

Common Draft™ Model Provisions: Employment Agreement

WORKING DRAFT 2012-12-13

WARNING: These Model Provisions may not meet your specific needs; it should not be relied on as a substitute for legal advice from a licensed attorney, and is provided **AS IS, WITH ALL FAULTS**. Without the advice and help of an attorney, you could be putting your money and property at risk. To be referred to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690, or a legally-authorized lawyer referral service in your state.

Precedence: To the extent that the Agreement Document (defined below) conflicts with these Model Provisions, the Agreement Document will control.

Provisions marked with an asterisk * apply only if so stated in the Agreement Document.

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1. General definitions

When used in this Agreement, the following terms have the meanings set forth below.

Affiliate: An "Affiliate" of a Person is any other Person that controls or is controlled by or is under common control with that Person. For this purpose, "control" refers to the direct or indirect ownership of at least fifty percent (50%) of the equity or beneficial interest in such Person or the right to vote for or appoint a majority of the board of directors or other governing body of such Person.

Agreement: The terms "this Agreement" refers to, collectively:

- (1) the Agreement Document (*see below*);
- (2) any exhibit, schedule, appendix, addendum, or other document identified in the Agreement Document as being part of this Agreement; and
- (3) any other document expressly incorporated by reference into the Agreement Document.

Agreement Document refers to a document signed by the parties (manually, electronically, or otherwise) that incorporates these Model Provisions by reference or otherwise states that the parties are making the signed document subject to these Model Provisions.

Company refers to the corporation or other organization, identified in the Agreement Document, that is entering into this Agreement with the Employee, but not to any other Company Group Member except as expressly stated in this Agreement.

Company Business refers to the following:

- (1) any business engaged in by the Company or any other Company Affiliate during the Employment Relationship, and
- (2) any other business as to which, during the Employment Relationship, Company or any other Company Group Member made demonstrable preparation to engage in the business, **IF** either or both of the following is true: (i) The Employee materially participated in that preparation; and/or (ii) in connection with that preparation, the Employee had access to Confidential Information.

Company Group Member refers to the Company and its Affiliates.

Company Innovation refers to any *Innovation* that is made, created, conceived, or reduced to practice by any person if any of the following is true about the Innovation:

- (1) any equipment, supplies, facilities, or confidential information of Company or any other Company Group Member were used in any phase of the conception or development of the Innovation; or
- (2) the Innovation was made at least in part using time for which the person was compensated by Company or any other Company Group Member; or
- (3) the Innovation relates to any Company Business; or
- (4) the Innovation resulted, in whole or in part, from work which the person performed for Company or any other Company Group Member.

The previous sentence applies whether the person worked alone or jointly with others, and whether or not during regular working hours; it also applies whether or not the Innovation is potentially patentable or copyrightable in the U.S. or elsewhere.

Company Materials refers to any and all Materials for which any of the following is true:

- (1) the Employee received the Materials from Company or any other Company Group Member, or
- (2) the Employee *created*, or help to create, the Materials during the Employment Relationship AND the Materials relate to any Company Business; or
- (3) the Materials contain, or reflect, Confidential Information.

Confidential Information refers to confidential information of Company or any other Company Group Member that the Employee learns in the course of the Employment Relationship — whether or not the information is marked as confidential[†] — **except for** information that the Employee can show, with reasonable corroborating evidence, that:

- (1) the information was in the Employee's possession or knowledge before the Employment Relationship began; or
- (2) the information is or becomes generally known to persons who could take economic advantage of it without breach of an obligation to a Company Group Member; or
- (3) the Employee obtained the information from a party having the right to disclose it to the Employee without violation of an obligation to a Company Group Member.

No combination of information will be deemed to be within any of the exceptions (1) through (3) in the previous sentence, however — even if one or more component parts of the combination are within one or more exceptions — unless the combination itself and its economic value and principles of operation are themselves within one or more of those exceptions.

Create and **Creation**, whether or not capitalized, (i) in respect of an invention, trade secret, or business idea, refer to the conception or reduction to practice thereof; (ii) in respect of a work of authorship, refer to fixation of the work, in whole or in part, in a tangible medium of expression.

Designated Owner refers to (i) the Company or (ii) if from time to time the Company designates another Company Group Member, or one or more other organizations, to own certain inventions or other intellectual-property rights, the designated other organization.

Employment Relationship refers to the Employee's employment with the Company.

[†] Marking requirements for confidential information are often found in nondisclosure agreements between companies, but for an employment agreement, such a requirement would likely be unwieldy for the Company to comply with.

Examples (and corresponding terms such as for example), whether or not capitalized, are used in the Agreement for purposes of illustration, not of limitation, unless another meaning is clear from the context. For the avoidance of doubt, if in some places the Agreement uses longer expressions such as "by way of example and not of limitation," such usage does not mean that the parties intend for shorter expressions such as "for example" to serve as limitations unless expressly stated otherwise.

Include and like words (for example, includes, included, and including), whether or not capitalized, are to be deemed followed by the phrase "without limitation" if not followed literally by that phrase. For the avoidance of doubt, if in some places the Agreement uses longer expressions such as "including but not limited to" or "including without limitation," such usage does not mean that the parties intend for other, shorter expressions such as "including" to serve as limitations unless expressly stated otherwise.

Innovation refers to each of the following: (1) an invention, whether or not patentable or patented; (2) a work of authorship copyrightable in the U.S. or elsewhere, whether or not registered or registrable; (3) a trade secret; and (4) an idea that could be used in any Company Business.

Materials refers to reports, notes, emails, manuals, computer programs or data, photographs, and all other recorded, written, or printed matter, in any format, including but not limited to electronic, magnetic, optical, and hard-copy formats.

Person refers to a natural person, corporation, partnership, or other legal entity, or a joint venture of two or more of any of them.

Tribunal refers to an arbitration panel, court, or other body of competent jurisdiction that is deciding a matter arising out of or relating to this Agreement.

2. Employee's duties

(a) **Position:** The Employee is being initially hired for a particular position; the Company may change the Employee's position, title, and specific job responsibilities from time to time in its discretion.

(b) **Best efforts:** The Employee will perform all the duties and such other functions as the Company may require, to the best of the Employee's ability, giving the Company the full benefit of the Employee's knowledge, expertise and technical skill, and will comply with all lawful directions given by or with the authority of the Company.

(c) **Work hours:** Whenever so required for the proper fulfillment of the Employee's duties, the Employee will work such hours as the Company may prescribe, with additional compensation if and to the extent required by applicable law.

(d) **Travel:** The Employee will attend and work at any premises of the Company Group Members wherever situated, and travel and work both in this country and abroad, as may be required for the proper fulfillment of the Employee's duties.

(e) **Compliance with policies, etc.:** The Employee will comply with all lawful rules, regulations, policies, procedures, ethical standards, and special instructions that may be adopted by the Company from time to time, except that if such policies conflict with the express provisions of this Agreement, then the terms of this Agreement will govern.

(f) **Full-time work:** The Employee will devote his or her full productive time, ability and attention and his or her best efforts to the business of the Company, except to the extent otherwise authorized in writing by the Company.

(g) **Knowledge:** The Employee will make available to the Company any and all information of which the Employee has knowledge and which the Employee has a reasonable belief is or would be relevant to the Company's business, to the extent that this is possible without violating any obligation of confidentiality that the Employee may have to a former employer.

3. Restrictions on activities

(a) **No conflicting activities:** The Employee will not engage, directly or indirectly, in the planning, operation or management of any activity that competes with the Company or otherwise conflicts with the Company's business interests.

(b) **Other work:** The Employee will not work on a full- or part-time or independent-contracting basis for any other Person without the Company's prior written consent.

(c) **Company property:** The Employee will not remove or assist in removing any Company Materials or other property of Company or any other Company Group Member from such company's premises under any circumstances, either during the Employment Relationship or after its termination, except as authorized by the Company.

4. Compensation and benefits

(a) **Compensation:** For all the services rendered by the Employee to Company or any

other Company Group Member during the Employment Relationship, and for so long as the Employee remains employed by the Company, the Employee will receive the compensation offered to and accepted by him or her, less withholding that is either required by law or agreed to by the Employee.

(b) **Pay schedule:** The Employee's compensation will be payable in installments at such times as the Company customarily pays its other employees, but in any event no less often than monthly or the minimum frequency required by applicable law for comparably-situated employees, whichever is more often.

(c) **Benefits (if applicable):** The Employee will be entitled to participate in any group medical, dental, disability, and life insurance plans, 401(k) plans, pension or profit-sharing plans, stock option plans, and similar benefits that may be offered by the Company — if any — on the same or similar basis as comparably-situated employees. The Employee also understands that these benefits may change or be eliminated at the sole discretion of the Company.

(d) **Bonus (if applicable):** In addition to the compensation and benefits referred to above, the Employee may receive bonus compensation at such intervals and frequency as determined appropriate in the sole discretion of the Company. The Company will not be obligated to the Employee for any bonus compensation not otherwise so authorized. The Employee acknowledges that he or she must be employed by the Company at the time the bonus is authorized in order to be eligible for a bonus.

(e) **Vacation (if applicable):** The Employee will be entitled to vacations of a duration (1) consistent with the Company's policies as promulgated from time to time, or (2) if longer, as required by applicable law for comparably-situated employees.

(f) **Tax responsibility:** The Employee alone, and not the Company, will be responsible for the payment of all taxes required by applicable law in respect of the payments to be made and benefits to be provided under this Agreement or otherwise (except to the extent withheld by the Company).

(g) **Expense reimbursement:** (1) The Company will cause the Employee to be reimbursed for reasonable business expenses actually incurred by him or her, with the Company's authorization, in connection with the Employment Relationship.

(2) All such reimbursement will be done in accordance with the Company's then-current travel policies and applicable tax-authority requirements or guidelines.

(h) **No other compensation or benefits:**² For the avoidance of doubt, the compensation and other benefits described in this "Compensation and benefits" section represent all, and the only, compensation and benefits to which the Employee is entitled from the Company or any other Company Group Member.

(i) **Withholding:** Except to the extent otherwise prohibited by law, the Company is authorized to withhold — from cash compensation or other payment of any kind, if any, which the Employee may be due — any past-due amounts, of any kind, that the Employee owes to the Company, if any.

5. At-will employment

For the avoidance of doubt, to the greatest extent not prohibited by law, the parties intend that the Employee will be an "at-will" employee during the entire time of the Employment Relationship.

6. Company policies

(a) **Policy documents:** The Company may in its sole discretion establish, amend, maintain and distribute (including but not limited to publication on an internal Web site) policies, employee manuals and/or personnel policy manuals.

(b) **Policies are not contractual:** (1) The Employee will adhere to and follow all rules, regulations and policies of the Company set forth in those policies and manuals as they now exist or may later be amended or modified.

(2) The Employee acknowledges and agree that those policies and manuals are not part of the contractual terms of this Agreement and do not constitute a separate contract, but instead are only general policies and guidelines of the Company's employees.

7. Innovations

(a) **Ownership:** The Designated Owner will be the sole owner of any and all Company Innovations and any Company Materials that the Employee may create during the Employment Relationship; the same will be a "work made for hire" to the greatest extent permitted by law.

(b) **Disclosure to Company:** The Employee will promptly disclose to the Company, without additional compensation, any such Company Innovation and Company Materials.

² This is a "vaccination" clause, intended to forestall employee claims of implied promises to additional compensation or employee benefits.

(c) **IP protection:** (1) The Employee will assist one or both of the Company and the Designated Owner, at the Company's or the Designated Owner's expense, in protecting any intellectual property rights that may be available anywhere in the world for Company Innovations and Company Materials.

(2) Such assistance will include, for example, signing U.S. or foreign patent applications; copyright registration applications; oaths or declarations relating to such patent- or copyright-registration applications; assignments of ownership of such applications; and similar documents.

(d) **Moral rights:** To the extent that the Employee retains any so-called "moral rights" or similar rights in a Company Innovation or in any Company Materials as a matter of law, the Employee authorizes the Company and its successors, assigns, and licensees —

(1) to make any desired changes to any part of the Company Innovation or Company Materials;

(2) to combine any such part with other materials; and

(3) to withhold the Employee's identity in connection with any business operations relating to that Company Innovation or Company Materials; in each case without additional compensation to the Employee.

8. Confidential Information

(a) **Confidentiality obligation:** Both during and after the Employment Relationship, the Employee will not disclose to anyone, directly or indirectly, nor will the Employee use —

(1) any Confidential Information of the Company or any other Company Group Member except (i) as required in the course of the Employment Relationship or (ii) with the prior written consent of the Company or the other Company Group Member, as applicable; nor

(2) any information of a Person as to which the Company is under an obligation of confidence, except as directed by the Company or with the prior consent of the owner of that information.³

(b) **Exception for subpoenas, etc.:** Notwithstanding subdivision (a), the Employee may

³ This provision can help the Employee in an indirect way: Sometimes a business partner of the Company will ask for the Company's employees to sign a confidentiality agreement directly with the business partner. If the Company decides to push back against such a request, it will help if the Company can point to specific language in the Employment Agreement that requires employees to preserve business partners' confidential information in confidence.

disclose Confidential Information if, and to the extent, required by legal process (e.g., a subpoena), provided that the Employee notifies the Company immediately upon receiving or becoming aware of the legal process in question.

(c) **Confidential information of others:**⁴

(1) The Employee will strictly adhere to any obligations that he or she may have to former employers, consulting clients, or other Persons, insofar as the Employee's use or disclosure of confidential information of any such other Person is concerned.

(2) The Employee represents that to the best of his or her knowledge, the Employment Relationship duties for the Company will not violate any such obligation.

(3) The Employee will promptly advise his or her supervisor if it appears to the Employee that his or her duties for the Company may call for him or her to use confidential information of a former employer or any other Person in breach of an obligation of confidence of the Employee.

(d) **Continued applicability:** For the avoidance of doubt, the requirements of this "Confidential Information" section will apply after termination of this Agreement without regard to whether the "Noncompetition covenant" section of this Agreement is in effect at the time in question.

9. Personnel data

(a) **Employee consent:** The Employee consents for the Company to hold computer records and personnel files relating to the Employee.⁵ These may include, but are not limited to, the Employee's employment application, references, bank details, performance appraisals, holiday and sickness records, salary reviews and remuneration details and other records, (which may, where necessary, include sensitive data relating to the Employee's health, and data held for ethnic monitoring purposes).

(1) The Employee acknowledges that the Company requires such personal data for personnel administration and management purposes and to comply with its obligations regarding the keeping of employee/worker records.

(2) The Employee will have a right of access to this data as prescribed by law.

⁴ This clause could give the Company at least some help if a former employer of the Employee were to make a claim that the Employee stole the former employer's confidential information.

⁵ This consent may be required in some jurisdictions such as the members of the European Union.

(b) Data processing, disclosure, and cross-border-transfer: The Employee consents for the Company to process personal data relating to the Employee for personnel administration and management purposes, and when necessary for those purposes, make such data available to its advisors, to parties providing products and/or services to the Company (such as IT systems suppliers, pension, benefits and payroll administrators), to regulatory authorities (including tax authorities) and as required by law; and

(c) To transfer any and all such data to and from the Company or any other Company Group Member, including outside the European Economic Area.

10. Termination

(a) **Termination by either party:** Either the Company or the Employee can terminate the Employment Relationship at any time, for any reason, with cause (sometimes referred to as "for cause") or without cause.

(b) **Waiver of notice period:** If the Employee tenders his or her resignation from the Employment Relationship effective after a stated notice period, the Company may in its discretion waive the notice period (orally or in writing), in which case the Employment Relationship will end immediately upon the waiver.

(c) **Final compensation:** IF: The Employment Relationship is terminated for any reason; THEN:

(1) The Employee will be entitled only to the Employee's earned compensation, as well as any other benefits earned and due prior to termination.

(2) The Company will then have no further obligations to the Employee except as may be expressly provided otherwise in the Agreement Document or in a separate authorized written agreement with the Company.

(d) **Property return:** Upon any termination of the Employment Relationship for any reason, the Employee will preserve intact and promptly deliver to the Company all originals and all copies of all Company Materials, as well as all other property of Company or any other Company Group Member, that are in the Employee's possession, custody, or control.

(e) **Exit interview:** Upon any termination of the Employment Relationship for any reason, the Employee will participate in an exit interview at a time and place reasonably determined by the Company. In connection with the exit interview, the Employee will provide the Company with such information as it may reasonably request about the Employee's

reasons for leaving; his or her future employment plans, if any; and any Company Innovations and/or Company Materials that the Employee may have created or may have in his or her possession.

(f) **Continued enforceability:** Termination of the Employment Relationship for any reason will not affect the continued enforceability of this Agreement of those provisions that by their nature are intended to continue in effect after termination.

(g) **No false identification:** After termination of the Employment Relationship, the Employee will not identify or hold out him- or herself as being connected with or employed by the Company, nor any other Company Group Member, in any capacity, unless the Employee is in fact so connected or employed at the time in question.⁶

11. Noncompetition covenant *

(a) **Confidential information access:** The Company intends to provide the Employee, during the Employment Relationship, with access to pre-existing and new Confidential Information on an as-needed basis commensurate with the Employee's duties, including but not limited to access to appropriate portions of the Company's computer network.

(b) **Post-termination restrictions:** To aid in the protection of the Company's legitimate interests in such Confidential Information, the Employee agrees that, beginning on the date that the Company first provides him or her with such access in any form, and ending on the date set forth in the Agreement Document — one year after the termination of the Employment Relationship if not otherwise specified in the Agreement Document — unless the Company in its sole discretion gives its prior written consent, the Employee will not, directly or indirectly,

(1) participate, for the benefit of the Employee or any other Person, in any business that competes with any Company Business anywhere in the world, where the Employment Relationship materially related to such Company Business during the Employment

⁶ This provision addresses the possible situation in which, say, a sales employee's employment is terminated, after which the (former) employee begins holding himself out as an authorized reseller, dealer, etc., of his former company.

* Not applicable unless so stated in the Agreement Document. **CAUTION:** California law basically prohibits employers from requiring employees to agree to post-employment noncompetition covenants; an employer that includes such a covenant in its employment agreement might be liable for damages.

Relationship; nor

(2) without limiting clause (1), entice, induce or encourage any customer or prospective customer of Company or any other Company Group Member to transfer or remove its business from that company if the Employee had any material involvement with the business in question during the Employment Relationship; nor

(3) interfere, directly or indirectly, with the relationship between the Company or any other Company Group Member and that company's employees by inducing any such employee to terminate his or her employment, whether or not such employee would thereby breach his or her employment agreement with that company; nor

(4) solicit for employment, directly or indirectly, on behalf of the Employee or any other Person, any employee of the Company or any other Company Group Member; nor

(5) induce or assist any other Person to engage in any of the activities described in subdivisions (1) through (4).

(c) **Materiality of noncompetition covenant:** The Employee acknowledges that the Company would not permit him or her to have, or to continue to have, access to Confidential Information without the Employee's agreement to the provisions of this "Non-competition covenant" section.

(d) **Release from covenant:** IF: The Employee has never been provided with any such access to Confidential Information in any way at the time the Employment Relationship is terminated — including but not limited to never having been provided access to an email account or other access to a computer network of Company or any other Company Group Member — THEN: The Employee will be automatically released from the restrictions in subdivision (a).⁷

(e) **Tolling:** (1) The parties intend that, if the Employee violates the post-termination restrictions set forth in subdivision (b), the Company shall not be deprived of the benefit of those restrictions due to the time required to enforce those restrictions.

(2) Accordingly, the restrictions in subdivision (b) will end the agreed length of time after the later of (i) the date of termination of the Employment Relationship for any reason, and (ii) the date of entry by a court of competent jurisdiction of a final judgment enforcing the restrictions in subdivision (b), as written or as modified by the court.

⁷ This release provision is intended to try to make the non-competition covenant more "saleable" to a judge or arbitration panel.

(f) **Consent to competitive employment:**⁸ The Company will not unreasonably withhold its consent to the Employee's taking a job at a company that competes with one or more of the Company Group Members, BUT ONLY IF, before starting the new job, the Employee provides the Company with a document reasonably satisfactory to the Company, signed by both the Employee and an authorized representative of the competing company, containing a written description of (1) the Employee's duties in the new job, and (2) the specific ways by which the competing company will ensure that the Employee will neither use nor disclose trade secrets or other Confidential Information of Company or any other Company Group Member.

(g) **Exception:** The Employee may acquire a direct or indirect ownership interest of not more than 5% of the outstanding securities of any corporation which is engaged in activities prohibited by subdivision (a) IF such securities are listed on any recognized securities exchange or traded in the over-the-counter market in the United States, PROVIDED THAT such investment is of a totally passive nature and does not involve the Employee's devoting time to the management or operations of such corporation.

(h) **Modification of restrictions:** IF: A Tribunal determines that any of the restrictions set forth in this "Noncompetition covenant" section is unreasonably broad or otherwise unenforceable under applicable law; THEN: (1) the Tribunal's determination shall be binding only within the geographic area in which the Tribunal has jurisdiction; and (2) the restriction will not be terminated or rendered unenforceable; instead, the Tribunal is hereby authorized and requested restriction — solely for purposes of enforcement within the geographic area of the Tribunal's jurisdiction — to reform the to the minimum extent required to render it enforceable.

12. Mandatory arbitration *

(a) Except to the extent affirmatively prohibited by law or as otherwise agreed in writing between the parties, any dispute, controversy or claim that in any way arises out of or relates to this Agreement or the Employment

⁸ This consent provision is intended to try to help the parties amicably resolve any dispute involving the non-competition provision.

* Not applicable unless so stated in the Agreement Document. NOTE: The validity of mandatory-arbitration clauses in employment contracts is the subject of no small controversy.

Relationship will be submitted to binding arbitration.

(b) Any such arbitration will be conducted in English-language arbitration, in the city of the Company's office in which the Employee is principally employed, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association in effect on the date of the demand for arbitration, available on the Web at <http://www.adr.org>.

(c) Notwithstanding subdivision (a), to protect Innovations or Confidential Information, or other proprietary rights, the Company or any Company Group Member may seek temporary or preliminary injunctive relief in a court of competent jurisdiction without waiving its right to arbitration.

(d) Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

13. General provisions

(a) **Amendments:** Except as otherwise provided in this Agreement, any amendment or modification of this Agreement must be in writing and signed by an authorized officer of the Company, and any other attempt to amend or modify this Agreement, orally or in writing, will be void.

(b) **Amendments – unilateral (going forward):** (1) The Company may unilaterally amend this Agreement, or any exhibit, schedule, or appendix of this Agreement, on a going-forward basis, by giving at least five business days' notice to the Employee. EXCEPT AS STATED in subdivisions (2) and (3), if the Employee does not resign before the end of the time specified in the notice, then the amendment will go into effect automatically without further action by the parties. (2) For the avoidance of doubt, without the Employee's express written agreement, a unilateral amendment by the Company will not retroactively eliminate or modify any right already exercised by the Employee under this Agreement. (3) For the avoidance of doubt, no unilateral amendment will retroactively modify any binding dispute-resolution provisions of this Agreement for then-pending disputes (for example, binding-arbitration provisions) unless the parties expressly agree otherwise.

(c) **Assignment:** All of the terms and provisions of this Agreement will be binding upon and inure to the benefit of and be enforceable by the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, except that the Employee's duties and responsibilities

under this Agreement are of a personal nature and will not be assignable or delegable by the Employee in whole or in part.

(d) **Entire agreement:** (1) This Agreement sets forth the final, complete, exclusive, and binding statement of the agreement of its signatory parties concerning the subject matter of the Agreement; it supersedes all prior agreements and undertakings, both written and oral, between or on behalf of the signatory parties with respect to that subject matter. (2) Except as stated in this Agreement, there are no promises, understandings, representations, or warranties of any kind between the parties concerning its subject matter. Neither party is entitled to rely on any representation by the other party, or in the case of the Employee, by any other Company Group Member, concerning the same.

(e) **Equitable relief:** (1) The Employee acknowledges and agrees that if he or she materially violates this Agreement's provisions concerning Confidential Information (or, if applicable, the "Noncompetition covenant" section" of this Agreement), it would result in harm to the Company, or to one or more other Company Group Members, that was not capable of being redressed by an award of money damages alone. (2) In any such event, the Company may seek one or more of a preliminary injunction, a temporary restraining order, a permanent injunction, or comparable equitable relief, in any court of competent jurisdiction, to restrain any further or continued violation, to order that the Employee comply with this Agreement, or both.⁹

(2) Any other affected Company Group Member, if any, will have the same right as the Company to seek equitable relief against the Employee. (3) The right to seek such equitable relief will be in effect even if this Agreement requires arbitration of disputes.

(f) **Governing law:** The laws that apply in the location specified in the Agreement Document will govern any claim, controversy, or other dispute arising out of or relating to (i) this Agreement, or (ii) the interpretation or enforcement of this Agreement, without regard to conflicts-of-law or choice-of-law rules.

⁹ Unlike some agreement forms, this injunction provision does not include a waiver by the Employee of any requirement that the Company post a bond as a prerequisite to obtaining a preliminary injunction.

(g) **Job change.** If the Employee changes jobs from one Company Group Member to another, this Agreement will be deemed automatically assigned by the first Company Group Member to the other Company Group Member.

(h) **Non-exclusive remedies:** Except as otherwise stated in this Agreement, each remedy provided in this Agreement shall be in addition to any other remedy provided by this Agreement or by law.

(i) **Non-U.S. supplemental terms:** IF: The Company is organized under the laws of a country or other jurisdiction outside the United States of America and its territories and possessions; THEN: The terms of any country-specific addendum signed by the parties, if any, will be deemed part of this Agreement and will take precedence over any inconsistent provision(s) in these Model Provisions.

(j) **Notices:** All notices and statements with respect to this Agreement must be in writing.

(1) Notices to the Company are to be addressed to the Employee's supervisor at the Company, with a copy to the Company's counsel, its human-resources manager, or both.

(2) Notices to the Employee may be delivered to him or her in person or by email, or may be delivered to the Employee's then-current address as indicated in the Company's payroll records.

(k) **Section headings:** The section and subsection headings of this Agreement are for convenience only and are not intended to define, limit, or expand its provisions.

(l) **Severability.** IF: A Tribunal determines that any provision of this Agreement, or its application to anyone or under any circumstances, is invalid or unenforceable and declines to reform such provision; THEN: For purposes of the dispute being decided by the Tribunal:

(1) except as otherwise provided in this Agreement, the provision(s) in question are to be deemed struck from this Agreement and the remainder of this Agreement is to be fully enforced; and

(2) the invalidity or unenforceability of the provision(s) in question (i) are not to affect any other provision of this Agreement which can be given effect without the struck provision(s), and (ii) are not to be considered to invalidate or render unenforceable such provision in any other jurisdiction.

(m) **Signatures and delivery:** (1) The Agreement Document may be signed and delivered in separate counterpart originals; all such counterparts will be deemed to consti-

tute one and the same instrument.

(2) Any counterpart may comprise one or more duplicates, any of which may be signed by less than all of the parties provided that each party whose execution is required signs at least one of the same.

(3) Delivery of a counterpart may be effected (for example) by transmitting a signed signature page by FAX, by emailed PDF, or by other electronic transmission means.

(n) **Third-party beneficiaries:** (1) Each Company Group Member other than the Company (if any) is intended to be a third-party beneficiary of this Agreement to the extent stated in the Agreement.

(2) The parties do not intend for any other party to benefit from any right or obligation under this Agreement unless the Agreement Document expressly so states.

(o) **Waiver:** (1) No effect is to be given to any claim that a party waived a right, obligation, or condition (collectively, "term") stated in this Agreement, or that the party waived a breach of this Agreement, unless the alleged waiver (i) was in writing; and (ii) was signed by the waiving party or by an individual authorized to make binding commitments on behalf of that party.

(2) For the avoidance of doubt, a party's waiver of a term or breach of this Agreement will affect only that term or breach; it is not to be deemed a waiver of any other term or breach. Likewise, the fact that a party, at a given moment in time, did not enforce one or more terms is not to be deemed a waiver by that party of its right to enforce any term at any other time.

– END –

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