

EMPLOYMENT AGREEMENT

This Agreement (the “Agreement”), dated as of _____, 20__, is by and between _____ (the “Company”) and _____ (the “Executive”).

Introduction

[Reference is made to the _____ Agreement, dated [on or about the date hereof/_____, 20__], by and among the Company, _____ and the other parties named therein (as modified from time to time, the “Purchase Agreement”). The execution and delivery of this Agreement is a condition to the consummation of the transactions contemplated by the Purchase Agreement, which transactions are of substantial benefit to the Executive.]

[[The Executive is currently an employee of the Company.] The Company desires to retain the services of the Executive pursuant to the terms and conditions set forth herein and the Executive wishes to be employed by the Company on such terms and conditions. The Executive will [continue to] be a key employee of the Company, with significant access to information concerning the Company and its business. The disclosure or misuse of such information or the engaging in competitive activities would cause substantial harm to the Company.]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. [Effective Date;] Term. [This Agreement shall become effective as of the Closing (as defined in the Purchase Agreement) of the transactions contemplated by the Purchase Agreement.] The Company shall employ the Executive for a term commencing [on the Closing/as of the date hereof] and continuing for _____ years, unless earlier terminated pursuant to Section 8.

2. Duties. The Executive will initially serve as the _____ of the Company and shall have such duties of an executive nature as the Board of Directors of the Company (the “Board”) [or [any officer of the Company designated by the Board/the President]] shall determine from time to time. The Executive will report to [the Board or the President/any officer designated by the Board].

3. Full Time; Best Efforts. The Executive shall use the Executive’s best efforts to promote the interests of the Company and shall devote the Executive’s full business time and efforts to its business and affairs. The Executive shall not engage in any other activity which could reasonably be expected to interfere with the performance of the Executive’s duties, services and responsibilities hereunder.

4. Compensation and Benefits. During the term of Executive’s employment with the Company under this Agreement, the Executive shall be entitled to compensation and benefits as follows:

(a) **Base Salary.** The Executive will receive a salary at the rate of \$ _____ annually (the “Base Salary”), payable in equal increments not less often than monthly in arrears. [Effective as of each anniversary of the [effective] date of this Agreement, the Executive’s Base Salary shall be increased by the increase, if any, of the Consumer Price Index for _____ for the then immediately preceding 12 completed calendar months.] In addition, the Executive’s Base Salary may from time to time be increased, but not decreased, by the Board.

(b) **Bonus.** The Executive will be eligible for an annual bonus of up to \$ _____ for each full [calendar/fiscal] year based upon [note: describe bonus provisions] (the “Bonus”). [The payment of any Bonus shall be prorated for any partial [fiscal/calendar] year during the term of this Agreement.] [The Board shall determine [reasonably and] in good faith the amount of the Bonus, and such determination shall be binding and conclusive on the Executive.]

(c) **Benefits.** In addition to the Base Salary and any Bonus, the Executive shall be entitled to receive fringe benefits that are generally available to the Company’s executive employees in accordance with the then existing terms and conditions of the Company’s policies. The Executive will be entitled to reimbursement of all reasonable expenses incurred in the ordinary course of business on behalf of the Company, subject to the presentation of appropriate documentation and approved by, or in accordance with policies established by, the Board.

[Subject to the presentation of appropriate documentation, the Company shall reimburse the Executive up to [\$ ____] per month in the aggregate for the lease of an automobile to be used in connection with the Executive’s employment with the Company [and for related insurance and repair expenses].]

(d) **Withholding.** The Company may withhold from compensation payable to the Executive all applicable federal, state and local withholding taxes.

5. Confidentiality; Intellectual Property. The Executive agrees that during the Executive’s employment with the Company, whether or not under this Agreement, and at all times thereafter:

(a) The Executive will not at any time, directly or indirectly, disclose or divulge any Confidential Information (as hereinafter defined), except as required in connection with the performance of the Executive’s duties for the Company, and except to the extent required by law (but only after the Executive has provided the Company with reasonable notice and opportunity to take action against any legally required disclosure). As used herein, “Confidential Information” means all trade secrets and all other information of a business, financial, marketing, technical or other nature relating to the business of the Company including, without limitation, any customer or vendor lists, prospective customer names, financial statements and projections, know-how, pricing policies, operational methods, methods of doing business, technical processes, formulae, designs and design projects, inventions, computer hardware, software programs, business plans and projects pertaining to the Company and including any information of others that the Company has agreed to keep confidential; provided,

that Confidential Information shall not include any information that has entered or enters the public domain through no fault of the Executive.

(b) The Executive shall make no use whatsoever, directly or indirectly, of any Confidential Information at any time, except as required in connection with the performance of the Executive's duties for the Company.

(c) Upon the Company's request at any time and for any reason, the Executive shall immediately deliver to the Company all materials (including all soft and hard copies) in the Executive's possession which contain or relate to Confidential Information.

(d) All inventions, modifications, discoveries, designs, developments, improvements, processes, software programs, works of authorship, documentation, formulae, data, techniques, know-how, secrets or intellectual property rights or any interest therein (collectively, the "Developments") made by the Executive, either alone or in conjunction with others, at any time or at any place during the Executive's employment with the Company, whether or not reduced to writing or practice during such period of employment, which relate to the business in which the Company is engaged or in which the Company intends to engage, shall be and hereby are the exclusive property of the Company without any further compensation to the Executive. In addition, without limiting the generality of the prior sentence, all Developments which are copyrightable work by the Executive are intended to be "work made for hire" as defined in Section 101 of the Copyright Act of 1976, as amended, and shall be and hereby are the property of the Company.

(e) The Executive shall promptly disclose any Developments to the Company. If any Development is not the property of the Company by operation of law, this Agreement or otherwise, the Executive will, and hereby does, assign to the Company all right, title and interest in such Development, without further consideration, and will assist the Company and its nominees in every way, at the Company's expense, to secure, maintain and defend the Company's rights in such Development. The Executive shall sign all instruments necessary for the filing and prosecution of any applications for, or extension or renewals of, letters patent (or other intellectual property registrations or filings) of the United States or any foreign country which the Company desires to file and relates to any Development. The Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as such Executive's agent and attorney-in-fact (which designation and appointment shall be deemed coupled with an interest and shall survive the Executive's death or incapacity), to act for and in the Executive's behalf to execute and file any such applications, extensions or renewals and to do all other lawfully permitted acts to further the prosecution and issuance of such letters patent, other intellectual property registrations or filings, or such other similar documents with the same legal force and effect as if executed by the Executive.

(f) [Attached hereto as Exhibit A is a list of all inventions, modifications, discoveries, designs, developments, improvements, processes, software programs, works of authorship, documentation, formulae, data, techniques, know-how, secrets or intellectual property rights or any interest therein made by the Executive prior to Executive's employment with the Company (collectively, the "Prior Inventions"), which belong to Executive and which relate to the business of the Company and which are not assigned to the Company hereunder; or,

if no such list is attached, Executive represents that there are no such Prior Inventions. If in the course of Executive's employment with the Company, Executive incorporates into a Company product, process or machine a Prior Invention owned by Executive or in which Executive has an interest, the Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, transferable, worldwide license to make, have made, modify, use, sell and otherwise exploit such Prior Invention as part of or in connection with such product, process or machine, or any enhancements or extensions thereof.]

6. Noncompetition. The Executive agrees that during the Executive's employment with the Company, whether or not under this Agreement, and thereafter for _____ year[s]:

(a) the Executive will not, directly or indirectly, individually or as a consultant to, or an employee, officer, director, manager, stockholder, partner, member or other owner or participant in any business entity, other than the Company, engage in or assist any other person or entity to engage in any business which competes with any business in which the Company is engaging or in which the Company plans to engage or is considering engaging, during or at the time of termination of the Executive's employment, anywhere in the United States or anywhere else in the world where the Company does business, or plans to do business or is considering doing business; and

(b) the Executive will not, directly or indirectly, individually or as a consultant to, or an employee, officer, director, manager, stockholder, partner, member or other owner or participant in any business entity solicit or endeavor to entice away from the Company, [or offer employment or any consulting arrangement to,] or otherwise materially interfere with the business relationship of the Company with any person or entity who is, or was within the _____ year period immediately prior to the termination of the Executive's employment with the Company, (i) employed by, associated with or a consultant to the Company or (ii) a customer or client of, supplier to or other party having material business relations with the Company.

7. Remedies. Without limiting the remedies available to the Company, the Executive acknowledges that a breach of any of the covenants contained in Sections 5 or 6 herein could result in irreparable injury to the Company for which there might be no adequate remedy at law, and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary injunction and a permanent injunction restraining the Executive from engaging in any activities prohibited by Sections 5 or 6 herein or such other equitable relief as may be required to enforce specifically any of the covenants of Sections 5 or 6 herein. The foregoing provisions and the provisions of Sections 5 and 6 herein shall survive the term of this Agreement and the termination of the Executive's employment with the Company, and shall continue thereafter in full force and effect in accordance with their terms. For purposes of Sections 5, 6 and 7 of this Agreement, the term "Company" shall include the Company and each of its affiliated companies, subsidiaries and parent company.

8. Termination.

(a) The Executive's employment with the Company may be terminated at any time by the Company with Cause or without Cause or in the event of the death or Disability of the Executive. [The Executive's employment with the Company may also be terminated by the

Executive for Good Reason or, after at least _____ months prior written notice thereof from the Executive to the Company, without Good Reason]].

(b) As used herein, the following terms shall have the following meanings:

“Cause” means that, in the good faith [and reasonable] determination of the Board, the Executive has (i) breached any fiduciary duty or legal or contractual obligation to the Company or to the Company’s direct or indirect equity holders, [or failed to perform satisfactorily the Executive’s [material] duties to the Company [, which breach or failure, if curable, is not cured within ___ days after notice to the Executive thereof or, if cured, recurs]], (ii) engaged in [gross negligence,] [insubordination,] [willful] misconduct, fraud, embezzlement, acts of dishonesty or a conflict of interest relating to the affairs of the Company or any of its affiliates, [or] (iii) been convicted of or pleaded nolo contendere to (A) any misdemeanor relating to the affairs of the Company or any of its affiliates or (B) any felony [, or (iv) engaged in a willful violation of any federal or state securities laws].

“Disability” means illness (mental or physical) or accident, which results in the Executive being unable to perform the Executive’s duties as an employee of the Company for a period of three months in any twelve month period.

[“Good Reason” means [a material breach of any material provision of this Agreement, which breach is not cured by the Company within ___ days after notice thereof from the Executive.] [(i) the assignment of duties or responsibilities to the Executive by the Board which are inconsistent in a material and adverse respect with the Executive’s position with the Company as of the date of this Agreement and reflect a material diminution in the status of the Executive within the Company, [or] (ii) the permanent relocation of the Executive, without the Executive’s prior consent (which consent will not be unreasonably withheld or delayed), by the Company to a work location more than _____ miles from the Executive’s current work location; provided that, in each case, the Company shall have been given written notice from the Executive describing in reasonable detail the occurrence of the event or circumstance for which Executive believes he may resign for Good Reason within ___ days of the first occurrence thereof and the Company shall not have cured such event or circumstance within _____ days after the Company’s receipt of such notice.]

(c) If the Executive’s employment is terminated during the term of this Agreement, the Company shall have no further obligation to make any payments or provide any benefits to the Executive hereunder after the date of termination except for (i) payments of Base Salary and expense reimbursement that had accrued but had not been paid prior to the date of termination, (ii) if required by law, payments for any accrued but unused vacation time and (iii) if the Executive’s employment with the Company is terminated by the Company without Cause (other than as a result of death or Disability of the Executive [, or in connection with, or after the consummation of, the sale of all or substantially all of the Company’s equity securities, assets or business whether by merger, sale of securities or assets or otherwise]) [or by the Executive for Good Reason], continuation for a period of _____ months of payments of Base Salary at the

rate in effect at the date of termination [and of payments of the Company's share of the Executive's medical and dental insurance premiums in accordance with the terms of then existing Company benefit plans (but only to the extent the Executive is allowed by such benefit plans and by law to continue participation in such benefit plans)]; provided, however, that the Company shall not be required to make any payments pursuant to Section 8(c)(iii) beyond the scheduled termination date of this Agreement.

(d) The obligation to make payments under Section 8(c)(iii) of this Agreement shall be (i) contingent upon the Executive executing a general release in form and substance acceptable to the Company and (ii) reduced by any amounts earned from employment or consulting by the Executive during or in respect of the period during which such payments are payable. [Further, the Company's obligations hereunder to pay any premiums for medical or dental insurance benefits shall cease if Executive is eligible to receive similar benefits from another employer.] The Executive shall notify the Company promptly in writing of any amounts [or benefits] earned or to be earned from employment or consulting which would reduce or terminate the amounts payable by the Company pursuant to Section 8(c)(iii) of this Agreement.

(e) If the Executive breaches the Executive's obligations under Sections 5 or 6 of this Agreement, the Company may immediately cease all payments under Section 8(c)(iii) of this Agreement, and may recover any payments previously made by the Company pursuant to such Section. The cessation or recovery of these payments shall be in addition to, and not as an alternative to, any other remedies at law or in equity available to the Company, including without limitation the right to seek specific performance or an injunction.

(f) The provisions of Sections 5 through [20] of this Agreement shall survive the term of this Agreement and the termination of the Executive's employment with the Company, and shall continue thereafter in full force and effect in accordance with their terms.

9. Enforceability, etc. This Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under any such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating or nullifying the remainder of such provision or any other provisions of this Agreement. If any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, such provisions shall be construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by applicable law.

10. Notices. Any notice, demand or other communication given pursuant to this Agreement shall be in writing and shall be personally delivered, sent by nationally recognized overnight courier or express mail, or mailed by first class certified or registered mail, postage prepaid, return receipt requested as follows:

(a) If to the Executive:

(b) If to the Company:

Attention: _____

with copies to:

Attn: _____

and

Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110
Attention: _____

or at such other address as may have been furnished by such person in writing to the other parties.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the [State of Delaware], without regard to its choice of law provisions.

12. Amendments and Waivers. This Agreement may be amended or modified only by a written instrument signed by the Company and the Executive. No waiver of this Agreement or any provision hereof shall be binding upon the party against whom enforcement of such waiver is sought unless it is made in writing and signed by or on behalf of such party. The waiver of a breach of any provision of this Agreement shall not be construed as a waiver or a continuing waiver of the same or any subsequent breach of any provision of this Agreement. No delay or omission in exercising any right under this Agreement shall operate as a waiver of that or any other right.

13. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors and administrators, successors and assigns, except that the rights and obligations of the Executive hereunder are personal and may not be assigned without the Company's prior written consent. Any assignment of this Agreement by the Company shall not be considered a termination of the Executive's employment.

14. Entire Agreement. This Agreement [and the confidentiality, nonsolicitation and noncompetition provisions of the Purchase Agreement] constitute[s] the final and entire agreement of the parties with respect to the matters covered hereby and replace[s] and supersede[s] all other agreements and understandings relating hereto and to the Executive's

employment.

15. Counterparts. This Agreement may be executed in any number of counterparts, including counterpart signature pages or counterpart facsimile signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. No Conflicting Agreements. The Executive represents and warrants to the Company that the Executive is not a party to or bound by any confidentiality, noncompetition, nonsolicitation, employment, consulting or other agreement or restriction which could conflict with, or be violated by, the performance of the Executive's duties to the Company or obligations under this Agreement.

17. Review of Agreement. The Executive acknowledges that the Executive (a) has carefully read and understands all of the provisions of this Agreement and has had the opportunity for this Agreement to be reviewed by counsel, (b) is voluntarily entering into this Agreement and (c) has not relied upon any representation or statement made by the Company (or its affiliates, equity holders, agents, representatives, employees or attorneys) with regard to the subject matter or effect of this Agreement. The Executive further acknowledges that the provisions in Sections 5, 6 and 7 of this Agreement are reasonable and necessary to protect the goodwill, customer relationships, legitimate business interests and Confidential Information of the Company and its affiliates, and the Company would not have entered into this Agreement [or the Purchase Agreement] without the benefit of such provisions.

18. Captions. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

19. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises under any provision of this Agreement, this Agreement shall be construed as if drafted jointly by the parties thereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authoring any of the provisions of this Agreement.

20. Notification of New Employer. In the event that the Executive is no longer an employee of the Company, the Executive consents to notification by the Company to the Executive's new employer or its agents regarding the Executive's rights and obligations under this Agreement.

21. [Key Man Insurance. The Executive acknowledges that the Company may wish to purchase insurance on the life of the Executive, the proceeds of which would be payable to a the Company or an affiliate of the Company. The Executive hereby consents to such insurance and agrees to submit to any medical examination and release of medical records required to obtain such insurance.]

This Agreement has been executed and delivered as a sealed instrument as of the date first above written.

[INSERT NAME OF COMPANY]

By _____
(title)

[Insert name of the Executive]