

# SALESPERSON (COMMISSION) EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as the "Company"), a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_, and \_\_\_\_\_ (hereinafter referred to as the "Employee"), an individual, with his or her principal residence located at \_\_\_\_\_.

WITNESSETH:

WHEREAS, the Company is in the business of \_\_\_\_\_; and

WHEREAS, the operation by the Company of its business requires disclosure of confidential information to its employees; and

WHEREAS, such confidential information provided to the Employee by the Company if improperly used by the Employee for his or her own purpose rather than on behalf of the Company can result in irreparable harm to the Company, which harm, because of the nature of the industry, is not susceptible to precise proof; and

WHEREAS, the training of the Employee by the Company, the skills obtained by the Employee and the disclosure to the Employee of such aforesaid confidential information makes such Employee valuable to competitors of the Company; and

WHEREAS, the Employee is desirous of entering into the employment of the Company and is aware of the foregoing consideration and understands the reasons for the terms and conditions of his or her employment as set forth below.

NOW, THEREFORE, in consideration of the premises and mutual covenants and promises set forth herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I: PURPOSES. The Company hereby employs the Employee and the Employee accepts employment from the Company as a salesperson and/or such other duties as the Company may, from time to time, determine.

The Company hereby engages the Employee for the primary purpose of soliciting \_\_\_\_\_ sales in the territory or territories to be determined by the Company at the Company's sole discretion.

ARTICLE II: DUTIES. The Employee accepts such employment as a salesperson and agrees to devote his or her full-time and best efforts to soliciting sales in the territory or territories to be determined by the Company.

The Employee shall solicit \_\_\_\_\_ sales for the exclusive benefit of the Company and perform such other duties as may be assigned to him or her by the Company. The Employee agrees that during the term of this agreement, he or she will have no other employment except as may be specifically authorized in writing by the Company. The Employee shall not serve as an adviser, agent, consultant, independent contractor or in any partnership, corporation or other entity, person or firm that directly sells or services \_\_\_\_\_ or any type of product or service that competes, conflicts or interferes with the performance of his or her duties, unless he or she has first received written consent of the Company, which consent shall be revocable at the will of the Company.

The Employee shall present the Company's line of \_\_\_\_\_ to prospective clients and will offer such \_\_\_\_\_ at prices furnished by the Company, on the terms and conditions established by the Company and in the territories established by the Company.

The Employee shall not at any time enter into any contract with any person or corporation that shall purport to bind the Company in any manner whatsoever without written authority from the Company and any such contract entered into by such Employee shall not be binding upon the Company. The Company specifically reserves the right to reject any contract or to cancel any contract or part thereof even after acceptance, for credit reasons or for any other reason whatsoever that the Company may deem appropriate.

ARTICLE III: TERMS. The Company hereby employs the Employee and the Employee hereby accepts employment for a term of \_\_\_\_\_ (\_\_\_\_) year(s) from the date hereof unless terminated by either party by written notice sent by certified mail at least \_\_\_\_\_ (\_\_\_\_) days in advance of such termination. Such notice of termination shall not prejudice either party as to any remedies under the provisions of this agreement. If the agreement is not terminated by either party during the initial term hereof, the Employee's employment shall continue thereafter under the terms and conditions hereof for a period of one year, and so on from year to year, until either party terminates this agreement.

ARTICLE IV: COMPENSATION. As compensation for all of the services to be rendered by the Employee pursuant to the terms and conditions set forth herein and such other duties as the Company may from time to time determine, the Employee shall receive a commission in an amount to be determined pursuant to the Schedule(s) of Commissions to be published by Company, from time to time.

In the event that a commission is paid to the Employee pursuant to the terms of this ARTICLE IV, and the Company, for whatever reason whatsoever, is thereafter obligated to return the payments upon which the commission is determined, the Employee shall, upon thirty (30) days written notice, repay to the Company such compensation as he or she has received based on the amounts so returned or returnable. Compensation payable pursuant to this ARTICLE IV shall be paid not less frequently than monthly and may be offset by any amounts owed to the Company.

In the event the Company shall determine, in its sole discretion, that compensation based on the Schedule of Commissions shall change, the Company shall provide written notice to the Employee at least thirty (30) days prior to the said change. The Company agrees that it shall not change the commission schedule unless the said changes are made for all sales employees of the Company. Any amounts paid and any benefits provided to the Employee pursuant to this agreement that are deemed to be compensation under the Internal Revenue Code shall be subject to the applicable income tax withholding for federal, state and local income taxes. In addition, the Company shall deduct from the

compensation paid to the Employee such other deductions as authorized by the Employee or by a court of competent jurisdiction.

ARTICLE V: OTHER BENEFITS AND EXPENSES. The Employee shall be entitled during the term of this agreement to participate in all health insurance and benefit plans, group insurance or other plan or plans providing benefits generally applicable to the employees of the Company who are currently in existence or those who hereafter may be adopted by the Company.

Once the Employee shall be deemed a "successful salesperson", said determination to be at the sole discretion of the Company as applied to all salespeople, the Employee may draw for expenses up to \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per month, the said draw amount being subject to change as long as the said change applies to all "successful salespeople" at the sole discretion of the Company. The Employee shall submit evidence of the said expenses on no less than a monthly basis with the difference between the monthly draw and the actual verified expenses being returned to the Company within thirty (30) days of notice.

ARTICLE VI: PRICES AND SERVICE. The Employee shall sell the Company's \_\_\_\_\_ at the price and under the terms and conditions established by the Company. Said prices, terms and conditions may, from time to time, be changed and/or modified by the Company at its sole discretion. The Employee shall not at any time enter into any contract with any person, firm or corporation that shall purport to bind the Company in any manner whatsoever without written authority from the Company and any such contract entered into by such Employee shall not be binding upon the Company. The Company specifically reserves the right to reject any application or contract or to cancel any application or contract or part thereof even after acceptance, for credit reasons or for any other reason whatsoever that the Company deems appropriate.

ARTICLE VII: TERMINATION. In the event of the death of the Employee, the Company shall pay to the representative of the Employee's estate all funds due to the Employee to the date of death. In the event that the Employee becomes disabled because of physical or mental disability as to be unable to perform the services required by this agreement and such disability continues for \_\_\_\_\_ (\_\_\_\_) days, the Company may, at or after the expiration of such \_\_\_\_\_ (\_\_\_\_)-day period and provided the Employee's incapacity is then continuing, terminate the Employee's employment under this agreement. It is expressly understood that the inability of the Employee to render services to the Company by reason of illness, disability or incapacity or any cause beyond his or her control shall not constitute a failure by the Employee to perform his or her obligations hereunder and shall not be considered a breach or default under this agreement.

In the event that the Employee violates any of the provisions of this agreement or performs any act or does anything by which the Company shall incur liability, then, at the option of the Company, this contract shall at once cease and the Company shall be under no obligation to the Employee, except to pay the Employee for such services as may have been performed up to the date of termination of this agreement as herein provided. In the event that the Employee violates any of the provisions of this agreement or fails to perform the services required of the Employee by this agreement, then at the option of the Company, this agreement shall at once cease and become null and void and the Company shall be under no obligation to said Employee except to pay the Employee such compensation as he or she may be entitled to receive up to the time of such termination.

In the event that the Employee becomes insolvent and unable to pay his or her debts in full or files a petition in bankruptcy or is adjudicated a bankrupt, this agreement shall at once cease and become

null and void and the Company shall be under no obligation to the Employee except to pay the Employee such compensation as he or she may be entitled to receive up to the time of such termination.

In the event that the Employee should be arrested or be the subject to an indictment or charged with any crime or unlawful act involving an allegation or charge of a breach of moral turpitude or the sale or use of a prohibited drug or controlled substance, this contract shall at once cease and become null and void and the Company shall be under no obligation to the Employee except to pay the Employee such compensation as he or she may be entitled to receive up to the time of such termination. In the event that the Employee should be found to have taken, used or converted any property belonging to the Company, the Employee shall be immediately discharged and this contract shall at once cease and become null and void and the Company shall be under no obligation to the Employee except to pay the Employee such compensation as he or she may be entitled to receive up to the time of such termination.

Any payments due the Employee pursuant to termination shall be paid to the Employee as soon as the Company can determine the true and correct amount for all payments due the Employee, except that in the event that said termination is due to the misconduct of the Employee pertaining to any of the terms hereunder, the Company shall have the right to withhold all money due the Employee and shall apply said funds as an offset against any money due the Company from the Employee as a result of the Employee misconduct. In any event, the Employee shall be entitled to an accounting, in writing, of the funds so withheld,

ARTICLE VIII: CONFIDENTIAL INFORMATION. "Confidential Information" shall be defined for the purpose of this agreement as information (1) disclosed to the Employee or known or gathered by the Employee as a consequence of or through his or her employment by the Company and (2) not generally known to the industry in which the Company is or may become engaged about the Company's products, administrative services or methods of doing business, including, but not limited to, information relating to trade secrets, marketing techniques and programs, dates, figures, projections, costs, methods of operation, identity of plans or administrative services, estimates, customer lists, customer history, personnel history, financial statements, accounting procedures and selling techniques.

That the Employee will not during his or her employment or after termination thereof, irrespective of the time, manner or cause of the termination of said employment, directly or indirectly disclose to any person, firm or corporation any of the above Confidential Information that he or she shall have acquired during his or her term of employment.

The Employee agrees that he or she will not, during his or her employment by the Company or at any time thereafter, interfere with or disrupt, or attempt to interfere with or disrupt, any business relationship, contractual or otherwise, between the Company and any other party, including clients or prospective clients, suppliers, agents or the employees of the Company.

The Employee acknowledges that all documents, words, files, customer lists, information and data in his or her possession or custody, whether gathered by the Employee or any other person, and whether or not reduced to writing, an electronic or magnetic medium, relating to the business activities of the Company are and shall remain the sole and exclusive property of the Company and/or the Company's customers.

That upon the termination of said employment, irrespective of the time, manner or cause of said termination, the Employee will surrender to the Company all information written or otherwise in connection with the Company's customers or business as well as other property of the Company.

ARTICLE IX: NONCOMPETITION PROVISION. In further consideration of employment, the Employee shall not engage in a business in any manner similar to or in competition with the Company's or the Company's affiliated businesses during the term of his or her employment. Furthermore, the Employee shall not engage in a business in any manner similar to or in competition with the Company's business for a period of \_\_\_\_\_ (\_\_\_\_) years from the date of termination of his or her employment with the Company in the geographical area within a \_\_\_\_\_ (\_\_\_\_)-mile radius of any present or future office opened by the Company during the term of employment and the geographical area within a \_\_\_\_\_ (\_\_\_\_)-mile radius of the Employee's home address.

The Employee shall not request any customers of any business then being conducted or contemplated by the Company or its affiliates to curtail or cancel their business with the Company or its affiliates.

The Employee shall not disclose to any person, firm or corporation any trade, technical or technological secrets, any details of organizations or business affairs, any names of past or present customers of the Company or its affiliates or any other information relating to the business or businesses or their affiliates.

The Employee shall not solicit, canvass or accept any business or transaction for any other person, firm or corporation or business similar to any business of the Company or its affiliates.

The Employee shall not induce, or attempt to influence, any employee of the business or its affiliates to terminate employment with the business or its affiliates or to enter into any employment or other business relationship with any other person (including the Employee), firm or corporation,

The Employee shall not act or conduct himself or herself in any manner that he or she shall have reason to believe is inimical or contrary to the interests of the Company or its affiliates.

The Employee shall not perform any act in violation hereof through any other person or entity or through any plan, scheme or design calculated to circumvent the requirements hereof.

The Employee acknowledges and agrees that the above restriction is reasonable as to duration and geography, that it is fully enforceable, and waives any objection thereto and covenants to institute no suit or proceeding or otherwise advance any position or contention to the contrary.

The Employee recognizes that immediate and irreparable damage will result to the Company if the Employee breaches any of the terms and conditions of this article and, accordingly, the Employee hereby consents to the entry of temporary, preliminary and permanent injunctive relief by any court of competent jurisdiction against him or her to restrain any such breach, in addition to any other remedies or claims for money damages that the Company may seek; and the Employee agrees to render an equitable accounting of all earnings, profits and other benefits arising from such violations; and to pay all costs and counsel fees incurred by the Company in enforcing this agreement, which rights shall be cumulative. The Employee represents and warrants to the Company that his or her experience and capabilities are such that he or she can obtain employment in business without breaching the terms and conditions of this article and that his or her obligations under the provisions of this article (and the enforcement thereof by injunction or otherwise) will not prevent him or her from earning a livelihood.

This covenant on the part of the Employee shall be construed as an agreement independent of any other provisions of this agreement, and the existence of any claim or cause of action of the

Employee against the Company, whether predicated on this agreement or otherwise, shall not constitute a defense to the enforcement by the Company of this covenant. In the event that the Employee is in breach of any of the provisions of this Article IX, the period of proscription from doing the act or acts constitute a breach of this Article IX shall be extended for a period of two (2) years from the date that the Employee ceased, whether voluntarily or by court order, to engage in or do said actions.

The Employee recognizes and agrees that the Company does not have a remedy at law adequate to protect the Company's rights and interests as set forth in this article, and the Employee therefore agrees that the Company shall have the right to an injunction enjoining the Employee from violating the provisions of this article. Nothing herein contained shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for such breach or threatened breach, including the recovery of damages from the Employee.

If any action at law or equity is necessary to enforce or interpret the terms of this agreement, the Employee agrees to pay the Company reasonable attorney's fees, costs and necessary disbursements, in addition to any other relief and/or damages to which the Company may be entitled.

In the event that a court of competent jurisdiction determines that this restrictive covenant and covenant not to compete is unenforceable in whole or in part for any reason, including, without limitation, the duration, scope and remedies set forth above, then same shall not be void, but rather shall be enforced to the extent that same is deemed to be enforceable by said court, as if originally executed in that form by the parties hereto,

ARTICLE X: MISCELLANEOUS. Service of all notice under this agreement shall be sufficient if made by registered mail to the specific party involved herein at his or her respective address hereinafter set forth or as such party may provide from time to time in writing:

For the Company: \_\_\_\_\_

For the Employee: \_\_\_\_\_

This agreement constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, understandings and agreements, whether oral or written, of any nature whatsoever with respect to the term of employment that is the subject matter hereof, and there are no representations, warranties, understandings or agreements other than those expressly set forth herein between the Company and the Employee. This agreement cannot be changed, modified or terminated except in writing and signed by the parties hereto.

The validity, interpretation, construction and enforcement of this agreement shall be governed by the laws of the state of \_\_\_\_\_.

The Company shall have the right, but not the obligation, to assign this agreement and the Company's rights hereunder in whole, but not in part, to any corporation or other entity with or into which the Company may hereafter merge or consolidate or to which the Company may transfer all or substantially all of its assets provided such corporation or other entity assumes all of the Company's obligations hereunder.

The Employee understands and acknowledges that his or her employment contract is a contract for personal services of the Employee and cannot be assigned

This contract is for the personal services of the Employee and shall cease and desist and be considered null and void upon the termination of the contract under any of the provisions hereto.

The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereto and the agreement shall be construed in all respects as though such invalid or unenforceable provision were omitted.

Any legal action undertaken by the Employee pursuant to any of the terms or conditions or the interpretation thereof shall be commenced within six (6) months of said termination. The Employee agrees hereby that after a term of six (6) months has expired, no legal action against the Company may be brought in any court regarding any term or condition of this agreement.

IN WITNESS WHEREOF, the parties hereto acknowledge, understand and agree to this Employment Agreement. The parties understand and intend to be bound by all of the clauses contained in this document and further certify that they have received signed copies of this agreement.

Company By:

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President

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Employee