

SAMPLE EXECUTIVE EMPLOYMENT AGREEMENT

AGREEMENT, made and entered into as of the **DATE** of **MONTH, YEAR**, and herein amended and restated, by and between **COMPANY NAME** (together with its successors and assigns permitted under this Agreement, the “Company”), and **EXECUTIVE NAME** (the “Executive”).

WITNESSETH:

WHEREAS, the Company desires to employ the Executive and to enter into an agreement, as herein amended and restated, embodying the terms of such employment (this “Agreement”) and the Executive desires to enter into this Agreement and to accept such employment, subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the receipt of which is mutually acknowledged, the Company and the Executive (individually a “Party” and together the “Parties”) agree as follows:

I. Definitions.

- (a) “Affiliate” of a person or other entity shall mean a person or other entity that directly or indirectly controls, is controlled by, or is under common control with the person or other entity specified.
- (b) “Base Salary” shall mean the salary provided for in Section 4 below or any increased salary granted to the Executive pursuant to Section 4.
- (c) “Board” shall mean the Board of Directors of the Company.
- (d) “Cause” shall mean:
 - (e) the Executive’s willful failure to substantially perform his duties as an employee of the Company or any of its subsidiaries (other than any such failure resulting from incapacity due to physical or mental illness),
 - (f) any act of fraud, misappropriation, dishonesty, embezzlement or similar conduct against the Company or any of its subsidiaries,
 - (g) the Executive’s conviction of a felony or any crime involving moral turpitude (which conviction, due to the passage of time or otherwise, is not subject to further appeal) or
 - (h) the Executive’s gross negligence in the performance of his duties hereunder.

- (i) “Change in Control” shall mean the occurrence of any of the following events:
- (i) An acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (the “Exchange Act”) (an “Entity”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (A) the then outstanding shares of Stock of the Company (the “Outstanding Company Stock”) or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); excluding, however, the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security being so converted was itself acquired directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (4) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) of this Section 1(e);
 - (ii) A change in the composition of the Board such that the individuals who, as of the effective date of this Agreement, constitute the Board (such Board shall be hereinafter referred to as the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that for purposes of this definition, any individual who becomes a member of the Board subsequent to the effective date of this Agreement, whose election, or nomination for election, by the Company’s stockholders was approved by a vote of at least a two-thirds majority of those individuals who are members of the Board and who were also members of the Incumbent Board (or deemed to be such pursuant to this proviso) shall be considered as though such individual were a member of the Incumbent Board; and provided, further however, that any such individual whose initial assumption of office occurs as a result of or in connection with either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of an Entity other than the Board shall not be so considered as a member of the Incumbent Board;
 - (iii) A merger, reorganization or consolidation to which the Company is a party or a sale or other disposition of all or substantially all of the assets of the Company (each, a “Corporate Transaction”); excluding however, such a Corporate Transaction pursuant to which (A) all or substantially all of the individuals and entities who are the beneficial owners, respectively, of the Outstanding Company Stock and Outstanding Company Voting Securities immediately prior to such Corporate Transaction will beneficially own, directly or indirectly, more than 60% of, respectively, the outstanding shares of common stock, and the combined voting power of the then outstanding voting securities entitled to

vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction [including, without limitation, a corporation or other person which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries (a "Parent Company")] in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Company Stock and Outstanding Company Voting Securities, as the case may be, (B) no Entity (other than the Company, any employee benefit plan (or related trust) of the Company, such corporation resulting from such Corporate Transaction (or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, such Parent Company) will beneficially own, directly or indirectly, 20% or more of, respectively, the outstanding shares of common stock of the corporation resulting from such Corporate Transaction (or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection with the applicable Corporate Transaction, such Parent Company) or the combined voting power of the outstanding voting securities of such corporation entitled to vote generally in the election of directors unless such ownership resulted solely from ownership of securities of the Company prior to the Corporate Transaction, and (C) individuals who were members of the Incumbent Board will immediately after the consummation of the Corporate Transaction constitute at least a two-thirds majority of the members of the board of directors of the corporation resulting from such Corporate Transaction (or, if reference was made to equity ownership of any Parent Company for purposes of determining whether clause (A) above is satisfied in connection the applicable Corporate Transaction, of the Parent Company); or

- (iv) The approval by the stockholders of the Company of a plan of complete liquidation or dissolution of the Company.
- (j) "Constructive Termination Without Cause" shall mean termination by the Executive of his employment at his initiative following the occurrence of any of the following events without his consent:
 - (i) a reduction in the Executive's then current Base Salary or target bonus opportunity as a percentage of Base Salary or the termination or material reduction of any employee benefit or perquisite enjoyed by him (other than as part of an across-the-board reduction applicable to all executive officers of the Company);
 - (ii) the failure to elect or reelect the Executive to any of the positions described in Section 3 or the removal of him from any such position;

- (iii) a material diminution in the Executive's duties or the assignment to the Executive of duties which are materially inconsistent with his duties or which materially impair the Executive's ability to function as the TITLE of the Company;
- (iv) the relocation of the Company's principal office, or the Executive's own office location, as assigned to him by the Company to a location more than 50 miles from **CITY AND STATE**; or
- (v) the failure of the Company to obtain the assumption in writing of its obligation to perform this Agreement by any successor to all or substantially all of the assets of the Company within 15 calendar days after a merger, consolidation, sale or similar transaction.
- (vi) Following written notice from the Executive, as described above, the Company shall have 15 calendar days in which to cure. If the Company fails to cure, the Executive's termination shall become effective on the 16th calendar day following the written notice.
- (k) "Disability" shall mean the Executive's inability, due to physical or mental incapacity, to substantially perform his duties and responsibilities under this Agreement as determined by a medical doctor selected by the Company and the Executive. If the Parties cannot agree on a medical doctor, each Party shall select a medical doctor and the two doctors shall select a third who shall be the approved medical doctor for this purpose.
- (l) "Effective Date" shall mean the date as of which this Agreement was entered into.
- (m) "Fair Market Value" shall mean the value of a share of Stock as traded on the New York Stock Exchange on the date in question, based on the mean of the high and low reported prices.
- (n) "Pro Rata" shall mean a fraction, the numerator of which is the number of days that the Executive was employed in the applicable performance period (a calendar year in the case of an annual bonus and a performance cycle in the case of an award under the Long-Term Incentive Plan) and the denominator of which shall be the number of days in the applicable performance period.
- (o) "Stock" shall mean the Common Stock of the Company.
- (p) "Term of Employment" shall mean the period specified in Section 2 below (including any extension as provided therein).

2. Term of Employment.

The Term of Employment shall begin on the Effective Date, and shall extend until October 31, 2005. Notwithstanding the foregoing, the Term of Employment may be earlier terminated by either Party in accordance with the provisions of Section 12.

3. Position and Responsibilities

During the Term of Employment (as defined above), the Executive will serve as a full-time employee of the Company and will report directly to, and serve at the discretion of, the Board of Directors of the Company. The Executive will, during the Term of Employment, serve the Company in the capacity of Chairman and Chief Executive Officer. The Executive will, during the Term of Employment, devote substantially all of his time and attention during normal business hours to the performance of services for the Company, or as otherwise reasonably directed by the Board from time to time. The Executive will maintain a primary office and conduct his business in **COMPANY LOCATION**, except for normal and reasonable business travel in connection with his duties hereunder.

4. COMPENSATION AND BENEFITS

(a) Compensation.

For services rendered by the Executive pursuant to this Agreement during the Term of Employment, the Company will pay the Executive base salary for the Period of Employment on a bi-weekly basis at an annual rate not less than **BASE SALARY AMOUNT** (the "Base Salary"). The Executive will be given consideration for annual increases to Base Salary in accordance with the Company's customary procedures for senior officers.

(b) Annual Incentive Awards.

The Executive will be eligible to receive an annual bonus for each fiscal year of the Company during the Term of Employment based upon a target bonus equal to 100% of Base Salary, subject to the Company's attainment of applicable performance targets established and certified by the Compensation Committee of the Company's Board of Directors (the "Committee").

(c) Employee Benefits.

During the Term of Employment, the Company will provide the Executive with employee benefits generally offered to all eligible full-time employees of the Company, and with perquisites generally offered to all senior officers of the Company, subject to the terms of the applicable employee benefit plans or policies of the Company.

5. Expenses.

During the Term of Employment, the Company will reimburse the Executive for reasonable business expenses incurred and timely submitted in accordance with any applicable policy of the Company.

6. Equity.

Subject to the approval of the Committee, the Executive will be granted, at the next meeting of the Committee immediately following the Executive's commencement of employment, a nonqualified option to purchase **NUMBER OF SHARES** shares of the Company common. The option granted pursuant to this paragraph will have such terms and conditions as the Committee determines in its sole discretion; provided, however, that the option will vest with respect to one-third of the shares subject thereto on each of the first three anniversaries of the date of grant and will have a per share exercise price equal to the fair market value of the Company's stock as of the date of grant.

7. Termination of Employment.

(a) Termination Due to Death. In the event that the Executive's employment is terminated due to his death, his estate or his beneficiaries, as the case may be, shall be entitled to the following benefits:

- (i) Base Salary through the end of the month in which death occurs;
- (ii) annual incentive award for the year in which the Executive's death occurs, based on the original target award performance for such year, payable in a single installment promptly after his death;
- (iii) all outstanding options, whether or not then exercisable, shall become exercisable and shall remain exercisable until the end of their originally scheduled terms;
- (iv) the restrictions on restricted stock shall lapse.

(b) Termination Due to Disability. In the event that the Executive's employment is terminated due to his Disability, he shall be entitled to the following benefits:

- (i) disability benefits in accordance with the long-term disability program then in effect for senior executives of the Company;
- (ii) Base Salary through the end of the month in which disability benefits commence;
- (iii) annual incentive award for the year in which the Executive's termination occurs, based on the original target award for such year, payable in a single installment promptly after his termination;
- (iv) all outstanding options, whether or not then exercisable, shall become exercisable and shall remain exercisable until the end of their originally scheduled terms;
- (v) the restrictions on any restricted stock shall lapse and;

(c) Termination by the Company for Cause.

- (i) A termination for Cause shall not take effect unless the provisions of this paragraph (i) are complied with. The Executive shall be given written notice by the Board of the intention to terminate him for Cause, such notice (A) to state in detail the particular act or acts or failure or failures to act that constitute the grounds on which the proposed termination for Cause is based and (B) to be given within six months of the Board learning of such act or acts or failure or failures to act. The Executive shall have ten calendar days after the date that such written notice has been given to the Executive in which to cure such conduct, to the extent such cure is possible. If he fails to cure such conduct, the Executive shall then be entitled to a hearing before the Board. Such hearing shall be held within 15 calendar days of such notice to the Executive, provided he requests such hearing within ten calendar days of the written notice from the Board of the intention to terminate him for Cause. If, within five calendar days following such hearing, the Executive is furnished written notice by the Board confirming that, in its judgment, grounds for Cause on the basis of the original notice exist, he shall thereupon be terminated for Cause.
- (ii) In the event the Company terminates the Executive's employment for Cause:
 - (1) he shall be entitled to Base Salary through the date of the termination;
 - (2) all outstanding options which are not exercisable shall be forfeited; exercisable options shall remain exercisable until the earlier of the ninetieth day after the date of termination or the originally scheduled expiration date of the options unless the Compensation and Employee Benefits Committee determines otherwise;
 - (3) all restricted stock as to which restrictions have not lapsed shall be forfeited.
- (d) Termination without Cause or Constructive Termination without Cause. In the event the Executive's employment is terminated by the Company without Cause, other than due to Disability or death, or in the event there is a Constructive Termination without Cause, the Executive shall be entitled to the following benefits:
 - (i) Base Salary through the date of termination;
 - (ii) Base Salary, at the annualized rate in effect on the date of termination, for a period of 24 months following such termination, provided that, at the Executive's option, the Company shall pay him the present value of such salary continuation payments in a lump sum (using as the discount rate the applicable Federal rate specified under Section 1274 of the Internal Revenue Code of 1986, as amended (the "Code"), for short-term Treasury obligations as published by the Internal Revenue Service for the month in which such termination occurs);

- (iii) a Pro Rata annual incentive award for the year in which termination occurs, based on his original target award for such year, payable when annual incentive awards are paid to other senior executives (or in a lump sum in accordance with the proviso in Section 7(d)(ii));
 - (iv) an annual incentive award for a period of 24 months following the date of termination, based on his original target award for the year in which termination occurs and payable in equal monthly installments over the 24-month period of Base Salary continuation payments pursuant to Section 7(d)(ii) (or in a lump sum in accordance with the proviso in Section 7(d)(ii));
 - (v) all outstanding options, whether or not then exercisable, shall become exercisable and shall remain exercisable until the end of their originally scheduled terms;
 - (vi) the restrictions on restricted stock shall lapse;
 - (vii) the Executive shall be entitled to continued participation in all medical, dental, vision and hospitalization insurance coverage and in other employee benefit plans or programs in which he was participating on the date of his termination until the earlier of:
 - (1) 24 months following the date of termination and
 - (2) the date, or dates, he receives equivalent coverage and benefits under the plans and programs of a subsequent employer. The Executive shall promptly advise the Company of any such subsequent employment and the benefits he receives in connection therewith.
- (e) Voluntary Termination; Retirement.
- (i) A termination of employment by the Executive on his own initiative, other than a termination due to death or Disability or a Constructive Termination without Cause or retirement following the end of the Term of Employment, shall have the same consequences as provided in Section 7(c)(ii) for a termination for Cause. A voluntary termination under this Section 7(e) shall be effective 30 calendar days after prior written notice is received by the Company.
- (f) Consequences of a Change in Control.
- (i) If, following a Change in Control, the Executive's employment is terminated by the Company without Cause, other than due to Disability or death, or there is a Constructive Termination without Cause, the Executive shall be entitled to the benefits provided in Section 7(d) above, except that the period for which salary, annual incentive and benefits are provided in Sections 7(d)(ii), 7(d)(iv) and 7(d)(x) (except that the Executive may in his

discretion, to the extent the plans permit, elect to continue his benefits under Section 7(d)(x) in lieu of the lump sum payment therefor) shall be 36 months, and all payments to be made pursuant to those Sections and the payments to be made pursuant to Sections 7(d)(iii) and 7(d)(viii) shall be paid to the Executive in a lump sum promptly following the date of termination.

- (ii) Immediately following a Change in Control, all amounts and benefits to which the Executive is entitled but not yet vested, whether under this Agreement or otherwise, shall become fully vested.
- (iii) If, following a Change in Control, the aggregate of all payments or benefits made or provided to the Executive under Section 7(f)(i) and under all other plans and programs of the Company (the "Aggregate Payment") is determined to constitute a Parachute Payment within the meaning of Section 280G(b)(2) of the Code, the Company shall pay to the Executive, prior to the time any excise tax imposed by Section 4999 of the Code ("Excise Tax") is payable with respect to such Aggregate Payment, an additional amount (the "Gross-Up Payment") which, after the imposition of all income, employment, excise and other taxes thereon, is equal to the Excise Tax on the Aggregate Payment. The determination of whether the Aggregate Payment constitutes a Parachute Payment and, if so, the amount to be paid to the Executive and the time of payment pursuant to this Section 7(f)(iii) shall be made by an independent auditor (the "Auditor") selected by the Parties and paid by the Company. The Auditor shall be a nationally recognized United States public accounting firm which has not, during the two years preceding the date of its selection, acted in any way on behalf of the Company or any Affiliate thereof. If the Executive and the Company cannot agree on the firm to serve as the Auditor, then the Executive and the Company shall each designate one accounting firm and those two firms shall jointly select the accounting firm to serve as the Auditor. All fees and expenses of the Auditor shall be borne solely by the Company. Any Gross-Up Payment shall be paid by the Company to the Executive within five calendar days of the receipt of the Auditor's determination. Any determination by the Auditor shall be binding upon the Company and the Executive.
- (iv) As a result of uncertainty in the application of Sections 280G and 4999 of the Code at the time of the initial determination by the Auditor hereunder, it is possible that the Gross-Up Payment made will have been an amount more than the Company should have paid pursuant to this Section 7(f)(iii) (the "Overpayment") or that the Gross-Up Payment made will have been an amount less than the Company should have paid pursuant to this Section 5(f)(iii) (the "Underpayment"). In the event that there is a final determination by the Internal Revenue Service, or a final determination by a court of competent jurisdiction, that an Overpayment has been made, any such Overpayment shall be treated for all purposes as a loan to the Executive which the Executive shall repay to the Company

together with interest at the applicable Federal rate provided for in Section 7872(f)(2) of the Code. In the event that there is a final determination by the Internal Revenue Service, a final determination by a court of competent jurisdiction or a change in the provisions of the Code or regulations pursuant to which an Underpayment arises under this Agreement, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive together with interest at the applicable Federal rate provided for in Section 7872(f)(2) of the Code.

- (v) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would result in an Underpayment and would require the payment by the Company of an additional Gross-Up Payment. Such notification shall be given as soon as practicable but no later than 10 business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30 calendar day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:
- (1) give the Company any information reasonably requested by the Company relating to such claim,
 - (2) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,
 - (3) cooperate with the Company in good faith in order effectively to contest such claim, and
 - (4) permit the Company to participate in any proceeding relating to such claim; provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income or employment tax (including interest and penalties with respect thereto) imposed as a result of such proceeding and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 7(f)(iii), the Company shall control all proceedings taken in connection with such contest, provided that the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and Executive

shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(g) No Mitigation; No Offset. In the event of any termination of employment under this Section 7, the Executive shall be under no obligation to seek other employment and there shall be no offset against amounts due the Executive under this Agreement on account of any remuneration attributable to any subsequent employment that he may obtain.

(i) Nature of Payments. Any amounts due under this Section 7 are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty.

8. Confidentiality.

(a) The Executive agrees that he will not, at any time during the Term of Employment or thereafter, disclose or use any trade secret, proprietary or confidential information of the Company or any subsidiary or affiliate of the Company, obtained during the course of his employment, except as required in the course of such employment or with the written permission of the Company or, as applicable, any subsidiary or affiliate of the Company or as may be required by law, provided that, if the Executive receives legal process with regard to disclosure of such information, he shall promptly notify the Company and cooperate with the Company in seeking a protective order.

(b) The Executive agrees that at the time of the termination of his employment with the Company, whether at the instance of the Executive or the Company, and regardless of the reasons therefor, he will deliver to the Company, and not keep or deliver to anyone else, any and all notes, files, memoranda, papers and, in general, any and all physical matter containing information, including any and all documents significant to the conduct of the business of the Company or any subsidiary or Affiliate of the Company which are in his possession, except for any documents for which the Company or any subsidiary or Affiliate of the Company has given written consent to removal at the time of the termination of the Executive's employment and his personal rolodex, phone book and similar items.

(c) The Executive agrees that the Company's remedies at law would be inadequate in the event of a breach or threatened breach of this Section 8; accordingly, the Company shall be entitled, in addition to its rights at law, to an injunction and other equitable relief without the need to post a bond.

9. Noncompetition.

(a) Subject to the provisions of Section 9(b) below and notwithstanding any other provisions of this Agreement, any and all payments (except those made from Company-sponsored tax-qualified pension or welfare plans), benefits or other entitlements to which the Executive may

be eligible in accordance with the terms hereof, may be forfeited, whether or not in pay status, at the discretion of the Company, if the Executive at any time without the consent of the Company “establishes a relationship with a competitor” or “engages in an activity” which is in conflict with or adverse to the interest of the Company, all within the meaning of the Non-Competition Guideline referred to below (a “Competitive Activity”). The payments, benefits and other entitlements hereunder are being made in part in consideration of the obligations of this Section 9 and in particular the post-employment payments, benefits and other entitlements are being made in consideration of, and dependent upon, compliance with this Section 9(a) and, to the extent set forth in Section 9(e), the Release and Agreement referred to in Section 9(e). Exhibit F is a copy of the Non-Competition Guideline.

- (b) Anything in Section 9(a) to the contrary notwithstanding, no forfeiture or cancellation shall take place with respect to any payments, benefits or entitlements hereunder or under any other award agreement, plan or practice unless the Company shall have first given the Executive written notice of its intent to so forfeit, or cancel or pay out and Executive has not, within 30 calendar days of giving such notice, ceased such unpermitted Competitive Activity, provided that the foregoing prior notice procedure shall not be required with respect to (x) a Competitive Activity which the Executive initiated after the Company had informed the Executive in writing that it believed such Competitive Activity violated Section 9(a) or the Company’s Non-Competition Guideline, (y) any Competitive Activity regarding local, regional or long distance telephone services or other products or services which are part of a line of business which represents more than 5% percent of the Company’s consolidated gross revenues for its most recent completed fiscal year at the time the Competitive Activity commences.
- (c) Nothing in this Section 9 shall prohibit the Executive from being a passive owner of not more than one percent of the outstanding common stock, capital stock and equity of any firm, corporation or enterprise so long as the Executive has no active participation in the management of business of such firm, corporation or enterprise.
- (d) If the restrictions stated herein are found by a court to be unreasonable, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area and that the court shall revise the restrictions contained herein to cover the maximum period, scope and area permitted by law.
- (e) Any payments or benefits made pursuant to Section 5 are: (1) subject to the provisions, restrictions and limitations of Section 9 above, but not otherwise subject to offset or mitigation, (2) subject to the Executive’s signing a Release and Agreement not to sue the company in the form of Exhibit G hereto with such changes therein or additions thereto as needed under then applicable law to give effect to the intent of the Release and Agreement and (3) receipt of Executive’s resignation from all offices, directorships and fiduciary positions

with the Company, its Affiliates and their respective benefit plans. Notwithstanding the due date of any post-employment payment, any amounts due under Section 7 shall not be due until after the end of any applicable revocation period with regard to the Release and Agreement.

- (f) In no event shall the Executive be required to repay to the Company any amount previously received by the Executive from the Company, except to the extent required by the Company's Non-Competition Guideline.

10. Resolution of Disputes.

- (a) Any disputes arising under or in connection with this Agreement shall be resolved by third party mediation of the dispute and, failing that, by binding arbitration, to be held in CITY AND STATE, in accordance with the rules and procedures of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each Party shall bear his or its own costs of the mediation, arbitration or litigation, except that the Company shall bear all such costs if the Executive prevails in such mediation, arbitration or litigation on any material issue.

11. Indemnification.

- (a) The Company agrees that if the Executive is made a party, or is threatened to be made a party, to any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he is or was a director, officer or employee of the Company or is or was serving at the request of the Company as a director, officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether or not the basis of such Proceeding is the Executive's alleged action in an official capacity while serving as a director, officer, member, employee or agent, the Executive shall be indemnified and held harmless by the Company to the fullest extent legally permitted or authorized by the Company's certificate of incorporation or bylaws or resolutions of the Company's Board of Directors or, if greater, by the laws of the State of STATE, against all cost, expense, liability and loss (including, without limitation, attorney's fees, judgments, fines, ERISA excise taxes or other liabilities or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Executive in connection therewith, and such indemnification shall continue as to the Executive even if he has ceased to be a director, member, employee or agent of the Company or other entity and shall inure to the benefit of the Executive's heirs, executors and administrators. The Company shall advance to the Executive all reasonable costs and expenses incurred by him in connection with a Proceeding within 20 calendar days after receipt by the Company of a written request for such advance. Such request shall include an undertaking by the Executive to repay the amount of such advance if it shall ultimately be determined that he is not entitled to be indemnified against such costs and expenses.

- (b) Neither the failure of the Company (including its board of directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of any proceeding concerning payment of amounts claimed by the Executive under Section 11(a) above that indemnification of the Executive is proper because he has met the applicable standard of conduct, nor a determination by the Company (including its board of directors, independent legal counsel or stockholders) that the Executive has not met such applicable standard of conduct, shall create a presumption that the Executive has not met the applicable standard of conduct.
- (c) The Company agrees to continue and maintain a directors' and officers' liability insurance policy covering the Executive to the extent the Company provides such coverage for its other executive officers.

12. Assignability; Binding Nature.

- (a) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs (in the case of the Executive) and assigns. Rights or obligations of the Company under this Agreement may be assigned or transferred by the Company pursuant to a merger or consolidation in which the Company is not the continuing entity, or the sale or liquidation of all or substantially all of the assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the assets of the Company and such assignee or transferee assumes the liabilities, obligations and duties of the Company, as contained in this Agreement, either contractually or as a matter of law. The Company further agrees that, in the event of a sale of assets or liquidation as described in the preceding sentence, it shall take whatever action it reasonably can in order to cause such assignee or transferee to expressly assume the liabilities, obligations and duties of the Company hereunder. No rights or obligations of the Executive under this Agreement may be assigned or transferred by the Executive other than his rights to compensation and benefits, which may be transferred only by will or operation of law.

13. Representation.

The Company represents and warrants that it is fully authorized and empowered to enter into this Agreement and that the performance of its obligations under this Agreement will not violate any agreement between it and any other person, firm or organization. The Executive represents that the performance of his obligations under this Agreement will not violate any agreement between him and any other person, firm or organization that would be violated by the performance of his obligations under this Agreement.

14. Entire Agreement.

This Agreement contains the entire understanding and agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, between the Parties with respect thereto.

15. Amendment or Waiver.

No provision in this Agreement may be amended unless such amendment is agreed to in writing and signed by the Executive and an authorized officer of the Company. No waiver by either Party of any breach by the other Party of any condition or provision contained in this Agreement to be performed by such other Party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by the Executive or an authorized officer of the Company, as the case may be.

16. Severability.

In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law so as to achieve the purposes of this Agreement.

17. Survivorship.

Except as otherwise expressly set forth in this Agreement, the respective rights and obligations of the Parties hereunder shall survive any termination of the Executive's employment. This Agreement itself (as distinguished from the Executive's employment) may not be terminated by either Party without the written consent of the other Party.

18. References.

In the event of the Executive's death or a judicial determination of his incompetence, reference in this Agreement to the Executive shall be deemed, where appropriate, to refer to his beneficiary, estate or other legal representative.

19. Governing Law/Jurisdiction.

This Agreement shall be governed in accordance with the laws of STATE without reference to principles of conflict of laws.

20. Notices.

All notices and other communications required or permitted hereunder shall be in writing and shall be deemed given when (a) delivered personally, (b) sent by certified or registered mail, postage prepaid, return receipt requested or (c) delivered by overnight courier (provided that a written acknowledgment of receipt is obtained by the overnight courier) to the Party concerned

at the address indicated below or to such changed address as such Party may subsequently give such notice of:

If to the Company:

COMPANY NAME

AND ADDRESS

Attention: Executive Vice President

Human Resources

If to the Executive:

EXECUTIVE NAME

c/o COMPANY NAME

AND ADDRESS

21. Headings.

The headings of the sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

22. Counterparts.

This Agreement may be executed in two or more counterparts.

23. Conditions.

The effectiveness of this Agreement is conditioned upon the following:

- (a) there being no agreement between the Executive and any prior employer that interferes or could interfere with his employment with the Company unless such agreement is to the satisfaction of the Company waived by such prior employer; and
- (b) the Executive passes a physical examination to the satisfaction of the Company in accordance with its policy on pre-employment physical examinations.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Agreement on **MONTH DATE, YEAR** as of the date first written above.

