Tallwood Venture Capital

Legal Best Practices

635 Waverley Street
Palo Alto, California 94301

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Palo Alto, California 94301

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I. Legal Key Tasks

Formation – Series A	Bridge Financing	Series A Financing	Series B Financing and Beyond
0-5 employees	**5-50 Employees**	**5-50 Employees**	**50-100 Employees**
• Select form of entity. • Choose name. • Select state of incorporation. • Qualify in foreign jurisdictions. • Select officers and directors. • Obtain appropriate licenses and identification numbers. • Execute Founder's Stock Purchase Agreement. • Consider advisory board. • Consider trademark clearance search for corporate name. • Identify new IP. • Consider Internet-To-Use Trademark application on corporate name. • Transfer IP from founders to company. • Adopt forms of unilateral and bilateral non-disclosure agreements. • Create offer letters. • Create Proprietary Information and Inventions Agreement. • Create Consulting Agreement. • Consider hiring of consultants versus Employees. • Consider outsourcing payroll. • Adopt employee handbook. • Review available health and 401(k) benefits. • Consider immigration issues. • Create option plan. • Document retention policies. • Evaluate IP Considerations during Product Development Phase (for reference only – number of employees and IP phases don't necessarily track financings).	• Negotiate term sheet. • Negotiate and draft Note Purchase Agreement or Note and Warrant Purchase Agreement. • Negotiate and draft form of Convertible Promissory Note. • Negotiate and draft form of Warrant (if applicable). • Negotiate and draft Security Agreement (if applicable). • Complete appropriate federal and state securities laws compliance.	• Negotiate term sheet. • Negotiate, draft, and file Amended and Restated Articles of Incorporation. • Negotiate and draft Series A Preferred Stock Purchase Agreement. • Negotiate and draft Investors' Rights Agreement. • Negotiate and draft Right of First Refusal and Co-Sale Agreement. • Negotiate and draft Voting Agreement. • Negotiate and draft board observer agreements, if applicable. • Complete appropriate federal and state securities laws compliance.	• Consider all issues discussed under Series A Financing. • Consider valuation and price per share issues. • Obtain requisite consents to conduct financing. • Consider applicable rights of participation and waiver of rights of participation. • Consider applicable anti-dilution adjustment and waiver of rights of participation.

II. Exiting Your Current Employment

A. Obtain a copy of your employment agreement and review it well in advance of your departure.

B. Do not take anything (e.g., documentation, hard copies of software, other materials and information that you would reasonably consider proprietary) before you consult your lawyer. You should err on the conservative side when determining what to take.

C. Do not sign anything at the exit interview without consulting your lawyer.

III. Formation of the Company

A. Select the form of entity (usually a C Corporation).

B. Choose a name.
   1. Check availability and reserve the name in the state of incorporation.
   2. Check availability and reserve the name in foreign jurisdictions (e.g., states other than state of incorporation) in which the company is doing business.
   3. Reserve the domain name. If the domain name is reserved personally by a founder, be sure to transfer it to the company once the company is formed.
   4. Consider a trademark search on the company name. If significant early markets will be outside the U.S., consider a trademark search in applicable countries as well.
   5. File an intent-to-use trademark (or service mark) application on key terms of the company name. It's cheap insurance. If an intent-to-use trademark application is filed before the company is formed, make sure to transfer the application to the company once it's formed.

C. Select the state of incorporation (usually Delaware or California). Franchise taxes are usually higher in Delaware, but it is administratively easier to consummate transactions for a Delaware corporation (e.g., Delaware Secretary of State accepts fax filings while California Secretary of State does not).

D. Qualify in foreign jurisdictions. A company is required to qualify in jurisdictions where the company is doing business.

E. Select the officers and directors.
   1. Select and elect all officers and directors. A corporation is required to have a President, Treasurer, and Secretary. The number of required directors is based on the number of stockholders.
   2. Enter into indemnity agreements with directors.
   2. Consider insurance coverage for directors and officers.

F. Obtain the appropriate licenses and identification numbers.
   1. Obtain California or Delaware state and local business licenses.
   2. Obtain federal tax identification number.
   3. Obtain state employee identification number.

G. Execute Founder's Stock Purchase Agreements. (This is an important area in which to involve your attorney.)
   1. Determine the number of shares of Common Stock for each Founder (usually an aggregate of four to six million shares divided among founders according to contributions made by each founder).
   2. Determine vesting schedule.
      a) Number of years of vesting (usually four years).
      b) Consider "cliff" vesting. "Cliff" vesting means that vesting does not start until a certain period of time has passed from the Vesting Start Date, usually the first day of employee's employment (typically one year).
      c) Consider immediate vesting of a portion of shares upon execution of the purchase agreement (this is a way to compensate founders for extensive efforts pre-incorporation).
   3. Determine acceleration of vesting provisions (accelerated vesting is desired by founders but generally disfavored by VCs).
      a) Acceleration upon death/disability (this is often disfavored by VCs).
      b) Acceleration upon termination without cause (this is often disfavored by VCs).
      c) Acceleration in connection with a change of control.
         - Single trigger acceleration – acceleration upon a change of control (strongly disfavored by VCs, who will often eliminate these provisions at the funding stage).
         - Double trigger acceleration – acceleration upon termination within a year following change of control (more palatable to VCs).
   4. Include right of first refusal in favor of the company (i.e., requires a founder to give the company the opportunity to repurchase shares of the founder's Common Stock before the founder transfers or sells such shares to a third party).
   5. Include lock-up provisions**,** i.e., prevents sale of securities by a founder for a certain period of time following the public offering (e.g., 180 days).
   6. Include escrow provisions (e.g., unvested shares will be held in escrow pending vesting).

H. Consider an advisory board.
   1. Think about who you plan to bring onto such a board. Will they dedicate enough time to the company?
   2. Execute advisory board agreements. See Sample Advisory Board Agreement in the Appendix.
   3. Consider stock option grants to advisory board members (but be careful not to grant too many shares to advisors). Consider a vesting schedule (typically one year).

IV. Intellectual Property Considerations

Many IP issues correspond to stages in the New Product Development ("NPD") cycle, rather than to a stage in the formation of the company. Issues related to NPD cycle are discussed in Section IX of this module. The following are key issues that should be kept in mind from the earliest stages of the company.

A. Identify and protect your new IP early on, both for valuation issues and IP protection.

B. Bear in mind that VCs usually do not sign non-disclosure agreements. Do not include key aspects of your IP in your business plan, and be cautious about disclosing key aspects of your business to potential VCs or other investors until a relationship of trust is established.

C. If one of the founders holds IP personally (e.g., domain name, invention, trademark application) have it assigned to the company.

D. Adopt forms of unilateral and bilateral non-disclosure agreements (See Sample Unilateral Nondisclosure Agreement and Sample Mutual Nondisclosure Agreement in the Appendix), but remember that each must be tailored to the particular situation to give the company the best protection. (Ask your lawyers for help the first few times.) Sometimes you will have a meeting, such as with a competitor or vendor, where you want it clearly understood that you and your company do not want to receive anything confidential (e.g., your company is working in the same area, and you want freedom to pursue any approach.) In these cases, consider using an Agreement of Non-Confidential Disclosure (see Appendix).

V. Employee Matters

Please also review Human Resources Best Practices in connection with hiring matters.

A. Create offer letters (for both exempt and non-exempt employees). See the Appendix for Sample Exempt Employee Offer Letter and Sample Non-Exempt Employee Letter.

B. Create a Proprietary Information and Inventions Agreement. See a sample in the Appendix.

C. Create a Consulting Agreement. See a sample in the Appendix.

D. Be careful when hiring consultants; carefully evaluate their status as an independent contractor versus an employee. There are a number of factors to consider when determining if someone is a consultant versus an employee (e.g., under common control of the company, uses his or her own supplies versus company supplies, etc.). If the IRS deems someone to be an employee rather than a consultant, the company could have accrued withholding tax obligations.

E. Consider outsourcing payroll. Make sure employees retain their status as common law employees of the company when outsourcing payroll. Often, company employees become employees of the outsourcing company. In this case, the company cannot grant ISOs to such individuals because they are no longer employees of the company.

F. Adopt an Employee Handbook. See a sample in the Appendix.

G. Review available health and 401(k) benefits.

H. Be aware of immigration issues.

1. The identity and employment eligibility of every employee must be reviewed and documented (on INS Form I-9) within the first three days of his or her employment.
2. Before a foreign national without U.S. citizenship or Lawful Permanent Resident ("green card") status is hired, ensure compliance with federal rules regarding sponsorship of nonimmigrant work visa.
3. Obtaining a green card can take as long as four to five years, during which time the foreign national must maintain nonimmigrant work visa status to live and work in the U.S. The most commonly utilized nonimmigrant work visas include:
   a) H-1B visa classification (generally requires that the employee have a BA. or higher degree in a field directly related to and necessary for the duties required).
   b) L-1 visa classification (for intra-company transferees that have accrued employment experience abroad with parent, subsidiary, affiliate, or branch of the proposed U.S. employer).
   c) O-1 visa classification (for foreign nationals with extraordinary ability in arts, science, athletics, or business).
   d) TN-1 or TN-2 visa classification (TN-1 for Canadian Citizens; TN-2 for Mexican Citizens who are professionals accepting positions in the U.S. in compliance with NAFTA agreements).
   e) E-1 or E-2 visa classification, for certain U.S. companies who are majority-owned by foreign corporate entities or foreign individuals, when the foreign owners are of a nationality with which the United States maintains a Treaty agreement allowing E-1 (substantial trade) or E-2 (substantial investment) visa issuance to nationals of the same country.

I. Consult your lawyer before terminating any employees.

VI. Option Plan

General terms and conditions of option grants set forth in the option plan shall be applied consistently to all employees. However, as discussed below, there will be differences in option numbers and, possibly, vesting schedules.

A. Determine the appropriate percentage of outstanding equity to reserve for the plan (typically 15% -30% for an early-stage company).

B. Determine an appropriate vesting schedule (typically four years, with one year "cliff").

C. Determine if the options will permit "early exercise" (i.e., give optionees the right to exercise prior to vesting, subject to the company's right to repurchase at cost if the optionee terminates service before the option otherwise vests).
   1. Benefits: Optionees may take advantage of favorable tax consequences by filing 83(b) notices.
   2. Drawbacks: Optionees who early exercise will immediately become shareholders of the company. (If you want to maintain a closely-held company, early exercise is not a good option.)

D. Consider vesting acceleration for some or all optionees upon certain events (e.g., change of control, termination without cause, death/disability, performance milestones, etc). Often, acceleration is not provided for in the option plan, but instead is evaluated by an officer of the company (typically the CEO) on a case-by-case basis.

E. Consider whether employees should have the right to pay the exercise price with promissory notes. This is an important area in which to involve your attorney.
   1. An employee may want to exercise an option and start the capital gains holding period at a time when the employee does not have cash to pay the exercise price. The alternative of doing a net exercise (defined below) generally has adverse accounting consequences for the company and leaves the employee with fewer shares.
   2. For tax and accounting reasons, a loan must be a full recourse obligation of the employee (i.e., repayment cannot be limited to stock pledged as collateral).
   3. The company becomes a lender and may have difficulty enforcing repayment of a loan if the value of shares declines (because employee relations do matter).
      a) If loans are forgiven, employees may have taxable compensation income, and accountants may require variable accounting treatment for other options exercised with promissory notes.
      b) Unless the company complies with accounting rules that require imposition of a market rate of interest and adequate net worth of the employee (similar conditions to those a bank would impose), options may be subject to adverse variable accounting.

F. Establish option plan administration procedures.

G. All options must be approved by the Board of Directors (the "Board"). The date the Board approves the option grant will serve as the "grant date." The Board will review and set the Common Stock price each time an option is granted. The price is set based on market factors and the stage of the company.

H. The Board must set the exercise price. The offer letters should state the exercise price would be equal to the fair market value of one share of Common Stock as of the grant date.

I. Establish option "budgets" or ranges for different positions in the company. Please also review Human Resources Best Practices for guidelines.

VII. Bridge Financing

A. Term Sheet (contains major terms of the financing).

B. Note Purchase Agreement or Note and Warrant Purchase Agreement (depending on whether Investors require warrant coverage).
   1. Note Purchase Agreement or Note and Warrant Purchase Agreement contains all relevant terms in connection with the issuance of the Notes (and Warrants).
   2. Note Purchase Agreement or Note and Warrant Purchase Agreement also contain representations and warranties of the company and investors; they are typically less extensive than those found in the Series A Preferred Stock Purchase Agreement (referenced below). VCs may try to expand the company's representations and warranties.

C. Convertible Promissory Note. This document evidences the loan made by an investor to the company.
   1. Consider the interest rate for the loan (usually 6%-8%; must adhere to usury laws).
   2. Determine conversion provisions of the Note. Conversion features govern conversion of the Note into Series A Preferred Stock or Common Stock.
      a) Automatic conversion:
         - Typically into Series A Preferred Stock upon consummation of Series A Preferred Stock financing ("Series A Financing"), either meeting a certain dollar threshold -- typically a dollar amount that will allow the company to achieve the next financing milestone ("Financing Threshold") -- and/or occurring before a specified time (usually the demand date of the Notes, i.e., "Financing Deadline").
         - May also convert into Common Stock or Series A Preferred Stock upon change of control.
      b) Voluntary conversion:
         - Into Common Stock or Series A Preferred Stock if Series A Financing does not occur at all, occurs after Financing Deadline, or does not meet Financing Threshold.
         - Upon change of control.
         - At holder's option.
      c) Notes usually convert into Series A Preferred Stock at the Series A Preferred Stock purchase price; however, investors may require that Notes convert into Series A Preferred Stock at a discount. Investors often require a deeper discount as Series A Financing occurs further from

date the Notes were issued (the theory is that the longer it takes to fund, the more risky the investment).

D. Warrant (investors may require the company to issue warrants to an investor as a condition to a loan). This document represents the right of the investor to purchase a certain number of securities of the company after a specified time and at a specified exercise price.
   1. Consider the warrant coverage factor (usually 15%-100% of the loan amount).
   2. Consider a cash-less (or net issue) exercise provision (i.e., investor can exercise a warrant without paying cash to the company by accepting less shares; this has favorable holding period consequences for the investor).

E. Security Agreement (if an investor requires Notes to be secured by the assets of the company – rare for bridge financing). Must be careful if other security interests have already been granted.

VIII. Series A Preferred Stock Financing

A. Term Sheet (contains major terms of the financing). In addition to listing financing terms, term sheets typically contain "no shop" and confidentiality provisions. "No shop" provisions prevent the company from soliciting investment offers from other investors during a certain period of time (usually 30-60 days). Confidentiality provisions require parties to keep confidential the terms of the negotiation. Term sheets also state that terms contained therein are non-binding and subject to negotiation. (Even though the term sheet is non-binding, this is a good time to call your attorney before executing.)

B. Articles (or Certificate) of Incorporation. The following is a list of the most heavily negotiated issues/provisions:
   1. Liquidation preference:
      a) Liquidation preference is the amount investors get off the top upon a liquidation (usually one to three times the original investment amount).
      b) Participation with Common Stock: nonparticipating (favorable to Common Stock holders), participating up to a cap (usually two to five times; middle ground), fully participating (investor favorable).
   2. Voting rights. The number of directors Series A Preferred Stock can elect. The number of directors Common Stock can elect. The number of joint directors (elected by Preferred Stock and Common Stock).
   3. Conversion rights. Conversion rights govern terms by which Series A Preferred Stock converts into Common Stock.
      a) Automatic conversion (upon the vote of a certain percentage of Series A Preferred Stock (usually a majority or super-majority) or a qualified IPO (IPO that meets certain dollar thresholds; usually $15,000,000-$30,000,000 in aggregate proceeds to the company with a per share price of at least two to three times the purchase price of the Series A Preferred Stock).

b) Voluntary conversion (upon the option of the holder).

4. Anti-dilution protection — adjustments to the price at which Series A Preferred Stock converts into Common Stock (the "Conversion Price"), made in connection with "down rounds," or sales of securities by the company at prices below the original Series A Preferred Stock purchase price; allows investors to convert to Common Stock on greater than a one-for-one basis to protect the value of the investment.
   a) Full ratchet anti-dilution protection – The Conversion Price is lowered to the price of new securities being sold (investor favorable).
   b) Broad-based weighted average anti-dilution protection – the Conversion Price is lowered based on a formula that provides for less of an adjustment than is provided by full ratchet adjustment (company favorable).
   c) Narrow-based weighted average anti-dilution protection – The Conversion Price is lowered based on a formula that provides for less of an adjustment than is provided by full ratchet adjustment, but more of an adjustment than is provided by broad-based weighted average adjustment (middle ground).
   d) Consider carve-outs from anti-dilution protection (i.e., issuances of securities by the company that will not trigger anti-dilution adjustment). Some examples of carve-outs include issuances: (a) to employees, directors, and consultants for compensatory purposes; (b) in connection with equipment lease financings, and (c) in connection with joint ventures or strategic transactions.
   e) Pure pay to play (i.e., no anti-dilution protection based on the assumption that investors have the right to participate pro rata in future financing and in the event of a down-round, the investor can maintain a percentage ownership in the company by exercising pro rata participation rights).
5. Redemption rights (not always required). Redemption rights require the company to repurchase Series A Preferred Stock from investors at a specified price and upon specified dates.
6. Protective provisions. A vote of a certain number of shares of Series A Preferred Stock (usually a majority or super-majority) required to put into effect certain actions (e.g., amendments to Articles of Incorporation that adversely affect Series A Preferred Stock, authorization of senior/parity Preferred Stock, authorization of merger/sale of assets, etc.).

C. Series A Preferred Stock Purchase Agreement. The following is a list of the most heavily negotiated issues/provisions:

1. Representations and warranties made by the company with respect to aspects of the company (e.g., intellectual property, material contracts, capitalization, etc.).

2. Conditions to closing (e.g., execution of definitive deal documents, minimum investment amount, legal opinion, due diligence, officer certificates, etc.).

D. Investors' Rights Agreement. The following is a list of the most heavily negotiated issues/provisions:

1. Demand registration (i.e., the ability of investors to force a public offering) and the number of demands (usually one to three).
   a) Consider the date that investors can activate the first demand registration (usually three to five years from the date of the agreement).
   b) Consider a minimum size of registration (usually 20%-30% of Registerable Securities).
2. Piggyback registration (i.e., the ability of investors to participate in company-initiated public offerings).
   a) Consider cutbacks on an IPO (up to 100%) and follow-on offerings (usually capped at 25-30%). "Cutbacks" refer to the exclusion by an underwriter of a certain amount of shares (requested to be registered) from a registration.
   b) Consider the allocation of registration opportunities among stockholders.
   c) Consider piggyback rights for founders. VCs usually don't allow this, because they feel it is not appropriate for founders to have this liquidity right on par with Preferred Stock investors.
3. S-3 registration — The ability of investors to force a public offering on Form S-3 (a shorter form than the S-1, or initial public offering registration statement), provided that the company meets certain requirements allowing it to use Form S-3.
   a) Consider a minimum size of registration ($500,000-$2,00,000).
   b) Consider the number of registrations (typically unlimited).
4. Termination of registration rights (usually three to five years).
5. Market stand-off (lock-up) agreement (i.e., the inability for investors to sell securities for a certain period of time following a public offering).
   a) Usually 180 days for IPO and 90 days for follow-on.
   b) Conditioned upon the execution of a similar agreement by officers, directors, and holders of a certain percentage of the company's capital stock (usually 1% to 5%).
6. Information and inspection rights (i.e., the rights of investors to inspect the books and records of the company). This is usually reserved for investors holding a minimum number of shares, or "Major Investors".
7. Participation rights (i.e., the right of investors to purchase a pro rata share of new issuances of securities by the company). This is usually reserved for Major Investors. Consider whether to include options and warrants into the pro rata calculation.
8. Drag-along rights — The requirement that founders, executives of the company, and other stockholders vote in favor of the sale of the company if a certain percentage of outstanding Preferred Stock requests such a sale (usually a majority or super-majority).

E. Right of First Refusal and Co-Sale Agreement. The purpose of this agreement is to prevent founders from liquidating their holdings in the company. Investors want to see founders stand behind the company. The following is a list of the most heavily negotiated issues/provisions:

1. Carve-outs for founders' shares not subject to rights of first refusal and co-sale, for example, a pledge of shares that creates a mere security interest, a bona fide gift, transfers in connection with mergers or sales of assets, or a certain percentage of shares reserved for founder transfers (often 5-15%).

F. Voting Agreement. The purpose of this agreement is to ensure that holders of Series A Preferred Stock (or any other class of securities having the right to elect directors) vote their shares in a specified manner in connection with the election of directors (typically agree to vote their shares to elect a director nominated by a certain investor). The following is a list of the most heavily negotiated issues/provisions:

1. Number of shares that must be held by an investor in order for such investor to maintain nominating rights (usually at least 5%-10% of a particular series).
2. Term of agreement (typically 5 to 10 years) or when the number of shares required to be held as provided in F.1 above is no longer held.

G. Company Counsel Legal Opinion. Investors' counsel usually requires the company's counsel to opine to certain legal conclusions regarding the company, including due authorization and issuance of the company's securities, due incorporation of the company, etc. The following is a list of the most heavily negotiated issues/provisions:

1. Knowledge qualifiers on various opinions (i.e., with respect to certain opinions, company counsel will only opine based on its knowledge).
2. Issuance of securities compliance opinion (i.e., opinion that all of the company's securities have been issued in compliance with securities laws).
3. Issuance of capitalization opinion (i.e., opinion as to the company's capital structure).

H. Board Observer Agreement. Often, investors who do not get Board seats will request Board observer rights (i.e., the right to attend Board meetings and receive Board material). Consider including in the Board observer agreement provisions allowing Board to exclude Board observers from attending Board meetings and receiving Board material where, among other things, the company's attorney-client privilege would be compromised, or conflict of interest issues may arise. See a Sample Board Observer Agreement in the Appendix.

I. Management Rights Letter. If a VC has investors that are employee benefit plan entities, such VC often requires Management Rights Letters (in connection with financings) to avoid being subject to ERISA requirements and preserve its status as a Venture Capital Operating Company. See a Sample Management Rights Agreement in the Appendix.

J. Federal and State Securities Law Compliance and Filings. Must comply with federal and state securities laws.

IX. Future Preferred Stock Financing Transactions

The following is a list of potential issues surrounding future financing transactions:

A. Consider valuation and price per share issues.
   1. The company will negotiate the pre-money valuation with investors.
   2. Price per share of the new series is determined by dividing the pre-money valuation by the number of outstanding shares of capital stock. Consider whether the option pool will be included in the price per share calculation.

B. Must obtain the requisite consents to conduct the financing:
   1. The company must amend Articles to provide for a new series of Preferred Stock. This usually requires consent of: (a) a majority of outstanding Common Stock, (b) a majority of outstanding Preferred Stock, (c) possibly a majority or super-majority of currently existing series of Preferred Stock (either voting together or as separate series) pursuant to protective provisions in current Articles – see Section VI.B.5, and (d) the Board.
   2. The company must amend the Investors' Rights Agreement to add new investors as parties. This typically requires the consent of: (a) a majority of investors who are current parties to the agreement (sometimes a super-majority is required; that would be investor-favorable because it gives investors more control over the financing process, but company-unfavorable because it could slow the closing process), and (b) the Board.
   3. The company must amend the Co-Sale Agreement to add new investors as parties. This requires the consent of: (a) typically a majority of investors who are current parties to the agreement (sometimes a super-majority is required; see same comment as in Section 2 above), (b) the Board, and (c) each founder who is a party to the agreement.
   4. The company may need to amend the Voting Agreement to add new investors as parties. This requires the consent of: (a) typically a majority of investors who are current parties to the agreement (sometimes a super-majority is required; see same comment as in Section 2 above), and (b) the Board, if the company is a party (often the company is not a party because the agreement is typically between stockholders).

C. Consider Rights of Participation.
   1. Current stockholders may have the rights to purchase a pro rata percentage of a new offering (see Section VI.D.5 above). The company needs to send investors notice of a new offering.
   2. The company should send notices to stockholders as soon as possible to start the clock running on the time frame in which stockholders may participate (usually 15 days from the date of notice).
   3. The company may request that stockholders waive their rights of participation (or portions thereof) in order to bring more new money into the company.

D. Consider Anti-dilution Protection.
   1. In the event the company has a "down round," or sells the next series of Preferred Stock at a price per share lower than previous rounds of Preferred Stock, previous rounds may be entitled to anti-dilution adjustments (see

Section VI.B.4). As a result, the Conversion Price of affected series will be adjusted so such series converts into Common Stock on greater than a one-for-one basis. Rarely, instead of adjusting conversion price, companies will issue more shares of Preferred Stock to the affected series.

2. The company may request that stockholders waive the anti-dilution adjustment. Often, an investor will condition the investment on waiver.

X. IP Considerations during the Product Development Phase

A. Idea Phase.

1. Identify, as early as possible, any innovations in the new product.
   a) Establish procedures for recording inventions.
   b) A lab notebook is probably adequate when the company is small.
   c) A more robust procedure will be helpful as the company gets larger, with each engineer using a lab notebook
   d) Ensure that the company owns the innovation.
   e) Make sure all employees have signed Invention Assignment Agreements, which are usually part of the Employment Agreement. See Sample Employment Inventions and Confidential Information Agreement in the Appendix. In connection with financing transactions, companies are often required to represent that the company's employees have signed such Invention Assignment Agreements. Investors may also make the signing of such agreements a condition for investment.
   f) Make sure all consultants have signed consulting agreements that assign all rights to the company. Consulting agreements vary more than employment agreements. Please see Sample Consulting Agreement in the Appendix.
2. Will the product or the idea for a product be discussed with anyone outside the company at this stage (e.g., key potential customers, vendors, or potential partners)?
   a) Such discussions can be very helpful for product planning, but they can also trigger certain patent deadlines.
      - Where possible, use an NDA for discussions with customers. Do not assume their NDA will protect your company – it probably won't.
      - Even if a customer has signed an NDA, consider filing a provisional patent application. Advise your patent attorney about the planned customer discussions.
      - If both parties will disclose confidential information, consider using a Mutual NDA.
   b) Early stage disclosures may also be made to vendors. Make sure an NDA is in place before having discussions with vendors.
   c) It may be necessary to begin establishing relationships with potential partners even at the idea phase. Make sure an NDA that protects a new product is in place, either as a standalone agreement or as part of a larger agreement.

3. Consider doing a patent search.
   a) Identifies potentially blocking patents.
   b) Assists in clarifying patent-able aspects of the new product.
4. If a name has been chosen for a new product, even tentatively, consider running a trademark search. Also consider filing an intent-to-use trademark application, if it is unlikely that the name will change.

B. Planning Phase.
1. Determine what differentiates the new product from those of competitors.
   a) Consider filing a provisional patent application to stake a claim to those differences as early as possible in the development cycle.
   b) If provisional patent applications have already been filed, has the design changed since those provisional applications were filed? If so, consider whether updated provisional patent applications should be filed. Also, keep in mind that conventional patent applications must be filed within one year of the date of first provisional (and sometimes much earlier).
   c) Make sure the company owns its inventions. Check that all employment agreements and consulting agreements are signed. See the Appendix.
2. Make sure NDAs are in place for discussions with customers, vendors, and potential partners or alliances.
3. Are there any competitors with patents?
   a) May affect how promptly patents need to be filed.
   b) May affect design flexibility.
   c) Advise your attorney promptly of any notice you receive about third party patents.

C. Development Phase.
1. At least by the end of the Development Phase, patent disclosures should be provided to the company's patent counsel if it has not already been done. Re-evaluate the inventions in the product.
   a) Is there anything new that is innovative?
      • What technical problems were encountered in developing the product to this point?
      • How did we overcome those problems?
   b) Do existing provisional patent applications need to be updated?
2. Continue to use NDAs with customers or potential customers, vendors, and partners.
3. Complete the product name selection.
   a) Run at least an U.S. trademark search.
   b) Consider running an international trademark search, if the product or service will be introduced to foreign markets.
   c) File an intent-to-use trademark application as soon as the name is selected.
4. Depending on the product, protect the company's mask rights. If using an outside fab, the fab house should take care of this, but check!
5. Beta Test Agreements.

a) All customers who get samples or any pre-release version should sign a Beta Test agreement. (See Sample Beta Site Agreement in the Appendix.) Label the sample products as "Engineering Sample" or "Production Sample" or other appropriate sample.
   - Protects company against claims of defective product.
   - Maintains confidentiality.

b) Provide a basis for asking for feedback from the customer on how well the product works.

D. Evaluation Phase.

1. By the end of the Evaluation Phase, all patent applications should be on file, including any updates to provisionals. Monitor deadlines for converting provisional patent applications to conventional patent applications.
2. Evaluate the need to file foreign patent applications.
   a) Patent attorneys have different views, but one approach to determining whether to file international patent applications is to file in countries which represent the major foreign markets, or which represent a major manufacturing threat.
   b) Another approach is to file a PCT application and defer costs as long as possible. Discuss this with your patent attorney.
3. By the end of the Evaluation Phase, all trademark clearances should be complete, including foreign markets. Intent-to-Use trademark applications should be converted to actual use applications (discuss this with your attorney) where the trademark has been used on samples.
4. Continue to use Beta Test Agreements with all customers receiving pre-release versions of the product. Continue to label samples appropriately (see Section 5.a., above).
5. Start developing the sales agreements and licenses necessary for the release of the product.

E. Production Phase.

1. Verify that all appropriate patent applications have been filed, including any applications made necessary by changes in the product during beta testing. Complete conversion of provisional patent applications to conventional patent applications.
2. Verify that all employees have signed employment agreements assigning to the company all patent rights and copyrights in their development for the company.
3. File trademark applications in all key markets, if not already done.
4. Complete partnering agreements as appropriate.
5. Consider establishing a patent reward program. Your attorney can give you guidance on typical industry approaches.

XI. Board Presentations

A. Create agendas for Board meetings that cover all topics to be discussed.

B. Consider what kinds of reports/material the Board wants and on what topics (e.g., engineering, marketing, business development, product development, business strategy, stock option grants, financing efforts, financial reports, etc.) Consider the level of detail the Board expects.
   1. Consider creating Powerpoint presentations.
   2. Stock option grant and other employee information:
      a) At the initial Board meeting, the Board should approve a range of options for certain positions (if the company wants to grant options outside the range, the company must discuss with, and get further approval from, the Board). The Board should also approve salary guidelines at the initial Board meeting.
      b) b. Stock option information should set forth: (i) the names of optionees, (ii) the number of shares of Common Stock covered by the option, (iii) the vesting start date, (iv) the vesting schedule (usually four years/one year cliff), and (v) a snapshot of the company's option pool (authorized, granted, exercised, cancelled, outstanding, and available).

XII. Document Retention Policy

Be sure to establish a comprehensive document retention policy. It is good practice to keep a separate file for: (a) each of the company's material contracts (e.g., license agreements, leases, joint venture agreements, financing and loan agreements, etc.); (b) each employee of the company containing such employee's offer letter, proprietary information and inventions agreement, option grant and exercise information, and other matters related to such employee's employment with the company; and (c) other miscellaneous documents (non-disclosure agreements, confidentiality agreements, consulting agreements, etc.). In the event the company pursues a financing, acquisition, or public offering, the company will need to produce such documents in connection with the due diligence process.

About the Author

Legal Best Practices was written by Pillsbury Winthrop LLP, a leading global law firm with a full range of expertise in all aspects of the planning, structuring, and operation of emerging companies. The firm has expertise in all areas including: the formation of a company, financings, option plans, employment matters, patents, copyrights and trademarks, intellectual property issues, mergers, IPOs, and other public offerings. The firm has represented more than 100 semiconductor, semiconductor equipment, and EDA software companies. Contact Pillsbury Winthrop LLP at 650-233-4500; Allison Leopold Tilley (Corporate Law), allison@pillsburywinthrop.com or 650-233-4518; Lisa S. Higa (Corporate Law), lhiga@pillsburywinthrop.com or 650-233-4664; James E. Eakin (IP Law), jeakin@pillsburywinthrop.com or 650-233-4602

Appendix

Sample Advisory Board Agreement

THIS ADVISORY BOARD AGREEMENT is entered into as of _____, 200_ (the "Effective Date") between STARTUP COMPANY, INC., a [Delaware/California] corporation ("Company") and _____, an individual ("Advisor").

The parties agree as follows:

1. Services. Advisor agrees to (i) act as member of the Company's Advisory Board, including attending and participating in each Advisory Board Meeting if practicable; and (ii) the following activities, among others, to further the goals of the Company: (a) meeting periodically with the Company's founders and key management for strategy and general brainstorming sessions; (b) making introductions for the Company to prospective strategic partners and investors; (c) being reasonably available to the Company by telephone and email; (d) lending Advisor's name when and where appropriate; (e) assisting the Company in recruiting key employees; (f) when appropriate and schedule permitting, attending meetings with prospective and/or existing strategic partners and investors. (collectively, the "Services"). As an Advisor, the Company expects that Advisor will devote the equivalent of at least [3 hours] per month of service to the Company.

2. Compensation. As full consideration for the services performed by Advisor under this agreement, the Company agrees, subject to approval by the Board of Directors, to grant Advisor a non-qualified stock option (the "Option") to purchase _____ shares of the Company's Common Stock (the "Common Stock"). Subject to Advisor's continued relationship with the Company, 1/24th of the shares shall vest at the end of each month after the Effective Date. The exercise price of such shares of Common Stock shall be the fair market value of the Common Stock on the grant date of such option.

3. Expenses. Company shall reimburse Advisor for reasonable travel and related expenses incurred in the course of performing Services hereunder, to the extent any significant expenses are approved in advance in writing by the Company. The Company will make payments for such expenses within thirty (30) days after receipt of Advisor's invoice therefor.

4. Confidentiality. Advisor shall maintain in confidence and not publish or otherwise disclose to third parties or use for any purpose other than providing the Services hereunder any Confidential Information of the Company, unless otherwise approved in writing by the Company. As used in this Agreement, "Confidential Information" shall mean any information or other subject matter disclosed to Advisor by the Company in connection with Advisor's performance of the Services. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) was publicly known and generally available in the public domain prior to the time of disclosure to Advisor; (ii) becomes publicly known and generally available after disclosure to Advisor through no action or inaction of Advisor; or (iii) is in the possession of Advisor, without confidentiality restrictions, at the time of disclosure as shown by Advisor's files and records immediately prior to the time of disclosure.

5. Ownership of Materials. All Confidential Information including without limitation, tangible materials received from the Company shall remain the property of the Company, and Advisor shall deliver all Confidential Information to the Company upon the expiration or termination of this Agreement, or earlier if so requested by the Company.

6. Assignment of Discoveries. Advisor will promptly disclose and assign to the Company Advisor's entire right, title and interest in all Discoveries. As used in this Agreement, "Discoveries" shall mean all technical or business innovations, whether or not patent-able or copyright-able, which are made by Advisor in the course of performing the Services, and/or at the request of the Company, or are based upon or incorporate any Confidential Information of the Company.

7. Duty to Assist. As requested by the Company, Advisor shall take all steps reasonably necessary to assist the Company in obtaining and enforcing in its own name any patent, copyright or other protection which the Company elects to obtain or enforce for the Discoveries. Advisor's obligation to assist the Company in obtaining and enforcing patents, copyrights and other protections shall continue beyond the termination of Advisor's relationship with the Company, but the Company shall compensate Advisor at a reasonable rate after the termination of such relationship for time actually spent at the Company's request providing such assistance.

8. No Conflict. The Company acknowledges that Advisor is currently employed by _____ (the "Employer"). Notwithstanding anything in this agreement to the contrary, during the period of this agreement Advisor being employed by the Employer, shall not be deemed a breach of Advisor's obligations under this agreement. The Company recognizes that Advisor's primary responsibility is to the Employer. Advisor represents that Advisor's compliance with the terms of this Agreement and provision of Services hereunder will not violate any duty which Advisor may have to any other person or entity (such as a present or former employer), including obligations concerning providing services to others, confidentiality of proprietary information and assignment of inventions, ideas, patents or copyrights, and Advisor agrees that Advisor will not do anything in the performance of Services hereunder that would violate any such duty or compromise the Company.

9. Legal Relationship. Advisor is an independent contractor and will not act as agent nor shall the Advisor be deemed an employee of the Company or any of its affiliates, or entitled to participate in any employee benefit plan of the Company or receive any benefit available to employees of the Company, including insurance, worker's compensation, retirement and vacation benefits. Advisor shall not have any authority to, and shall not, make any representation or promise or enter into any agreement on behalf of the Company.

10. Term and Termination. Advisor's appointment to the Advisory Board is "at-will." In other words, either Advisor or the Company can terminate Advisor appointment to the Advisory Board at any time for any reason, with or without cause and with or without notice.

11. Miscellaneous. This Agreement shall be governed by the laws of the State of California, without reference to its conflicts of laws provisions. This Agreement and the agreements referred to herein are the only and entire agreements between the parties and supersede all prior agreements and representations. This Agreement may be amended or modified only by a written document signed by both parties. If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of the remainder of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ADVISOR	STARTUP COMPANY, INC.
_____	By: _____
Print Name: _____	Name: _____
	Title: _____

Sample Exempt Employee Offer Letter[1]

Dear _____:

This offer letter sets forth the basic terms and conditions of your employment with StartUp Company, Inc. (the "Company") effective _____. Your effective date of hire will be _____. By signing this offer letter, you will be agreeing to these terms. It is important that you understand clearly both what your benefits are and what is expected of you by the Company.

1. Salary. You will be paid a monthly base salary of $_____, less regular payroll deductions, (payable as $_____ semi-monthly), which covers all hours worked. Generally, your salary will be reviewed annually but the Company reserves the right to change your compensation from time to time on reasonable notice.

2. Duties. Your job title will be _____. Your duties generally will be in the areas of _____, but you may be assigned other duties as needed and your duties may change from time to time on reasonable notice, based on the needs of the Company and your skills, as determined by the Company.

   As an exempt employee, you are required to exercise your specialized expertise, independent judgment and discretion to provide high-quality services. You are required to follow office policies and procedures adopted from time to time by the Company and to take such general direction as you may be given from time to time by your superiors. The Company reserves the right to change these policies and procedures at any time. (Also see Adjustments and Changes in Employment Status). You are required to devote your full energies, efforts and abilities to your employment, unless the Company expressly agrees otherwise. You are not permitted to engage in any business activity that competes with the Company.

3. Hours of Work. As an exempt employee, you are expected to work the number of hours required to get the job done. However, you are generally expected to be present during normal working hours of the Company. Normal working hours will be established by the Company and may be changed as needed to meet the needs of the business.

4. [Adjustments and Changes in Employment Status. You understand that the Company reserves the right to make personnel decisions regarding your employment, including but not limited to decisions regarding any promotion, salary adjustment, transfer or disciplinary action, up to and including termination, consistent with the needs of the business.][1]

5. Proprietary Information and Inventions Agreement. You will be required to sign and abide by the terms of the enclosed Proprietary Information and Inventions Agreement, which is incorporated into this offer letter by reference as Exhibit A.

6. Immigration Documentation. Please be advised that your employment is contingent on your ability to prove your identity and authorization to work in the U.S. for the Company. You

[1] This provision is optional, but may give the Company greater protection from claims that the Company took disciplinary action improperly

must comply with the Immigration and Naturalization Service's employment verification requirements.

7. Representation and Warranty of Employee. You represent and warrant to the Company that the performance of your duties will not violate any agreements with or trade secrets of any other person or entity.

8. Employee Benefits. You will be eligible for paid vacation, sick leave and holidays. You will be provided with health insurance benefits and dental insurance benefits, as provided in our benefit plans.[2] [You will be eligible to participate in the Company 's profit sharing plan, pursuant to the terms of the plan.][3] These benefits may change from time to time. You will be covered by workers' compensation insurance and State Disability Insurance, as required by state law.

9. Additional Benefits, If Any. You will be provided with the following additional benefits, which may also change from time to time:[4] _____, _____, _____, _____.

10. Term of Employment. Your employment with the Company is "at-will." In other words, either you or StartUp Company, Inc. can terminate your employment at any time for any reason, with or without cause and with or without notice.

    If you are terminated without cause, you will receive _____ weeks' notice or _____ weeks' pay in lieu of notice.[5] Termination for cause requires no notice and no additional pay.

11. Dispute Resolution Procedure. You will be required to sign and abide by the terms of an arbitration agreement, which is incorporated into this offer letter by reference.

12. Integrated Agreement. Please note that this offer letter supersedes any prior agreements, representations or promises of any kind, whether written, oral, express or implied between the parties hereto with respect to the subject matters herein. It constitutes the full, complete and exclusive agreement between you and the company with respect to the subject matters herein. This offer letter cannot be changed unless in writing, signed by you and the President.

13. Severability. If any term of this offer letter is held to be invalid, void or unenforceable, the remainder of this offer letter shall remain in full force and effect and shall in no way be affected; and, the parties shall use their best efforts to find an alternative way to achieve the same result.

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2 If the Company provides health benefits or other ERISA benefits, the employee should receive summary plan descriptions for these plans.

3 Insert if applicable.

4 Insert additional benefits such as moving expenses, stock options, educational allowance, etc. If there are no additional benefits, insert "No additional benefits." NOTE: The stock option/stock purchase language should be consistent with the terms of the stock plans.

5 This pay in lieu of notice provision will increase the perceived fairness of the Agreement. However, if the Company adopts this provision and then decides to terminate the worker without notice, it should be prepared to show that there was a substantial reason for the termination since the worker will be denied a valuable benefit.

We look forward to your joining our organization. In order to confirm your agreement with and acceptance of these terms, please sign one copy of this offer letter and return it to me. The other copy is for your records. If there is any matter in this offer letter which you wish to discuss further, please do not hesitate to speak to me.

Very truly yours,

STARTUP COMPANY, INC.

By: _____

Title: _____

……

I agree to the terms of employment set forth in this offer letter.

_____ _____

Employee Date

Exhibit A

Employee's Proprietary Information and Inventions Agreement

Sample Non-Exempt Employee Offer Letter[6]

Dear _____:

This offer letter sets forth the basic terms and conditions of your employment with StartUp Company, Inc. (the "Company"), effective _____. Your effective date of hire will be _____. By signing this offer letter, you will be agreeing to these terms. It is important that you understand clearly both what your benefits are and what is expected of you by the Company.

1. Salary. You will be paid at the rate of $_____ per hour, less regular payroll deductions, for all straight-time hours worked.[7] Generally, your salary will be reviewed annually but the Company reserves the right to change your compensation from time to time on reasonable notice.

2. Duties. Your job title will be _____. Your duties generally will be in the areas of _____, but you may be assigned other duties as needed and your duties may change from time to time on reasonable notice, based on the needs of the Company and your skills, as determined by the Company.

   You are required to follow office policies and procedures adopted from time to time by the Company and to take such general direction as you may be given from time to time by your superiors. The Company reserves the right to change these policies and procedures at any time. (Also see Adjustments and Changes in Employment Status). You are not permitted to engage in any business activity that competes with the Company.

3. Hours of Work. As a non-exempt employee, you are expected to work your regular shift as well as any overtime needs as required by the needs of the business. Working hours will be established by the Company and may be changed as needed to meet the needs of the business. Overtime must be approved by your supervisor and recorded on forms to be supplied by the Company.

4. [Adjustments and Changes in Employment Status. You understand that the Company reserves the right to make personnel decisions regarding your employment, including but not limited to decisions regarding any promotion, salary adjustment, transfer or disciplinary action, up to and including termination, consistent with the needs of the business.][8]

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[6] This Agreement is designed for executives, professional, high-level administrative and outside sales employees. If the employee is not exempt from overtime, the Non-Exempt Letter Agreement should be used.

[7] In the alternative this sentence could read: "You will be paid a monthly base salary of $_____ (payable as $_____ semi-monthly), which covers 40 hours of work per week.

[8] This provision is optional, but may give the Company greater protection from claims that the Company took disciplinary action improperly.

5. Proprietary Information and Inventions Agreement. You will be required to sign and abide by the terms of the enclosed Proprietary Information and Inventions Agreement, which is incorporated into this offer letter by reference as Exhibit A.

6. Immigration Documentation. Please be advised that your employment is contingent on your ability to prove your identity and authorization to work in the U.S. for the Company. You must comply with the Immigration and Naturalization Service's employment verification requirements.

7. Representation and Warranty of Employee. You represent and warrant to the Company that the performance of your duties will not violate any agreements with or trade secrets of any other person or entity.

8. Employee Benefits. You will be eligible for paid vacation, sick leave and holidays. You will be provided with health insurance benefits and dental insurance benefits, as provided in our benefit plans.[9] [You will be eligible to participate in Company's profit sharing plan, pursuant to the terms of the plan.][10] These benefits may change from time to time. You will be covered by workers' compensation insurance and State Disability Insurance, as required by state law.

9. Additional Benefits, If Any. You will be provided with the following additional benefits:[11] _____, _____, _____, _____.

10. Term of Employment. Your employment with the Company is "at-will." In other words, either you or StartUp Company, Inc. can terminate your employment at any time for any reason, with or without cause and with or without notice.

If you are terminated without cause, you will receive _____ weeks' notice or _____ weeks' pay in lieu of notice. Termination for cause requires no notice and no additional pay.[12]

11. Dispute Resolution Procedure. You will be required to sign and abide by the terms of an arbitration agreement, which is incorporated into this offer letter by reference.

12. Integrated Agreement. Please note that this offer letter supersedes any prior agreements, representations or promises of any kind, whether written, oral, express or implied, between the parties hereto with respect to the subject matters herein. It constitutes the full, complete and

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[9] If the Company provides health benefits or other ERISA benefits, the employee should receive summary plan descriptions for these plans.

[10] Include this provision if non-exempt employees are eligible for profit sharing.

[11] Insert additional benefits such as moving expenses, stock options, educational allowance, etc. If there are no additional benefits, insert "No additional benefits." NOTE: The stock option/stock purchase language should be consistent with the terms of the stock plans.

[12] This pay in lieu of notice provision will increase the perceived fairness of the Agreement. However, if the Company adopts this provision and then decides to terminate the worker without notice, it should be prepared to show that there was a substantial reason for the termination since the worker will be denied a valuable benefit.

exclusive agreement between you and the Company with respect to the subject matters herein. This offer letter cannot be changed unless in writing, signed by you and the President.

13. Severability. If any term of this offer letter is held to be invalid, void or unenforceable, the remainder of this offer letter shall remain in full force and effect and shall in no way be affected; and, the parties shall use their best efforts to find an alternative way to achieve the same result.

We look forward to your joining our organization. In order to confirm your agreement with and acceptance of these terms, please sign one copy of this offer letter and return it to me. The other copy is for your records. If there is any matter in this offer letter which you wish to discuss further, please do not hesitate to speak to me.

Very truly yours,

STARTUP COMPANY, INC.

By:_____

Title:_____

……

I agree to the terms of employment set forth in this offer letter.

_____ _____

Employee Date

Exhibit A

Employee's Proprietary Information and Inventions Agreement

Sample Employment, Invention and Confidential Information Agreement

In consideration of my employment by CLIENT TECHNOLOGY, or its subsidiaries, (all hereafter referred to collectively as "CLIENT"), and the compensation I shall receive, I agree that:

l. I will perform for CLIENT such duties as may be designated by CLIENT from time to time. I will, without further compensation or consideration, disclose promptly to CLIENT any and all inventions, designs, improvements or discoveries, patent-able or unpatentable, which during the term of my employment I may conceive, make, develop or work on, in whole or in part, solely or jointly with others, whether or not during regular working hours, and which relate to actual or anticipated products, research, development or business of CLIENT, or to my employment activities, or which result from me or are suggested by work done by or for CLIENT. I agree that all such inventions, improvements, designs, and discoveries together with all related rights (such as patents, trademarks, copyrights and designs) will be the sole property of CLIENT, it successors and assigns. If my job responsibilities include developing, installing or maintaining hardware or software or computer systems which employ the same, then I understand that as part of my responsibilities I am hired to invent and that any software I may develop is developed as a work for hire. If my job responsibilities include developing, writing or editing documentation, designs, advertising or other works protectable by copyright, then I understand and agree that any such writings, documentation, designs, advertising or other works are made by me as a work for hire.

2. I will assign and hereby do assign, without further compensation or consideration, any and all worldwide rights in and to such inventions, improvements, writings, designs and discoveries to CLIENT, and will assist CLIENT in every proper way, including the signing applications for patents or copyright and assignments to CLIENT, the making and keeping of proper records, and the giving of evidence and testimony (all entirely at CLIENT's expense), as may be necessary or desirable to perfect CLIENT's ownership in, or to obtain for CLIENT full rights and advantages of such inventions, improvements and discoveries in all countries. I hereby assign to CLIENT all copyrights, including renewal copyrights, for such software, related documentation, designs or writings.

3. I understand that, notwithstanding the provisions of paragraphs l and 2 hereof, my obligation to assign or offer to assign my inventions to CLIENT does not apply to an invention for which no equipment, supplies, facility, or trade secret information of CLIENT was used and which was developed entirely on my own time, and (a) which does not relate (l) to the business of CLIENT or (2) to the actual or demonstrably anticipated research or development of CLIENT, or (b) which does not result from any work performed by me for CLIENT. I also understand that my obligations under this Agreement shall not apply to the inventions listed below, patented or unpatented, which I developed and owned prior to my employment by CLIENT. (If none, write "NONE".)

4. All records, including but not limited to notebooks, drawings, blueprints, bulletins, reports, memos, magnetic media, physical devices, computer programs or other data, coming into my possession or kept by me in connection with my employment are the exclusive property of CLIENT. I agree to return to CLIENT all such records upon termination of my employment unless specific written consent is obtained from an officer of CLIENT to retain any such record.

5. I will regard and preserve as confidential and will not divulge to unauthorized persons, or use for any unauthorized purposes, either during or after the term of my employment, any trade secret, information, matter or thing, of a confidential, private or secret nature (including but not limited to schematics, software, pricing or costing information, telephone lists, salary and compensation information, and organization charts) connected with the actual or anticipated products, research, development or business of CLIENT without the written consent of an officer of CLIENT until such time as such information otherwise becomes public knowledge. I also will not publish any information in any way relating to CLIENT without first obtaining the written permission of an officer of CLIENT to do so.

6. I will not disclose to CLIENT, or induce CLIENT to use, any confidential information or material in violation of the rights of my former employers or those listed below. To the best of my knowledge, there are no other contracts or other obligations to assign inventions or to keep information confidential that are now in force between me and any other person, company or partnership which would conflict with any of my obligations under this Agreement, except as listed immediately below: (If none, write "NONE".)

List of Prior Contracts	Parties of Contract	Date of Contracts

7. I understand and acknowledge that my obligations arising out of this Agreement will not be terminated or altered by changes in my employment such as changes in duties or compensation, will continue beyond termination of this Agreement, will be binding upon my heirs, executors, administrators, or other legal representatives, and will inure to the benefit of the successors, assigns or other legal representatives of CLIENT.

8. I agree not to accept, directly or indirectly, any outside employment or enter into any consulting agreements during my period of employment with CLIENT without prior written permission from an officer of CLIENT.

9. I hereby give CLIENT and its assigns permission to use photographs taken of me while employed by CLIENT, either during or after my employment, with or without using my name, for whatever purposes it deems necessary in furtherance of CLIENT's business objectives.

l0. If I terminate my employment at CLIENT, I agree to give it fifteen (l5) days notice. If CLIENT terminates my employment, it will give me fifteen (l5) days notice or, at its election, CLIENT may terminate my employment at any time upon paying me one-half (1/2) of a month's salary. CLIENT may terminate my employment for good cause without notice or payment in lieu of

notice.

ll. If any provision of this Agreement is held illegal in a judicial proceeding, such provision shall be severed from this Agreement and shall be inoperative; and the remainder of the Agreement shall remain binding on the parties hereto.

l2. This Agreement supersedes all previous understandings, if any, between CLIENT and me on the matters covered herein. No term or provision of this Agreement may be varied or modified by any prior or subsequent act of either me or CLIENT except that CLIENT and I may subsequently amend this Agreement by written instrument specifically referring to this Agreement and executed in the same manner as this Agreement.

Date_____ _____

Employee Signature

WITNESS:

_____

Sample Consulting Agreement

This Consulting Agreement (the "Agreement") is entered into effective as of _____, 200_ ("Effective Date") by and between STARTUP COMPANY, INC. (the "Company") and _____ ("Consultant").

1. Consulting Relationship. During the term of this agreement, Consultant will provide consulting services (the "Services") to the Company as described on Exhibit A attached to this Agreement, as needed and as requested by the Company. Consultant shall use Consultant's best efforts to perform the Services in a manner satisfactory to the Company.

2. Fees. As consideration for the Services to be provided by Consultant and other obligations, the Company shall pay to Consultant the consideration specified in Exhibit B attached to this Agreement.

3. Support. As additional consideration for the Services to be provided by Consultant under this Agreement, the Company will provide Consultant with such support facilities and space as may be required in the Company's judgment to enable Consultant to perform the Services properly.

4. Expenses. Except as specified in Exhibit C attached to this Agreement, Consultant shall not be authorized to incur on behalf of the Company any expenses, without the prior written consent of the Company. As a condition to receipt of reimbursement for permitted expenses, Consultant shall be required to submit to the Company reasonable evidence that the amount involved was expended and related to Services provided under this Agreement.

5. Term and Termination. Consultant shall serve as a consultant to the Company for a period commencing on the Effective Date, until this Agreement is terminated by either party upon ten day's written notice to the other party.

6. Independent Contractor. Consultant's relationship with the Company will be that of an independent contractor and not that of an employee. Consultant will not be eligible for any employee benefits, nor will the Company make deductions from payments made to Consultant for taxes, all of which will be Consultant's responsibility. Consultant agrees to indemnify and hold the Company harmless from any liability for, or assessment of, any such taxes imposed on the Company by relevant taxing authorities. Consultant will have no authority to enter into contracts that bind the Company or create obligations on the part of the Company without the prior written authorization of the Company.

7. Supervision of Consultant's Services. All services to be performed by Consultant, including but not limited to the Services, will be as agreed between Consultant and the Company's President. Consultant will be required to report to the President concerning the Services performed under this Agreement. The nature and frequency of these reports will be left to the discretion of the President.

8. Consulting or other Services for Competitors. The Company understands that Consultant does not presently perform or intend to perform, during the term of this Agreement, consulting or other services for any company, person or entity whose business or proposed business in any way involves products or services which could reasonably be determined to be competitive with the products or services or proposed products or services of the Company. If, however, Consultant desires to perform such services at any time after the Effective Date and prior to termination of this Agreement, Consultant agrees to notify the Company in writing in advance (specifying the identity of the entity or the person) and provide information sufficient to allow the Company to determine if such consulting would conflict with projects or products of the Company. If the Company determines that such business is in competition with that conducted by the Company, this Agreement shall, at the option of the Company upon written notice to Consultant, terminate immediately.

9. Confidentiality Agreement. Consultant shall sign, or has signed, a Proprietary Information and Inventions Agreement substantially in the form attached to this Agreement as Exhibit D (the "Confidentiality Agreement"), prior to or on the date on which Consultant's consulting relationship with the Company commences.

10. Conflicts with this Agreement. Consultant represents and warrants that neither Consultant nor any of Consultant's partners, employees or agents is under any pre-existing obligation in conflict or in any way inconsistent with the provisions of this Agreement. Consultant warrants that Consultant has the right to disclose or use all ideas, processes, techniques and other information, if any, which Consultant has gained from third parties, and which Consultant discloses to the Company in the course of performance of this Agreement, without liability to such third parties. Consultant represents and warrants that Consultant has not granted any rights or licenses to any intellectual property or technology that would conflict with Consultant's obligations under this Agreement. Consultant will not knowingly infringe upon any copyright, patent, trade secret or other property right of any former client, employer or third party in the performance of the services required by this Agreement.

11. License and Assignment of Rights. To the extent that Consultant has intellectual property rights of any kind in any pre existing works which are subsequently incorporated in any work or work product produced in rendering the Services, Consultant hereby grants the Company a royalty-free, irrevocable, world wide, perpetual, non exclusive license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell, license, disclose, publish, or otherwise disseminate or transfer such subject matter. Consultant agrees that all inventions, original works of authorship, developments, concepts, know-how, improvements or trade secrets which are made by Consultant (solely or jointly with others) within the scope of and during the period in which Consultant is providing Services to the Company are "works made for hire" (to the greatest extent permitted by applicable law) belonging to the Company and Consultant is compensated therefor by such amounts paid to Consultant under this Agreement, unless regulated otherwise by the mandatory law of the state of California. To the extent there are any conflicts between this Section 11 and the Confidentiality Agreement, the terms of the Confidentiality Agreement shall prevail.

12. Miscellaneous.

(a) Amendments and Waivers. Any term of this Agreement may be amended or waived only with the written consent of the parties.

(b) Sole Agreement. This Agreement, including the Exhibits hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

(c) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by a nationally-recognized delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

(d) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws.

(e) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(f) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

(g) Arbitration. Any dispute or claim arising out of or in connection with any provision of this Agreement, excluding Sections 9 and 11 hereof, will be finally settled by binding arbitration in Santa Clara County, California in accordance with the rules of the American Arbitration Association by one arbitrator appointed in accordance with said rules. The arbitrator shall apply California law, without reference to rules of conflicts of law or rules of statutory arbitration, to the resolution of any dispute. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision.

(h) ADVICE OF COUNSEL. EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

The parties have executed this Agreement as of the date first set forth above.

COMPANY

STARTUP COMPANY, INC.

By: _____

Name: _____

Title: _____

Address: _____

_____

CONSULTANT

Signature: _____

Name: _____

Address: _____

_____

Exhibit A

Description of Consulting Services

[Description of Consulting Services must be provided]

Exhibit B

Consideration

[Description of Consideration must be provided]

Exhibit C

Description of Authorized Expenses

The Company will reimburse Consultant for reasonable travel, lodging and other out-of-pocket expenses previously approved in writing by the Company.

The Company will not reimburse Consultant for general office expenses or other expenses not specified above, without the Company's prior written consent.

Exhibit D

Proprietary Information and Inventions Agreement

[See sample for employees; discuss changes for consultants with your attorney.]

Sample Unilateral Nondisclosure Agreement

_____ ("RECIPIENT"), a corporation organized under the laws of the State of _____ and having offices at _____, wishes to receive from COMPANY, a company with an address at _____ _____, and COMPANY wishes to furnish to RECIPIENT certain trade secret, confidential and proprietary information as more particularly identified in Appendix A hereto ("the INFORMATION") for the sole purpose of _____. In consideration of receiving the INFORMATION, RECIPIENT agrees to be bound by the terms of this Agreement.

RECIPIENT agrees to maintain the INFORMATION in confidence, will use at least the same degree of care to maintain the INFORMATION secret as it uses in maintaining as secret its own proprietary, confidential and trade secret information, but always at least a reasonable degree of care, will use the INFORMATION only for the above purpose unless hereafter agreed to in writing by COMPANY, and will deliver to COMPANY, in accordance with any request from COMPANY, all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the INFORMATION. However, RECIPIENT will have no obligation with respect ot any portion of the INFORMATION which (1) was known to it prior to receipt, directly or indirectly, of such portion from COMPANY, (2) is lawfully obtained by it from a third party under no obligation of confidentiality, direct or indirect, or (3) is or becomes known or available without any act or failure to act by it.

RECIPIENT will not disclose any portion of the INFORMATION to any person except those of its employees having a need to know such portion in order to accomplish the sole purpose stated above, and will require each employee, before he or she receives direct or indirect access to the INFORMATION, to acknowledge the confidential, proprietary and trade secret nature of the INFORMATION and to agree to be bound by the obligations of RECIPIENT under this Agreement.

RECIPIENT agrees that, in the event COMPANY is required to bring an action to enforce the provisions of this Agreement, the damages to COMPANY for improper disclosure of the INFORMATION or any portion thereof are irreparable, and COMPANY is entitled to equitable relief, including but not limited to an injunction and a preliminary injunction, in addition to other relief.

RECIPIENT further agrees that, in the event it determines that any portion of the INFORMATION is not confidential for the reasons set forth above, it will give COMPANY at least ten (10) days written notice before disclosing such portion to any third party. Such written notice will be sent to: <contact name>, COMPANY Corporation, <COMPANY ADDRESS>, or such other address as COMPANY shall designate in writing from time to time.

RECIPIENT further agrees to obtain all applicable government export licenses and to fully comply with all applicable rules and regulations concerning export of the INFORMATION or any portion thereof, including but not limited to the U.S. Export Control Regulations and ITARs, and represents and warrants to COMPANY that, unless prior authorization is obtained from all appropriate governmental agencies including but not limited to the U.S. Office of Export Administration, RECIPIENT will not knowingly export or re-export, directly or indirectly through RECIPIENT's affiliates, licensees or subsidiaries, any of the INFORMATION provided hereunder or under any ancillary agreements hereto to the People's Republic of China, Afghanistan or any country prohibited from receiving such information under the current Export Administration Regulations published by the U.S. Department of Commerce, or in violation of any other applicable portion of any export rules or regulations.

RECIPIENT ACKNOWLEDGES THAT THE INFORMATION IS PROVIDED "AS IS", WITHOUT ANY WARRANTY EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY USE OF THE INFORMATION MADE BY RECIPIENT IN RELIANCE ON THE INFORMATION IS MADE AT RECIPIENT's OWN RISK.

This Agreement is effective as of _____, 200_, under the laws of the State of California and will terminate five (5) years after the date of the last receipt by RECIPIENT of any portion of the INFORMATION.

_____ COMPANY Corporation

"RECIPIENT"

By_____ By_____

Name_____ Name_____

Title_____ ____ Title_____

Date_____ Date_____

Appendix A

[Insert description of confidential information being disclosed.]

Sample Mutual Nondisclosure Agreement

_____ ("RECIPIENT"), a corporation organized under the laws of _____, and having offices at _____, wishes to provide to and receive from COMPANY ("COMPANY"), a [California/Delaware] corporation with an address at _____ , and COMPANY wishes to receive from and provide to RECIPIENT certain trade secret, confidential and proprietary information as more particularly identified in Appendix A hereto ("the INFORMATION") for the purpose of _____. In consideration of receiving the respective portions of the INFORMATION from the other, both RECIPIENT and COMPANY agree to be bound by the terms of this Agreement.

The receiving party agrees to maintain the INFORMATION in confidence, will use at least the same degree of care to maintain the INFORMATION secret as it uses in maintaining as secret its own proprietary, confidential and trade secret information, but always at least a reasonable degree of care, will use the INFORMATION only for the above purpose unless hereafter agreed to in writing by the disclosing party, and will deliver to the disclosing party, in accordance with any request from the disclosing party, all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the INFORMATION. However, the receiving party will have no obligation with respect to any portion of the INFORMATION which (1) was known to it prior to receipt, directly or indirectly of such portion from the disclosing party, (2) is lawfully obtained by it from a third party under no obligation of confidentiality, direct or indirect, or (3) is or becomes known or available without any act or failure to act by it. RECIPIENT acknowledges that COMPANY is or may be developing a similar product and agrees that such independent development is not a misappropriation of any information provided to COMPANY pursuant to this agreement.

The receiving party will not disclose any portion of the INFORMATION to any person except those of its employees (including, in the case of COMPANY, the employees of its subsidiaries) having a need to know such portion in order to accomplish the sole purpose stated above, and will require each employee, before he or she receives direct or indirect access to the INFORMATION, to acknowledge the confidential, proprietary and trade secret nature of the INFORMATION and to agree to be bound by the obligations of the receiving party under this Agreement.

The receiving party agrees that, in the event the disclosing party is required to bring an action to enforce the provisions of this Agreement, the damages to the disclosing party for improper disclosure of the INFORMATION or any portion thereof are irreparable, and the disclosing party is entitled to equitable relief, including but not limited to an injunction and a preliminary injunction, in addition to other relief.

The receiving party further agrees to obtain all applicable government export licenses and to fully comply with all applicable rules and regulations concerning export of the INFORMATION or any portion thereof, including but not limited to the U.S. Export Control Regulations and ITARs, and represents and warrants to the disclosing party that, unless prior authorization is obtained from all appropriate governmental agencies including but not limited to the U.S. Office of Export Administration, the receiving party will not knowingly export or re-export, directly or indirectly through any affiliates, licensees or subsidiaries, any of the INFORMATION provided hereunder or under any ancillary agreements hereto to the People's Republic of China, Afghanistan or any country prohibited from receiving such information under the current Export Administration Regulations published by the U.S. Department of Commerce, or in violation of any other applicable portion of any export rules or regulations.

This Agreement is effective as of _____, 200_, under the laws of the State of California and will terminate two (2) years after the date of the last receipt by the receiving party of any portion of the INFORMATION.

_____ COMPANY TECHNOLOGY

RECIPIENT

By_____ By_____

Name_____ Name_____

Title_____ Title_____

Date_____ Date_____

Appendix A

Confidential Information of Company

[description of confidential information being disclosed by Company]

Confidential Information of Recipient

[description of confidential information being disclosed by Recipient]

Sample Agreement of Non-Confidential Disclosure

This Agreement is entered into between CLIENT Technology, a [California/Delaware] corporation having offices at _____ ("CLIENT") and _____, having offices at _____ _____ ("Company").

CLIENT and Company have agreed to discuss certain matters between them. With regard to all such matters, the parties agree that neither party intends to disclose, nor does it wish to receive, any information which may be considered confidential or proprietary. Accordingly, except with respect to rights under valid patents or copyrights, no obligation of any kind is assumed by or to be implied against either party by virtue of any discussions or communications between the parties, whether in person, by telephone, or otherwise, with respect to whatever information may be provided.

Each party will be free to reproduce and to use and disclose such information to others without limitation of any kind. The discussions between the parties will not serve to impair the right of either party to make, procure, or market products or services now or in the future which may be competitive with those offered by the other, nor to require either party to disclose any planning information to the other.

The foregoing understanding will apply to any subsequent meetings or communications between us, unless modified in writing as to any such subsequent discussions.

In witness whereof, the parties have caused this Agreement to be executed by their duly authorized representatives and effective on the last date shown below.

CLIENT Technology

_____
"Company"

By_____

Name_____

Title_____

Date_____

By_____

Name_____

Title_____

Date_____

Sample Employee Handbook

(FOR CALIFORNIA EMPLOYERS WITH FEWER THAN 50 EMPLOYEES)

Issued: [Date]

TABLE OF CONTENTS

SECTION I. INTRODUCTION

A. Purpose of the Employee Handbook

This employee handbook outlines the personnel policies applicable to all employees of the Company. Please review these policies carefully and if you do not understand them, you are urged to consult with [insert appropriate title].

This employee handbook is designed solely as a guideline for management and staff in administering the Company's personnel policies. It is not intended to, and does not, create a contract of employment or continued employment, either express or implied. The Company reserves the right to alter, amend or change these guidelines from time-to-time on reasonable notice, provided however, that the policy regarding at-will employment can only be changed in writing, signed by the employee and the [insert appropriate title] of the Company.

AFTER YOU HAVE READ THIS HANDBOOK PLEASE SIGN AND DATE THE ACKNOWLEDGMENT FORM LOCATED IN THE BACK OF THE BOOK AND RETURN IT TO [insert appropriate title] AS SOON AS POSSIBLE.

SECTION II. HIRING AND EMPLOYMENT PROCEDURES

A. At-will Employment

It is the Company's policy that employment is "at-will" and shall continue only so long as it is mutually agreeable to the employee and the Company. In other words, either the employee or the Company can terminate the employment relationship at any time for any reason, with or without cause, and with or without notice. This term of employment is not subject to change or modification of any kind, except in writing and signed by the employee and the [insert appropriate title].[13]

B. Equal Opportunity Employment

The Company is an equal opportunity employer. The Company prohibits unlawful discrimination against any employee or applicant for employment based on race, color, religion, sex, age, national origin, genetic characteristics, disability, status as a special disabled veteran or veteran of the Vietnam era, marital status, sexual orientation or any other factor prohibited by law.

Specifically, the Company is committed to recruiting, hiring, training, and promoting qualified persons to all job titles without unlawful discrimination, and to administering all personnel actions, including compensation, benefits, transfers, layoffs or terminations, returns from layoff, training, education and social and recreational programs, without unlawful discrimination.

In order to ensure equal employment opportunities to qualified individuals with disabilities, the Company will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or an employee unless undue hardship would result. Any applicant or employee who requires an accommodation in order to

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[13] This at-will statement can be a useful expression of the Company's policy. However, there is a substantially better chance of enforcing an at-will provision if it appears in an offer letter or, most effectively, in an integrated employment agreement.

perform the essential functions of the job should contact [insert appropriate title] and request such an accommodation.

If you believe prohibited discrimination has occurred, you should notify your immediate supervisor or [insert appropriate title] immediately. Reports will be investigated, and appropriate corrective action will be taken. Complaints will be handled as discreetly as possible, consistent with the need for an effective investigation and appropriate resolution. This policy prohibits retaliation, harassment or other adverse action because you had made a complaint, assisted in an investigation, opposed discrimination or otherwise exercised rights protected by law.

C. Policy Against Harassment

The Company is committed to providing a work environment that is free of harassment. Harassment based on an individual's[14] sex, race, ethnicity, national origin, age, sexual orientation, religion, disability or any other legally-protected characteristic will not be tolerated. All employees are expected to abide by the policy. This policy applies to both direct, personal interactions and communications accomplished through the Company's e-mail, voicemail, computer and online systems.

1. Definitions of Sexual and Other Prohibited Harassment

Sexual harassment refers to behavior of a sexual nature that is unwelcome and personally offensive to its recipients. Sexual harassment is a form of employee misconduct that is demeaning to another person and undermines the integrity of the employment relationship.

For example, unwanted physical contact, foul language of an offensive and sexual nature, sexually oriented propositions, jokes or remarks, obscene gestures or the display of sexually explicit pictures, cartoons, screen savers or other materials, or improper use of the computer system to harass others may reasonably be considered offensive to another employee and, thus, should not occur.

Other forms of prohibited harassment include verbal or physical conduct that denigrates or shows hostility or aversion to an employee because of gender, race, color, religion, age, national origin, disability, veteran's status, marital status or any basis prohibited by law. Examples include: verbal abuse, ridicule, racial slurs, epithets and stereotyping, offensive jokes and comments, threatening, intimidating or hostile acts and displaying or distributing offensive materials, writings, graffiti, or pictures.

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct constitute sexual or other prohibited harassment when:

a. submission to such conduct is made explicitly or implicitly a condition of your employment;

b. submission to or rejection of such conduct is used as a basis for an employment decision affecting you; or

[14] The California Fair Employment Housing Act protects not only employees, but independent contractors, such as freelancers, temporary workers and contract workers.

c. the harassment has the purpose or effect of unreasonably interfering with your work performance or creating an intimidating, hostile or offensive work environment.

2. Complaint Procedure

If you feel that you have been harassed based on your sex, race, national origin, ethnic background, or other legally protected characteristic, you should immediately report the matter to your supervisor. If that person is unavailable or if you believe that it would be inappropriate to contact your supervisor, you should immediately contact [insert appropriate title]. Any supervisor or manager who becomes aware of any possible sexual or other unlawful harassment should immediately advise [insert appropriate title].

A prompt investigation will be conducted and appropriate corrective action will be taken where it is warranted. Complaints will be handled as discreetly as possible, consistent with the need for an effective investigation and appropriate resolution.

Any employee engaging in improper harassment will be subject to disciplinary action, including possible termination of employment.

No person will be adversely affected in employment with the Company as a result of bringing complaints of unlawful harassment. This policy prohibits retaliation, harassment or other adverse action as a result of having brought a complaint, assisted in an investigation, opposed harassment or otherwise exercised rights protected by law. If you feel that you have been retaliated against or harassed as a result of having brought a complaint, assisted in an investigation or otherwise having exercised rights protected by law, you should immediately report the matter to your supervisor or [insert appropriate title]. Any complaint of retaliation will be investigated and appropriate corrective action will be taken where it is warranted.

We encourage you to use the Company's procedure for resolving complaints of harassment, including claims of sexual harassment, and we believe that this procedure is effective. However, you may file complaints of discrimination, including complaints of sexual harassment or retaliation for having made claims of sexual harassment, with the California Department of Fair Employment and Housing ("DFEH"). If the complaint is not resolved by DFEH, it may be heard by the California Fair Employment and Housing Commission ("FEHC"). FEHC may dismiss the complaint or may order a variety of remedies such as hiring, reinstatement, actual damages, compensatory damages or penalties. The DFEH can be contacted at 1 (800) 884-1684. The FEHC can be contacted at 1390 Market Street #410, San Francisco, CA 94102. You can contact the nearest field office of the EEOC by calling 1 (800) 669-4000. You should be aware that both federal and state laws provide time limits within which complaints must be filed. Therefore, you should contact the relevant agency to determine the applicable time limit.

D. Conflicts of Interest Involving Employees Related to Each Other or With Special Relationships[15]

It is the Company's policy not to discriminate against an individual because of that individual's marital status, because the individual may be related to another Company employee or because of

[15] This provision is optional.

any legal off duty conduct of employees. However, certain situations can create conflicts of interest, which require the Company to take an employee's relationship with another employee into account:

a. An employee should not be in a supervisory relationship with another employee who is a Relative (husband, wife, [domestic partner,][16] brother, sister, mother, father, children, grandparents). Supervisors should avoid real or apparent opportunities for favoritism or conflicts of interest regarding the employment of Relatives.

b. A supervisor should not date or form special social relationships with someone directly under his/her supervision or otherwise form special social relationships with Company employees which could result in real or apparent opportunities for favoritism or conflicts of interest. If such a relationship arises, the supervisor should inform the Company of the circumstances so that appropriate steps can be taken to avoid the appearance of favoritism or conflicts of interest.

The Company reserves the right to take appropriate action if such relationships interfere with the safety, security or morale at the Company or create real or apparent conflicts of interest.

E. Immigration Law Compliance

It is the policy of the Company to employ only United States citizens and aliens who are authorized to work in the United States. In complying with the Immigration Reform and Control Act of 1986, it is against Company policy to discriminate because of an individual's national origin, citizenship, or intent to become a U.S. citizen.

In accordance with federal law, each prospective employee shall be required to provide documents verifying his/her identity and authorization to be legally employed in the United States. In addition, the prospective employee will be required to sign a verification attesting s/he is legally employable in the United States.

The Company shall retain copies of the documents submitted by the employee. To the extent practical and appropriate, these documents will be kept confidential. However, the Company is required to provide copies of the documents to the U.S. Department of Labor and to the Immigration and Naturalization Service ("INS") on request.

Providing false documentation or making false statements on the verification shall be grounds for immediate discharge. If, during the course of employment, the Company requests further information relating to the employee's authorization to work in the United States, the employee shall furnish the information requested and failure to cooperate in furnishing such information shall be grounds for discipline, up to and including discharge.

F. Definitions of Employment Status

The following terms are used in this Handbook to describe the classifications of employees and their employment status.

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16 Including domestic partners is optional.

Exempt. Employees whose positions meet specific tests established by state and federal law and who are exempt from overtime pay requirements.[17]

Non-Exempt. Employees whose positions do not meet state and federal exemption tests and who are paid overtime pay for authorized overtime.

Regular Full-Time. Employees scheduled to work ____ hours or more per week.

Regular Part-Time. Employees scheduled to work less than ____ hours per week.

Temporary and Project. Employees employed in a capacity of limited, specified duration (either full-time or part-time) generally not to exceed six (6) months

Regular part-time and temporary or project employees are generally ineligible for Company benefits. To determine eligibility for specific benefits, consult the sections of this handbook addressing those benefits or, if applicable, the Summary Plan Descriptions.

Independent contractors and consultants are not employees of the Company and are not entitled to employee benefits. Terms and conditions of their services are set forth in an agreement entered into between the Company and the Contractor, or his/her employer.

If you have any doubt about your status as described above, contact [insert appropriate title].

G. Address or Status Change

It is the responsibility of each employee to promptly notify [insert appropriate title] of any changes in personal data.

Personal home address, telephone number, names of dependents, marital status, person to be contacted in the event of an emergency, and other such status reports must be accurate at all times. Failure to furnish this information or failure to keep the information current can be grounds for discipline, including discharge. This policy applies to all employees, including those on leave.

H. Access to Personnel Files

The Company will retain a record of each employee's work history. Upon request, employees will be given access to their personnel files at reasonable times and at reasonable intervals. Upon request, employees will be given copies of materials in their personnel file that have been signed by the employee. A reasonable charge will be made for such copies.

Since personnel files contain personal information, the Company will make a reasonable effort to maintain the confidentiality of the file. The Company generally does not release personnel information to third parties unless there is reasonable protection of the employee's privacy, the employee has given his/her written authorization, or providing the record is required by legal process or if release of the records is needed to protect the Company's business interests.

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[17] **NOTE**: "Exempt employees" are executive, professional, administrative and outside sales employees who meet certain duties and salary requirements. You should carefully evaluate which classifications in your workforce are exempt and non-exempt so that overtime can be paid properly.

I. Termination Procedures

Either you or the Company may terminate the employment relationship at any time, with or without notice and with or without cause. While it is not required, we do request that if you elect to resign, you give as much advance notice as possible (preferably at least two weeks) to allow the Company to plan for your departure.

An exit interview will normally be scheduled on the last day of work. The purposes of the exit interview is to review eligibility for benefit conversion, to ensure that all necessary forms are completed, to collect any company property (including keys, credit cards, Company or client equipment and Company documents and records) that may be in the employee's possession, to review the Employee's obligations regarding confidential information, and to provide the employee with the opportunity to make any constructive comments and suggestions on improving the working environment at the Company. We appreciate receiving your candid opinion of your employment with us. Final pay, including pay for any earned but unused vacation time, will be provided in accordance with state law.

SECTION III. HOURS OF WORK, OVERTIME AND ATTENDANCE

A. Scheduling and Overtime Provisions for Non-Exempt Employees

Each employee's supervisor will inform him or her of his/her regular work schedule/shift. Due to possible changes in the work force and business needs, the Company retains the right to change this work schedule or the number of hours in a standard shift.

Each employee's supervisor will tell him or her the circumstances under which s/he will be eligible for overtime pay. The supervisor will also tell the employee if s/he is required to work overtime.

Overtime should not be worked without the prior [written] authorization of a supervisor. All straight time and overtime hours must be accurately recorded on the non-exempt employee's time card and approved by the supervisor prior to payment. Tampering, altering or falsifying records, including time records may result in disciplinary action, including discharge.

Non-exempt employees are eligible for overtime pay in accordance with state and federal law. The Company's seven-day workweek is from _____ to _____. The Company's twenty-four hour workday is from midnight to midnight. Overtime is paid at one and one-half times the regular hourly rate for hours in excess of eight in a workday or 40 in a workweek. The employee will be paid at double the regular hourly rate for hours in excess of 12 in a workday. If an employee works seven consecutive days in a workweek, overtime for work on the seventh day will be paid at one and one-half times the regular rate for up to and including eight hours, and double time for any hours worked in excess of eight.

Exempt employees are paid a salary that covers all hours worked. Therefore, they are not eligible for additional compensation if they work additional hours.

B. Make-up Time Policy[18]

The Company allows the use of make-up time when non-exempt employees need time off to tend to personal obligations. Employees may take time off and then make up the time later in the same workweek, or may work extra hours earlier in the workweek to make up for time that will be taken off later in the workweek. Make-up time worked will not be paid at an overtime rate.

Make-up time requests must be submitted in writing to your supervisor, with your signature. Requests will be considered for approval based on the legitimate business needs of the Company at the time the request is submitted. A separate written request is required for each occasion the employee requests make-up time.

If you request time off that you will make-up later in the week, you must submit your request at least 24 hours before the desired time off. If you ask to make-up time first to take time off later in the week, you must submit your request at least 24 hours before working the make-up time. Your make-up time request must be approved in writing before you take the requested time off or work make-up time, whichever is first.

All make-up time must be worked in the same workweek as the time taken off.

Non-exempt employees may not work more than 11 hours in a day or 40 hours in a workweek as a result of making up time that was or would be lost due to a personal obligation.

If you take time off and are unable to work the scheduled make-up time for any reason, the hours missed normally will be unpaid. However, your supervisor may arrange with you another day to make-up the time, if possible, based on scheduling needs. If you work make-up time before you plan to take off, you must take that time off, even if you no longer need the time off for any reason.

Any employee's use of make-up time is completely voluntary. The Company does not encourage, discourage or solicit the use of make-up time.

C. Work Breaks

Non-exempt employees generally will receive a one-half hour meal break each eight-hour shift and a 15 minute rest break during each 4 hours worked. [Employees are required to punch out on their time cards for the meal break but not for rest breaks.][19] Although employees may leave the premises during meal breaks, employees shall not leave the premises during any rest breaks unless they make special arrangements with their supervisor. Supervisors will schedule meal breaks in a manner that will ensure that employees get their meal breaks while maintaining adequate coverage of job duties.

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[18] California permits, but does not require, employers to allow non-exempt employees to take time off during the work day and make up that time later. If you decide to allow make-up time, you must follow the rules set forth in this policy to avoid having to pay overtime for the make-up time.

[19] If the Company does not use a time clock, the employee's daily work hours and meal periods should be noted on the employee's time card or timesheet.

D. Attendance Policy

While absences may be unavoidable for some acceptable reasons, attendance is an important factor in judging an employee's value to the Company. If an employee is sick or will be absent from work for any reason, s/he must call his/her supervisor personally each day at least ____ minutes before the start of the shift. Failure to call in for any three consecutive days will be considered job abandonment and the employee may be terminated.

The employee also must provide the Company with a telephone number and address where s/he can be reached during his/her absence.

Excessive and repeated absences, early departure from the employee's work station and/or tardiness is cause for dismissal. Tardiness is defined as being away from the assigned work station at the start of the workday or being late in returning from an allotted rest or meal period.

E. Paydays

All employees are paid [semi monthly on the 15th and last day of the month.][20] Each paycheck will include earnings for all reported work performed through the end of the payroll period.

In the event that a regularly scheduled payday falls on a weekend or holiday, employees will receive their pay on the last day of work preceding the day off.

All employees will receive an itemized statement of wages each pay day.

F. Pay Deductions

The law requires that the Company make certain deductions from every employee's pay check. Among these deductions are applicable federal, state and local income taxes.

[The Company offers programs and benefits beyond those required by law. Employees who wish to participate in these programs may voluntarily authorize deductions from their pay checks.][21]

SECTION IV. EMPLOYEE BENEFITS AND TIME OFF

A. Employee Benefits (Overall)

[Medical: All regular, full-time employees are eligible for participate in the Company sponsored medical insurance program. The Company pays the employees' premium. The Company will cover approximately seventy (70%) percent of the premium to enroll dependents in the same program. The employee's portion of monthly premiums to cover dependents will be deducted from the

[20] **NOTE:** Insert when the paydays occur. If overtime is paid on the following payday, that issue should be clarified.

[21] **NOTE:** Material in brackets should be included if the Company provides benefits such as health insurance which requires co-payments by employees or a 401(k) program.

employee's paycheck. Part-time and temporary employees are not eligible to participate in this insurance program.[22]

- Other Benefits: …]

For a complete descriptions of the coverage available under these programs, the eligibility requirements and other terms and conditions, please see the Group Insurance Program handbooks provided by the insurance companies or other Summary Plan Descriptions.

The Company reserves the right to alter, amend or terminate benefits from time-to-time on reasonable notice.

B. Workers' Compensation

The Company provides a comprehensive workers' compensation insurance program at no cost to employees. This program provides insurance for covered injuries or illnesses sustained in the course of employment, that require medical, surgical, or hospital treatment. Subject to applicable legal requirements, workers' compensation insurance provides benefits after a short waiting period or, if the employee is hospitalized, immediately.

Any employee who sustains a work-related injury or illness should inform his/her supervisor immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible.

After 30 days from the report of the injury, the employee may be treated by a physician of his/her own choice within a reasonable geographic area. In the event of injury requiring more than first aid, the employee may be treated by his/her personal physician if the employee has notified the Company, in writing, of the name of the personal physician prior to the date of the injury.

Neither the Company nor the insurance carrier will be liable for the payment of Workers' Compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, or athletic activity sponsored by the employer.

C. Vacations[23]

The Company provides regular employees with paid annual vacations.

New employees will begin to accrue vacation time from their first day of employment. [However, they must successfully complete _____ before taking any vacation.][24]

Initially, all regular full-time employees are eligible to accrue ____ days of paid vacation per year. Starting with the ___ year of employment and beyond, regular full-time employees will be eligible to

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22 This is an example of the types of basic information that can usefully be included in the employee handbook. Care should be taken to insure that any information included is consistent with plan documents.

23 Although paid vacation is the most commonly provided benefit, federal and state laws do not require that it be provided.

24 This provision is optional.

earn ___days of vacation per year.[25] Regular part-time employees accrue vacation on a pro-rata basis.

A period of rest and relaxation during each year is beneficial to everyone. To encourage all employees to take their vacation annually, the Company places a limit on the amount of unused vacation time an employee can accrue. Employees may accrue up to a maximum of ____[26] days of unused vacation time. Once an employee has accumulated this maximum amount of unused vacation, vacation hours will cease to accrue until the employee takes some of his/her vacation so that the total accrued, unused vacation falls below the maximum allowance.

[Your vacation accrual account cannot go negative. If your accrued vacation reaches zero, time off will not be paid until the accrual is positive again.][27]

Employees must submit all requests for vacation leave to his/her Department Manager for approval. Employees are requested to take their vacations in one or two week increments if accrued allowances permit.

If a recognized holiday falls during an employee's vacation period, it will not be considered as a vacation day.

Although salary will not normally be paid to current employees in lieu of unused accrued vacation, all earned, unused vacation will be paid as wages at the time of termination. The Company reserves the right to schedule employees for vacations or to pay off earned, unused vacation at any time.

D. Holidays[28]

The Company observes the following annual holidays:
New Year's Day
Martin Luther King, Jr. Day
Presidents' Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day after Thanksgiving
Christmas (2 days)

If a holiday falls during an employee's vacation period, it will not be counted as a vacation day.

The specific dates of the holidays will be published at the beginning of each year.

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25 You have great flexibility in setting the amount of vacation accrued annually at various stages in the employee's career.

26 Insert the maximum amount of vacation you will permit an employee to accrue. The amount should be at least as great as the yearly accrual. One to two time the annual accrual is the norm.

27 This provision is optional.

28 This provision is optional. Though you are not required to provide paid holidays, most employers provide some paid holidays.

E. Sick Leave Benefits[29]

The Company provides sick leave benefits to all regular, full-time, employees for periods of temporary absence due to illnesses or injuries.

All regular full-time employees are eligible to accrue ____ days of paid sick leave per year. Regular part-time employees accrue sick leave on a pro-rata basis. Employees may accrue up to a maximum of ____[30] days of unused sick leave.

An employee is permitted to use up to half of his/her annual sick leave accrual to attend to the illness or injury of his/her child, parent, spouse or domestic partner[31] ("family member"). Because sick leave benefits are intended to provide income protection to the employee in the event s/he takes time off in connection with his/her actual illness or injury or that of his/her family member, unused sick leave benefits cannot be used for any other paid or unpaid absence.

The Company may request a doctor's certificate for verification of an absence. If the employee has had a serious illness or accident, a doctor's certification releasing the employee to return to regular employment may be required. In some circumstances, the Company may request the employee to be examined by a doctor selected by the Company.

Unused sick leave benefits will not be paid at the time of termination of employment or retirement.

Sick leave benefits will be used to supplement any state disability insurance or workers' compensation benefits that an employee is eligible to receive. The combination of any such disability payments and sick leave benefits cannot exceed the employee's normal earnings. You are required to submit a copy of your SDI or workers' compensation checks to the Company. For each day you are off work, your sick leave account will be reduced by the difference between your SDI or workers' compensation benefits and your regular pay. If you do not submit your SDI/workers' compensation checks, your sick leave account will be reduced by a full days' pay.

Also see the attendance policy.

F. Medical Leaves[32]

These general provisions apply to all types of medical leaves of absence, including pregnancy disability leaves. There are also special provisions that apply to pregnancy disabilities. In addition, special provisions may apply to workers' compensation leaves and other medical leaves required by law.

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29 This provision is optional. Paid sick leave is not required in California; however, most employers provide some paid sick leave.

30 The cap on accrual of sick days can be as low as the annual accrual rate. However, allowing accrual of 30 to 60 days of sick time may diminish the incentive for employees to use sick time for "mental health days" while allowing employees to accumulate sick time as protection against a serious injury or illness.

31 In California, employers are required to allow each employee to use half of his/her accrued sick leave to care for his/her children, parents, spouse, or domestic partner.

32 This provision is optional. This provision is designed for employers with fewer than 50 employees. If the Company has 50 employees it must comply with the California and federal family and medical leave laws.

Employees who Qualify. Based on their doctor's verification, regular full-time employees [who have been employed at least _____ months][33] can apply for a non-pregnancy related medical leave of absence.[34] This leave is not available for child rearing.

Amount of Leave. Generally, a medical leave of absence shall not exceed ____ months per year.[35] Medical leave does not need to be taken in one continuous period of time.

Pay Status. Previously earned, unused sick leave [and vacation] must be used in connection with non-pregnancy related medical leaves. After the vacation and sick pay have been used, the remainder of the leave shall be unpaid.

Benefits. The Company [will/will not] continue the employee's health insurance under the same terms as if s/he were actively employed during his/her medical disability leave. If health insurance is continued, such continuation shall not exceed _____ months in a 12-month period for all pregnancy and non-pregnancy related medical disabilities.

Return to Work. In order to return to work, the employee must notify the Company of his/her release to return to work and submit a release from his/her doctor. The Company will consider the employee for suitable available positions after his/her disability leave ends. However, if no suitable position is available, the employee will be terminated.

If reinstatement is required by law, the Company will consider the employee for a suitable position.[36] Employees on a medical leave have no greater rights to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the medical leave.

If the employee accepts other employment during a medical leave of absence without the Company's express written consent, fails to provide a fitness for duty certification or fails to return to work on the next regularly scheduled workday following the expiration of the medical leave of absence, s/he will be subject to termination.

G. Pregnancy Disability Leave

In addition to the provisions set forth above which cover all disabilities, the following policies apply to pregnancy disability leaves. These provisions supersede the more general medical disabilities provisions when there is a conflict.

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33 **NOTE:** You can require employees who apply for non-pregnancy disability leaves to be employed for a specific length of time before granting the leave, such as six months. However, employees who apply for pregnancy disability leaves, workers' compensation leaves or leaves covered by the Americans with Disability Act or comparable state law, cannot be required to meet length of service requirements.

34 Consider adopting a personal leave policy for employees who have been employed less than the specified period.

35 **NOTE:** Employees must be given up to four months off if they are disabled on account of pregnancy. However, employees with other disabilities can be given less time off. You could provide that all employees will be allowed up to four months off regardless of the nature of their medical disability or you could decide to treat non-pregnancy disabilities less generously than pregnancy disabilities, i.e., only allow 3 months off for non-pregnancy disabilities.

36 Pregnant employees usually must be reinstated to their original or a substantially similar job after they return from a pregnancy disability. Reinstatement is not required by law for other types of disabilities, with the exception of workers' compensation injuries and certain conditions which are protected by the Americans with Disabilities Act.

Duration of Leave: If an employee is disabled because of childbirth, pregnancy, or a related condition, she may take a leave of absence of up to four months with medical verification of the disability. Pregnancy disability leave is not available for care of a newborn, but only for the mother's own disability. However, after her doctor releases the employee to work, she may apply for a personal leave of absence to care for her newborn.

The estimated duration of a pregnancy disability leave must be determined by the employee and her doctor. To assist in a smooth transition, employees should share this information with the Company as far in advance as possible.

Transfer Rights. An employee who is pregnant is entitled to a transfer from her current position to a less strenuous or hazardous position or duties if:

- The employee provides a certification from her doctor that less strenuous work is medically advisable; and
- A transfer can be reasonably accommodated by the Company.

If it is foreseeable that it would be medically advisable for a pregnant employee to take intermittent leave or work a reduced schedule, the Company may require the employee to transfer temporarily to an available alternative position that has equivalent pay and benefits, so long as the employee is qualified for the position, and the position better accommodates recurring absences than the employee's regular job.

The employee will be reinstated to her regular job or a comparable position when the employee's health care provider certifies that there is no further need for less strenuous work, intermittent leave or a reduced schedule.

Right to Reasonable Accommodation: The Company will make a reasonable accommodation for conditions that are related to pregnancy, childbirth or related medical conditions if requested by an employee, with the advice of her health care provider.

Benefits During a Pregnancy Disability Leave: An employee must take any accrued sick leave as part of their pregnancy disability leave. An employee may take any accrued vacation as part of their pregnancy disability leave. After all paid leave is exhausted, the remainder of the employee's pregnancy disability leave will be unpaid.

The Company will continue to provide health benefits for an employee on pregnancy disability leave under the same terms and conditions as if the employee were still working. The employee will be required to continue paying the employee's portion of any premiums.[37]

For policies regarding other benefits, consult with [insert appropriate title]. With respect to all benefits, an employee on pregnancy disability leave will be treated no less favorably than employees on other disability related leaves.

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[37] There are more restrictive approaches to this issue potentially available. If you wish to consider a more restrictive approach, you should consult with counsel to discuss the pros and cons.

Reinstatement After a Pregnancy Disability Leave: If an employee returns to work at the end of a pregnancy disability of four months or less, she will be reinstated to her former position unless the position no longer exists because of business changes, such as a reduction in force or job abolishment. If the employee's former position does not exist, she will be reinstated to an equivalent position, if one is available. The employee will be required to provide the Company with a fitness for duty certification from her doctor stating that she is released to return to work and indicating any work restrictions she may have. Failure to provide this certification may result in termination of employment.

If the employee fails to return to work at the end of any authorized leave, her employment will be subject to termination, unless she is eligible for another form of leave.

[After the employee is released to return to work from a pregnancy disability, she may be given additional leave to care for her newborn as a personal leave of absence.][38]

H. Personal Leave[39]

Personal leaves will be granted solely at the discretion of the Company, based on the circumstances in each case, including the needs of the business. If a personal leave is granted, it generally will not exceed _____ [work days/calendar days].

During a personal leave, the Company will have no obligation to pay its portion of the employee's health insurance coverage. The employee will have the option of electing to continue his/her health insurance if s/he pays the full employer cost of the health insurance plus a small administration fee. The employee will also be required to pay the premiums for dependent coverage.

At the end of a personal leave, the Company may consider the employee for suitable positions. However, the Company cannot guarantee that the employee will be reinstated to any particular position, or at all, at the end of the personal leave. Employees on a personal leave have no greater rights to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during a personal leave.

I. Military Leave

A military leave of absence is provided to eligible employees. Generally, a military leave of absence is unpaid.[40] If you participate in annual military training, you may apply any available vacation time to the leave if you wish; however, you are not obligated to do so. When the need for military leave is foreseeable, you must notify your manager as far in advance as possible so arrangements can be made to cover your duties. If you have written authorization from your military branch for your leave, you should provide it when you request leave.

Upon completion of duties, you will be reinstated into your former position or into another position of equal pay and status, consistent with applicable laws. The length of time you have to report to

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38 This language is optional.

39 This provision is optional.

40 In order to protect exempt status under the FLSA, exempt employees must be paid their regular salary for any week in which they have temporary military duty if they also perform duties on behalf of the Company during that workweek. Non-exempt employees only have to be paid for the time they actually work.

work after your military leave ends will depend on the type of leave you have taken. Please contact [insert appropriate title] as soon as you identify the need to use this benefit for additional information regarding military leaves, including information regarding your job reinstatement rights.

J. Court Appearances.

Jury Duty. The Company encourages employees to fulfill their civic responsibilities by performing jury duty service when summoned. Any employee summoned for compulsory jury duty will be excused for the duration of the trial.

Compulsory Court Appearances. Any employee who is compelled to appear as a witness by subpoena or other legal process shall be excused for the time required in order to give testimony.

Voluntary Court Appearances. Voluntary witness appearance on Company time must be approved by your supervisor in advance. If time off is approved, it may be granted with or without pay as determined by the Personnel Department.

Generally, leave for court appearances or jury duty is unpaid.[41] However, an employee may use available vacation leave.

The employee must show the jury duty summons, witness subpoena or other legal process to his/her supervisor immediately after receipt so that arrangements can be made to accommodate his/her absence. Employees are expected to report to work whenever the court schedule does not require their presence. The employee must provide the Company, within a reasonable amount of time, with evidence from the court that s/he has appeared in court.

K. Time Off to Vote

The Company encourages employees to fulfill their civic responsibilities by voting. If an employee is unable to vote in a statewide election during his/her non-working hours, we will grant up to two hours of paid time off to vote.

Employees should request time off to vote from their supervisor at least two working days prior to Election Day so that the necessary time off can be scheduled at the beginning or end of the work day, whichever provides the least disruption to the normal work schedule.

L. Time Off To Appear in Child's School[42]

If an employee gives the Company reasonable advance notice, s/he will be given time off [with/without] pay (unless vacation credits are used):[43] (1) to appear at the school of the employee's

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41 Some employers specify the number of days of paid jury duty. However, in order to protect exempt status, exempt employees must be paid their regular salary for any week in which they perform civic duty if they also perform any work on behalf of the Company during that workweek. Non-exempt employees only have to be paid for the days they actually work.

42 State law requires all employers to provide time off for an employee to appear at the employee's child's school when the employee is required to do so by the school because the child has been suspended. Only Employers with 25 or more employees are required to provide time off for other school visits. "Schools" include licensed day care centers.

children when the employee is required to do so by the school because a child has been suspended; and (2) for up to 40 hours per school year to participate in activities at the school(s) of the employee's children. If the employee is granted such time off, s/he must provide the Company with documentation from the school as proof that s/he participated in school activities on a specific date and time.

M. Time Off for Literacy Programs[44]

Employees with illiteracy problems may request the Company's assistance in enrolling in an adult literacy program. The Company will not pay for such enrollment or pay an employee's wages for participating in the program.

The Company will make a reasonable effort to accommodate such requests, but will not be required to do so if an accommodation would impose an undue hardship on the Company. The Company will make a reasonable effort to safeguard the privacy of employees who reveal an illiteracy problem. Employees who reveal an illiteracy problem shall not be subject to termination because of such disclosure.

N. Bereavement Leave[45]

All regular, full-time, active employees are eligible to receive five (5) days paid leave upon the death of an immediate family member. Immediate family includes mother, father, sister, brother, stepmother, stepfather, children or spouse. Employees are eligible to receive three (3) days paid leave upon the death of an extended family member. Extended family includes in-laws, aunt, uncle, cousin, grandmother, grandfather or grandchildren.

O. Victim of Domestic Violence Leave

The Company will maintain the confidentiality of any employee requesting domestic violence leave to the extent possible.

Employees who are victims of domestic violence are entitled to take time off to:

- Obtain or attempt to obtain relief, including seeking restraining orders or other injunctive relief, to help insure the health, safety or welfare of a domestic violence victim or his/her child,[46]
- get medical attention for injuries caused by domestic violence,

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[43] In order to protect exempt status under the FLSA, exempt employees can take time off for school visits and can use vacation time, but their base salary should not be docked for school visits of less than a full day. Non-exempt employees can be docked for time off on an hour-for-hour basis.

[44] State law requires employers with 25 or more employees to provide time off for literacy training.

[45] This section is optional.

[46] All employers are required to provide leave for the purpose of obtaining or attempting to obtain relief, including seeking restraining orders or other injunctive relief, to help insure the health, safety or welfare of a domestic violence victim or his/her child. Only employers with 25 or more employees are required to provide leave for the other purposes identified here.

- get services from a domestic violence shelter or rape crisis center,
- get psychological counseling for a domestic violence related experience,
- to participate in safety planning or to take other action to increase safety from future violence, including temporary or permanent relocation.

To be eligible for leave, employees must qualify as domestic violence victims. This includes individuals who are being abused by: a spouse or former spouse, someone living with them, someone they are (or were) dating, someone they are (or were) engaged to, someone they have a child with, or a member of their immediate family or a very close relative.

Generally, employees must give their employer reasonable advance notice that they need time off for domestic violence leave. However, in certain circumstances, employees may take an unscheduled leave without giving advance notice.

Certification for domestic violence leave may include:

- a police report which indicates that the employee was a victim of domestic violence;
- a court order protecting or separating the employee from the abuser, or other evidence from the court or prosecuting attorney that the employee appeared in court; or
- a report from a medical professional, domestic violence advocate, health care provider, or counselor documenting that the employee was treated for mental or physical injuries.

Domestic violence leave is unpaid. However, the employee may use any accrued vacation.[47]

P. Safety Personnel Leave

Eligible employees may take time off to serve as volunteer firefighters, reserve police officers or emergency rescue personnel during emergencies. This leave is unpaid, though the employee [can/must] use any accrued vacation time.[48]

Employees are entitled to leave if they qualify as volunteer firefighters, reserve police officers or emergency rescue personnel. Volunteer firefighters include any person registered as a volunteer member of a regularly organized fire department that is officially recognized by the local government in which the department is located. Emergency rescue personnel include any person who is an officer, employee, or member of a fire department or fire protection or fire fighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, or of a sheriff's

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47 In order to protect exempt status under the FLSA, exempt employees taking time off due to domestic violence can be required to use vacation time, but their base salary should not be docked for absences of less than a full day. Non-exempt employees can be docked for time off on an hour-for-hour basis.

48 In order to protect exempt status under the FLSA, exempt employees taking time off due to for emergency personnel service can be required to use vacation time, but their base salary should not be docked for absences of less than a full day. Non-exempt employees can be docked for time off on an hour-for-hour basis.

department, police department, or a private fire department, whether that person is a volunteer or partly paid or fully paid, while s/he is actually engaged in providing emergency services.

Volunteer firefighters, reserve police officers and emergency rescue personnel may take leave only for emergency duty. There is no limit on the amount of time they may take off to perform emergency duties.

Volunteer firefighters are also entitled to take up to 14 days each calendar year for fire or law enforcement training.[49]

Q. LACTATION ACCOMMODATION

The Company will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time will, if possible, run concurrently with any paid break time that is already provided to the employee. If additional break time is required, it shall be unpaid.

The Company will make provide the employee with the use of a room or other location, (not merely a toilet stall), in close proximity to the employee's work area, for the employee to express milk in private.

Break time for expressing milk will not be provided if to do so would seriously disrupt operations of the business.

SECTION V. EXPECTATIONS OF CONDUCT

A. Expectations of Conduct

Employees are expected to conduct themselves in an intelligent, mature and responsible manner. In this regard there are certain expectations of conduct that all employees must know and follow. These expectations are designed for the protection of our employees, and for the good of the Company as a whole. Where, in the judgment of the Company, an employee's performance or conduct does not meet our standards or expectations, the Company will take the action that it determines to be appropriate. In addition the Company in its sole business judgment may decide to lay off, discharge or dismiss employees for any other reason that the Company deems to be in its business interests.

Employees shall be subject to disciplinary action, up to and including discharge without advance notice, for inappropriate behavior, unsatisfactory performance or inability to perform effectively in the organization. Company action in a particular case will depend on consideration of, among other things, the seriousness of the conduct, the past employment record of the employee, the circumstances surrounding the matter and the needs of the business.

It is not possible to list all the forms of behavior that are considered unacceptable in the work place, but the following are examples of infractions of rules of conduct that may result in disciplinary or corrective action, including suspension or termination of employment:

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[49] All employers are required to provide leave for emergency duty. Only employers with 50 or more employees are required to provide firefighters with leave for training.

Misappropriation or unauthorized removal or possession of Company-owned property;

Falsification of timekeeping records or other employment-related documents;

Working under the influence of alcohol or illegal drugs;

Possession, distribution, manufacture, purchase, sale, attempted sale, transfer or use of alcoholic or illegal drugs in the work place, in Company vehicles, while performing Company business or while on the premises of the Company's customers;

Failure to work cooperatively with others;

Refusal of non-exempt employees to work overtime;

Fighting or threatening violence in the work place;

Boisterous or disruptive activity in the work place;

Negligence or improper conduct leading to damage of Company-owned property;

Insubordination or other disrespectful conduct;

Sleeping or loafing on the job;

Violation of safety or health rules;

Violation of no smoking policy;

Sexual or other unlawful harassment;

Possession of dangerous or unauthorized materials, such as explosives or firearms, in the work place;

Excessive absenteeism or any absence without notice;

Unauthorized or unnecessary absence from work place during the work day;

Unauthorized use of telephones, mail system or other Company-owned equipment;

Unauthorized disclosure of business "secrets" or confidential information;

Violation of the Company's policy regarding access to the Company's computer system;

Violation of personnel policies;

Violation of the Proprietary Information and Conflict of Interest Agreement;

Unsatisfactory performance or conduct; and

Failure to cooperate in an investigation.

Nothing in this policy changes the at-will nature of the employment relationship.

B. Soliciting/Conducting Personal Business While on Duty

Employees are not permitted to conduct personal business or solicit business during their working time, or when the employee being solicited is supposed to be working.

This includes the distribution of literature or other material. This distribution is also against the Company's policy if it interferes with access to facility premises, if it results in litter, or if it is conducted in areas where other employees are working.

Solicitation during non-work time, i.e., paid break, lunch period or other such non-work period, is permissible. However, employees may not use the Company property or facilities (for example, stationery, photocopiers, or telephones) to solicit or to conduct any personal business enterprise.

Solicitation by non-employees is not permitted on the Company facility premises.

C. Conflicts of Interest

Employees should not be in a position where there is a conflict between what is best for the Company and what may benefit them personally. You should notify the [insert appropriate title] of any potential conflicts of interest.

Employees should not have any direct or indirect financial interest with a customer, competitor or supplier that could cause divided loyalty or the appearance of divided loyalty. You should notify the [insert appropriate title] if you have, or are considering acquiring any financial interest in any customer, competitor or supplier.

No employee may conduct company business with a person with whom s/he is related in blood or marriage, or a business organization with which the employee or family member has a significant association, without first having the written approval of the [insert appropriate title].

No employee or any member of his/her household shall accept gifts or gratuities or other favored treatment from any person associated with a present or prospective customer, competitor, or supplier of the company. Routine gifts of nominal value (i.e. advertising novelties or holiday gifts) are generally acceptable and should be shared with fellow employees. Similarly, no employee may give money or gifts of significant value to a customer, competitor or supplier if it could be reasonably viewed as being done to gain an unfair business advantage.

D. Protection of Trade Secrets/Non Disclosure of Company Information

The protection of confidential business information and trade secrets is vital to the interests and success of the Company. Such confidential information includes but is not limited to the following examples:

Compensation data
Customer lists
Financial information
Labor relations strategies

Marketing strategies
New materials research
Pending projects and proposals
Proprietary production processes
Research and development strategies
Technological data and prototypes

[All employees are required to sign a Proprietary Information and Conflict of Interest Agreement as a condition of employment.][50] Any employee who misappropriates for his/her own use or discloses trade secrets or confidential business information to other persons or organizations will be subject to disciplinary action (up to and including discharge) and legal action, even if s/he does not actually benefit from the disclosed information.

Trade secret and confidential information may be exchanged among Company employees on a need to know basis in connection with regular business duties. If an employee has any uncertainty as to whether someone is authorized to receive certain trade secret or confidential information, the employee should contact [insert appropriate title] to discuss the matter before any such disclosure is made.

E. Outside Employment

Employees are required to inform the company before accepting any employment or consulting relationship with another person or entity. While the Company does not prohibit outside employment, employees should not accept outside work which creates a conflict of interest or which interferes the employee's work for the Company.

F. Use of Telephone and Mail Systems

To assure effective telephone communications, employees should always greet callers in a courteous and professional manner. Please confirm information received from the caller and hang up only after the caller has done so.

The Company retains the right to require reimbursement from employees for telephone charges relating to their personal calls. Personal use of the telephone is not permitted to the extent it interferes with job performance in management's judgment.

Use of the postage meter for personal correspondence is not permitted.

G. Use of Company Equipment

Equipment essential in accomplishing job duties can be expensive and difficult to replace. When using equipment, employees are expected to exercise care and follow all operating instructions, safety standards and guidelines.

Please notify [insert appropriate title] if any equipment appears to be damaged, defective, or in need of repair. Prompt reporting of damages, defects, and the need for repairs or service could prevent

[50] **NOTE:** Include material in brackets, if applicable.

deterioration and possible injury to employees or others. Your supervisor can answer any questions about responsibility for maintenance and care of equipment.

The improper, careless, negligent, destructive or unsafe use or operation of equipment can result in disciplinary action, including termination of employment.

H. Security Inspections

The Company wishes to maintain a work environment that is free of illegal drugs, alcohol, firearms, explosives or other improper materials. To this end, the Company prohibits the control, possession, transfer, sale or use of such materials on its premises. The cooperation of all employees is required in the administration of this policy.

Desks, lockers and other storage devices are provided for the convenience of employees, but remain the sole property of the Company. Accordingly, they, as well as any articles found within them, can be inspected by a representative of the Company at any time, either with or without prior notice.

The Company also reserves the right, without prior notice, to search its premises thoroughly at any time and to conduct a search of any person(s), employee(s), belongings and lockers as well as suppliers, vendors or couriers entering or leaving the premises. A search can also be conducted of any of the Company's equipment or personal equipment used in the scope and course of employment, including but not limited to computer equipment and files, the online system, personal computers, e-mail and voicemail.

An individual's vehicle, including the trunk, glove compartment and containers in the vehicle are subject to search if the vehicle is parked on the Company property.

The Company may deny entry to the premises to anyone refusing to submit to a search. Failure to cooperate in a search may result in disciplinary action up to and including discharge.

I. Use of Company Computer System

The purpose of this policy is to outline the responsibilities of employees when using the Company's Computer System. The Computer System, including the [mainframe/network/standalone computers,] software, e-mail and any online or Internet access is the property of the Company. You are only authorized to use the Computer System for business purposes. You are not permitted to use or download Company-owned software for personal use outside of the Company.

1. Security of the Computer System.

It is vital to maintain the security of the Computer System. Therefore, you are required to keep log-in protocols and passwords confidential and only disclose them to other Company employees on a need-to-know basis. You are required to give your computer, e-mail and online passwords to [System Administrator/another responsible person at the Company]. You are required to refrain from using unauthorized software on the Company's Computer System.

2. Confidentiality of Information.

It is vital to maintain the confidentiality of information on the Computer System. Therefore, you are required to mark all sensitive information including but not limited to data, charts, e-mail messages, online messages and documents ("computer documents") as: **"_____ Confidential Internal Use Only."** If internal distribution of a computer document is limited, mark it: **"DO NOT FORWARD WITHOUT PERMISSION."**

3. E-mail Etiquette

Please take care to ensure that your messages are courteous, professional and businesslike. Do not let the seeming informality of e-mail distract you from the fact that you are communicating on behalf of the Company. The recipients of your e-mails will form their impression of the Company based in part on the tone and quality of your e-mails. Remember, your e-mail messages may be read by someone other than the person(s) you send them to and may someday have to be disclosed to outside parties or a court in connection with litigation.

Always use care in addressing e-mail messages to make sure that messages are not inadvertently sent to outsiders or the wrong person inside the Company. Refrain from routinely forwarding messages containing Company confidential information to multiple parties unless there is a clear business need to do so.

The Company strongly discourages the storage of large numbers of e-mail messages for a number of reasons. E-mail messages frequently contain confidential information and it is desirable to limit the availability of such messages. Retention of messages fills up large amounts of storage space on the network and can slow down the performance. Accordingly, employees are to promptly delete any e-mail messages they send or receive that no longer require action or are not necessary to an ongoing project.

4. Software, Copyrights and Viruses

Since some software programs may be incompatible with the Company computer systems or may contain viruses, do not install any software onto your computer without prior approval from authorized representatives of the Company. Only licensed software can be installed on Company computer systems. The Information System staff will not support installation of personal software.

Use of the information systems to copy software programs, documents or other information protected by the copyright laws is prohibited by federal law and may subject you and the Company to civil and criminal penalties. Do not copy software programs of any kind without express authorization from Company representatives. Do not accept copies of any software programs from any other employees without approval from authorized Company representatives.

Ensure that Company-approved virus checking software is installed and always running on your computer. Never disable this software. Never insert any floppy disks into your computer, or download any files from any outside source, without first checking them for viruses.

5. Non-Competition.

During the course of your employment, you shall not use the Computer System for purposes which are adverse to the Company's business interests, including, but not limited to engaging in unauthorized communications to or business transactions with competitors; transferring the Company's confidential, trade secret or proprietary information to third-parties without the express [written] consent of [insert appropriate title]; preparing computerized information, files or documents which could be used to compete with the Company; or, using the Computer System to take other actions which are adverse to the Company.

6. Company Ownership of and Access to Computer Documents

[All computer documents are automatically backed up on a regular basis.] All computer documents, including e-mail, voicemail and online messages, are Company documents. The Company reserves the right to monitor, access, print and disclose computer documents for legitimate business reasons, including to investigate suspected misconduct, locate needed information, satisfy a law or governmental request, or protect the Company's interests.[51]

EMPLOYEES SHOULD NOT USE THESE SYSTEMS TO SEND, RECEIVE OR STORE ANY INFORMATION THAT THEY WISH TO KEEP PRIVATE. Employees should treat the systems like a shared file system – with the expectation that files sent, received or stored anywhere in the system will be available for review.

7. Disciplinary Action.

Violation of this policy is grounds for disciplinary action up to and including discharge. It is impossible to list every type of activity that would be considered an improper use of the Computer System. However, the following are some examples of activities which are not permitted when using the Computer System.

a. Using the Computer System for any unlawful purpose or to store or transmit unlawful material. Examples of unlawful material include child pornography, libelous and defamatory material, including material that disparages the trade of customers, vendors and competitors, and copyrighted, trademarked, and other proprietary or confidential material used without proper authorization from the owner of the rights thereto.

b. Using threatening, obscene or abusive language in connection with the Computer System.

c. Using the Computer System in a manner that disrupts the normal use of the system for other users, including sending unsolicited e-mail or advertising, spawning dozens of processes or making unauthorized attempts to access the systems and networks of

[51] In the alternative, this section could provide: "The Company will monitor stored e-mail and other computer messages on a routine basis" or "from time to time for legitimate business reasons."

others [using a webcam on Company premises without the express permission of [insert appropriate title].][52]

d. Using the Computer System to harass other employees or members of the public, including making remarks regarding race, creed, color, national origin, disability status or sexual orientation; making remarks which are derogatory or defamatory toward any person; making remarks that could be construed as harassment, including sexual harassment.

e. Using the Computer System to pursue personal business or activities, such as selling personal items or soliciting for personal charities.

f. Discussing the Company's confidential, trade secret or proprietary information on any part of the Computer System that is publicly accessible. Employees may not use the Company's facilities to communicate anonymously online.[53]

g. Storing or transmitting programs containing viruses or trojans, or tools to compromise the security of the Company or other sites with the exception of materials used in the course of the Company's product development.

The Company will investigate employee misconduct that involves the use of the Computer System that is made the subject of a complaint or is otherwise brought to the Company's attention. Investigations may include accessing employee's stored communications.

The Company reserves the right to refuse to post or to remove any communication, information or other content, in whole or in part, that, in the Company's sole discretion, violates this policy, other company policies, or is otherwise unacceptable.

J. Voicemail Policy

The voicemail system is the property of the Company. The Company's employees are only authorized to use the voicemail system for business purposes. The Company reserves the right to access, review and disclose the contents of employee voicemail messages for legitimate business purposes, including to investigate suspected misconduct or violation of company policies, to disclose any information as necessary to satisfy any law or governmental request, or as necessary to protect the Company's interests.

The voicemail system is provided by the Company and employees should use it with the expectation that messages sent on the Company business or with the use of the Company facilities may be subject to review and disclosure. The Company generally will not monitor voicemail messages as a routine matter, but will do so for legitimate business reasons, including to investigate suspected misconduct and breaches of security, to protect the Company's interests, and to locate information.[54] The Company may override individual passwords and require employees to disclose passwords to facilitate access to the voicemail system.

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52 Insert material in brackets if applicable.

53 In the alternative, you may want to require use of encryption for transmission of sensitive information; or you may want a rule that an employee must identify him/herself as a Company employee.

54 In the alternative, the policy could provide that the Company will monitor on a routine basis.

K. Substance Abuse Policy

It is the Company's policy to maintain a drug-free workplace. Drug and alcohol use is highly detrimental to the safety and productivity of employees in the work place. No employee may be under the influence of any illicit drug or alcohol while in the work place.

Unlawfully manufacturing, possessing, distributing, dispensing, transferring, purchasing, selling, using or being under the influence of alcoholic beverages or illegal drugs while on the Company's property or performing duties, may lead to disciplinary action, including termination of employment.

Using or being under the influence of drugs while attending business related activities off the Company's premises or being under the influence of alcoholic beverages during such activities also is prohibited.

Physician-prescribed medications are permitted, providing they do not adversely affect job performance or the safety of the employee or other individuals in the work place. Employees are required to notify [insert appropriate title] if they are taking any prescription drug that is likely to impair their performance.

The Company will reasonably accommodate an employee disabled by a drug or alcohol dependency who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program provided such reasonable accommodation does not create an undue hardship for the Company. The policy of accommodation will not prevent the Company from disciplining employees for on the job conduct that violates the substance abuse policy.

If an employee believes that s/he has a substance abuse problem and wishes to seek professional help, s/he should contact [insert appropriate title] and the Company will attempt to assist the employee in locating drug and alcohol rehabilitation agencies so that the employee may avail him/herself of professional help.

L. Safety[55]

Establishment and maintenance of a safe work environment is the shared responsibility of the Company and employees at all levels of the organization. The Company will attempt to assure a safe environment in compliance with federal, state and local safety regulations.

All employees are expected to obey safety rules and to exercise caution in all of their work activities. Employees shall not engage in any conduct which jeopardizes the health and safety of themselves or others in the workplace. Employees should and must immediately report any unsafe conditions or conduct to their supervisor and the Personnel Department, so that the problem can be corrected as promptly as possible.

All accidents that result in injury must be reported to the appropriate supervisor and the Personnel Department, regardless of how insignificant the injury may appear. Such reports are necessary to comply with laws and to initiate insurance and workers' compensation procedures.

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[55] **NOTE:** In addition to adopting a safety policy, the Company should adopt a formal Injury and Illness Prevention Program ("IIPP"), as required by CAL-OSHA. Please let us know if you would like us to draft an IIPP for you.

M. Smoking

In keeping with the Company's intent to provide a safe and healthy work environment, employee smoking is prohibited in all Company facilities.[56]

N. Employee Grievances

In every organization there can be honest differences of opinion about working conditions, discipline, rules, and other employee problems. A grievance is the dissatisfaction an employee feels when the employee believes rightly or wrongly that the employee has not been treated fairly, or that a mistake has been made concerning a term or condition of employment or the administration of a rule or policy.

For problems other than incidents of sexual and other illegal harassment, it is particularly important that employees first discuss any problem relating to their job with their immediate supervisor. This procedure is intended to resolve workplace problems and questions informally and as expeditiously as possible.

If an employee cannot discuss the problem with the assigned supervisor, then the problem should be discussed with the [insert appropriate title]. The majority of misunderstandings can be resolved at this level.

If the employee believes that s/he has not been able to resolve the problem with the [insert appropriate title], the employee may initiate a formal grievance to the [insert appropriate title] of the Company. The formal grievance must be made in writing, must summarize the prior proceedings and explain the reason for the formal grievance to the President and specify the relief requested or proposed. If the President does not agree to furnish the relief requested or proposed, or otherwise does not satisfy the demand of the employee, the matter shall be referred to formal dispute resolution procedures, if the employee and the Company have agreed to such procedures.

[56] Under California's statewide smoking ordinance, workplace smoking is permitted only in very limited circumstances.

Employee Acknowledgment Form

I have been given a copy of the Company Employee Handbook, and I have reviewed and understand its contents. I understand that this issue of the Handbook supersedes any and all previous employee handbooks. I understand that, with the exception of the at-will provision, the other provisions of this handbook may be changed at any time by the Company on reasonable notice.

I understand that my employment is at-will and shall continue only so long as is mutually agreeable between me and the Company and that no promise for employment of any other duration or on any other basis can be made except in writing, signed by me and [insert appropriate title].

_____ _____

Signature of Employee Print Name

_____

Date

Sample Board Observer Agreement

_____, 200_

[Board Observer]

_____

_____

Attn: _____

Re: Board Observation

Dear _____:

This side letter is being issued in connection with the purchase by _____ ("Investor") of at least _____ shares of [Series A Preferred Stock] (the "Series A Preferred") of _____, a [Delaware/California] corporation (the "Company").

The Company hereby agrees to permit Investor to designate one observer who is an employee of Investor or an affiliate of Investor (the "Observer"), to be present at all meetings of the Company's Board of Directors (the "Board") and to give the Observer notice of such meetings at the same time notice is provided or delivered to members of the Board; provided, however, that such Observer shall execute a Non-Disclosure Agreement in a form reasonably acceptable to the Company and Investor. Materials (the "Board Documents") that are sent to the directors prior to a meeting of the Board shall be sent simultaneously by the Company to the Observer. The Observer may be excluded from meetings of the Board, or portions thereof, and notwithstanding the foregoing sentence, any Board Documents may be withheld and not delivered to the Observer, if in good faith and for reasonable business purposes and to the extent that a majority of the Board determines that a material conflict of interest with respect to the Observer does or may exist relating to one or more matters to be considered by the Board and that it is in the Company's best interest to exclude the Observer and/or withhold such Board Documents; provided, however, that the Company shall provide Investor with notification concerning the reasons for such exclusion or withholding as soon as reasonably practicable. For example, if the Board intends to discuss matters relating to the relationship between the Company and Investor or the relationship or prospective relationship between the Company and a competitor of Investor, a majority of the Board may vote to exclude the Observer or withhold Board Documents.

The initial Observer shall be _____. Investor may change the Observer at any time immediately upon notice to the Company; provided, however, that such Observer shall be an employee of Investor or an affiliate of Investor, shall be reasonably acceptable to the Company and shall have executed a Non-Disclosure Agreement in a form reasonably acceptable to the Company. Investor agrees that person designated as the Observer may not serve concurrently as a board

observer or director to any other company, which in the reasonable, good faith judgment of the Company is engaged in a business that competes materially with the Company.

In addition, if the Company receives advice from legal counsel that there is a substantial risk that discussing a specified matter in the presence of a person who is not a member of the Board, or sending specified board materials to such person, would result in the Company's loss of attorney-client privilege, breach of a material confidentiality obligation owed to a third party, or material loss of intellectual property protection otherwise available with respect to a specified matter, the Company may exclude the Observer from a meeting (or portion thereof) or exclude such board materials from the Board Documents sent to the Observer, or both, but only to the extent necessary to preserve such privilege or intellectual property protection or prevent such a breach; provided, however, that the Company shall promptly notify Investor regarding the reasons for any such exclusion.

Investor agrees to maintain, and to cause Investor and its officers, directors, employees and agents to maintain, the confidentiality of any information of the Company obtained by it and/or the Observer as a result of the Observer's attendance at Board meetings or receipt of Board Documents. Investor and its officers, directors, employees and agents further agree that such information shall only be disclosed to the senior management of Investor on a need to know basis and shall be used only within Investor and only in connection with the relationship between Investor and the Company or any investment Investor has in the Company.

The Company's obligations under this side letter shall terminate upon the earlier to occur of (i) at such time as Investor, together with its affiliated companies, no longer holds at least _____ shares of Preferred Stock of the Company and/or Common Stock of the Company issued upon conversion thereof (as appropriately adjusted for stock splits, reverse stock splits, reclassifications and the like occurring after the date hereof), (ii) upon the closing of a firmly underwritten public offering of the Company's securities pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission, (iii) upon the closing of a consolidation, merger, or other reorganization of the Company (other than a reincorporation of the Company) with or into any other corporation or corporations in which the stockholders of the Company do not own or control a majority of the outstanding voting shares of the surviving entity, (iv) the consummation of the acquisition of fifty-one percent (51%) or more of the outstanding capital stock of the Company pursuant to a tender offer validly made under any federal or state law (other than a tender offer by the Company), (v) the sale of all or substantially all of the assets of the Company to a third party who is not an affiliate of the Company, or (vi) the dissolution of the Company pursuant to action validly taken by the stockholder of the Company in accordance with applicable state law.

Investor
_____, 200_
Page 3

Please sign below to confirm agreement to the provisions set forth in this letter. I'm looking forward to working with you.

Sincerely,

_____
[President/CEO]

Acknowledged and Agreed:

INVESTOR

_____
Signature

By: _____

Title: _____

Date: _____, 200_

Sample Beta Site Agreement

This Agreement, effective _____, is made by and between Client Products, Inc. ("CLIENT"), having an office at 23456 Client Blvd., Hayfield, CA 94567-1234, _____ and Customer, Inc. ("CUSTOMER") having an address at _____, with regard to the following:

Whereas, CLIENT is in the final stages of developing a _____ ("the Product") and desires to have from CUSTOMER information on Product to assist CLIENT in assuring the quality of CLIENT's products before they are released for production use,

Whereas, CUSTOMER desires to obtain early access to the Product before other customers and to become familiar with the benefits of this product, and

Whereas, both parties recognize that prototype testing is a joint effort requiring extensive communication between both parties in debugging the Product and in rectifying other problems which might arise in the introduction of a product.

Now, therefore, in consideration of CLIENT's willingness to provide early access to the Product, the parties hereby agree as follows:

1. The Test Period for the Product will begin upon CUSTOMER's receipt of the Product and will continue for a period of two months unless otherwise terminated in accordance with this Agreement. CUSTOMER agrees to promptly install the Product.

2. CLIENT will provide to CUSTOMER such documentation as CLIENT deems appropriate to CUSTOMER's evaluation of the Product, to the extent such documentation exists. CUSTOMER recognizes that such documentation may not be in final form, and may include errors or omissions.

3. During the Test Period, CUSTOMER agrees to report to CLIENT any and all problems relating to the Product and to complete a Product Evaluation form if requested. However, CUSTOMER recognizes that, because of the preliminary nature of the Product, CLIENT may desire not to repair or otherwise correct any problem encountered by CUSTOMER, and CUSTOMER agrees that CLIENT will have no obligation to do so. Nevertheless, CLIENT agrees to carefully consider each problem reported by CUSTOMER and to promptly provide such updates or corrections as CLIENT deems appropriate in its sole discretion.

4. CUSTOMER recognizes that the Product is not a final release, and agrees not to use the Product in a production environment. CUSTOMER RECOGNIZES THAT ALL ITEMS PROVIDED TO IT HEREUNDER ARE DELIVERED "AS IS". NO WARRANTIES ARE GIVEN, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF FITNESS OR MERCHANTABILITY. IN NO EVENT WILL CLIENT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY LIABILITY IN TORT INCURRED BY OR UNDER THIS AGREEMENT OR THE DELIVERY OF THE PRODUCT TO CUSTOMER.

5. CUSTOMER recognizes that the Product has not been publicly released, is confidential to CLIENT, and incorporates and contains information that is a trade secret of and proprietary to CLIENT. CUSTOMER acknowledges that title will at all times remain in CLIENT, and CUSTOMER has only a license to use the Product during the Test Period under the terms and conditions set forth in this Agreement. CUSTOMER agrees to maintain the Product, including related documentation, in confidence and not to disclose the same to any third party without CLIENT's prior written permission, will use at least the same degree of care to maintain the Product as confidential as it uses in maintaining as confidential its own trade secret and proprietary information (but in no event less than a reasonable degree of care), and will use the Product for the sole purpose of evaluating the same. Notwithstanding the foregoing, CUSTOMER will have no obligation of confidentiality with respect to any portion of the Product which (1) was known to CUSTOMER prior to receipt, directly or indirectly, of such portion from CLIENT, (2) is lawfully obtained by you from a third party under no obligation of confidentiality, direct or indirect, or (3) is or becomes publicly known or available without any act or failure to act by you. The obligations created by this paragraph will survive termination of the Agreement and will continue for a period of two years after receipt by CUSTOMER of the last portion of the Product.

6. CUSTOMER agrees not to modify the Product without the prior written permission of CLIENT, and agrees that upon termination of the Test Period it will return to CLIENT the Product together with all documentation, notes, media or other information relating to the Product, unless otherwise agreed in writing by CLIENT. CUSTOMER agrees that at all times during the Test Period the Product will remain the property of CLIENT.

7. Because of the possibility, however unlikely, that this preliminary version of the Product will need to be removed, CLIENT reserves the right to terminate this Agreement at its sole discretion, upon reasonable notice to CUSTOMER.

8. This Agreement may not be assigned by either party without the written consent of the other.

[Rest of page intentionally left blank.]

9. This Agreement sets forth the entire understanding between the parties with respect to the matters set forth herein and supersedes all prior representations, understandings or agreements, whether written or oral, express or implied, with respect to this transaction.

10. This Agreement is governed by the laws of the State of California.

CLIENT Products, Inc.	Customer, Inc.
_____	_____
Authorized signature	Authorized signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date

Sample Management Rights Agreement

This MANAGEMENT RIGHTS AGREEMENT (this "Agreement") is entered into as of _____ by and between STARTUP COMPANY, INC., a Delaware corporation (the "Company"), and VENTURE CAPITAL FUND I, L.P., a Delaware limited partnership (the "Fund") (together, the "Parties").

RECITALS

WHEREAS, the Fund's organizational documents require that the Fund qualify, at all relevant times, as a "venture capital operating company" within the meaning of Department of Labor Regulation Section 2510.3-101(d) (the "Regulation"); and

WHEREAS, the Regulation generally requires that a venture capital operating company have direct contractual rights to substantially participate in, or substantially influence the conduct of, the management of its portfolio companies; and

WHEREAS, in order to induce the Fund to invest in the Company, the Company has agreed to provide such rights to the Fund.

NOW, THEREFORE, the Parties, intending to be legally bound, hereby agree as follows.

1. ***Grant of Management Rights***. From and after the Fund's purchase of _____shares of [Series A Preferred Stock] of the Company, the Fund shall have the following contractual management rights. Such rights shall be in addition to, and nothing in this Agreement shall be deemed to limit, any other rights that the Fund may hold as a stockholder of the Company or otherwise.

(a) The Fund shall be entitled to consult with and advise management of the Company on significant business issues, including without limitation management's proposed quarterly and annual operating plans. Upon request by the Fund, management of the Company shall meet with authorized representatives of the Fund, at a mutually agreeable time and place, within thirty days after the end of each calendar quarter for such consultation and advice and to review progress in achieving such plans.

(b) The Fund shall be entitled to examine the books and records of the Company, inspect its facilities, and receive other information at reasonable times and intervals concerning the general status of the Company's financial condition and operations.

(c) For any period during which an authorized representative of the Fund is not a member of the Company's Board of Directors, the Company shall invite the Fund's authorized representative to attend all meetings of the Board and in connection therewith shall provide to such representative copies of all notices, minutes, consents, and other materials that it provides to its directors. Such representative may participate in discussions of matters brought before the Board, but shall in all other respects be a nonvoting observer.

2. ***Limitation on Management Rights***. The Company shall not be required under this Agreement to provide access to attorney/client privileged communications or other information of an extremely sensitive nature the disclosure of which to the Fund would be materially detrimental to the Company. The Company acknowledges and agrees that the preceding sentence is not intended to prevent the Fund from obtaining information necessary for the Fund to substantially participate in, or substantially influence the conduct of, management of the Company within the meaning of the Regulation.

3. ***Termination of Management Rights***. The management rights granted in paragraph 1, above, shall terminate upon consummation of a sale of the Company's securities pursuant to a registration statement filed by the Company under the Securities Act of 1933 in connection with a firm commitment underwritten offering of the Company's securities to the general public.

4. ***Confidentiality***. Except as otherwise required by applicable law, the Fund and any authorized representative acting on behalf of the Fund pursuant to this Agreement shall maintain the confidentiality of all proprietary Company information acquired pursuant to this Agreement and shall not disclose or use such information other than for a Company purpose or with the Company's consent.

5. ***Restructuring***. Subject to paragraph 3, above, if the Company engages in a restructuring or similar transaction, any resulting entity or entities shall be subject to this Agreement in the same manner as the Company.

IN WITNESS WHEREOF the Parties have executed this Management Rights Agreement as of the date first above written.

STARTUP COMPANY, INC.,
a Delaware corporation

By:

_____

Name:
Title:

VENTURE CAPITAL FUND I, L.P.,
a Delaware limited partnership

By: General Partner I, L.L.C.,
a Delaware limited liability company
Title: General Partner

By:

_____

Name:
Title: