

Sample Executive Employment Agreement

This Sample Executive Employment Agreement is drafted for compliance with California law. Unlike California, other states may permit restrictive covenants (not included herein) and different vacation accrual policies. Though this Sample Agreement is specific to the Company's President and Chief Executive Officer, the relevant Position can be modified.

THIS EXECUTIVE EMPLOYMENT AGREEMENT (this "Agreement") is made effective as of this ___th day of (Month) (Year), by and between _____ (the "Company" or "Company Acronym"), a California corporation, and _____ (the "Executive") (collectively referred to as "the Parties").

RECITALS

- A. The Company wishes to employ the Executive, and the Executive is willing to accept such employment, as the President and Chief Executive Officer.
- B. It is now the mutual desire of the Company and the Executive to enter into a written employment agreement to govern the terms of the Executive's employment by the Company as of the start of the term of this Agreement on the terms and conditions set forth below.

TERMS AND CONDITIONS

In consideration for the promises of the parties set forth below, the Company and the Executive hereby agree as follows:

1. **Term.** Subject to the provisions of Section 6 of this Agreement, the term of employment of the Executive under this Agreement shall be as follows:

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

(a) **Initial Term.** The Agreement will be for an initial term of _____ years beginning on _____ through _____. It will expire by its terms unless renewed by (Company's) Chairman of the Board of Directors of the Company (the "Chairman"), in the manner set forth below in paragraph 1(b). If renewed, the Agreement will be renewed for an additional _____ years, pursuant to the procedures set forth below.

(b) **Renewal Terms.** Upon the written request of the Executive to extend the Executive's term of employment under this Agreement prior to the termination of the Executive's employment with the Company, the Chairman shall consider extending the term of this Agreement. Such request must be delivered to the Chairman not later than twelve (12) months prior to the end of the initial or renewal term of employment _____. Within thirty (30) days following the receipt of such notice, the Chairman shall consider the Executive's request and advise the Executive, in writing whether he approves of such extension. The failure of the Chairman to provide such written advice shall constitute approval of the Executive's request for extension. If the Executive's request for an extension is approved, this Agreement shall be extended _____ additional years. Such additional _____-year period is referred to herein as a "Renewal Term."

(c) **Position and Duties.** During the term of the Executive's employment under this Agreement, the Executive shall serve as the President and Chief Executive Officer of the Company. The Executive shall report directly to the Chairman of the Company. The Executive will serve as a director on Company's Board of Directors for as long as he serves as Company's CEO and President. The Executive will be entitled to participate in all Company benefits and profit-sharing plans, and will receive the amount of vacation customary for someone of his level. Unused vacation days shall not be forfeited once they have been earned and, if still unused at the time of the Executive's termination of employment with the Company, shall be promptly paid to the Executive at their then-current value, based on the Executive's rate of pay at the time of the Executive's termination of employment. The Executive shall also be entitled to all paid holidays given by the Company to its executives.

2. **Outside Activities.** During the term of the Executive's employment, the Executive may engage in outside activities, provided those activities (including, but not limited to, membership on boards of directors of not-for-profit and for-profit organizations) do not conflict with the Executive's duties and responsibilities hereunder, and provided further that the Executive gives written notice to the Chairman of any significant outside business activity in which Executive plans to become involved, whether or not such activity is pursued for profit.

3. **Principal Place of Employment.** The Executive shall be employed at the Company's offices in _____, California (the "Principal Place of Employment"),

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

except for required travel on the Company's business to an extent substantially consistent with present business travel obligations of the Executive's position.

4. **Compensation and Related Matters.**

(a) **Salary.** During the Executive's employment, the Company shall pay the Executive a salary of not less than _____ Thousand Dollars (\$ _____,000) per annum. The Executive's salary, shall be payable in equal installments in accordance with the Company's normal payroll practices applicable to senior officers. Subject to the first sentence of this Section 4(a), the Executive's salary may be adjusted from time to time by the Chairman in accordance with normal business practices of the Company and, once increased, shall not be subject to reduction.

(b) **Bonus.** During the Executive's employment, the Executive shall be eligible to receive an annual bonus of up to _____% of his base salary, based on the achievement of _____ factors, to be mutually determined within thirty (30) days of the beginning of the fiscal year by the Executive and the Chairman. The Executive and the Chairman will memorialize the agreed-upon goals in a written document which will be shared with the Company's Board of Directors for notification purposes only. The achievement of each goal will entitle the Executive to _____% of his bonus. The Executive will be entitled to payment of his earned bonus within thirty (30) days of the Company's outside accountants completing their final year-end review and audit of the Company's financial statements, but in no event later than 120 days of the end of each fiscal year.

(c) **Expenses.** The Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred during the term of the Executive's employment by the Executive in performing services hereunder, including all reasonable expenses of travel and living while away from home, provided that such expenses are incurred and accounted for in accordance with the policies and procedures established by the Company.

(d) **Benefits.** The Executive shall be entitled to participate in all of the Company's employee benefit plans and arrangements in effect on the date hereof in which senior executives of the Company are eligible to participate.

5. **Confidential Information**

(a) The Executive agrees not to disclose, either while in the Company's employ or at any time thereafter, to any person not employed by the Company, or not engaged to render services to the Company, any confidential information obtained while in the employ of the Company, including, without limitation, any of the Company's inventions, processes, methods of distribution or customers or trade secrets; provided,

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

however, that the provisions of this Section 5 shall not preclude the Executive: (1) from disclosing such information to the Executive's professional tax advisor or legal counsel solely to the extent necessary to the rendering of their professional services to the Executive if such individuals agree to keep such information confidential; and (2) from use or disclosure of information known generally to the public or from disclosure required by law or court order.

(b) The Executive agrees that, upon leaving the Company's employ, the Executive will make himself reasonably available to answer questions from Company officers regarding the Executive's former duties and responsibilities and the knowledge Executive obtained in connection therewith. In addition, the Executive will not take with the Executive, without the prior written consent of any officer authorized to act in the matter by the Board, any study, memoranda, drawing, blueprint, specification or other document of the Company, its subsidiaries, affiliates and divisions, which is of a confidential nature relating to the Company, its subsidiaries, affiliates and divisions.

6. **Termination.** The Executive's employment may be terminated during the term of this Agreement only as follows:

(a) **Death.** The Executive's employment shall terminate upon the Executive's death.

(b) **Disability.** If, as a result of the Executive's Disability (as defined below), the Executive shall have been absent from the Executive's duties hereunder on a full-time basis for the entire period of six consecutive months, and within thirty days after written notice of termination is given by the Company or the Executive (which may occur before or after the end of such six-month period), the Executive shall not have returned to the performance of the Executive's duties hereunder on full-time basis, the Executive's employment shall terminate. A termination of employment pursuant to this Section 6(b) shall be deemed an involuntary termination for purposes of this Agreement or any plan or practice of the Company. For purposes of this Agreement, the term "Disability" shall mean a physical or mental illness, impairment or condition reasonably determined by the Board that prevents the Executive from performing the duties of the Executive's position under this Agreement.

(c) **Cause.** The Company may terminate the Executive's employment for Cause. The Company shall have "Cause" to terminate the Executive's employment if the Executive either: (i) continuously fails to substantially perform the Executive's duties hereunder (unless such failure is a result of a Disability, as defined in Section (b)); or (ii) engages in intentional misconduct or illegal or grossly negligent conduct which is materially injurious to the Company monetarily or otherwise. A termination for Cause shall not take effect unless: (1) the Executive is given written notice by the Company of its intention to terminate Executive for Cause; (2) the notice specifically identifies the

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

particular act or acts or failure or failures to act which are the basis for such termination; (3) the notice is given within 90 days of the Company's learning of such act or acts or failure or failures to act; and (4) the Executive fails to substantially cure such conduct, to the extent such cure is possible, within 60 days after the date that such written notice is given to Executive.

(d) **Without Cause.** The Company may terminate the Executive's employment at any time Without Cause. A termination "Without Cause" is a termination of the Executive's employment by the Company for any reasons other than the death or disability of the Executive or the involuntary termination of Executive for Cause as described above in Section 6(c).

(e) **Termination by the Executive for Good Reason.** The Executive may terminate the Executive's employment with the Company for Good Reason, which shall be deemed to occur if the Executive terminates the Executive's employment within six months after: (1) written notice by the Executive of a failure by the Company to comply with any material provision of this Agreement (including but not limited to the reduction of the Executive's salary or target bonus opportunity) which failure has not been cured within ten days after such written notice of noncompliance has been given by the Executive to the Company; (2) a significant diminishment in the nature or scope of the authority, power, function or duty attached to the position which the Executive currently maintains without the express written consent of the Executive; (3) a Change of Control shall have occurred; or (4) the Executive is relocated more than 25 miles from the Executive's Principal Place of Employment as described in Section 3 without Executive's prior written consent.

(f) **Voluntary Termination.** The Executive may voluntarily terminate the Executive's employment with the Company at any time. A termination of employment by the Executive pursuant to Section 6(e) above for Good Reason shall not be deemed a voluntary termination by the Executive for purposes of this Agreement or any plan or practice of the Company but shall be deemed an involuntary termination.

(g) **Non-Renewal.** If the Executive fails to request an extension of the term of the Executive's employment in accordance with Section 1 or if the Chairman fails to approve such request, this Agreement shall automatically expire at the end of the then-current term. Such expiration shall not entitle the Executive to any compensation or benefits except as earned by the Executive through the date of expiration of the then current term of the employment and as set forth in Section 8(e) [Special Change of Control Provisions]. The parties hereto shall have no further obligations to each other thereafter except as set forth in Sections 5, 11 and 17. Any earned bonus payments will be paid to the Executive within thirty (30) days of the Company's outside accountants completing their final year-end review and audit of the Company's financial statements, but in no event later than _____.

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

7. Notice and Effective Date of Termination

(a) **Notice.** Any termination of the Executive's employment by the Company or by the Executive during the term of this Agreement (other than as a result of death) shall be communicated by written notice of termination to the other party hereto. Such notice shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under that provision.

(b) **Date of Termination.** The date of termination shall be:

(i) if the Executive's employment is terminated by the Executive's death, the date of the Executive's death;

(ii) if the Executive's employment is terminated due to Disability pursuant to Section 6(b), the date of termination shall be the 31st day following delivery of the notice of termination (but in no event prior to the end of the six-month period referenced in Section 6(b));

(iii) if the Executive's employment is terminated for any other reason by either party, the date on which a notice of termination is delivered to the other party; and

(iv) if the Agreement expires pursuant to Section 6(g)[Non-Renewal], the parties' employment relationship shall terminate on the last day of the term of Executive's employment under this Agreement without any notice.

8. Compensation and Benefits Upon Termination.

(a) **Termination Due To Disability, Without Cause or For Good Reason.** If the Executive's employment terminates pursuant to Sections 6(b)[Disability], (d)[Without Cause], or (e)[For Good Reason], the Executive shall be entitled to the following:

(i) **Salary.** The Company shall continue to pay the Executive the Executive's then-current salary through the remaining term of the Executive's employment under this Agreement as defined in Section 1.

(ii) **Bonus.** The Company shall continue to pay the Executive an annual bonus(es) throughout such remaining term. Each such bonus shall be equal to the greater of (A) the Executive's bonus during the year prior to the Executive's termination or (B) the bonus that the Executive would have earned under the Company's bonus plan in the year that Executive was terminated had Executive remained in its

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

employment. Such bonuses shall not be paid until they would normally be paid in accordance with the Company's practices.

(iii) **Stock Options.** With respect to any stock options granted to the Executive by the Company, the Executive shall immediately become vested in any unvested stock options upon such termination. Executive will have no right to any future ungranted options.

The Company shall have no further obligations to the Executive as a result of such termination except as set forth in Sections 11 and 17.

(b) **For Cause.** If the Executive's employment is terminated for Cause (as defined in Section 6(c)), the Executive shall receive only the post-termination compensation and benefits described in Section 8(c) [Death or Voluntary Termination].

(c) **Death or Voluntary Termination.** If the Executive's employment terminates pursuant to Section 6(a) [Death] or 6(f)[Voluntary Termination], the Executive (or the Executive's designee or the Executive's estate) shall be paid the Executive's salary through the Executive's termination date and not thereafter. The Executive shall not be entitled to any bonus payments which were not fully earned prior to the Executive's termination date, and the Executive shall not be entitled to any unearned pro-rated bonus payment for the year in which the Executive's employment terminates. Any stock options granted to the Executive by the Company shall continue to vest only through the date on which the Executive's employment terminates. The Company shall have no further obligations to the Executive as a result of the termination of the Executive's employment pursuant to Section 6(a) or (f).

(a) **Non-Renewal.** If the Agreement expires as set forth in Section 6(g)[Non-Renewal], the Executive shall be entitled to the following:

(i) **Salary.** The Company shall continue to pay the Executive the Executive's then-current salary through the remaining term of the Executive's employment under this Agreement as defined in Section 1.

(ii) **Bonus.** The Company shall continue to pay the Executive an annual bonus for the year of termination which shall be pro-rated for the portion of the bonus year that Executive is employed by the Company. The calculation of such bonus prior to pro-ration shall be equal to the greater of (A) the Executive's bonus during the year prior to the Executive's termination or (B) the bonus that the Executive would have earned under the Company's bonus plan in the year that Executive was terminated had Executive remained in its employment. Such bonuses shall not be paid until they would normally be paid in accordance with the Company's practices.

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

(iii) **Stock Options.** With respect to any stock options granted to the Executive by the Company, the Executive shall immediately become vested in any unvested stock options upon such termination.

The Company shall have no further obligations to the Executive as a result of such termination except as set forth in Section 12.

(e) **Special Change of Control Provisions.**

(i) **Change of Control Benefits.** In the event of a Change of Control (as defined below), the Executive shall be entitled to receive the immediate acceleration of the vesting of any stock options that were granted to the Executive pursuant to the terms of his Agreement. This will not include any options not yet granted, as anticipated in potentially future extensions of this Agreement (as contemplated in Section 4(b) of this Agreement).

(ii) **Change of Control Defined.** Change of Control shall mean: (i) the sale by the Chairman of over 50% of his interest in Company; (ii) the death of the Chairman; or (iii) the sale of a majority of the outstanding shares of Company to an outside third party not affiliated with or sourced by the Executive.

9. **Non-Solicitation of Employees.** During the term of the Executive's employment with the Company and for a period of 24 months following the termination of that employment for any Cause, the Executive shall not directly or indirectly solicit any other employee of the Company to terminate his or her employment with the Company.

10. **Successors; Binding Agreement.** This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would still be payable to Executive hereunder, all such amounts shall be paid in accordance with the terms of this Agreement to the Executive's written designee or, if there be no such designee, to the Executive's estate.

11. **Insurance and Indemnity.** The Company shall, to the extent permitted by law, include the Executive during the term of the Executive's agreement under any directors and officers liability insurance policy maintained for its directors and officers, with coverage at least as favorable to the Executive in amount and each other material respect as the coverage of other directors and officers covered thereby. The Company's obligation to provide insurance and indemnify the Executive shall survive expiration or termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions of the Executive occurring during the Executive's

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

employment with the Company or with any affiliated company. Such obligations shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Executive's heirs and personal representatives.

12. **Notice.** For the purposes of this Agreement, notices, demands and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or (unless otherwise specified) mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive: (Name of Executive)

If to the Company: Name of Company

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

13. **Complete Agreement; Modification or Waiver; Entire Agreement.** This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, promises or representations of the parties. No provision of this Agreement may be modified or waived except in a document signed by the Executive and the Chairman or such other person as may be designated by the Board. This Agreement constitutes the entire agreement between the parties regarding their employment relationship. To the extent that this Agreement is in any way inconsistent with any prior or contemporaneous agreements between the parties, this Agreement shall control. No agreements or representations, oral or otherwise, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

14. **Governing Law - Severability.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the state of California. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

15. **Mitigation Not Required.** In the event the Executive's employment with the Company terminates for any reason, the Executive shall not be obligated to seek other employment following such termination. However, any amounts due the Executive under this Agreement shall be offset by any remuneration attributable to any subsequent employment that the Executive may obtain during the period of payment of compensation under this Agreement following the termination of the Executive's employment with the Company.

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.

16. **Withholding.** All payments required to be made by the Company hereunder to the Executive or the Executive's estate or beneficiaries shall be subject to the payroll and withholding deductions required by applicable law.

17. **Arbitration.** In the event of any dispute or claim relating to or arising out of the parties' employment relationship or this Agreement (including, but not limited to, any claims of breach of contract, wrongful termination, or age, race, sex, disability or other discrimination), all such disputes shall be fully, finally and exclusively resolved by binding arbitration conducted by the American Arbitration Association in the city in which the Executive's principal place of employment is located by an arbitrator mutually agreed upon by the parties hereto or, in the absence of such agreement, by an arbitrator selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association; provided, however, that the Executive's arbitration provision shall not apply to any disputes or claims relating to or arising out of the misuse or misappropriation of the Company's trade secrets or proprietary information. Notwithstanding the foregoing, if either the Company or the Executive shall request, such arbitration shall be conducted by a panel of three arbitrators, one selected by the Company, one selected by the Executive, and the third selected by agreement of the first two, or, in the absence of such agreement, in accordance with such Rules.

18. **Attorney's Fees.** Each party shall bear its own attorney's fees and costs incurred in any action or dispute arising out of this Agreement.

19. **Miscellaneous.** No right or interest to, or in, any payments shall be assignable by the Executive; provided, however, that the Executive's provision shall not preclude the Executive from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and shall not preclude the legal representative of Executive's estate from assigning any right hereunder to the person or persons entitled thereto. This Agreement shall be binding upon and shall inure to the benefit of the Executive, the Executive's heirs and legal representatives, and the Company and its successors.

IN WITNESS WHEREOF, the parties have executed this Executive Employment Agreement effective as of the date and year first above written.

COMPANY

EXECUTIVE

By:

Disclaimer: This Sample Policy is not intended as advice or assistance with respect to individual problems. It is provided with the understanding that the publisher, editor or authors are not engaged in rendering legal or other professional services. Readers should consult competent counsel or other professional services of their own choosing as to how the matters discussed relate to their own affairs or to resolve specific problems or questions.