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Key Employee Employment Agreement

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into on this ____ day of _____, 20__ ("Effective Date"), by and between Employer:

and the Employee:

collectively, the "Parties".

WHEREAS Employer desires to employ Employee commencing on the Effective Date of this Agreement, and continuing until its termination or expiration, and Employee desires to be employed by Employer during that period.

NOW THEREFORE, Employer and Employee covenant and agree as follows:

1. Duties

- a. Employee represents to the Employer that the Employee has the required skills and experience to perform the duties of and required for the position of _____ in accordance with generally accepted industry standards and with the resume and/or application materials submitted to the Employer.
- b. Employee warrants and represents that Employee has the legal right to work in the United States.
- c. Employee warrants and represents that Employee has the ability to enter into this Agreement; that entering into and performing under this Agreement will not violate Employee's

Employer's Initials: _____
Employee's Initials: _____

agreement with any third party; that there exists no restrictions or obligations to any third party which would restrict Employee's performance of his duties under this Agreement; and that Employee has not provided, or promised to provide, Employer with any confidential information, trade secrets, or property of any former or current employer of Employee.

d. During the term of employment, Employee, as a key full-time employee of Employer, shall, to the maximum extent permissible under applicable law, devote his time, attention, knowledge, and skill solely and exclusively to the business and interests of Employer on a full-time basis, and Employer shall be entitled to all benefits, emoluments, profits, or other issues arising from or incident to any and all work, services, and advice of Employee. Employee expressly agrees that during the term hereof he will not be interested, directly or indirectly, in any form, fashion, or manner, as partner, officer, director, stockholder, owner, consultant, advisor, employee, independent contractor, or in any other capacity, in any other business, without the express written permission of Employer, except that nothing herein contained shall be deemed to prevent or limit the right of Employee to invest any of his surplus funds in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything herein contained be deemed to prevent Employee from investing his surplus funds in real estate.

e. Employee shall comply with all lawful and reasonable instructions given by superiors or other employees representing Employer. Unless otherwise directed, Employee shall report to _____.

f. Employee shall comply with all stated standards of performance, policies, rules, and regulations of Employer, including executing additional documents and completing required training. Employee shall also comply with such future Employer policies, rules, regulations, performance standards, and manuals as may be published or amended from time to time.

g. Employer's job duties shall be rendered at the above mentioned corporate headquarters and at such other place or places as Employer shall in good faith require or as the interests, needs, business, and opportunities of Employer shall require or make advisable. Employee may be required to travel domestically and internationally, may need to travel overnight, may need to work more than forty (40) hours per week, work weekends and/or holidays, and may need to be available by telephone and electronic mail during "off-hours", as Employer's business conditions and objectives require.

h. Employee shall not during the term of this Agreement: (i) enter into any agreement that conflicts with the Employee's duties or obligations to the Employer; (ii) directly or indirectly solicit or encourage any other employee, agent, independent contractor, supplier, customer, consultant, or any other person or company to terminate or detrimentally alter a relationship with Employer; (iii) disparage the Employer or its business or employees, agents, contractors, suppliers, customers, or consultants.

2. Employer's Confidential Information

Employee will not, at any time during his employment or thereafter, in any fashion, form, or manner, either directly or indirectly divulge, disclose, or communicate to any third party in any manner whatsoever any information of any kind, nature, or description concerning any confidential matters affecting or relating to the business of Employer, including, without limitation, the names of any of its customers, the prices it obtains or has obtained, or at which it

Employer's Initials: _____
Employee's Initials: _____

sells or has sold its products, or any other information concerning the business of Employer, its manner of operation, or its trade secrets, plans, processes, or other data of any kind, nature, or description without regard to whether any or all of the foregoing matters would be deemed material or important.

Employee will return to the employer all documents relating to the employer, including without limitation all drawings, blueprints, reports, manuals, correspondence, customer lists, computer programs, and all other materials and all copies thereof relating in any way to the employer's business, or in any way obtained by the employee during the course of employment. Employee further agrees not to retain any copies, electronic or otherwise, of the foregoing, nor allow any third party to examine, copy, retain, publish, distribute, or sell such material.

The Parties agree that the matters covered in this Section 2 are important and material and gravely affect the effective and successful conduct of the business of Employer and its goodwill; that Employer would not enter into this Agreement but for the provisions of this Section 2; and that any breach of the terms of this Section 2 is a material breach of this Agreement which will cause irreparable harm and incalculable injury to Employer for which an award of monetary damages alone may be inadequate.

3. Assignment of Inventions

a. Employee agrees to promptly disclose to Employer a complete record of any inventions, improvements, or patents which the Employee may create or devise during his employment with Employer.

b. Except as provided in subsection c of this Section, Employee grants and assigns to Employer his entire rights and interest in any inventions, improvements, or patents that result in any way from any work performed while employed by Employer. Such inventions, improvements, or patents shall be the sole and exclusive property of Employer.

c. (1) Employee understands that the provisions of this Agreement requiring assignment of Inventions to Employer do not apply to any invention which fully qualifies under California Labor Code Section 2870, that is, any invention Employee developed entirely on his or her own time without using Employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

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

(B) Result from any work performed by Employee for Employer.

(2) Employee shall promptly advise Employer in writing of any inventions that Employee believes meet(s) the criteria of California Labor Code Section 2870.

d. Employee warrants that he does not have any past agreements, patents, obligations, improvements, or inventions that might conflict with his employment with Employer and has disclosed his existing inventions, improvements, and patents to Employer, and such disclosures

Employer's Initials: _____
Employee's Initials: _____

have been attached to this Agreement as Attachment A and incorporated herein by this reference.

4. Non-Solicitation

Employee agrees that Employee will not for a period of _____ *[the longer the period, the more likely a court will invalidate this provision]* months after termination of his employment, directly or indirectly, without the prior written authorization of Employer, attempt to approach, or offer employment to any of the other employees, contractors, consultants, customers, or suppliers of the Employer. This shall not include publicly traded companies (e.g., Federal Express, UPS, ADP).

5. Salary and Benefits

As payment for the services rendered to Employer by Employee, Employer shall pay for and provide the following salary and benefits to Employee *[strike out and initial or delete any that do not apply, insert any additional, then double-check numbering]*:

- a. An annual base salary of _____, payable _____ *[e.g., on the first and fifteenth day of each month, or every two weeks]*. This base salary is subject to review every six (6) months, and may be increased, but not decreased, without the need for a new employment agreement.
- b. An annual bonus in the absolute discretion of Employer.
- c. Incentive compensation consisting of _____ when the following conditions are met in the specified time frame(s): _____

_____.
- d. A signing bonus, payable upon the execution of this Agreement, of _____.
- e. A one-time stock option grant as of the Effective Date of this Agreement for _____ shares of Employer's common stock. The grant price of these options will be determined by the fair market value of the average of the high and low share price of Employer's common stock on the Effective Date of this Agreement. These options will be subject to terms and conditions determined by Employer and may be subject to a separate agreement, which is incorporated herein by this reference.
- f. Reimbursement of reasonable out-of-pocket re-location expenses incurred by Employee and not to exceed \$_____.
- g. An automobile allowance of _____ per month applicable only toward a personal automobile properly titled, registered, and insured in Employee's name. The vehicle may be leased. In order to be eligible for the automobile allowance, said vehicle shall be appropriate for business use and shall be properly maintained and cleaned at Employee's expense.

Employer's Initials: _____
Employee's Initials: _____

h. Reimbursement of any reasonable and customary out-of-pocket expenses authorized by Employer and incurred by Employee pursuant to Employee's employment in accordance with the Employer's guidelines. Employee shall seek prior approval from Employer prior to incurring an expense of \$ _____ or more.

i. The following company benefits: (i) health and dental insurance for Employee and his spouse (and where required by applicable law, his domestic partner); (ii) life insurance; (iii) short-term disability coverage; (iv) long-term disability coverage; (v) participation in Employer's retirement and employee stock purchase plan; and (vi) all other employee benefit plans offered to any employee at Employee's level or lower. Detailed information about each of these benefits will be provided to Employee in the new hire information package Employee will receive from Employer upon commencement of employment.

j. _____ (____) _____ of annual paid vacation per year. To the extent Employee does not use his full three week's allotment in any given calendar year, Employee may accrue and carry forward such unused vacation time up to a maximum accrual of six (6) weeks.

k. Employee understands and acknowledges that the above described compensation will cause Employee to recognize taxable income subject to Internal Revenue Service withholding requirements.

l. Employee understand and acknowledges that the compensation described in subsections d and f shall be refundable to Employer on a pro-rated basis if Employee breaches this Agreement or is terminated in accordance with Section 7 c. of this Agreement during the first six (6) months following the Effective Date of this Agreement.

6. Term

This Agreement shall commence as of its Effective Date as listed above until the _____ day of _____, 20____ or until its earlier termination in accordance with its terms.

7. Termination

This Agreement may be terminated by the Employee or Employer in the following circumstances (strike out and initial any that do not apply, or delete them entirely from the Agreement):

a. By Employee upon giving at least ___ days written notice to the Employer.

b. By Employer upon giving at least ___ days written notice to the Employee.

c. By Employer, upon written notice to Employee at any time, for the following reasons: (i) A breach of any of the provisions of this Agreement by Employee; (ii) Employee's conviction of, or plea of nolo contendere to, a criminal offence potentially punishable by incarceration of one (1) year or more where such cause is not prohibited by applicable state or federal laws; (iii) Employee's absenteeism for any reason, other than for authorized vacation, for a period in excess of thirty (30) working days total in any six (6) month period (This provision shall be applied so as not to conflict with any applicable state or federal laws.); (iv) Employee committing

Employer's Initials: _____
Employee's Initials: _____

any act of fraud, embezzlement, grand theft, gross negligence, or having found to materially falsify any employment application or company report; and (v) the failure of Employee to perform his duties, or to follow the rules, regulations, and instruction of Employer satisfactorily after written notice or warning thereof, including any material breach of this Agreement; (vi) being under the influence of alcohol or non-prescription drugs at work; or (vii) for just cause based upon nonperformance of essential job duties by Employee.

d. This Agreement shall be terminated upon the death or physician certified mental incapacity of Employee during the term of this Agreement.

e. Notwithstanding anything in this Agreement to the contrary, in the event that Employer shall discontinue principal business operations at the premises mentioned above, then this Agreement shall terminate as of the last day of the month in which principal business operations cease with the same force and effect as if such last day of the month were originally set forth as the termination date hereof. Principal business operations shall be deemed to mean regular business operations, and deemed to exclude wind-up, sale, or transfer of business operations, or the preparation for the same.

f. Upon termination, Employee authorizes Employer to deduct from any payment due to the Employee at any time, any money owed to the Employer by reason of purchases, advances, or loans, and in accordance with Section 5(l) of this Agreement. This provision shall be applied so as not to conflict with any applicable state or federal laws.

8. Litigation Assistance

Employee shall, upon reasonable notice, furnish such information and proper assistance to Employer as it may reasonably require in connection with any litigation in which it is, or may become, a party, either during or after Employee's employment with Employer. Employer shall prepay or timely reimburse Employee's reasonable expenses required or incurred in providing such assistance.

9. Assignment

This Agreement may be assigned by Employer to another employer in conjunction with the sale, merger, reorganization, bankruptcy, or dissolution of Employer upon written notice to Employee and provided that all other provisions and terms of this Agreement are honored by the assignee. This Agreement may not be assigned or subcontracted by Employee under any circumstances.

10. Severability

In the event that any provision or part of this Agreement shall be deemed void or invalid by a court of jurisdiction, its remaining provisions shall remain in full force and effect.

11. Entire Agreement

Employer's Initials: _____
Employee's Initials: _____

This Agreement embodies the entire understanding between the Parties and supersedes and replaces any and all prior understandings, arrangements, and/or agreements, whether written or oral, relating to the subject matter hereof.

12. Amendment/Waiver

- a. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this Agreement, or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this Section 12 may not be waived except as herein set forth.
- b. Failure to exercise or delay in exercising any right, power or privilege of that party under this Agreement on the part of either Party shall not in any circumstances operate as a waiver of any such rights, powers, or privileges, nor prejudice either Party's rights to take subsequent action.

13. Notices

- a. Any notice required to be given to Employee hereunder shall be sufficiently given if delivered to the Employee personally, or if mailed by United States first class certified mail, return receipt requested, to the Employee's address last known to the Employer. It is Employee's responsibility to keep his contact information up-to-date with Employer.
- b. Any notice required to be given to Employer hereunder shall be sufficiently given if delivered to a member of Employer's management team personally, or if mailed by United States first class certified mail, return receipt requested, to Employer's business headquarters address.
- c. Any notice given in accordance with this Section 13 shall be deemed to be received by the recipient on the third business day after mailing if sent by United States certified mail, and on the day of delivery, if delivered personally.

14. Remedies

Each of the Parties to this Agreement will be entitled to enforce its rights under this Agreement, specifically, to recover damages and costs (including attorney's fees) caused by any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The Parties to this Agreement agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement, and, that any party may, in its sole discretion, apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) for specific performance and/or other injunctive relief in order to enforce or prevent any violations of the provisions of this Agreement.

15. Choice of Law and Jurisdiction

Employer's Initials: _____
Employee's Initials: _____

This Agreement shall be deemed to be made and performed in, and shall be governed and construed in accordance with the laws of the State of California and of the United States of America without regard to conflicts of laws provisions.

The Parties further consent to the jurisdiction of the state and federal courts located in _____ County, California.

16. Force Majeure

Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to natural disaster, war, riot, terrorism, labor disputes, and/or any other cause beyond the reasonable control of the Party whose performance is affected.

17. Execution of Additional Documents

The Parties agree to promptly execute and deliver such documents which are reasonably required to be executed by a Party to effectuate this Agreement.

18. Headings/Interpretation

The headings in this Agreement are for convenient reference only and shall not limit or otherwise affect any of the terms of this Agreement. As context may require, the singular shall mean and include the plural and vice versa, and the masculine shall include the feminine and vice versa.

19. Drafting

This Agreement has been fully reviewed and negotiated by the Parties; accordingly, any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting to said Party.

20. Counterparts; Effectiveness

This Agreement may be signed in two counterparts, which together shall constitute one and the same instrument, provided that each Party receives a copy fully executed by the other Party.

The remainder of this page intentionally left blank.

Employer's Initials: _____
Employee's Initials: _____

21. Acknowledgement

EACH PARTY THAT SIGNS THIS AGREEMENT REPRESENTS AND WARRANTS THAT HE OR IT: HAS CAREFULLY READ AND FULLY UNDERSTANDS THIS AGREEMENT AND ITS FINAL AND BINDING EFFECT; HAS BEEN AFFORDED SUFFICIENT TIME AND OPPORTUNITY TO REVIEW THIS AGREEMENT WITH ADVISORS OR ATTORNEYS OF HIS OR ITS CHOICE; HAS HAD AN OPPORTUNITY TO NEGOTIATE WITH REGARD TO THE TERMS OF THIS AGREEMENT; IS FULLY COMPETENT TO MANAGE HIS OR ITS OWN BUSINESS AFFAIRS AND TO ENTER INTO OR SIGN THIS AGREEMENT; HAS SIGNED THIS AGREEMENT KNOWINGLY, FREELY, AND VOLUNTARILY; AND THAT THE ONLY PROMISES MADE TO INDUCE HIM OR IT TO SIGN THIS AGREEMENT ARE THOSE STATED HEREIN.

EMPLOYER: [COMPANY NAME]

By (Signature): _____

Date Signed

By (Print Name): _____

Title: _____

EMPLOYEE (Signature): _____

Date Signed

Print Name: _____

Employer's Initials: _____
Employee's Initials: _____

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Employer's Initials: _____
Employee's Initials: _____

Attachment A: List of Prior Employee Inventions
(attach additional sheets as necessary)

Employer's Initials: _____
Employee's Initials: _____