

<b><u>Form:</u></b>	Employment Agreement (Pro-Employer)
<b><u>Description:</u></b>	This is a form of Employment Agreement for a senior level employee. The form tends to be pro-employer oriented.
<b><u>When to Be Used:</u></b>	This form is to be used when the company desires to enter into a longer term agreement with the employee or the employee wishes to have certain job security.
<b><u>Term of Agreement:</u></b>	Carefully consider how long you want to Agreement to last (Section 1(a)). You can consider a longer term (say 3-4 years), so long as you have the right to fire the employee under Section 5(b) without paying an exorbitant severance pay.
<b><u>Duties:</u></b>	List at least some of the principle duties of the employee in Section 1(b), but make sure that the company retains the right to change those duties from time to time.
<b><u>Bonus:</u></b>	Bonuses can be based on a formula or at the discretion of the Company (Section 2(c)). Some employees may insist on a guaranteed bonus if certain financial or other goals are met.
<b><u>Benefits:</u></b>	Consider what benefits you want to give to the employee (Section 3). Try to avoid giving significantly different benefits to this employee versus other employees.
<b><u>Stock Options:</u></b>	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.
<b><u>Termination for Cause:</u></b>	Section 5(a) provides the company the right to terminate the employee for "cause," without paying severance pay. "Cause" is defined quite broadly, and the employee may insist that it be narrowed.
<b><u>Right to Terminate for any Reason:</u></b>	Section 5(b) gives the company the right to terminate the employee for any reason. However, you 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).
<b><u>No Inconsistent</u></b>	Section 11 requires the employee to tell the

**Obligations:**

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.

**Related Forms:**

The form can be used in conjunction with the Confidentiality and Invention Assignment for Employees.

## **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] and to serve in such additional or different position or positions as the Company may determine in its sole discretion. The term of employment shall be for a period of \_\_\_\_\_ (\_\_) years ("Employment Period") to commence on the date hereof, unless earlier terminated as set forth herein.

(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 that position and such other or different duties on behalf of the Company, as may be assigned from time to time by [the Company's Board] [\_\_\_\_\_].

(c) **Location.** The initial principal 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 \_\_\_\_\_ 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 as follows: [e.g., at the sole discretion of the Board of Directors or under a formula if certain goals are met.]

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, as the Company may change such plans from time to time in its sole discretion. 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 or any affiliate of 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 [a Stock Option Plan to be adopted by the Company] [the Company's existing Stock Option Plan dated [DATE]], subject to the following terms:

(1) The options will vest only as follows:

<u>Event</u>	<u>Vesting Amount</u>
If Executive is still an employee of the Company on _____	Options to acquire _____ shares of Common Stock
If Executive is still an employee of the Company on _____	Options to acquire _____ shares of Common Stock
If Executive is still an employee of the Company on _____	Options to acquire _____ shares of Common Stock

If Executive is still an  
employee of the Company  
on \_\_\_\_\_

Options to acquire \_\_\_\_\_  
shares of Common Stock

If Executive is still an  
employee of the Company  
on \_\_\_\_\_

Options to acquire \_\_\_\_\_  
shares of Common Stock

(2) The exercise price for the options shall be at \_\_\_\_\_  
dollar (\$\_\_\_) 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. No additional vesting of options shall occur after  
Executive's death, disability, or cessation of employment with the Company for  
any reason or no reason.

(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 form of the Stock Option Agreement included within the  
Stock Option Plan.

(e) No Other Benefits. 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 and its affiliates, as its business and affairs now exist and as they hereafter may be  
changed. [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, or indictment for, a felony, any act involving moral  
turpitude, or a misdemeanor where imprisonment is imposed, (2) commission of any act of theft,  
fraud, dishonesty, or falsification of any employment or Company records, (3) improper  
disclosure of the Company's confidential or proprietary information, (4) any action by the  
Executive which has a detrimental effect on the Company's reputation or business,  
(5) Executive's failure or inability to perform any reasonable assigned duties after written notice  
from the Company of, and a reasonable opportunity to cure, such failure or inability, (6) any  
breach of this Agreement, which breach is not cured within ten (10) days following written  
notice of such breach, (7) a course of conduct amounting to gross incompetence, (8) chronic and

unexcused absenteeism, (9) unlawful appropriation of a corporate opportunity, or (10) misconduct in connection with the performance of any of Executive's duties, including, without limitation, misappropriation of funds or property of the Company, securing or attempting to secure personally any profit in connection with any transaction entered into on behalf of the Company, misrepresentation to the Company, or any violation of law or regulations on Company premises or to which the Company is subject. Upon termination of Executive's employment with the Company for cause, the Company shall be under no further obligation to Executive, except to pay all accrued but unpaid base salary 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 \_\_\_\_\_ (\_\_) weeks of Base Salary in addition to accrued but unpaid Base Salary and accrued vacation, less deductions required by law, but if, and only if, Executive executes a valid and comprehensive release of any and all claims that the Executive may have against the Company in a form provided by the Company and Executive executes such form within seven (7) days of tender (subject to time limits imposed by applicable law).

(c) Resignation. Upon termination of employment, Executive shall be deemed to have resigned from the Board of Directors of the Company if Executive is a director.

(d) Cooperation. After notice of termination, Executive shall cooperate with the Company, as reasonably requested by the Company, to effect a transition of Executive's responsibilities and to ensure that the Company is aware of all matters being handled by Executive.

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 120 consecutive days. Upon such termination, Executive shall be entitled to all accrued but unpaid Base Salary and vacation.

7. Death of Executive. In the event of the death of Executive during the Employment Period, 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 is simultaneously executing 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. Exclusive Employment. During employment with the Company, Executive will not do anything to compete with the Company's present or contemplated business, nor will he or she plan or organize any competitive business activity. Executive will not enter into any agreement which conflicts with his duties or obligations to the Company.

Executive will not during his employment or within one (1) year after it ends, without the Company's express written consent, directly or indirectly, solicit or encourage any employee, agent, independent contractor, supplier, customer, consultant or any other person or company to terminate or alter a relationship with the Company.

10. 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. This Agreement shall inure to the benefit of, and be binding upon and enforceable by, any purchaser of substantially all of Company's assets, any corporate successor to Company or any assignee thereof.

11. 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.

12. Miscellaneous.

(a) 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.

(b) 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, 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.

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

(d) 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.

(a) 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.

(b) 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.

(c) 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) Assistance in Litigation. Executive shall, during and after termination of employment, upon reasonable notice, furnish such information and proper assistance to the Company as may reasonably be required by the Company in connection with any litigation in which it or any of its subsidiaries or affiliates is, or may become a party; provided, however, that such assistance following termination shall be furnished at mutually agreeable times and for mutually agreeable compensation.

(j) Arbitration. Any controversy, claim or dispute arising out of or relating to this Agreement or the employment relationship, either during the existence of the employment relationship or afterwards, between the parties hereto, their assignees, their affiliates, their attorneys, or agents, shall be settled solely and exclusively by arbitration in [City], [State]. Such arbitration shall be conducted in accordance with the commercial arbitration rules of JAMS in existence at the time of the commencement of the arbitration, with the following exceptions if in conflict: (a) one arbitrator shall be chosen by JAMS; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the JAMS' rules and regulations) of the proceedings has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive. Each party will bear its/his own attorneys' fees, costs and expert witness fees. The parties shall keep confidential the existence of the claim, controversy or disputes from third parties (other than the arbitrator), and the determination thereof, unless otherwise required by law or necessary for the business of the Company.



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

[COMPANY]

[EXECUTIVE]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_