

<u>Form:</u>	Employment Agreement (Pro-Employee)
<u>Description:</u>	This is a form of Employment Agreement for a senior level employee. The form tends to be pro-employee oriented.
<u>When to Be Used:</u>	This form is more suitable to be used for the benefit of the employee.
<u>Term of Agreement:</u>	The Agreement is not for any particular term, but the employer must pay significant severance pay if the employee is terminated without cause.
<u>Bonus:</u>	Bonuses can be based on a formula or at the discretion of the Company (Section 2(c)). Consider some guaranteed bonus if certain financial or other goals are met.
<u>Benefits:</u>	Consider whether additional benefits are appropriate.
<u>Stock Options:</u>	Section 3(d) allows the employee to earn certain stock options based on continuing employment. Eliminate Section 3(d) if you do not plan to give the employee any stock options.
<u>Termination for Cause:</u>	Section 5(a) provides the company the right to terminate the employee for "cause," without paying severance pay. "Cause" is defined quite narrowly, and the employer may insist that it be broadened.
<u>Right to Terminate for any Reason:</u>	Section 5(b) gives the company the right to terminate the employee for any reason. However, the employer may not fire the employee for an illegal reason. If the employee is terminated without "cause," the employee is entitled to severance pay in an amount to be inserted in Section 5(b).
<u>No Inconsistent Obligations:</u>	Section 11 requires the employee to tell the company that he or she is not under any inconsistent obligations with a prior employer and that the employee will not be using the confidential information of any prior employers. This is important for the new employer, to attempt to avoid problems with the prior employer.

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT is entered into by and between _____, a _____ corporation (the "Company"), and _____, the undersigned individual ("Executive").

RECITAL

The Company and Executive desire to enter into an Employment Agreement setting forth the terms and conditions of Executive's employment with the Company.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Company and Executive agree as follows:

1. Employment.

(a) Term. The Company hereby employs Executive to serve as [TITLE] of the Company. The employment with the Company is not for any specified period of time. As a result, either the Company or the Executive is free to terminate the employment relationship at any time, subject to the other provisions of this Agreement.

(b) Duties and Responsibilities. Executive will be reporting to the Company's Board of Directors. Within the limitations established by the Bylaws of the Company, the Executive shall have each and all of the duties and responsibilities of the [TITLE] position and such other duties on behalf of the Company as may be reasonably assigned from time to time by the Company's Board.

(c) Location. The location at which Executive shall perform services for the Company shall be _____.

2. Compensation.

(a) Base Salary. Executive shall be paid a base salary ("Base Salary") at the annual rate of \$_____, payable in bi-weekly installments consistent with Company's payroll practices. The annual Base Salary shall be reviewed on or before [January 1] of each year, unless Executive's employment hereunder shall have been terminated earlier pursuant to this Agreement, starting on [January 1, ____] by the Board of Directors of the Company to determine if such Base Salary should be increased for the following year in recognition of services to the Company.

(b) Payment. Payment of all compensation to Executive hereunder shall be made in accordance with the relevant Company policies in effect from time to time, including normal payroll practices, and shall be subject to all applicable employment and withholding taxes.

(c) Bonus. Executive shall also be entitled to a bonus determined at the sole discretion of the Board of Directors. The Company shall set proposed milestones and proposed bonuses if those milestones are met, [each quarter] [each year].

3. Other Employment Benefits.

(a) Business Expenses. Upon submission of itemized expense statements in the manner specified by the Company, Executive shall be entitled to reimbursement for reasonable travel and other reasonable business expenses duly incurred by Executive in the performance of his duties under this Agreement.

(b) Benefit Plans. Executive shall be entitled to participate in the Company's medical and dental plans, life and disability insurance plans and retirement plans pursuant to their terms and conditions. Executive shall be entitled to participate in any other benefit plan offered by the Company to its employees during the term of this Agreement (other than stock option or stock incentive plans, which are governed by Section 3(d) below). Nothing in this Agreement shall preclude the Company from terminating or amending any employee benefit plan or program from time to time.

(c) Vacation. Executive shall be entitled to ____ weeks of vacation each year of full employment, exclusive of legal holidays, as long as the scheduling of Executive's vacation does not interfere with the Company's normal business operations.

(d) Stock Options. Executive shall be entitled to options to acquire shares of the Common Stock of the Company pursuant to the terms of the Company's Stock Option Plan, subject to the following terms:

(1) The number of shares for which the options will become exercisable shall be ____ shares, subject to vesting. The shares will vest in [1/48] [1/36] equal amounts for each month of continued employment by Executive.

(2) The exercise price for the options shall be at _____ dollars (\$_____) per share, as appropriately adjusted for stock splits, stock dividends, and the like.

(3) The vested options shall be exercisable until the earlier of five (5) years after vesting or 90 days after termination of Executive's employment with the Company. Executive may elect within 30 days after termination for his stock options to be non-incentive stock options, and in that event, the vested options need not be exercised until five (5) years after the date of vesting.

(4) Issuance of the options shall be in accordance with all applicable securities laws and the other terms and conditions of the Company's

Stock Option Plan and the Stock Option Agreement with Executive of even date herewith.

(5) Executive shall be given credit for [one year] [_____] worth of vesting of his unvested options (and any stock that may be subject to vesting) in the following events: (a) the termination of Executive without cause (defined in Section 5(a) below) or (b) the acquisition of the Company by merger, sale of all or substantially all of the Company's assets, or other reorganization resulting in a change of 50% or more in the ownership of the Company's stock.

(e) No Other Benefits. Subject to Section 5(b), Executive understands and acknowledges that the compensation specified in Sections 2 and 3 of this Agreement shall be in lieu of any and all other compensation, benefits and plans.

4. Executive's Business Activities. Executive shall devote the substantial portion of his entire business time, attention and energy exclusively to the business and affairs of the Company, Executive may serve as a member of the Board of Directors of other organizations that do not compete with the Company, and may participate in other professional, civic, governmental organizations and activities that do not materially affect his ability to carry out his duties hereunder.

5. Termination of Employment.

(a) For Cause. Notwithstanding anything herein to the contrary, the Company may terminate Executive's employment hereunder for cause for any one of the following reasons: (1) conviction of a felony, or a misdemeanor where imprisonment is imposed, (2) commission of any act of theft, fraud, or falsification of any employment or Company records in any material way, (3) Executive's failure or inability to perform any material reasonable assigned duties after written notice from the Company of, and a reasonable opportunity to cure, such failure or inability, or (4) material breach of this Agreement which breach is not cured within ten (10) days following written notice of such breach. Upon termination of Executive's employment with the Company for cause, the Company shall be under no further obligation to Executive for salary or bonus, except to pay all accrued but unpaid base salary, accrued bonus (if any) and accrued vacation to the date of termination thereof.

(b) Without Cause. The Company may terminate Executive's employment hereunder at any time without cause, provided, however, that Executive shall be entitled to severance pay in the amount of [one (1)] year of Base Salary in addition to accrued but unpaid Base Salary and accrued vacation, less deductions required by law.

(c) Termination for Good Reason. If Executive terminates his employment with the Company for Good Reason (as hereinafter defined), he shall be entitled to the vesting benefits set forth in Section 3(d)(5) and the severance benefits set forth in Section 5(b). For purposes of this Agreement, "Good Reason" shall mean any of the following: (i) relocation of the Company's executive offices more than forty miles

from the current location, without Executive's concurrence; (ii) any material breach by the Company of this Agreement; (iii) a material change in the principal line of business of the Company, without Executive's concurrence, or (iv) any significant change in the Executive's duties and responsibilities.

6. Disability of Executive. The Company may terminate this Agreement without liability if Executive shall be permanently prevented from properly performing his essential duties hereunder with reasonable accommodation by reason of illness or other physical or mental incapacity for a period of more than 180 consecutive days. Upon such termination, Executive shall be entitled to all accrued but unpaid Base Salary, accrued bonus (if any) and accrued vacation.

7. Death of Executive. In the event of the death of Executive, the Company's obligations hereunder shall automatically cease and terminate; provided, however, that within 15 days the Company shall pay to Executive's heirs or personal representatives Executive's Base Salary and accrued vacation accrued to the date of death.

8. Confidential Information and Invention Assignments. Executive has executed a Confidential Information and Invention Assignment Agreement (the "Confidential Information and Invention Assignment Agreement"). The obligations under the Confidential Information and Invention Assignment Agreement shall survive termination of this Agreement for any reason.

9. Assignment and Transfer. Executive's rights and obligations under this Agreement shall not be transferable by assignment or otherwise, and any purported assignment, transfer or delegation thereof shall be void.

10. No Inconsistent Obligations. Executive is aware of no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with his undertaking employment with the Company. Executive will not disclose to the Company, or use, or induce the Company to use, any proprietary information or trade secrets of others. Executive represents and warrants that he or she has returned all property and confidential information belonging to all prior employers.

11. Miscellaneous.

(a) Indemnification Agreement. Executive is concurrently executing with the Company an Indemnification Agreement giving him various indemnification rights as an officer.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE] without regard to conflict of law principles.

(c) Entire Agreement. Except with respect to the Stock Option Plan and Stock Option Agreement referenced in Section 3(d), this Agreement, together with the Confidential Information and Invention Assignment Agreement and

Indemnification Agreement referred to in Section 11(a), contains the entire agreement and understanding between the parties hereto and supersedes any prior or contemporaneous written or oral agreements, representations and warranties between them respecting the subject matter hereof.

(d) Amendment. This Agreement may be amended only by a writing signed by Executive and by a duly authorized representative of the Company.

(e) Severability. If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

(f) Construction. The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against the Company or Executive.

(g) Rights Cumulative. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party hereto (or by its successor), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.

(h) Nonwaiver. No failure or neglect of either party hereto in any instance to exercise any right, power or privilege hereunder or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged and, in the case of the Company, by an officer of the Company (other than Executive) or other person duly authorized by the Company.

(i) Notices. Any notice, request, consent or approval required or permitted to be given under this Agreement or pursuant to law shall be sufficient if in writing, and if and when sent by certified or registered mail, with postage prepaid, to Executive's residence (as noted in the Company's records), or to the Company's principal office, as the case may be.

(j) Arbitration. Any controversy, dispute or claim arising out of or related to this Agreement or breach of this Agreement shall be settled solely by confidential binding arbitration by a single arbitrator in accordance with the commercial arbitration rules of JAMS in effect at the time the arbitration commences. The award of the arbitrator shall be final and binding. No party shall be entitled to, and the arbitrator shall not be authorized to, award costs of a party (including, without limitation, attorneys'

fees). The arbitration shall be held in [CITY], [STATE]. The arbitrator shall not be required to provide support or explanation for his award.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth below.

[COMPANY]

By: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

[EXECUTIVE]

By: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Date: _____