

EXECUTIVE EMPLOYMENT AGREEMENT CHECKLIST

1. Scope of Employment

- a. Employee job title.
- b. Description of Employee job responsibilities.
- c. Basis for promotion, demotion and increase or decrease in job responsibilities.
- d. Position on Board of Directors.
- e. Location of employment.
- f. Basis for relocating Employee.
- g. Permitted activities beyond job responsibilities.

2. Base Salary

- a. Base salary.
- b. Terms of payment.
- c. Base Salary Adjustments: fixed or based on cost of living adjustments.
- d. Frequency of performance reviews.

3. Bonuses

- a. Signing bonuses.
- b. Guaranteed bonuses.
- c. Bonuses based on objective or subjective performance standards.
- d. Minimum or target bonuses.

4. Benefits

- a. Benefit Plans which will be made available to Employee.
 - (1) Health and medical (including spouse and dependent coverage)
 - (2) Disability

- (3) 401(k)
- (4) Pension
- (5) Cafeteria plan
- (6) Life insurance
- (7) Stock option/stock grant
- (8) Vision
- (9) Dental
- (10) Financial counseling

b. Contributions to each benefit to be provided by Employee.

c. Paid time off, how it will accrue (calendar year or employment year), whether it must be used in the year or can be carried over year to year and whether it is payable on termination of employment.

5. Term and Termination

a. "At will" or contract employment and if contract employment, the term of the contract.

b. Consequences of a termination of employment.

c. Definition of "for cause" termination by Employer:

- (1) Conviction of a felony or any act involving moral turpitude;
- (2) Commission of any act of theft, fraud, dishonesty or falsification of an employment record;
- (3) Material uncured breach of the Employment Agreement;
- (4) Failure to perform reasonable assigned duties; and/or
- (5) Improper disclosure of Employer's confidential information.

d. Definition of "good reason" termination by Employer.

6. Reimbursement of Expenses

a. Scope of expenses to be reimbursed.

b. Terms of reimbursement of expenses.

7. Liability Protection for the Employee

- a. Directors and officers liability insurance.
- b. Statutory indemnification of directors and officers under Employer's governing documents.
- c. Scope of statutory indemnification provided to directors and officers.
- d. Scope of contractual indemnification provided to directors and officers.

8. Stock Option Grants

- a. Scope of stock option grant.
- b. Stock option percentage in the capitalization table.
- c. Stock option exercise price.
- d. Number of options deemed automatically vested.
- e. Number of options subject to vesting and frequency of vesting.
- f. Length of time option is exercisable.
- g. Date of termination of option exercise period after termination of employment.
- h. Repurchase rights (and repurchase price) options are subject to.
- i. Right of first refusal (and terms of right) options are subject to.
- j. Incentive stock options or non-qualified stock options.
- k. Situations in which vesting of options may accelerate.

9. Stock Grants

- a. Scope of stock grant.
- b. Stock subject to vesting and length of vesting period.
- c. Stock subject to repurchase rights or rights of first refusal.
- d. IRC Section 83(b) election requirements.
- e. Consequences of a change of control.
- f. Employee payment for stock grant.

- g. Employee taxes on stock grant and gross up of amounts to cover taxes.
- h. Pre-emptive rights to avoid dilution.

10. Confidentiality Restrictions

- a. Confidentiality restrictions imposed by former employer.
- b. Limitation of use of prior employer information.
- c. Scope of confidentiality restrictions on employee.
- d. Duration of confidentiality restrictions.

11. Invention Assignment Issues

- a. Scope of the Company's rights to the Employee's development of new inventions, trade secrets, and ideas.
- b. Legal limitations on invention assignment provisions.

12. Breach of Agreement

- a. Required notice and cure periods upon breach of Employment Agreement.

13. Disability and Death

- a. Definition of disability.
- b. Consequences of Employee disability.
- c. Consequences of Employee death.

14. Restrictive Covenants

- a. Non solicitation of customers/clients, employees, suppliers.
- b. Non competition – geography-based, customer/client-based, activity-based.

15. Dispute Resolution

- a. Method for resolving disputes- Litigation versus alternative dispute resolution.
- b. Location of dispute resolution.
- c. Choice of law for dispute resolution.

16. Golden Parachute

- a. Golden Parachute payments to Employee upon a change of control.
- b. Tax implications of Golden Parachute payments and Employer gross up of Golden Parachute payments to cover tax.
- c. Definition of Change of Control.

17. Representations and Warranties of Employer

- a. Specific representations and warranties of Employer with respect to financial resources.
- b. Oral agreements to be reflected in the Employment Agreement.

18. Miscellaneous Provisions

- a. Limitations on assignment of agreement clause.
- b. Legal fee clause.
- c. Choice of law clause.
- d. Entire agreements clause.