9. REPRESENTATIONS AND WARRANTIES

In order to induce Employer to enter into this Agreement, Employee represents and warrants to Employer as follows:

9.1. No Violation of Other Agreements

Neither the execution nor the performance of this Agreement by Employee will violate or conflict in any way with any other agreement by which Employee may be bound, or with any other duties imposed upon Employee by corporate or other statutory or common law.

9.2. Patents, Etc.

Employee has prepared and attached hereto as Schedule 2 a list of all inventions, patent applications and patents made or conceived by Executive prior to the date hereof, which are subject to prior agreement or which Employee desires to exclude from this Agreement, or, if no such list is attached, Employee hereby represents and warrants to Employer that there are no such inventions, patent applications or patents.

[10. INDEMNIFICATION

[Option 1: Employee shall be indemnified by Employer to the extent permitted by applicable law and as provided by Section _____ of Employer's Bylaws, as attached hereto as Exhibit ___.**]**

[Option 2: Employer agrees that it will indemnify Executive against liability as an officer of Employer and, to the extent he acts in such capacity, as a director or an officer of any of Employer's affiliates, to the fullest extent permitted by applicable law.]

11. NOTICE AND CURE OF BREACH

Whenever a breach of this Agreement by either party is relied upon as justification for any action taken by the other party pursuant to any provision of this Agreement, other than pursuant to the definition of "Cause" set forth in subparagraph **[**7.8**]** hereof, before such action is taken, the party asserting the breach of this Agreement shall give the other party at least ____ days' prior written notice of the existence and the nature of such breach before taking further action hereunder and shall give the party purportedly in breach of this Agreement the opportunity to correct such breach during the ___-day period.

12. FORM OF NOTICE

All notices given hereunder shall be given in writing, shall specifically refer to this Agreement and shall be personally delivered or sent by telecopy or other electronic facsimile transmission or by registered or certified mail, return receipt requested, at the address set forth below or at such other address as may hereafter be designated by notice given in compliance with the terms hereof:

If to Employee: _____

_____

If to Employer: _____

_____

Copy to: _____

_____

If notice is mailed, such notice shall be effective upon mailing, or if notice is personally delivered or sent by telecopy or other electronic facsimile transmission, it shall be effective upon receipt.

13. ASSIGNMENT

This Agreement is personal to Employee and shall not be assignable by Employee. **[**Subject to the provisions of subparagraph 7.5 and subparagraph 7.6 hereof,**]** Employer may assign its rights hereunder to (a) any corporation resulting from any merger, consolidation or other reorganization to which Employer is a party or (b) any corporation, partnership, association or other person to which Employer may transfer all or substantially all of the assets and business of Employer existing at such time. All of the terms and provisions of this Agreement shall be binding upon

and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

14. WAIVERS

No delay or failure by any party hereto in exercising, protecting or enforcing any of its rights, titles, interests or remedies hereunder, and no course of dealing or performance with respect thereto, shall constitute a waiver thereof. The express waiver by a party hereto of any right, title, interest or remedy in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance. All rights and remedies shall be cumulative and not exclusive of any other rights or remedies.

[15. ARBITRATION

Subject to the provisions of subparagraph 8.7 hereof, any controversies or claims arising out of or relating to this Agreement shall be fully and finally settled by arbitration in accordance with the [*Commercial Arbitration Rules or Model Employment Arbitration Rules?*] of the American Arbitration Association and the Alaska Revised Uniform Arbitration Act, AS 09.43.300-.595, which are incorporated herein by this reference. The arbitration shall be conducted by one arbitrator either mutually agreed upon by Employer and Employee or chosen in accordance with the AAA Rules, except that the parties thereto shall have any right to discovery as would be permitted by the Federal Rules of Civil Procedure for a period of 90 days following the commencement of such arbitration and the arbitrator thereof shall resolve any dispute which arises in connection with such discovery. The prevailing party shall be entitled to costs, expenses and reasonable attorneys' fees, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.**]**

16. AMENDMENTS IN WRITING

No amendment, modification, waiver, termination or discharge of any provision of this Agreement, nor consent to any departure therefrom by either party hereto, shall in any event be effective unless the same shall be in writing, specifically identifying this Agreement and the provision intended to be amended, modified, waived, terminated or discharged and signed by Employer and Employee, and each such amendment, modification, waiver, termination or discharge shall be effective only in the specific instance and for the specific purpose for which given. No provision of this Agreement shall be varied, contradicted or explained by any oral agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by Employer and Employee.

17. APPLICABLE LAW; VENUE

This Agreement shall in all respects, including all matters of construction, validity and performance, be governed by, and construed and enforced in accordance with, the laws of the state of **[**Washington, Oregon**]**, without regard to any rules governing conflicts of laws. [Subject to paragraph 15, the parties irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located in **[County Name]** County, **[**Washington, Oregon**]** in connection with any action relating to this Agreement.

[18. SEVERABILITY

If any provision of this Agreement shall be held invalid, illegal or unenforceable in any jurisdiction, for any reason, including, without limitation, the duration of such provision, its geographical scope or the extent of the activities prohibited or required by it, then, to the full extent permitted by law (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intent of the parties hereto as nearly as may be possible, (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision hereof, and (c) any court or arbitrator having jurisdiction thereover shall have the power to reform such provision to the extent necessary for such provision to be enforceable under applicable law.**]**

19. HEADINGS

All headings used herein are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, this Agreement.

20. COUNTERPARTS

This Agreement, and any amendment or modification entered into pursuant to paragraph 16 hereof, may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same instrument.

21. ENTIRE AGREEMENT

This Agreement on and as of the date hereof constitutes the entire agreement between Employer and Employee with respect to the subject matter hereof and all prior or contemporaneous oral or written communications, understandings or agreements between Employer and Employee with respect to such subject matter are hereby superseded and nullified in their entireties.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement on the date set forth above.

EMPLOYEE:

_____

EMPLOYER:

By _____
Its_____

SCHEDULE 1

[Geographical Scope]

SCHEDULE 2

[Patents, etc.]

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, dated _____, 20__, is made and entered into by and between _____ (the "Company") and _____ ("Employee").

RECITAL

A. The Company desires to retain the services of Employee upon the terms and conditions set forth herein and Employee desires to provide services to the Company upon the terms and conditions set forth herein;

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing premises and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1. NATURE OF EMPLOYMENT

1.1. Title; Duties

The Company hereby employs Employee on a full-time basis as _____, in accordance with the terms of this Agreement. During the term of Employee's employment under this Agreement, Employee will perform such duties and exercise such powers, authorities and discretions in relation to the Company as established by, and subject always to the discretion and control of, the President of the Company (the "President") or the President's successors or designees. The President may at any time require Employee to cease performing or exercising any particular power, authority or discretion delegated to Employee. Employee shall report to any other person, as the Company shall hereafter designate.

1.2. Loyalty

Employee accepts such employment, agrees to abide by the decisions of the Company, and agrees to devote Employee's full time and efforts to Employee's employment under this Agreement. Employee agrees and understands that Employee owes the Company and its Affiliates (as defined below) fidelity and loyalty during the term of Employee's employment with the Company and any its Affiliates and will not perform similar duties in any other capacity for any other person or entity without the prior written consent of the Company.

SECTION 2. COMPENSATION AND BENEFITS

During the term of this Agreement, Employee shall be compensated solely in accordance with the terms of Schedule I hereof (the "Compensation Package"). If Employee, during the term of this Agreement, receives any compensation in excess of the Compensation Package, the payment of such increased compensation shall not be deemed to be an amendment to this Agreement, and may be discontinued at any time without cause.

SECTION 3. TERM OF AGREEMENT AND TERMINATION

3.1. Term

The employment of Employee under this Agreement will commence on the date of this Agreement, and will automatically terminate on the third anniversary of this Agreement ("Term"), unless sooner terminated in the manner provided herein. Upon termination of this Agreement, the parties acknowledge and agree that any further employment with the Company will be on an at-will basis and may be terminated by either party at any time with or without cause.

3.2. Termination by the Company Without Cause

(a) The Company may terminate Employee's employment, and this Agreement, without cause at any time upon written notice to Employee. In such event, Employee will be entitled to receive _____, less any required withholdings ("Severance Payments"), provided that Employee executes a severance agreement and a valid waiver and release of claims against the Company and its Affiliates in form and substance satisfactory to the Company. The Severance Payments shall constitute the full liquidated damages to which Employee shall be entitled as an employee of the Company. Employee agrees that, as an employee, Employee will not be entitled to any other remedy at law or in equity, including, without limitation, general, special, punitive or exemplary damages and/or injunctive relief. Notwithstanding the foregoing, after such notification is given and through the end of the 30-day notice period, Employee shall, if requested by the Company, continue to render the services required under this Agreement.

3.3. Termination by Employee Without Cause

(a) Employee may terminate Employee's employment, and thus this Agreement, upon 90 days' prior written notice to the Company. In such event, after such notification is given and through the end of the 90-day notice period, Employee, if requested by the Company, will continue to render the services required under this Agreement and will be compensated in accordance with the Compensation Package

then in effect, prorated up to the date of termination. Employee shall not be entitled to any Severance Payments or other payments upon such termination.

(b) Notwithstanding the foregoing, a voluntarily termination of employment by Employee prior to the end of the Term shall be deemed a termination of Employee by the Company without cause under Section 3.2 above if, within 30 days prior to Employee's voluntary termination, there shall have occurred any of the following events:

(i) a reduction in Employee's salary (as set forth in the Compensation Package), unless such reduction applies generally to the class of employees which Employee is a part;

(ii) a material reduction in the kind or level of non-monetary benefits that Employee is entitled to receive, unless such reduction applies generally to the benefits class of which Employee is a part; or

(iii) a forced relocation of Employee's principal workplace outside of_____, _____ within three years from the date of this Agreement, unless (A) such relocation is mutually agreed to by Employee and the Company, or (B) such relocation is, in the Company's and Employee's reasonable judgment, essential to _____'s business;

provided, however, that a voluntary termination of employment by Employee following the occurrence of an event described under clause (i), (ii) or (iii) above shall in no event be deemed a "termination of the Employee by the Company without cause" under this Section 3.2 unless (A) Employee shall have notified the Company in writing of Employee's assertion that action taken by the Company constitutes an event described in clause (i), (ii) or (iii) above, which notice shall be delivered to the Company within 30 days after Employee becomes aware of such action or proposed action, and (B) the Company fails to reverse such action or to otherwise remedy the matter in a manner reasonably acceptable to Employee and the Company within 30 days after the Company's receipt of such written notice.

3.4. Termination With Cause

(a) The Company may terminate Employee's employment, and thus this Agreement, for Cause (as defined below) at any time upon written notice of such termination to Employee. For purposes of this Agreement, "Cause" shall mean Employee's: (i) failure or refusal to observe or perform any obligation under this Agreement, the Proprietary Information and Invention Assignment Agreement attached as Addendum A or any other agreement entered into by Employee, (ii) failure to comply with any policy of the Company currently in effect or as may be adopted or

modified from time to time which failure adversely affects Employee in any material respect, (iii) commission of any act of fraud, misappropriation, embezzlement or theft, or other acts of dishonesty, alcoholism, drug addiction or dependency, (iv) conviction of, or guilty plea or plea of nolo contendere to, any crime of moral turpitude or crime punishable as a felony, (v) gross negligence or willful misconduct in connection with or related to the business of the Company; (vi) gross neglect of duties and responsibilities to the Company; or (vii) commission of any action that has a material adverse effect upon Employee's ability to perform Employee's duties, or other actions or occurrences that otherwise adversely affect the interests of the Company in any material respect; provided, that prior to terminating Employee in accordance with (i), (ii) or (vii) above, the Company shall first have notified Employee in writing of the specifics regarding the breach and shall have provided Employee with thirty (30) days during which Employee shall have the opportunity to cure the breach (except for a breach of the provisions of the Proprietary Information and Invention Assignment Agreement attached as Addendum A (other than a breach of Section 3.5 thereof which shall be subject to cure), or other breach that is not capable of being cured, for which no cure period is granted).

(b) If Employee's employment is terminated for Cause in accordance with this Section 3.4, Employee's right to compensation and benefits set forth on Schedule I shall immediately terminate and/or cease to accrue and Employee shall have no right to Severance Payments or other benefits; provided, that the Company will pay Employee for all earned but unpaid salary and benefits payable under the terms of this Agreement to such date of termination. In addition, termination of Employee's employment for Cause will not terminate or extinguish Employee's obligation or liability to pay to the Company or any of its Affiliates any amounts owed by Employee, including, without limitation, any amounts misappropriated or obtained by Employee by reason of any of the occurrences referred to in this Section 3.4, without prejudice to any other rights or remedies of the Company or any of its Affiliates at law or in equity.

3.5. Termination upon Death of Employee

This Agreement will automatically terminate in the event of Employee's death. Upon such termination, the Company will pay Employee's estate or beneficiaries, all earned and unpaid salary and benefits in accordance with the terms of the Compensation Package as then in effect (pro-rated for periods shorter than one year) through the end of the month in which Employee's death occurs.

3.6. Termination upon Total Disability of Employee

In the event of Employee's "Total Disability," which shall be defined as any illness or mental or physical incapacity or disability which prevents Employee from

performing Employee's normal duties for a continuous period exceeding six (6) months or for shorter periods aggregating six (6) months within any consecutive twelve (12) month period (in any case, even after reasonable accommodation), the Company may terminate Employee's employment under this Agreement (subject to the terms of the Americans with Disabilities Act and other applicable laws). Upon such termination, Employee, or Employee's estate, will be paid all earned and unpaid salary and benefits in accordance with the terms of the Compensation Package as then in effect (pro-rated for periods shorter than one year) through the end of the month in which such termination occurs.

3.7. Effect of Termination

If this Agreement is terminated for any of the reasons set forth in this Section 3, Employee will be subject to all restrictions provided for in Section 4 of this Agreement. The provisions of Sections 3, 4 and 5 will survive the termination or expiration of this Agreement.

SECTION 4. POST-EMPLOYMENT COVENANTS AND AGREEMENTS

4.1. Nonsolicitation and Other Matters

4.1.1. Acknowledgment of Protectable Interests

Employee agrees that the Company has a protectable interest in property, confidential and proprietary information and relationships (including, without limitation, customer lists), goodwill and specialized knowledge of the Company, _____, _____ and any other entity controlling, controlled by or under common control with any of the foregoing (collectively, "Affiliates"; the Company and its Affiliates are sometimes collectively referred to herein collectively as, "_____"), acquired by Employee during the course of Employee's employment with the Company or any of its Affiliates. Employee acknowledges that Employee's employment by the Company affords the opportunity to establish favorable relations with its employees, correspondents and other parties with whom the Company does business and will provide Employee with access to correspondence, records, processes, methods, correspondence lists, business secrets and other confidential or proprietary information of the Company, all of which as between Employee and the Company and its Affiliates are to remain the property of the Company and its Affiliates.

4.1.2. Ability to Earn Livelihood; Consideration

Employee expressly agrees and acknowledges that the post-employment restrictions contained in this Section 4.1 do not preclude Employee from earning a livelihood, nor do they unreasonably impose limitations on Employee's ability to earn

a living. Employee further agrees and acknowledges that the potential harm to the Company of the non-enforcement of these restrictions outweighs any harm to Employee of the enforcement of the restrictions by injunction or otherwise. Employee further acknowledges that Employee is executing this Agreement and agreeing to the restrictions contained in Section 4.1 in exchange for all of the consideration received by Employee in connection with this Agreement.

4.1.3. Post-Employment Covenant - Non-Solicitation

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee agrees that if Employee's employment is terminated pursuant to Section 3 of this Agreement, Employee will not, without the express written consent of the Company, for a period of ending on the later of (a) three years from the date of this Agreement and (b) 24 months after termination of Shareholder's employment or other relationship with the Company, or any of their Affiliates, directly or indirectly, on Employee's behalf or on behalf of any other person or entity:

(i) interfere with the Company's relationship with, or endeavor to divert or entice away from any such entity, any person or entity who or which is or was at any time prior to the date that is twelve months after the date that the Employee ceases to be an employee of the Company, an (A) employee; (B) consultant; (C) contractor; (D) officer; or (E) director;

(ii) interfere with the Company's relationship with, or endeavor to divert or entice away from any such entity, any person or entity who or which is or was at any time prior to the date that is twelve months after the date that the Employee ceases to be an employee of the Company, any (A) licensor; (B) vendor; or (C) supplier of the Company with respect to any business, products or services (including, without limitation, [DESCRIPTION]);

(iii) interfere with the Company's relationship with, or endeavor to divert or entice away from any such entity, any person or entity who or which is or was at any time prior to the date that the Employee ceases to be an employee of the Company, any (A) licensee; (B) customer; or (C) any other person or entity known by Employee to be a prospective customer of the Company with respect to any business, products or services (including, without limitation, [DESCRIPTION]); or

(iv) disparage the Company or any officers, directors or employees of the Company or any products or services the Company may offer.

4.1.4. Corporate Property

All records, files, lists, including, without limitation, computer generated lists, drawings, documents, equipment and similar items relating to the Company's (or the Company's) business which Employee has prepared for or received from the Company , and/or will prepare for or receive from the Company , during the course of Employee's employment, shall remain the Company's sole and exclusive property and Employee shall not acquire any interest therein. Upon termination of employment, and in any event at the request of the Company at any time, Employee shall promptly return to the Company all property of the Company in Employee's possession. Employee further agrees that Employee will not copy or cause to be copied, or cause to be printed, any software, documents or other materials originating with or belonging to the company.

4.1.5. Remedies Upon Breach

(a) In the event of a breach or threatened breach of any provision of this Section 4.1, Employee acknowledges and agrees that the Company will suffer irreparable harm and further acknowledges and agrees that the Company's remedies at law are inadequate, and that the Company will be entitled to an immediate injunction restraining such breach or potential breach as well as other equitable relief; provided, however, that nothing herein will be construed as prohibiting the Company from pursuing any other remedy available for such breach or threatened breach.

(b) Notwithstanding anything in this Agreement or any other agreement between the parties to the contrary and in addition to any other rights or remedies the Company may have, if at any time (whether during the Term of thereafter) Employee has violated any of Employee's obligations contained in this Section 4.1 or in Addendum A, then any obligation of the Company to pay Salary, Severance Payments, or any other form of pay, compensation or benefits, including, without limitation, any compensation or benefits included in the Compensation Package, will terminate, and from and after such termination neither Employee, Employee's beneficiary nor any of their legal representatives or distributees will have any right to receive any such payments.

4.1.6. Construction

In the event that any provision of this Section 4.1 should ever be deemed to exceed the time, geographic, or other limitations permitted by applicable law, then such provision will be reformed to the maximum time, geographic, or other limitations permitted by the applicable laws and without negating or impairing any other restriction or agreement set forth herein. The provisions of this Section 4.1 will survive the termination of this Agreement.

4.1.7. Severability

Employee understands that the obligations imposed under this Section 4.1 are in addition to, and independent of, any restriction on the disclosure of information imposed under Section 5.1 and Addendum A of this Agreement and any previously executed agreement concerning post-termination employment matters , impose separate and distinct obligations from the restriction on the disclosure of information contained in Section 5.1 and Addendum A, and may be valid even if the restriction on the disclosure of information contained in Section 5.1 or Addendum A is declared invalid, in whole or in part, in any judicial or quasi-judicial forum.

SECTION 5. GENERAL MATTERS

5.1. Non-Disclosure

Employee agrees to be bound by the terms and conditions of the "Proprietary information and Invention Assignment Agreement" attached hereto as Addendum A and incorporated herein by reference, as though such agreement had been separately executed and delivered by Employee.

5.2. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of _____ applicable to contracts made and to be wholly performed in _____ by persons domiciled in _____, without reference to rules governing conflicts of law.

5.3. Waiver of Jury Trial

The parties hereby waive, to the maximum extent permitted by law, any rights to trial by jury and agree not to request a trial by jury on any claims, counterclaims or cross-claims.

5.4. Binding Effect

This Agreement will be binding upon and inure to the benefit of Employee and the Company and their respective permitted successors, heirs and assigns.

5.5. Entire Agreement; Amendments in Writing

This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof. No amendment, modification, waiver,

termination or discharge of any provision of this Agreement, or any consent to any departure by the parties from any provision hereof, shall in any event be effective unless the same shall be in writing and signed by the parties, and each such amendment, modification, waiver, termination or discharge shall be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing, the parties further agree that if a judicial or quasi-judicial entity declares the agreement invalid in whole or in part, it may modify the terms of the Agreement to give effect to the Agreement as modified.

5.6. Text to Control

The captions and headings of this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

5.7. Reformation

The provisions and covenants contained herein are intended to be separate and divisible and if, for any reason, any one or more of such provisions or covenants should be held to be invalid and unenforceable in whole or in part, it is agreed that the same will not be held to affect the validity or enforceability of any other provisions and covenants of this Agreement. In the event that any restriction set forth in this Agreement is determined by a court to be unenforceable with respect to scope, time or geographical coverage, Employee agrees that such a restriction should be modified and narrowed so as to provide the maximum protection of the Company's and the Company's legally protectable interests as described in this Agreement, and without negating or impairing any other restrictions or agreements set forth herein.

5.8. Reasonableness

Employee acknowledges that Employee has carefully read this Agreement and has given careful consideration to the restraints imposed upon Employee by this Agreement, and is in full accord as to their necessity for the reasonable and proper protection of the Company's Proprietary information (as defined in Addendum A). Employee expressly acknowledges and agrees that each and every restraint imposed by this Agreement is reasonable with respect to subject matter, time period and geographical area, except for mutually agreed upon modifications to this Agreement.

5.9. Notices

All notices, requests, demands, consents, approvals, declarations and other communications required by this Agreement shall be in writing, shall be in English and shall be deemed delivered (a) if given by facsimile, when transmitted and the appropriate telephonic confirmation received, (b) if given by first-class air mail (certified and return-receipt requested), when delivered, (c) if given personally, when

delivered, and (d) if given by an internationally recognized overnight courier, when received or personally delivered, in each case, with all charges prepaid and addressed as follows, or to such other address as any party shall specify in a notice delivered to all other parties in accordance with this Section 5.9:

If to Employee

at the address of Employee set
forth on the signature page hereto.

If to the Company to:

Fax:
Attention:

with copies to:

_____

Fax:
Attention:

and:

Attorney
Attention:

5.10. Assignment; Third Party Beneficiary

Employee may not assign any right or delegate any duty hereunder without the prior written consent of the Company. The Company may assign this Agreement and all rights thereunder, and delegate all duties hereunder, to any Affiliate or to any party with which or into which the Company or any Affiliate merges or consolidates, or to whom the Company or any Affiliate may sell all or substantially all of the Company's or any Affiliate's respective assets.

5.11. Survival of Obligations and Provisions

The parties acknowledge and agree that the provisions under Sections 4 and 5 and Addendum A survive the termination or expiration of this Agreement as well as the termination of Employee's employment or other relationship with the Company.

5.12. Legal Fees

If any suit or action arising out of or related to this Agreement is brought by any party, the prevailing party shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

5.13. Execution in Counterparts

This Agreement and Addendum A may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement, Addendum A, or any amendment, waiver, consent or supplement hereto or thereto, by facsimile transmission shall be as effective as delivery of a manually signed counterpart hereof or thereof.

[This space intentionally left blank]

IN WITNESS WHEREOF, The parties have duly executed and delivered this EMPLOYMENT AGREEMENT as of the date first above written.

_____

By: _____
Name:
Title:

EMPLOYEE:

_____

Address:
_____
_____
_____

SCHEDULE I
Compensation Package

NAME:

TITLE:

SALARY: $

BENEFITS: Standard United States _____ benefit package*

SENIORITY: For purposes of determining your seniority at the Company, your date of hire will be _____, to the extent permitted by existing _____ United States benefit plans.

*_____ is currently eligible for ___ days of vacation and may accrue up to ____ more days this year. _____will be eligible for, and will accrue, sick days as if he had been employed by _____ beginning on _____.

ADDENDUM A

PROPRIETARY INFORMATION AND INVENTION ASSIGNMENT AGREEMENT

As a condition to my becoming employed (or my employment being continued) by _____, or any of its current or future parents, subsidiaries, affiliates, successors or assigns (collectively, the "Company"), including, without limitation, _____, _____ and _____, and to the acquisition by _____ of _____, and in consideration of my employment relationship with the Company and my receipt of the compensation now and hereafter paid to me by the Company, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I hereby agree, for the benefit of the Company, _____, _____, and their respective parents, subsidiaries, affiliates, successors and assigns (collectively, the "Entities"), as follows:

1. Employment or Consulting Relationship. Any employment or consulting relationship between the Company and me, whether commenced prior to or upon the date of this Proprietary Information and Invention Assignment Agreement (this "Agreement") Agreement, shall be referred to herein as the "Relationship." As used in this Agreement, "Person" means any individual, corporation or other entity.

2. Proprietary Information.

2.1 Company Information. I agree that at any time either during or after my Relationship with the Company to hold in strict confidence, and not to use, except for the benefit of the Company, or to disclose to any Person, any Proprietary Information of the Entities which I obtain or create. As used in this Agreement, "Proprietary Information" means any proprietary, confidential or other information that is not generally known to the public, whether of a technical, business or other nature (including, without limitation, trade secrets, know-how and information relating to the technology, clients, customers, business plans, marketing activities, finances, personnel matters and other business affairs). Proprietary Information may be contained in tangible materials, such as documents, drawings, reports, and computer programs, or may be in the nature of unwritten information. Proprietary Information includes (a) information disclosed in documents; (b) information disclosed orally; (c) information that is observed; (d) information derived from Proprietary Information disclosed to me; and (e) analyses, compilations, studies or other information or documents that are prepared by me that contain or reflect or are generated from information disclosed by any of the Entities or a third party, as the case may be.

2.2 Former Employer Information. My performance of services for the Company has not breached and will not breach any agreement to keep in confidence any confidential or other proprietary information belonging to any previous employer or other Person. I will not disclose to the Company, or induce the Company to use, any confidential or other proprietary information belonging to any previous employer or other Person.

2.3 Third Party Information. I recognize that the Company has received and in the future will receive Proprietary Information from _____ and other third parties subject to a duty of the Company to keep such information in confidence and to use it only for certain limited purposes. I agree to hold all such Proprietary Information in confidence and not to disclose it to any Person or to use it at any time either during or after my Relationship with the Company except as necessary in carrying out my work for the Company.

3. Inventions.

3.1 Inventions Retained. I have attached hereto, as Exhibit A, a list describing all inventions, processes, designs, technology, information, software, documentation, illustrations, artwork, photographs, trademarks, materials, original works of authorship and trade secrets that were made by me prior to the commencement of the Relationship (collectively referred to as "Prior Inventions") and that belong solely to me or belong to me jointly with another, which relate in any way to any of the Company's businesses or services, and which are not assigned to the Company by this Agreement. If no such list is attached, there are no such Prior Inventions. If, in the course of the Relationship, I incorporate into a Company product, process or machine a Prior Invention owned by me, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Prior Invention as part of or in connection with such product, process or machine.

3.2 Assignment of Inventions. I hereby assign to the Company, or as directed by the Company, its designee, all my right, title and interest throughout the world in and to any and all inventions, processes, designs, technology, information, software, documentation, mask works, illustrations, artwork, photographs, trademarks, materials, original works of authorship or trade secrets that I may solely or jointly conceive or develop or reduce to practice during my Relationship with the Company, which (a) pertain to any business activity of the Company; (b) are aided by use of time, materials, Proprietary Information or facilities of the Company; or (c) relate to any of my work for the Company (collectively referred to as "Inventions"). I hereby assign to the Company, or as directed by the Company, its designee, all my right, title and interest throughout the world in and to any and all intellectual property rights

associated with such Inventions, including, without limitation, patents, patent rights, copyrights, trademark rights, trade dress rights and trade secret rights. I will promptly make full written disclosure to the Company of all Inventions and will hold all Inventions in trust for the sole right and benefit of the Company. All copyrightable works made by me during my Relationship are, or shall be treated as, "works made for hire" to the greatest extent permitted by applicable law. My assignment to the Company of Inventions includes, without limitation, Inventions created during my Relationship with the Company prior to the date of this Agreement.

3.3 Moral Rights. My assignment to the Company of Inventions hereunder includes, without limitation, (a) all rights of attribution, paternity, integrity, disclosure and withdrawal; (b) any rights I may have under the Visual Artists Rights Act of 1990 or similar federal, state, foreign or international laws or treaties; and (c) all other rights throughout the world sometimes referred to as "moral rights" (collectively "Moral Rights"). To the extent that Moral Rights cannot be assigned under applicable law, I hereby waive such Moral Rights to the extent permitted under applicable law and consent to any and all actions of the Company that would otherwise violate such Moral Rights.

3.4 Intellectual Property Rights. I agree to assist the Company, at the Company's reasonable expense, to secure the Company's rights in the Inventions and any copyrights, patents, trademarks or other intellectual property rights relating thereto in any and all countries. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable for any reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions assigned to the Company, or its designee, then I hereby irrevocably designate and appoint the Company and its duly authorized officers as my agent and attorney in fact, to act for and in my behalf to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters for patent or copyright registrations with the same legal force and effect as if originally executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, that I may now or hereafter have for infringement of any intellectual property rights in and to the Inventions.

3.5 Maintenance of Records. I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the Relationship. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, and any other format. The records will be available to and remain the sole property of the Company or _____ at all times. I agree not to remove such records from the Company's place of business except as expressly permitted by Company policy which

may, from time to time, be revised at the sole election of the Company or _____.

4. Returning Company Documents. All material, including, without limitation, all records, notes, reports, correspondence, equipment, documents or other property ("Material") made, compiled, developed or otherwise produced by me in connection with my Relationship with the Company is the exclusive property of the Company, and any Material made, compiled, developed or otherwise produced by me in connection with services performed by me for the benefit of _____ and/or its affiliates is the exclusive property of _____. At the termination of my Relationship with the Company, I will deliver to the Company or _____, as the case may be, any and all Material made, complied, developed or otherwise produced by me in connection with my Relationship with the Company, or otherwise belonging to the Company, _____ or any of the other Entities, as the case may be, or that contain any Proprietary Information of the Company, _____ or any of the other Entities, as the case may be. Any property on the Company's premises and owned by the Company, _____ or any of the other Entities, including computer storage media and filing cabinets, is subject to inspection by the Company, _____ and/or the other Entities, as the case may be, at any time without notice. Upon the termination of the Relationship, I agree to sign and deliver the "Termination Certification" attached hereto as Exhibit B.

5. Notification to Other Parties.

If my employment with the Company ends for any reason, I hereby consent to notification by the Company to my new employer about my obligations under this Agreement.

6. General Provisions.

6.1 Governing Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of _____ applicable to contracts made and to be performed in _____ by persons domiciled in _____, without reference to rules governing conflicts of law.

6.2 Severability. If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

6.3 Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, and its successors and assigns.

6.4 Survival. The provisions of Sections 2, 3, 4, 5 and 6 of this Agreement shall survive the termination of the Relationship.

6.5 ADVICE OF COUNSEL. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL REGARDING THIS AGREEMENT, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT.

[This space intentionally left blank]

IN WITNESS THEREOF, the undersigned has duly executed and delivered this PROPRIETARY INFORMATION AND INVENTION ASSIGNMENT AGREEMENT as of _____, 20__.

_____

Address:

_____

_____

_____

Facsimile: _____

Telephone: _____

EXHIBIT A

LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP

EXCLUDED FROM SECTIONS 3 AND 4:

Title	Date	Identifying Number or Brief Description

_____ No inventions or improvements

_____ Additional Sheets Attached

_____
Employee

_____
Signature

Date: _____, 200__.

EXHIBIT B

TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any records, data, reports, drawings, sketches, materials, equipment, other documents or property, or copies or reproductions of any aforementioned items belonging to the Company.

I further certify that I have complied with all the terms of the Company's Proprietary Information and Invention Assignment Agreement signed by me, including the reporting of any inventions and original works of authorship, conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Proprietary Information and Invention Assignment Agreement, I will preserve as confidential all trade secrets, confidential and other proprietary information, data, and other information relating to trade secrets, know-how, designs, computer programs, data bases, other original works of authorship, client lists, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its customers.

Date: _____, 200__.

_____

EXHIBIT C

Section 2870 of the California Labor Code provides as follows:

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

[DATE]

[NAME]
[ADDRESS]

Dear [NAME]:

It is a pleasure to confirm the offer of employment made to you for the position of [JOB TITLE] in the [WORK GROUP] of [COMPANY]. The position reports to [WHO?], [JOB TITLE]. Your acknowledgement of acceptance of this offer will create an agreement between you and the [COMPANY] (referred to herein as the "Letter Agreement") according to the terms outlined below. I sincerely hope you find the following terms to be acceptable:

Position:

Start Date:

At-Will Employment: Your employment with [COMPANY] will be on an "at-will" basis. This means that you may resign from employment with [COMPANY] at any time, with or without notice or cause. Likewise, unless expressly otherwise agreed in a writing signed by you and the President of [COMPANY], [COMPANY] may terminate your employment at any time, with or without notice or cause.

Starting Salary: $_____ per month ($_____ per year), less required and otherwise authorized deductions, payable in accordance with [COMPANY]'s regular payroll practices.

Salary Grade: This position qualifies as [SALARY GRADE, if desired].

Annual Leave: You will be eligible for paid time off from work in accordance with the Company's policies as in effect from time to time and applicable to employees generally.

Fringe Benefits: You will be eligible to participate in the Company's Employee Benefits Plan on [WHEN?]and on the same basis as your peers at [COMPANY].

401(k) Plan: You will be eligible to participate in the Company's 401(k) Plan beginning [WHEN?], subject to any applicable waiting periods under the Company's 401(k) Plan.

200_ Bonus: You will be eligible to participate on a pro-rated basis in the [COMPANY] bonus pool if [COMPANY] achieves its earnings target for 200_.

Confidentiality and Non-Solicitation	As a condition of your employment, you must sign and agree to be bound by a Confidentiality and Non-Solicitation Agreement (the "Confidentiality Agreement"), a copy of which is attached hereto.
Arbitration:	As a condition of your employment, you must sign and agree to be bound by an Arbitration Agreement (the "Arbitration Agreement"), a copy of which is attached hereto. Any dispute arising under this Letter Agreement or otherwise relating to your employment with [COMPANY] will be subject to the Arbitration Agreement.
Other Terms and Conditions of Employment:	During your employment you will be expected to abide by all policies and procedures of [COMPANY], as applicable and in effect from time to time. A copy of the Company's Employee Handbook will be provided to you during orientation. No oral representations or statements, and nothing in this Agreement, the attached Arbitration and Confidentiality Agreements or the Employee Handbook can or does alter your "at-will" employment status.
Complete Agreement:	This Letter Agreement along with the attached Arbitration and Confidentiality Agreements constitute and contain the entire agreement and final understanding concerning your employment with [COMPANY] and the other subject matters addressed therein between the parties. The agreements are intended by the parties as a complete and exclusive statement of the terms of their agreement. The agreements supersede all other prior agreements, understandings, representations and warranties, both written and oral, between the parties or their respective representatives, agents or attorneys, with respect to the subject matter hereof and thereof. Any representation, promise or agreement not specifically included in the agreements shall not be binding upon or enforceable against either party. All three agreements are fully integrated agreements.
Governing Law:	This Letter Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of _____, without regard to the conflict of law principles thereof.
Amendment; Waiver:	This Letter Agreement may not be changed or modified except by a written document signed by you and the President of [COMPANY] or the Company's Director of Human Resources. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach of the same or similar nature.

Notices: All notices, requests, instructions and other communications to be given hereunder by any party to the other shall be in writing and shall be deemed given if personally delivered, telecopied (with confirmation) or mailed by registered or certified mail, postage prepaid (return receipt requested), to such party at its address set forth below or such other address as such party may specify to the other party by notice provided in accordance with this Section.

If to [COMPANY], to:

[COMPANY ADDRESS]
Attention: Director of Human Resources
Telephone:
Facsimile:

If to Employee, to:

[EMPLOYEE ADDRESS]
Telephone:

or to such other persons or addresses as may be designated in writing by the party to receive such notice.

We intend to schedule an Orientation on your Start Date. If you have any questions before then, please don't hesitate to contact [WHO?] or me at [PHONE NO.].

Very truly yours,

[NAME]
[JOB TITLE]

Please acknowledge your acceptance of this offer and return a copy to me at the address on the bottom of this Letter Agreement.

_____ _____
[EMPLOYEE NAME] Date

ARBITRATION AGREEMENT

In exchange for the benefits of the speedy, economical and impartial dispute resolution procedure of arbitration, _____ ("Employee") and _____ ("[COMPANY]"), after consultation with their selected counsel (if desired), choose to forego their right to resolution of their disputes in a court of law by a judge or jury, and instead elect to treat their disputes, if any, pursuant to the Federal Arbitration Act and/or the [INSERT APPLICABLE STATE CITATION: Arizona Uniform Arbitration Act, A.R.S. §§ 12-1501 et seq.]

Employee and [COMPANY] agree that any and all claims or controversies whatsoever brought by Employee or [COMPANY] arising out of or relating to Employee's employment with the Company or the attached Letter Agreement or Confidentiality and Non-Solicitation Agreement, or otherwise arising between Employee and [COMPANY], will be settled by final and binding arbitration in accordance with the applicable rules and procedures of the American Arbitration Association ("AAA"). This includes all claims whether arising in tort or contract and whether arising under statute or common law. Such claims may include, but are not limited to, those relating to the attached Letter Agreement and Confidentiality and Non-Solicitation Agreement; any claims arising out of the public policy of Arizona; any claims of wrongful termination; and any claims of employment discrimination, retaliation, or harassment of any kind, including statutory claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Arizona Civil Rights Act, or any other Federal or state statutes. The obligation to arbitrate such claims will survive the termination of Employee's employment with [COMPANY]. [COMPANY] shall be responsible for all costs of the arbitration services, including the fees and costs of the arbitrator and court reporter fees, unless Employee wishes to share such costs voluntarily. To the extent permitted by law, the hearing and all filings and other proceedings shall be treated in a private and confidential manner by the arbitrator and all parties and representatives, and shall not be disclosed except as necessary for any related judicial proceedings.

The party requesting arbitration must file a demand for arbitration with the AAA giving notice of any claim sought to be arbitrated within the limitations period established by applicable [STATE?] law or, if the dispute raises claims or issues that would support federal court jurisdiction, by applicable federal law. Any failure to timely demand arbitration shall constitute a waiver of all rights to raise any claims, in any forum, arising out of any dispute that was subject to arbitration. The arbitration will be conducted before an arbitrator who is a member of AAA and mutually selected by the parties from the AAA Panel. The arbitrator will have jurisdiction to determine the arbitrability of any claim. The arbitrator shall have a business office in or be a resident of [WHAT LOCALE?]. The arbitrator shall have the authority to grant all monetary or equitable relief (including, without limitation, injunctive relief, ancillary costs and fees, and punitive damages) available under state and Federal law. Judgment on any award rendered by the arbitrator may be entered and enforced by any court having jurisdiction thereof.

Notwithstanding the foregoing, the parties agree to participate in non-binding mediation with a mutually selected mediator prior to initiation of any arbitration process, except that either party may file any formal arbitration demand as necessary to preserve its legal rights.

In the event that any provision of this Agreement shall finally be determined to be unlawful or unenforceable, such provision shall be deemed to be severed from this Agreement, but every other provision shall remain in full force and effect.

I HAVE READ AND FULLY UNDERSTAND THIS ARBITRATION AGREEMENT, AND AGREE TO ABIDE BY ALL OF ITS TERMS.

_____
Employee's Legal Name

_____ _____
Signature Date

[COMPANY NAME]

By:_____ _____
Name: [COMPANY REP] Date
Title: [TITLE]

CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT

In consideration of my employment with _____or any of its subsidiaries or affiliates (any such entity, the "Company") or my continued employment with the Company, as the case may be, I agree to the following terms and conditions:

1. CONFIDENTIAL INFORMATION: I hereby acknowledge and agree that as an employee of the Company, I will have and will make use of, acquire and add to Confidential Information (as defined below) of a special and unique nature and value relating to the Company and the Company's strategic plans, operations, financial conditions and performance, and such Confidential Information constitutes trade secrets of the Company. I further recognize and acknowledge that all Confidential Information is the exclusive property of the Company, is material and confidential, and is critical to the successful conduct of the business of the Company. I agree to undertake the following obligations which I acknowledge to be reasonably designed to protect the Company's legitimate business interests without unnecessarily or unreasonably restricting my ability to pursue a livelihood after my relationship with the Company has terminated.

2. "CONFIDENTIAL INFORMATION" DEFINED: Confidential Information means any information and material of the Company which is deemed by the Company in its sole discretion to be confidential, including proprietary information and/or "trade secrets" as defined by the Uniform Trade Secrets Act. Confidential Information includes, but is not limited to, any and all information disclosed to or known by me as a consequence of my employment with the Company which is not generally known outside the Company, which is the subject of reasonable steps by the Company to maintain its confidentiality, and which has economic value as a result of its confidentiality. Such information would include, but not be limited to, information and documents regarding the Company's businesses, contracts, operations, products, services, research and development, finances, financial condition and performance, financial data, relationships with regulatory and self-regulatory bodies, policies, procedures, plans, budgets, assets or stock and operations; plans and strategies including business, marketing, advertising, sales and financial strategies and plans; Company transactions including proposed transactions such as purchases, mergers, acquisitions or disposition of property, development and expansion plans; information regarding employees including salary/compensation data; information regarding Company products, services, processes, methods of production, formulas, compositions, inventions, machines, source and object computer codes, computer software or programs, research projects, investor lists, customer or prospect lists (including knowledge of their financial condition and their financial needs), customer and customer account information (including customer requirements or preferences), suppliers, billing methods, pricing; and any and all information entrusted to the Company by third parties. Such Confidential Information may be contained in any form, including written materials, verbal communications, unwritten knowledge, information stored electronically (including, but not limited to, hard disk and soft disk drive mechanisms), and information embodied in objects or processes. Confidential Information shall not, however, include information that is or becomes publicly and widely known and made generally available outside of the Company through no act or failure to act by me or of others who were under confidentiality obligations as to the item or items involved.

3. FIDUCIARY RELATIONSHIP: I agree that a confidential and fiduciary relationship exists between me and the Company which means that I hold a position of trust at the Company with regard to all of the Company's Confidential Information.

4. RESTRICTIONS ON USE: I hereby covenant and agree that I will use Confidential Information for the benefit of the Company only and shall not at any time (without the prior written consent of the Company), directly or indirectly, during the term of this Agreement and thereafter, divulge, reveal or communicate any Confidential Information to any person, firm, corporation or entity whatsoever, or use any Confidential Information for my own benefit or for the benefit of any other person, firm, corporation or entity. No Confidential Information will be made available by me to anyone outside the Company (or to coworkers who do not have a valid reason to know) during or following my employment with the Company without the advance written permission of the Company. I will also guard against inadvertent disclosure by avoiding discussing such matters where the conversation may be overheard by others, or by mentioning such matters in casual conversation. I also will not use in other than the Company's business any such Confidential Information, either during or at any time after my employment. I agree not to remove from the Company's premises, reproduce, summarize or copy any Confidential Information except as expressly required by the Company in order to enable me to perform my duties. I hereby acknowledge that the sale or unauthorized use or disclosure of any Confidential Information by any means whatsoever and at any time before, during, and after my employment with the Company shall constitute unfair competition.

5. RETURN OF INFORMATION: I agree to immediately return all Confidential Information, including duplicate documents, in my possession to the Company upon termination of my employment or whenever management may otherwise require that such Confidential Information be returned. I also agree to return, upon termination or request, any and all records, files, data, notes, computer files in any media, analyses, summaries, formulas, source and object computer codes, computer programs, reports, manuals, proposals, customer and other lists, correspondence, specifications, drawings, blueprints, sketches, designs, materials, equipment, other documents or work papers (and all copies, summaries and abstracts thereof) or property, or reproductions of any of the aforementioned items in any form developed by me pursuant to my employment with the Company, containing or based upon any Confidential Information, whether prepared by the Company or any other person, firm, corporation or other entity of any kind or nature or otherwise belonging to the Company.

6. NON-SOLICITATION: During my employment, and for a period of two years immediately following my termination of employment (voluntary or otherwise), I shall not, in any manner, directly or indirectly (without the prior written consent of the Company) Solicit anyone who is then an employee of the Company or its affiliates (or who was an employee of the Company or its affiliates within the twelve (12) months preceding such Solicitation) to resign from the Company or its affiliates or to apply for or accept employment with, or act as an agent, independent contractor or partner in any other business or enterprise; provided, however, that nothing contained in this Section 6 is intended to prohibit general advertising or Solicitation not directed at the current or prospective customers or employees of the Company or its affiliates. For purposes of this Agreement, "Solicit" or "Solicitation" means any direct or indirect communication of any kind, regardless of who initiates it, that in any way invites, advises, encourages or requests any person,

firm, corporation or other entity of any kind or nature to take or refrain from taking any action. After the termination of my employment with the Company (whether voluntary or not), I agree that I will remain bound by the other limitations of this Agreement, including those related to disclosure and use of Confidential Information, and specifically agree that I shall not use Confidential Information to solicit any Company employee, consultant, independent contractor, or customer in the manners set forth in this paragraph or in any other manner.

7. SEPARATE COVENANTS. If, in any judicial proceeding, a court shall refuse to enforce any of the separate covenants (or any part thereof) contained in the preceding paragraphs of this Agreement, then such unenforceable covenants (or any such part) shall be deemed eliminated from this Agreement for the purpose of those proceedings to the extent necessary to permit the remaining separate covenants (or portions thereof) to be enforced.

8. NOTIFICATION REGARDING NEW EMPLOYMENT: In the event of the termination of my employment with the Company, I hereby agree that (i) prior to accepting a new job or business affiliation I shall notify my new employer or business affiliation of my rights and obligations under this Agreement, and (ii) prior to my departure from the Company, I shall give written notice to the Company of my decision, the identity and location of my new employer or business, and the exact nature and duties of my new position.

9. ARBITRATION: I recognize and agree that any controversy or claim arising out of or relating to my alleged violation of this Agreement will be finally settled pursuant to the Arbitration Agreement attached hereto.

10. SURVIVAL: Any termination of this Agreement (or breach of such Agreement by me or the Company) shall have no effect on the continuing operation of the covenants in Sections 1 through 6.

11. GOVERNING LAW: This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of _____, without regard to the conflict of law principles thereof.

12. AMENDMENT; WAIVER: This Agreement may not be changed or modified except by a written document signed by me and the Chief Executive Officer of the Company or the Director of Human Resources. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach of the same or similar nature.

13. NOTICES: All notices, requests, instructions and other communications to be given hereunder by any party to the other shall be in writing and shall be deemed given if personally delivered, telecopied (with confirmation) or mailed by registered or certified mail, postage prepaid (return receipt requested), to such party at its address set forth below or such other address as such party may specify to the other party by notice provided in accordance with this Section.

If to [COMPANY], to:
[ADDRESS]
Attention: Director of Human Resources
Telephone:
Facsimile:

If to Employee, to:
[ADDRESS]
Telephone:

or to such other persons or addresses as may be designated in writing by the party to receive such notice.

14. ENTIRE AGREEMENT, ETC: This Agreement along with the attached Letter and Arbitration Agreements constitute and contain the entire agreement and final understanding between the parties concerning Confidential Company Information and non-solicitation of Company employees and customers. The agreements are intended by the parties as a complete and exclusive statement of the terms of their agreement. The agreements supersede all other prior agreements, understandings, representations and warranties, both written and oral, between the parties or their respective representatives, agents or attorneys, with respect to the subject matter hereof and thereof. Any representation, promise or agreement not specifically included in the agreements shall not be binding upon or enforceable against either party. All three agreements are fully integrated agreements.

15. PARTIES IN INTEREST: This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors, assigns, estate, heirs, executors, administrators and other legal representatives, as the case may be. Nothing in this Agreement, express or implied, is intended to confer upon any other person, firm, corporation or other entity of any kind or nature, other than parties hereto and their respective successors, assigns, estate, heirs, executors, administrators and other legal representatives, as the case may be, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

16. ASSIGNMENT: This Agreement shall not be assignable by law or otherwise without the prior written consent of the other party hereto; provided, however, that the Company may assign any of its rights and obligations hereunder to any of its affiliates or to any other entity which may acquire all or substantially all of the assets, shares or business of the Company or any of its subsidiaries or any entity with or into which the Company or any of its subsidiaries may be consolidated or merged.

17. COMPLIANCE: The Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

18. CAPTIONS: The section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

19. GENERAL: I will comply, and do all things necessary for the Company to comply, with the laws and regulations of all governments, regulatory agencies, and licensing authorities under which the Company does business, and with provisions of contracts between any such government or its contractors and the Company, that relate to intellectual property or to the safeguarding of confidential information.

[REMAINDER OF PAGE LEFT BLANK – SIGNATURE PAGE FOLLOWS]

I HAVE READ AND FULLY UNDERSTAND THIS CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT, AND AGREE TO ABIDE BY ALL OF ITS TERMS.

_____
Employee's Legal Name

_____ _____
Signature Date

ACKNOWLEDGED:

[COMPANY NAME]

By:_____ _____
Name: [NAME] Date
Title: [TITLE]

PROPRIETARY INFORMATION,
INVENTION ASSIGNMENT, NON-COMPETITION
AND NON-SOLICITATION AGREEMENT

As a condition of my becoming employed (or my employment being continued) or my being retained as a contractor or consultant (or my contractor or consulting relationship being continued) by [EMPLOYER], an Oregon corporation, or any of its current or future subsidiaries, affiliates, successors or assigns (collectively, the "Company"), and in consideration of my employment or my contractor or my consulting relationship with the Company and my receipt of the compensation now and hereafter paid to me by the Company, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, _____ *[Print Name]*, agrees to the following:

1. Employment or Contractor/Consulting Relationship. I understand and acknowledge that this Proprietary Information, Invention Assignment, Non-Competition and Non-Solicitation Agreement (this "Agreement") does not alter, amend or expand upon any rights I may have to continue in the employ of or in a contractor or consulting relationship with, or the duration of my employment or contractor or consulting relationship with, the Company under any existing agreements between the Company and me or under applicable law. Any employment or contractor or consulting relationship between the Company and me, whether commenced prior to or upon the date of this Agreement, shall be referred to herein as the "Relationship." As used in this Agreement, "Person" includes any individual, corporation, partnership, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity of any kind whatsoever.

2. At Will Employment. I understand and acknowledge that my Relationship with the Company is and shall continue to be at will, as defined under applicable law, meaning that either I or the Company may terminate the Relationship at any time for any reason or no reason, without further obligation or liability, except as provided in Section 9(e) of this Agreement.

3. Proprietary Information.

(a) Company Information. I agree at all times during the term of the Relationship and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any Person without written authorization of the President of the Company, any Proprietary Information of the Company that I obtain or create. I further agree not to make copies of such Proprietary Information except as authorized by the Company. I understand that "Proprietary Information" means any

Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, suppliers, customer lists and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the Relationship), prices and costs, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets or other business information disclosed to me by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment or created by me during the period of the Relationship, whether or not during working hours. I understand that "Proprietary Information" includes, but is not limited to, information pertaining to any aspects of the Company's business which is either information not known by actual or potential competitors of the Company or is otherwise proprietary information of the Company or its customers or suppliers, whether of a technical nature or otherwise. I further understand that Proprietary Information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act of mine or of others who were under confidentiality obligations as to the item or items involved.

(b) Former Employer Information. I represent that my performance of all terms of this Agreement as an employee, contractor or consultant of the Company have not breached and will not breach any agreement to keep in confidence proprietary or other information, knowledge or data acquired by me in confidence or trust prior or subsequent to the commencement of the Relationship, and I will not use in the course of the Relationship, disclose to the Company, or induce the Company to use, any inventions, confidential or proprietary information or material belonging to any previous employer or any other Person.

(c) Third Party Information. I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any Person or to use it except as necessary in carrying out my work for the Company and then only in a manner consistent with the Company's agreement with such third party.

4. Inventions.

(a) Inventions Retained and Licensed. I have attached hereto, as Exhibit A, a list describing all inventions, processes, designs, technology, information, hardware, software, documentation, illustrations, artwork, photographs, trademarks, materials, other original works of authorship, developments, improvements and trade secrets which were made by me prior to the commencement of the Relationship (collectively referred to as "Prior Inventions"), which belong solely to me or jointly with

another, which relate to the Company's proposed or current business, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, I represent that there are no such Prior Inventions. If in the course of the Relationship, I incorporate into a Company product, process or machine a Prior Invention owned by me or in which I have an interest, the Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Prior Invention as part of or in connection with such product, process or machine.

(b) Assignment of Inventions. I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign, and agree to assign, to the Company, or its designee, all my right, title and interest throughout the world in and to any and all inventions, processes, designs, technology, information, hardware, software, documentation, illustrations, artwork, photographs, trademarks, materials, other original works of authorship, developments, improvements, concepts, know-how, or trade secrets (including, without limitation, any equipment, firmware, source code, object code and associated procedural code, data, programs, specifications, technology, information, discoveries, developments, designs, techniques, ideas, processes, and formulas), whether or not patentable or registrable under copyright or similar laws and , that I did or may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time of the Relationship (including, but not limited to, such period of time of the Relationship that accrued prior to this Agreement) that are within the scope of the relationship or otherwise relate to the business of the Company (collectively referred to as "Inventions"), except as provided in Section 4(f) below. I further acknowledge that all Inventions which are made by me (solely or jointly with others) are "works made for hire" (to the greatest extent permitted by applicable law) and are compensated by my salary (if I am an employee) or by such amounts paid to me under any applicable contractor or consulting agreement or arrangements (if I am a contractor or consultant), unless regulated otherwise by mandatory law.

(c) Maintenance of Records. I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of the Relationship. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, and any other format. The records will be available to and remain the sole property of the Company at all times. I agree not to remove such records from the Company's place of business except as expressly permitted by Company policy which may, from time to time, be revised at the sole election of the Company.

(d) Moral Rights. My assignment to the Company of Inventions includes all rights of attribution, paternity, integrity, disclosure and withdrawal, any

rights I may have under the Visual Artists Rights Act of 1990 or similar federal, state, foreign or international laws or treaties, and all other rights throughout the world sometimes referred to as "moral rights" (collectively "Moral Rights"). To the extent that Moral Rights cannot be assigned under applicable law, I hereby waive such Moral Rights to the extent permitted under applicable law and consent to any and all actions of the Company that would otherwise violate such Moral Rights.

(e) Patent and Copyright Registrations. I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for, obtain maintain and transfer such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of the Relationship. If the Company is unable because of my mental or physical incapacity or unavailability or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by me. I hereby waive and irrevocably quitclaim to the Company any and all claims, of any nature whatsoever, which I now or hereafter have for infringement of any and all proprietary rights assigned to the Company.

(f) Notice – If Washington Resident. If I am a resident of Washington, notwithstanding any other provision of this Agreement to the contrary, this Agreement does not obligate me to assign or offer to assign to the Company any of my rights in an invention for which no equipment, supplies, facilities or trade secret information of the Company was used and which was developed entirely on my own time, unless (a) the invention relates (i) directly to the business of the Company or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by me for the Company. This satisfies the written notice and other requirements of RCW 49.44.140.

5. Returning Company Documents. I agree that, at the time of termination of the Relationship, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, laboratory notebooks, materials, flow charts, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to or in connection with the Relationship or otherwise belonging to the Company, its successors or assigns. I further agree that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. In the event of the termination of the Relationship, I agree to sign and deliver the "Termination Certificate" attached hereto as Exhibit B.

6. Notification to Other Parties.

(a) Employees. If my employment with the Company ends for any reason, I hereby consent to notification by the Company to my new employer about my rights and/or obligations under this Agreement.

(b) Contractors and Consultants. I hereby grant consent to notification by the Company to any other parties besides the Company with whom I maintain a contractor or consulting relationship, including parties with whom such relationship commences after the effective date of this Agreement, about my rights and/or obligations under this Agreement.

7. Non-Solicitation of Employees, Contractors, Consultants, Suppliers, Customers and Other Parties; Non-Competition.

(a) I agree that during the term of the Relationship, and for a period of one (1) year immediately following the termination of the Relationship for any reason, whether with or without cause, I shall not either directly or indirectly, for myself or for any other Person:

(i) solicit, induce, recruit, or encourage any of the Company's employees, contractors or consultants to terminate their relationship with the Company, take away such employees, contractors or consultants from the Company, attempt to solicit, induce, recruit, encourage or take away any employees, contractors or consultants of the Company, or employ or attempt to employ, as an employee, contractor, consultant or otherwise, any Person who was at any time during the one (1) year prior thereto an employee, contractor or consultant of the Company;

(ii) induce or encourage any licensor, vendor or supplier to the Company to terminate their relationship with the Company, or otherwise interfere with the Company's relationship therewith;

(iii) induce or encourage any of the Company's customers or licensees to terminate their relationship with the Company or otherwise interfere with the Company's relationship therewith; or

(iv) solicit any of the Company's customers or licensees with respect to any business, products or services that are directly or indirectly competitive with the business, products or services offered or proposed to be offered by the Company or under development as of the date of termination of the Relationship.

(b) I further agree that during the term of the Relationship, and for a period of two (2) years immediately following the termination of the Relationship for any reason, whether with or without cause, I shall not either directly or indirectly, for myself or for any other Person, engage in or otherwise carry on (without limitation, either as principal, agent, employee, employer, investor, shareholder (except for investments of no greater than 3% of the total outstanding shares in any publicly-traded company), consultant, partner, member, financier or in any other individual or representative capacity of any kind whatsoever) any activity which is competitive with any of the business activities in which the Company (i) is engaged or is developing plans to engage at the commencement of my Relationship or (ii) engages or develops plans to engage at any time during my Relationship.

8. Representations and Covenants.

(a) Facilitation of Agreement. I agree to execute promptly any proper oath or verify any proper document required to carry out the terms of this Agreement upon the Company's written request to do so.

(b) Conflicts. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence any confidential or proprietary information acquired by me in confidence or in trust prior to commencement of the Relationship. I have not entered into, and I agree I will not enter into, any oral or written agreement in conflict with any of the provisions of this Agreement.

(c) Voluntary Execution. I certify and acknowledge that I have carefully read all of the provisions of this Agreement and that I understand and will fully and faithfully comply with such provisions.

(d) Ability to Earn Livelihood. I expressly agree and acknowledge that the post-Relationship restrictions contained in this Agreement do not preclude me from earning a livelihood, nor do they unreasonably impose limitations on my ability to earn a

living. I further agree and acknowledge that the potential harm to the Company of the non-enforcement of these restrictions outweighs any harm to me of the enforcement of the restrictions by injunction or otherwise.

9. General Provisions.

(a) Governing Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Oregon applicable to contracts made and to be wholly performed within Oregon by persons domiciled in Oregon, without giving effect to the principles of conflict of laws.

(b) Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged. Any subsequent change or changes in my duties, obligations, rights or compensation will not affect the validity or scope of this Agreement.

(c) Severability. If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

(d) Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

(e) Survival. The provisions of this Agreement shall survive the termination of the Relationship and the assignment of this Agreement by the Company to any successor in interest or other assignee.

(f) Remedies Upon Breach. In the event of a breach or threatened breach of any provision of this Agreement, I acknowledge and agree that the Company will suffer irreparable harm and further acknowledge and agree that the Company's remedies at law are inadequate, and that the Company will be entitled to an immediate injunction restraining such breach or potential breach as well as other equitable relief; provided, however, that nothing herein will be construed as prohibiting the Company from pursuing any other remedy available for such breach or threatened breach. The Company shall not be obligated to post a bond or other security to enforce its rights under this Section.

(g) Reformation. The provisions and covenants contained herein are intended to be separate and divisible and if, for any reason, any one or more of such provisions or covenants should be held to be invalid and unenforceable in whole or in part, it is agreed that the same will not be held to affect the validity or enforceability of

any other provisions and covenants of this Agreement. In the event that any restriction set forth in this Agreement is determined by a court to be unenforceable with respect to scope, time or geographical coverage, you agree that such a restriction should be modified and narrowed so as to provide the maximum protection of the Company's and the Company's legally protectable interests as described in this Agreement, and without negating or impairing any other restrictions or agreements set forth herein.

(h) ADVICE OF COUNSEL. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

(i) Counterparts. This Agreement, and any modification or amendment hereto, may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement or any modification or amendment or other related document by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement or such modification, amendment or other related document.

[Signature Page Follows]

IN WITNESS THEREOF, the undersigned have duly executed and delivered this PROPRIETARY INFORMATION, INVENTION ASSIGNMENT, NON-COMPETITION AND NON-SOLICITATION AGREEMENT as of the dates set forth below.

COMPANY:	EMPLOYEE OR CONTRACTOR / CONSULTANT:
[EMPLOYER]	
By: _____	_____
Name:	Signature
Title:	
	_____
	Print Name
Dated: _____, 200___	Dated: _____, 200___
Address:	Address:
_____	_____
_____	_____
_____	_____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 200___, before me, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, who executed the within and foregoing instrument for and on behalf of him/herself, and acknowledged that he/she signed the same as his/her free and voluntary act and deed.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.

_____
Notary Public for _____
My commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 200___, before me, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, the _____ of [EMPLOYER] (the "Company"), who executed the within and foregoing instrument for and on behalf of the Company, and acknowledged that he/she signed the same as the free and voluntary act and deed of the Company.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.

_____
Notary Public for _____
My commission expires: _____

EXHIBIT A

LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP
EXCLUDED FROM SECTION 4

Title	Date	Identifying Number or Brief Description

___ No inventions or improvements

___ Additional Sheets Attached

_____
Signature of Employee/Contractor/Consultant:

_____
Print Name of Employee/Contractor/Consultant:

Dated: _____, 200___

EXHIBIT B

TERMINATION CERTIFICATE

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to [EMPLOYER], its subsidiaries, affiliates, successors or assigns (together the "Company").

I further certify that I have complied with all the terms of the Company's Proprietary Information, Invention Assignment, Non-Competition and Non-Solicitation Agreement signed by me (the "Agreement"), including the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, contractors, consultants, customers or licensees.

I further agree that for one (1) year from the date of this Termination Certificate, I will not hire any employees or consultants of the Company and I will not solicit, induce, recruit or encourage any of the Company's employees, contractors or consultants to leave their employment, nor will I solicit any of the Company's licensors, vendors, customers or licensees to terminate any relationship with the Company, in each case, in accordance with Agreement. I further agree that for two (2) years from this date, I will not compete with the Company in accordance with the Agreement.

_____
(Signature)

_____
(Type/Print Name)

Dated: _____, 200___

RETENTION AGREEMENT

THIS AGREEMENT ("Agreement") between _____ ("Employer") and _____ ("Employee") is hereby entered into as of this date of _____, 20__.

WHEREAS, Employer and Employee wish to establish their respective rights and obligations in the event that Employer undergoes a change of control as defined below;

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, Employer and Employee agree as follows:

1. Management Retention Program

1.1 Retention Bonus

If Employee is employed on the date a change of control becomes effective, Employee shall be entitled to receive a retention bonus of up to 12 months of Employee's base salary, as calculated at the effective date of the change of control. The calculation of Employee's base salary shall not include bonuses, pension or other health and welfare benefits, profit sharing or stock options provided to Employee. One-half of the retention bonus shall be paid to the Employee on the date the change of control becomes effective. The remaining portion of the bonus shall be paid to the Employee on the earlier of (1) 90 days after the date the change of control becomes effective, unless the Employee has voluntarily terminated employment with Employer, or any successor to Employer, before the end of the 90-day period; (2) the date of Employee's last day of employment, if Employee resigns with the consent of his or her employer; or (3) the date Employee receives notification of termination by his or her employer. A voluntary termination which occurs as a result of a significant reduction in Employee's pay, responsibilities or reporting relationship, on or after the date of the change of control, or a work assignment requiring relocation, shall be deemed an involuntary termination for purposes of this Agreement.

1.2 Compensation Continuance

In the event Employee's position is terminated or eliminated as a result of a change of control, and such termination or elimination occurs within nine months of the date on which the change of control becomes effective, Employee will be placed on a paid leave of absence for a period equal to the greater of nine months or the number of months of available salary continuance under Employer's standard separation policy. During the paid leave of absence, Employee shall receive salary continuance at the greater of the Employee's base salary as of the date of the change of control or Employee's base salary

as of the date the leave of absence begins. The calculation of Employee's base salary shall not include bonuses, pension or health and welfare benefits, profit sharing or stock options provided to Employee. Salary continuance shall be paid in semi-monthly disbursements in accordance with Employer's, or any successor to Employer, regular practice. Employee shall also be paid an amount equal to 80% of Employee's monthly target level bonus opportunity, paid in semi-monthly installments during the period of paid leave of absence. Employee will also be eligible to receive a modified insurance benefits program during the period of compensation continuance. If Employee commences other employment before the period of paid leave expires, salary continuance payments, employment benefits and target level bonus payments shall cease. Employee will, however, receive one-half of the remaining salary continuance and target level bonus opportunity in a lump sum payment. At the time of termination of salary continuance payments, Employee shall receive payment for all accrued but unused vacation or floating holiday time.

1.3 Termination

The provisions of Section 1.2 shall apply only if Employee is involuntarily terminated for reasons other than cause. A voluntary termination which occurs as a result of a significant reduction in Employee's pay, responsibilities or reporting relationship, on or after the date of the change of control, or a work assignment requiring relocation, shall be deemed an involuntary termination. An involuntary termination shall be for "cause" if Employee is terminated for: (1) willful material misconduct in the performance of his or her duties; (2) the performance of illegal acts, while purporting to act on behalf of Employer; or (3) engaging in direct competition with Employer.

1.4 Outplacement Assistance

If Employee's position is terminated or eliminated as a result of a change of control, Employee may elect to utilize professional outplacement services with a national firm, to be designated by Employer, at Employer's expense. Professional outplacement services shall include the use of a work area and secretarial support. If Employee chooses not to utilize outplacement services, Employee is not entitled to receive money or other compensation in lieu of such services.

2. Change of Control

For purposes of this Agreement, a change of control shall be defined as: (i) the purchase of more than 50% of the stock of Employer, or acquisition of more than 50% of the voting power of Employer, by any "person," including a "group" as determined in accordance with Section 13(d)(3) of the Securities Exchange Act of 1934; (ii) the sale or disposition of 25% or more of Employer’s assets or a plan of partial (25% or more) or

complete liquidation; or (iii) the sale or disposition of a portion(s) (25% or more of the assets, revenues or employees) of Employer to any corporation or entity.

In the event a single business unit (SBU), as that term is commonly understood by employees of Employer, is sold, acquired or disposed of, a change in control has occurred for employees of that SBU. Similarly, if a staff department or function is substantially eliminated, a change in control has occurred for any affected employees.

3. Bonus Plans

[Insert terms of the bonus plan]

4. Benefits Upon Death

In the event of death or disability of Employee prior to the effective date of a change of control, Employee shall be entitled to receive no payments under this Agreement. In the event of death or disability of Employee after the date of change of control, Employee shall be entitled to receive Employee's full retention bonus, plus salary continuance through the end of the semi-monthly pay period which includes the date of Employee's death or disability. All vacation or floating holiday time which is accrued but unpaid as of the date of death or disability shall also be paid. All other bonus payments shall be paid on a pro rata basis through the date of death or disability. Employer will pay all such amounts (i) to Employee's personal representative or executor or administrator of his or her estate in the event of death or (ii) to Employee or the guardian or conservator of Employee in the event of disability. Disability shall be defined as Employee's inability substantially to perform the duties of his or her position for 80% or more of the normal working days during a period of ninety (90) consecutive days.

5. Confidentiality of Agreement

Employee understands and agrees that both the terms and the existence of this Agreement are confidential and are to remain confidential. As a material inducement to Employer to enter into this Agreement, and as a condition precedent to Employer's performance, Employee shall not hereafter disclose either the existence of or the terms of this Agreement to any person other than his or her immediate family or his or her accountants, professional financial advisors or attorneys, as necessary, who will be informed of and bound by this confidentiality clause.

6. Not a Contract of Employment

This Agreement does not constitute a contract of employment between Employer and Employee. This Agreement creates no contractual rights with respect to the continuation of Employee's employment with Employer. Nothing in this section,

however, is intended to in any way affect Employee's rights to the benefits of Sections 1 through 5 hereof.

7 Term of Agreement

This Agreement shall remain in full force and effect for a period of one year from _____, 20__, and shall be renewed automatically on a yearly basis, unless Employer or Employee provides 90 days' written notice of intent not to renew. Expiration of the term of this Agreement shall not affect any obligations to make payments pursuant to Sections 1 through 5 of this Agreement if the effective date of the change of control occurs prior to the expiration of the term of this Agreement.

8. Withholding of Taxes

Employer may withhold from any benefits payable under this Agreement all federal, state, city or other taxes as may be required pursuant to any law, governmental regulation or ruling.

9. General Provisions

9.1 Governing Law and Venue

This Agreement shall be governed and interpreted by the laws of the State of _____ applicable to agreements made and to be performed entirely in the State of _____. Any action to interpret or enforce the terms of this Agreement or relating in anyway to matters covered by this agreement, shall be brought _____

9.2 Complete Agreement

This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the matters covered by this Agreement. This Agreement may not be amended, modified or canceled except by written agreement of the parties. No provision of this Agreement may be waived except by a writing signed by the party to be bound thereby.

9.3 Severance

In the event any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent provided by law.

9.4 Successors

This Agreement shall be binding upon and inure to the benefit of Employee (or his or her personal representative), Employer and any successor organization or

organizations which shall succeed to substantially all of the business and property of Employer, whether by means of merger, consolidation, liquidation, acquisition of substantially all the assets or voting stock of Employer or otherwise, including by operation of law.

9.5 Attorneys' Fees

In the event that any suit or action is brought by either party to this Agreement to enforce or interpret the terms of this Agreement, the prevailing party shall recover from the other party reasonable attorneys' fees and costs of suit, including deposition costs, expert witness fees, copying costs and court costs, incurred in the prosecution of such suit or action.

I certify that I have read the foregoing Agreement, fully understand its contents, and agree to be bound by its terms and provisions .

_____

.

By:_____
Its:_____

CONFIDENTIAL SEPARATION AGREEMENT AND|
GENERAL RELEASE OF CLAIMS

In exchange for the mutual promises contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, _____("Employee") and _____("Employer") agree as follows:

1. Separation. Employee's employment with Employer will terminate effective _____ ___, 200_. On or before the effective date of Employee's termination, Employer shall pay Employee the gross amount of $_____, less required withholdings for federal, state and local taxes, which amount represents all wages, compensation, or benefits (including, without limitation, any bonus compensation and any accrued, but unused vacation) earned by Employee through the effective date of his separation from employment.

2. Separation Consideration. Upon expiration without revocation of the seven (7) day revocation period as provided in paragraph 4.2, Employee shall receive Separation Consideration as follows:

(a) Employee will receive severance pay in the gross amount of $_____. This severance payment will be subject to required withholdings for federal, state and local taxes.

(b) Employer will continue, at its cost, Employee's health insurance for three months following the month in which Employee's separation from employment becomes effective, after which time Employee may elect to continue, at his cost, health insurance in accordance with and for the duration of any time allowed by the health care continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

This Separation Consideration shall be in addition to any wages, compensation, or benefits (including, without limitation, any bonus compensation and any accrued, but unused vacation) earned by Employee through the effective date of his separation from employment. Employee agrees that all other wages, compensation or benefits of any kind shall cease on the effective date of Employee's termination from employment. Employee agrees that this Separation Consideration is not required by Employer's policies or procedures or by any contractual obligation of Employer, and is offered by Employer solely as consideration for this Agreement.

3. General Release of Claims. Employee releases, acquits and forever discharges Employer and its former and current subsidiary and affiliated entities, directors, officers, managers, employees, shareholders, insurers, attorneys, agents, partners, licensees, and representatives, and each of their respective successors and assigns, both individually and in their corporate capacities (collectively, "Released Parties") of and from any and all liabilities, claims, demands, actions, causes of action, suits, controversies, agreements, damages, or judgments, in law or in equity, whether known or unknown, or suspected or unsuspected, that Employee now or hereafter has or may have against the Released Parties (or any of them) for, upon, or by reason of any matter, thing, act or omission whatsoever, arising or occurring on or at any time prior to *(but not after)* the date on which

Employee executes this Agreement. Employee agrees that this release is general and complete in nature, and includes, but is not limited to, any claims arising out of Employee's relationship with Employer and the termination thereof; any claims for wages, compensation, or benefits (including, without limitation, any bonus compensation and any accrued, but unused vacation); any claims for compensatory or exemplary damages; any claims relating to or arising out of any express or implied contract or covenant; any claims relating to or arising under any federal or state statute (such as Title VII of the Civil Rights Act of 1964, the federal Age Discrimination in Employment Act ("ADEA"), the Sarbanes-Oxley Act of 2002, and the Oregon Revised Statutes); and any claims arising at common law. Employee intends that this general and complete release is binding and enforceable notwithstanding the possibility that Employee may hereafter discover facts which, if such facts had been known by Employee as of the execution of this Agreement, may have materially affected his decision to enter into this Agreement. Employee knowingly and intentionally hereby waives the benefit of any state or federal statute, law, order, or rule that would provide to the contrary.

4. ADEA Notice. [*Required only if employee is over 40*] This Agreement contains a full release of any claim under the Age Discrimination in Employment Act (the "ADEA"), which means in part that Employee is granted the following rights:

4.1. Period To Consider. Under the ADEA, Employee may take up to twenty-one (21) days to consider and accept the terms of this Agreement. Employee may accept in less time by signing and delivering the Agreement to [COMPANY NAME, ADDRESS, AND ATTENTION TO]. Employee is urged to use as many of the twenty-one (21) days as employee deems necessary to consider this Agreement and to consult with his attorney about it. By signing this Agreement, Employee acknowledges the following:

(a) employee has been given at least twenty-one (21) days to consider this Agreement,

(b) this Agreement is written in a manner that Employee understands,

(c) the general release described in paragraph 3 is made knowingly and voluntarily, without any duress or coercion and with the full intent of releasing the Released Parties of and from any and all claims; and

(d) Employee has been advised by Employer to consult with an attorney prior to signing this Agreement.

4.2. Revocation Period. Under the ADEA, Employee may revoke this Agreement within seven (7) days of the date on which employee first signed this Agreement. If Employee revokes the Agreement, then the Agreement shall become null and void, meaning Employee will not receive any Separation Consideration as set forth in the Agreement. To be effective, Employee's revocation must be in writing and returned by hand-delivery or by regular U.S. Mail postmarked to [COMPANY NAME, ADDRESS, AND ATTENTION TO] within seven (7) days of the date on which Employee first signed this Agreement.

5. Confidentiality and Nondisparagement. Employee agrees to hold the provisions of this Agreement in strictest confidence and not to disclose the provisions of this Agreement in any manner whatsoever, except that Employee may disclose this Agreement in confidence to his immediate family, attorneys, tax preparers, or otherwise as required by law. Employee agrees not to make any oral or written statements to any person or entity which might tend to disparage the business reputation of Employer or any of its customers, owners, employees, officers or directors.

6. Company Property/Proprietary Information. Employee hereby reaffirms and agrees to continue to abide by the terms of the Proprietary Information Intellectual Property and Non-Competition Agreement previously entered into by the parties, the terms of which are incorporated herein by reference.

7. Governing Law and Dispute Resolution. This Agreement, in all respects, shall be interpreted, enforced and governed by and under the laws of the State of _____. Any and all claims relating to or arising out of this Agreement shall be resolved in accordance with the terms of the Mutual Agreement For Mediation And Arbitration Of Claims previously entered into by the parties, the terms of which are incorporated herein by reference.

8. Integration. Except as otherwise specifically provided for in this Agreement, this Agreement sets forth the entire understanding between Employee and Employer and supersedes any prior agreements or understandings (express or implied) pertaining to the terms of his employment with Employer and the termination of the employment relationship. Employee acknowledges that in executing this Agreement employee does not rely upon any oral or written representation or statement by any representative of Employer concerning the subject matter of this Agreement, except as expressly set forth in the text of this Agreement. This Agreement may not be modified or amended except by written agreement between Employee and Employer.

9. Attorneys' Fees. If Employee or Employer files an action in any court or other forum to enforce compliance with any term of this Agreement or to allege a breach thereof, the party prevailing in that action shall be entitled to recover all attorneys' fees, costs and any necessary disbursements incurred therein, including, without limitation, expert witness fees, deposition costs, court clerk fees, service fees, and printing costs, in addition to any other relief to which the party may be entitled at trial or upon appeal.

10. No Admissions. It is understood and agreed that this Agreement is offered to Employee solely to facilitate his or her departure from employment with Employer. It is further understood and agreed that neither this Agreement, nor the release granted hereunder, is an admission of any wrongdoing or liability on the part of Employee or Employer, by whom liability has been and is expressly denied.

11. Voluntary Agreement. EMPLOYEE UNDERSTANDS AND AGREES THAT EMPLOYEE MAY BE WAIVING SIGNIFICANT LEGAL RIGHTS BY SIGNING THIS AGREEMENT, AND REPRESENTS THAT EMPLOYEE HAS ENTERED INTO THIS AGREEMENT KNOWINGLY AND VOLUNTARILY, WITH A FULL UNDERSTANDING OF AND IN AGREEMENT WITH ALL OF ITS TERMS.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates indicated below.

CAUTION: READ CAREFULLY—THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AND A WAIVER OF ANY RIGHT TO A JURY TRIAL.

[COMPANY NAME]

_____
[EMPLOYEE NAME]
Dated:_____

By:_____
Its_____
Dated:_____

Non-Compete Agreements[1]

State	Main provisions of law	Blue Pencil Rule or Severability of Unlawful Restrictions	Citation
Alaska	Alaska courts strictly construe noncompetes and view them with disfavor. Noncompetes are analyzed for "reasonableness." Several factors are to be considered in determining reasonableness: time and geographic limits, whether an employee represents the sole contact with a customer, whether an employee possesses confidential information or trade secrets, whether the agreement seeks to eliminate competition that would be unfair to the employer or merely seeks to eliminate ordinary competition, whether the agreement seeks to stifle the inherent skill and experience of the employee, whether the benefit to the employer is disproportional to the detriment of the employee, whether the agreement acts as a bar to the employee's sole means of support, whether the employee's talent that the employer seeks to suppress was actually developed during the period of employment, and whether the forbidden employment is merely incidental to the main employment.	Alaska rejects the "blue pencil" approach but will make a "reasonable alteration" to an overbroad non-compete clause to render it enforceable. However, the employer bears the burden of proving first that the covenant was drafted in good faith.	DeCristofaro v. Security National Bank, 664 P.2d 167, 168-69 (Alaska 1983); Metcalfe Investments, Inc. v. Garrison, 919 P.2d 1356, 1361-62 (Alaska 1996); and Data Management, Inc. v. Greene, 757 P.2d 62, 64-65 (Alaska 1988).

[1] Source: Employers Counsel Network, 50 Employment Laws in 50 States, M. Lee Smith Publishers LLC (2005).

State	Main provisions of law	Blue Pencil Rule or Severability of Unlawful Restrictions	Citation
Arizona	Only reasonable restraints will be enforced -- "those no broader than the employer's legitimately protectable interests." The courts routinely scrutinize time and territorial limitations. Courts have upheld small territorial limitations, and noncompetes may be effective long enough to obliterate any identification between the employer and former employee in the minds of customers and long enough to permit the employer to find and train a replacement. Courts have concluded that a noncompete was justifiable when the training of a replacement would take one to two years. Courts will modify noncompetes, eliminating unreasonable provisions, but courts can't add provisions or rewrite terms in an attempt to make an agreement enforceable. Also, TV, radio stations, and networks are prohibited from requiring employees or applicants to agree to a noncompete clause as a condition of employment.	Arizona courts will modify a non-competition agreement to render it enforceable only when the offending provision is severable from the whole. The courts will not rewrite the agreement but rather will ignore the unlawful provision where it is divisible from the whole agreement.	General: Amex Distributing Co., Inc. v. Mascari, 150 Ariz. 510, 515, 724 P.2d 596, 601 (App. 1986) and Valley Medical Specialists v. Farber, 194 Ariz. 363, 372, 982 P.2d 1277, 1286 (1999). TV, radio, networks: A.R.S. § 23-494. Olliver/Pilcher Ins. v. Daniels, 148 Ariz. 530, 715 P.2d 1218 (1986).
California	Restrictive covenants that prohibit an individual from pursuing an "entire business, trade, or profession …" are invalid. The general rule in California is that noncompetes are unenforceable. State law has narrowly drawn exceptions for noncompetes made pursuant to a sale of a business, sale of a shareholders' stock, or dissolution of a partnership. Otherwise, agreements that limit an employee's ability to obtain work will be enforced only when the employer can show a strong interest that needs to be protected. California courts generally don't give force to geographical and temporal restrictions, but the courts have consistently upheld an employee's covenant not to solicit the former employer's customers for terms from one to five years after employment ends.	California courts will not reform a noncompete that's void and illegal even when the agreement contains a savings clause expressly providing that the parties agree that the court may narrow the agreement as written if it's found to be unfair or commercially unreasonable.	Cal. Bus. and Prof. Code §§ 16600 through 16602.5. Kolani v. Gluska, 64 Cal. App 4th, 402, 408, 75 Cal. Rptr. 2d 257, 260 (1998).

State	Main provisions of law	Blue Pencil Rule or Severability of Unlawful Restrictions	Citation
Colorado	Noncompetes that restrict "the right of any person to receive compensation for performance of skilled or unskilled labor for any employer" are void except in limited circumstances. Also, a nonsolicitation agreement may prohibit soliciting business, but it may not be used to prohibit accepting business from customers who initiate contact.	Colorado courts have discretion to either “blue pencil” or partially enforce the covenant, but are not required to do so.	C.R.S. § 8-2-113, National Propane Corp. v. Miller, 18 P.3d 782 (Colo. App. 2000), and Atmel Corp. v. Vitesse Semiconductor Corp., 30 P.3d 789 (Colo. App. 2001). National Graphics Co. v. Dilley, 681 P.2d 546, 547 (Colo. Ct. App. 1984).
Illinois	Noncompetes are enforceable if the terms are reasonable and necessary to protect a legitimate, protectable business interest of the employer. Noncompetes must be reasonable in regard to time, territory, and activity restrictions.	Illinois courts have broad discretion to modify a restrictive covenant. The court may sever the offending provision or partially enforce it. However, provisions deemed as “essential” will not be modified to be enforceable.	Prairie Eye Ctr., Ltd. v. Butler, 768 N.E.2d 414, 421-22 (Ill. App. 4th Dist. 2002); Lawrence & Allen, Inc. v. Cambridge Human Resource Group, Inc., 685 N.E.2d 434, 443-44 (Ill. App. 2d Dist. 1997), and Lawrence & Allen, Inc., 685 N.E.2d at 441.
Oregon	To be enforceable, noncompetes must be entered into at the commencement of employment or upon a subsequent bona fide occupational advancement, and they must be reasonable as to time and geographic scope.	Oregon courts may modify or reasonably limit an overbroad covenant to render it enforceable.	ORS 653.295 and Volt Servs. Group v. Adecco Employment Servs., Inc., 178 Or. App. 121, 126, 35 P.3d 329, 333 (2001). Lavey v. Edwards, 264 Or. 331, 334-335, 505 P.2d 342, 344 (1973).

State	Main provisions of law	Blue Pencil Rule or Severability of Unlawful Restrictions	Citation
Washington	No statute of general application governs the enforceability of noncompetes, but state law comes into play when a nondisclosure covenant is included in an employee invention-assignment agreement. Employers have a right to protect information or relationships that peculiarly pertain to their operation. Thus, employers have a valid interest in protecting certain intellectual property and lists of customers. In determining whether a time or geographic restriction is reasonable, the court will evaluate whether they are reasonably necessary and calculated to protect the legitimate interests of the employer without imposing undue hardship on the employee. Various time and geographic restrictions have been allowed or stricken, depending on the circumstances applicable to the particular case.	When possible and when restrictions will not work an injustice to the parties or injure the public, courts will partially enforce or reword an otherwise overbroad agreement.	Wash. Rev. Code § 49.44.140(3). Knight, Vale & Gregory v. McDaniel, 37 Wash. App. 366, 371, 680 P.2d 448, 452 (1984).