



Executive Employment Agreement

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EXECUTIVE EMPLOYMENT AGREEMENT

This EXECUTIVE EMPLOYMENT AGREEMENT (the “**Agreement**”) made this ____ day of _____, 20__ (the “**Effective Date**”) by and between [COMPANY NAME], a _____ corporation with its principal place of business at [ADDRESS] (the “**Company**”) and [EMPLOYEE NAME] of [ADDRESS] (“**Executive**”).

RECITALS

WHEREAS, the Company wishes to employ [NAME OF EXECUTIVE] as [TITLE] of the Company, and the Executive wishes to be employed by the Company, on the terms and conditions contained herein.

WHEREAS, the Executive possesses expert knowledge and skills relating to the Company’s business which, pursuant to the terms contained herein, the Company wishes to ensure will not be used by the Executive to the direct or indirect detriment of the Company.

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration mutually exchanged by the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Terms and Conditions

1. Definitions.

1.1 “**Change of Control**” means (a) the sale, conveyance, transfer, or disposition of all or substantially all of such party’s assets, business, technology, intellectual property or other material goods, to a third party, (b) the acquisition of such party by a third party (whether through a merger, acquisition, consolidation or other transaction or series of transactions) the consummation of which results in a Person (other than an Affiliate of such party prior to such transaction) becoming the beneficial owner of fifty (50%) percent or more of the outstanding equity interests or voting power in such party, other than, in the case of this clause (b), an acquisition or a merger or consolidation in which holders of shares of voting capital stock immediately prior to the acquisition, merger or consolidation will not have at least fifty (50%) percent of the ownership of voting capital stock of the acquiring third party or the surviving corporation in such merger or consolidation, or transaction effected solely for purpose of changing the corporate domicile of such party, as the case may be, immediately after the merger or consolidation.

1.2 “**Disability**” shall mean the Executive’s inability to attend to and perform a majority of [his/her] job responsibilities due to illness, injury, or both if such inability (i) continues for a period of [NUMBER] (____) consecutive business days.

1.3 “**Confidential Information**” means all confidential and proprietary information and Intellectual Property Rights of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is either marked or designated as

confidential or is identified in writing as confidential or proprietary within fifteen (15) days of disclosure to the Receiving Party; provided that the following shall be deemed to be Confidential Information even if not so marked or identified: the terms and conditions of this Agreement (including pricing and other terms reflected in all schedules hereto), the Disclosing Party's business and marketing plans, technology and technical information, product designs, and business processes, any information or materials with the name, sign, trade name or trademark of the Disclosing Party and any information that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. **"Confidential Information"** does not include any item of information which (a) is or becomes available in the public domain without the fault of the Receiving Party; (b) is disclosed or made available to the Receiving Party by a third party without restriction and without breach of any relationship of confidentiality; (c) is independently developed by the Receiving Party without access to the disclosing party's Confidential Information; or (d) is known to the recipient at the time of disclosure.

1.4 **"Intellectual Property Rights"** means (a) all inventions (whether or not patentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, divisions, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, (b) all works of authorship, including all mask work rights, database rights and copyrightable works, all copyrights, all applications, registrations and renewals in connection therewith, and all moral rights, (c) all trade secrets, (d) all registered and unregistered trademarks, service marks, trade dress, domain names, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (e) all derivative works of any of the foregoing; (f) any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force, and (g) all copies and tangible embodiments of all of the foregoing (a) through (f) in any form or medium throughout the world.

1.5 **"Person"** whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or other entity of any nature.

1. Employment.

1.1 Offer of Employment. [COMPANY] hereby employs Executive, effective as of the date of this Agreement, as the [TITLE] of the Company, and such other additional or different positions as the Company may determine from time to time, in its sole discretion.

1.2 Acceptance of Employment. Executive hereby accepts such employment upon the terms and conditions hereinafter set forth. Executive is aware of no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with his undertaking of employment with the Company. Executive represents and warrants that [he or she] (a) will not disclose to the

Company or use or induce the Company to use any proprietary information or trade secrets of others; and (b) has returned all confidential information and property belonging to all prior employers.

2. Term. The term of this Agreement shall begin on the Effective Date and shall continue until the first to occur of [(a) [DATE] or (b)] any of the conditions set forth in Section 6 (Termination of Employment).

3. Compensation. For all services rendered by Executive under this Agreement, Executive shall receive the following compensation:

3.1 Base Salary. During the term of this Agreement the Company shall pay Executive an annual salary of _____ dollars (\$_____) (“**Base Salary**”), payable [bi-weekly, monthly] installments consistent with the Company’s standard payroll practices. The annual Base Salary shall be reviewed on or before [January 1] of each year, unless this Agreement is terminated as provided in Section 6 (Termination).

3.2 Bonus. Executive shall be entitled to such bonuses as may be agreed to between Executive and the Company (subject to the provisions of the Company’s charter and bylaws), based upon the relative performance of the Company such benefits currently include, but are not limited to, [_____].

3.3 Benefits. Executive shall be entitled to receive such benefits as are customarily provided to other full-time employees of the Company in comparable positions, which benefits shall be substantially similar to such benefits received by Executive in connection with [his/her] prior employment.

3.4 Vacation. Executive shall be entitled to receive [NUMBER (___)] weeks of vacation each year, and shall be scheduled in accordance with the Company’s standard vacation policy.

[OPTION 1]

3.5 Stock Options. Company hereby agrees to grant Executive [NUMBER (___)] options to purchase its common stock, \$____par value per share (the “**Stock Options**”) pursuant to [NAME OF STOCK PLAN] (the “**Stock Option Plan**”). The Stock Options shall vest in [NUMBER (___)] equal annual installments beginning [DATE] provided that Executive continues to be employed by Company pursuant to this Agreement and the Stock Options shall in all other respects be subject to and governed by the Stock Option Plan.

3.5.1 *Exercise Price.* The exercise price for the Stock Options shall be at \$____ per share (the “**Exercise Price**”), as appropriately adjusted for stock splits, dividends and other stock adjustments.

OR

[OPTION 2]

[3.5 Restricted Stock Award. Company hereby agrees to grant Executive [NUMBER] [] [restricted] shares of its common stock, \$__ par value per share (the “**Restricted Shares**”) pursuant to Company’s [NAME OF RESTRICTED STOCK PLAN] (the “**Restricted Stock Plan**”). The Restricted Shares shall vest in three equal annual installments beginning [DATE] provided that Employee continues to provide services to Company pursuant to this Agreement or in any other capacity and the Restricted Shares shall in all other respects be subject to and governed by the Restricted Stock Plan and any Restricted Stock Award Agreement entered into in connection therewith.]

[Optional]

3.6 Vesting; Exercise Price

3.6.1 *Vesting Schedule*.

(a) The [Stock Options or Restricted Stock] shall vest in installments in accordance with the vesting schedule set forth below upon the achievement of the corresponding gross revenue generated by sales during the applicable Vesting Period (“**Vesting Milestone**”) during the corresponding Vesting Period.

(b) To the extent that Vesting Milestones have not been achieved during their corresponding Vesting Period and the Exercise Price for such [Stock Options or Restricted Stock] shall be the Exercise Price calculated as of the last day of the final Vesting Period.

Vesting Date	Vesting Period	Vesting Milestone	No. Shares Warrant Stock Vested	Base Price	Exercise Price
		\$_____			
		\$_____			
		\$_____			

4. **Duties and Responsibilities.**

4.1 Title. Executive shall be employed as the [TITLE] of the Company, and in that capacity shall report to the Company's _____. As the [TITLE] of the Company the Executive is subject to the provisions of the Company’s charter and bylaws and the direction of the directors.

4.2 Specific Duties. As the [TITLE], the Executive shall perform duties as may be delegated to [him/her] [IMMEDIATE MANAGER], by the directors, the [CEO] or as may be imposed by law. [It shall be the duty of the [TITLE], and [he/she] shall have the power to see to it, that all orders and resolutions of the directors are carried into effect. [FURTHER DESCRIBE POSITION].

5. Extent of Services.

5.1 Exclusive Employment. Executive shall devote [his/her] full-time, attention and energies to the Company's business, and shall perform such managerial, executive, and administrative duties as shall be directed from time to time and as shall be required to accomplish the objectives of the position. Executive shall not, during the term of this Agreement, be engaged in any other full or part-time business activity whether or not such business activities are pursued for gain, profit or other pecuniary advantage, except as provided in Section 5.2 (Civic Organizations) or as may be agreed to by the Company. Permission will not be unreasonably withheld or delayed where the activity does not interfere with the business of the Company or with the performance of [EMPLOYEE]'s employment duties provided in Section 4 (Duties).

5.2 Civic Organizations. The Executive may serve as a member of the Board of Directors for other organizations that do not compete with the Company in any manner, and may also participate in other professional, civic and governmental organizations and activities that do not materially affect [his/her] ability to carry out any Duties.

6. Termination of Employment.

6.1 Termination by Company. Prior to [DATE], the Company may not terminate Executive's employment except (a) for cause, (b) for no cause, (c) in the event of Executive's Disability or (d) as permitted under the Company's bylaws.

6.1.1 *Termination for Cause.* The Company may terminate the Executive's employment with the Company for cause for any violation of the Company's Code of Ethics which may include any of the following; (i) conviction of a felony, any act involving moral turpitude, or a misdemeanor where imprisonment is imposed, (ii) commission of any act of theft, fraud, dishonestly or falsification of any employment or Company records, (iii) improper disclosure of the Confidential Information, (iv) any action by the Executive that has or may have a detrimental effect on the Company's reputation or business, (v) Executive's failure or inability to perform any of the duties set forth in Section 4 (Duties) or any additional duties assigned by the Company, (vi) any breach of this Agreement which has not been cured within fifteen (15) business days following written notification of such breach, (vii) misconduct, gross incompetence, chronic absenteeism, sexual harassment, and any other conduct that has a negative effect on the Company's business, reputation or employees' well-being. Under termination of the Executive's employment as provided in this Section 6.1.1 (Termination for Cause), the Company shall be under no further obligation to Executive, except to pay unpaid Base Salary and vacation that has accrued as of the effective date of the termination.

6.1.2 *Termination Without Cause.* The Company may terminate Executive's employment at any time without cause. In the event of the termination of Executive's employment without cause, and provided the Executive has executed a valid and comprehensive release in a form provided by the Company, the Executive shall be entitled to receive from the Company at the time of such termination without cause, a severance benefit equal to

[_____], in addition to accrued but unpaid Base Salary and accrued vacation, less deductions required to be taken by law.

6.1.3 *Executive's Death.* In the event of the Executive's death during the term of this Agreement, the Company sole obligation shall be to pay to the Executive's heirs or legal representative the Executive's unpaid Base Salary and vacation accrued as of the effective date of death, within fifteen (15) days of the date of death.

6.2 Termination by Executive. The Executive may terminate this Agreement by giving [NUMBER (__) days' written notice to the [TITLE].

6.3 Cooperation; Non-Disparagement. In the event of termination of employment for any reason, Executive shall cooperate with the Company, as reasonably requested by the Company to effect a smooth transition of Executive's duties and to ensure that the Company is apprised of the status of all matters the Executive is handling. The Executive further agrees that he will not, at any time, make comments, whether oral or in writing, that tend to disparage or injure the Company, its officers, directors, agents, employees, products and services, provided, however, that nothing in this Agreement will be construed to preclude Executive from complying with the terms of a validly issued subpoena.

6.4 Survival. The provisions of Section 7 (Ownership of Intellectual Property; Confidentiality) and Section 8 (Non-Competition) shall survive the termination of this Agreement.

7. Ownership of Intellectual Property; Confidentiality.

7.1 Ownership. Executive acknowledges that the Company shall retain ownership of all Intellectual Property Rights in all Company property and Confidential Information.

7.2 Confidential Information. During and at all times after Executive's employment: (i) Executive shall not disclose to any Person, without the Company's prior written consent, any Confidential Information; (ii) Executive shall not directly or indirectly use any Confidential Information other than as directed by the Company writing; (iii) Executive shall not, except in furtherance of the business of the Company, remove Confidential Information from the premises of the Company without the prior written consent of the Company.

7.3 Return of Confidential Information. Upon termination of [his/her] employment for whatever reason, Executive will promptly deliver to the Company all originals and copies (whether in note, memo or other document form or on video, audio or computer tapes or disks or otherwise) of Confidential Information that is in [his/her] possession, custody or control, whether prepared by [him/her] or others.

8. Non-Competition and Non-Solicitation.

8.1 Non-Competition. Executive agrees that, during Executive's employment with the Company [and for a period of [_____] thereafter], Executive will not establish or act, directly

or indirectly, by way of ownership, management or otherwise, whether or not for compensation, as a Executive, employer, employee, agent, principal, partner, stockholder (other than ownership of less than 5% of the outstanding capital stock of a publicly-traded corporation), officer, director or in any other representative or individual capacity for, any business that (i) is similar to, (ii) is directly competitive with, or (iii) provides goods or services to any aspect of the business in which the Company is engaged or contemplates engaging. During the term of this Agreement, Executive will not undertake any planning for any outside business competitive with the Company.

8.2 No Conflicts. Executive agrees not to enter into any agreement that contains any term that may conflict, either actually or potentially, with the terms of this Agreement.

8.3 Business Opportunities. Executive agrees that during the term of this Agreement, Executive will not take for Executive's own use, and will promptly notify the Company of, any and all business opportunities of which Executive becomes aware that relate, directly or indirectly, to the current or reasonably anticipated future business of the Company.

8.4 No Solicitation of Company Employees and Executives. Executive agrees that for a period of [NUMBER (___)] years following termination of employment for any reason, Executive will not disrupt, damage, impair or interfere with the Company's business by recruiting, soliciting or otherwise inducing any of the Company's employees or exclusive Executives to enter into employment or an exclusive consulting relationship with any other business entity that competes with the Company.

8.5 No Solicitation of Company Customers. Executive also agrees that, for a period of [NUMBER (___)] years following the termination of employment for any reason, Executive will not (a) call on, solicit, or take away (directly or indirectly), or (b) attempt to call on, solicit or take away (directly or indirectly) any Company customer or potential customer whom the Company has identified in the course of employment, either for Executive's own benefit or for the benefit of another Person, and Executive will not solicit or induce any customer or potential customer to terminate a business relationship with the Company.

9. Miscellaneous Provisions.

9.1 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the law of the [STATE].

9.2 Agreement Binding. This Agreement shall be binding upon any successors or assigns of the Company and upon Executive's heirs, legal representatives, administrators, and executors.

9.3 Assignment and Transfer. The rights and obligations of the Executive under this Agreement shall not be transferable by assignment or otherwise. This Agreement shall inure to the benefit of, and be binding upon and enforceable in the event of any Change of Control.

9.4 Captions. All paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of this Agreement.

9.5 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

9.6 Dispute Resolution. The parties shall submit any dispute arising under, out of, or in connection with this Agreement to mediation in [STATE] under the applicable Mediation Rules of the American Arbitration Association. All costs of such mediation shall be borne equally by the parties. If such dispute is not entirely resolved through mediation, any unresolved matters relating to such dispute shall be determined and settled by arbitration in [STATE] pursuant to the Rules of the American Arbitration Association for resolution of commercial disputes. Any award rendered therein shall be final and binding on all parties hereto and judgment may be entered thereon in any court of appropriate jurisdiction. All costs of such mediation shall be borne equally by the parties. All costs of such arbitration may be allocated among and awarded to the parties per the arbitrator's sole discretion.

9.7 Entire Agreement. This Agreement contains the entire agreement between the parties. There are merged herein all prior and collateral representations, promises, and conditions in connection with the subject matter hereof, whether written or oral. Any representation, promise, or condition not incorporated herein shall not be binding upon either party.

9.8 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by registered or certified mail, postage prepaid, addressed (a) if to Executive, to [him/her] at [his/her] current home address as listed on the payroll records of the Company, and (b) if to the Company to [Chairman] at [his/her] principal place of business, with a copy to each of:

If to the Company: _____

Attn: _____

If to the Executive: _____

Attn: _____

9.9 Remedy for Breach; Attorney's Fees. The parties hereto agree that, in the event of a breach or threatened breach of any covenants of Executive, the damage or imminent damage to the value and the goodwill of the Company's business shall be incalculable, and therefore any remedy at law or in damages shall be inadequate. Accordingly, the parties hereto agree that the Company shall be entitled to injunctive relief against Executive in the vent of any breach or threatened breach of any provisions of this Agreement by Executive, in addition to any other relief (including damages) available to the Company under this Agreement or under law. The

prevailing party in any action instituted under this Agreement shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and other expenses incurred in such action.

9.10 Severability. If any provision of this Agreement shall be held or deemed to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in this Agreement.

9.11 Waiver. No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

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

[COMPANY NAME]

By: _____

Its:

Executive

Printed Name: _____