

[COMPANY LOGO]

November 30, 2022

[EXECUTIVE NAME] – via email

Re: **Amendment to agreed compensation — partial conversion from cash to stock-based**

Dear [EXEC FIRST NAME]:

This letter agreement will serve as an agreed “Amendment” — effective retroactive to June 1, 2022 — to modify certain terms of your offer-letter agreement dated April 12, 2022 (“Offer Letter”).

1. **BACKGROUND: FULL-TIME START DATE:** This confirms that you began working for the Company:
  - part-time on April 4, 2022; and
  - full time on June 1, 2022 (your “Full-Time Start Date”).

2. **BACKGROUND: PREVIOUSLY-AGREED CASH SALARY:** Under paragraph 2.4 of the Offer Letter, your annualized salary was to have been increased to \$250,000 per year from its original annualized rate of \$125,000 per year, beginning on your Full-Time Start Date (see paragraph 2.1 of the Offer Letter).

3. **BACKGROUND: PREVIOUSLY-AGREED CASH BONUS:** Under section 4 of the Offer Letter, you were to have been paid a cash bonus for the first half of 2022 at a rate of 50% of your average base salary in effect during the first half of 2022 (January 1 through June 30; see the example in paragraph 4.3 of the Offer Letter), assuming achievement of agreed semi-annual goals, calculated as follows:

TARGET BONUS COMPUTATION FOR 1H2022	AMOUNT
Base salary: April 1 – May 31 (2 months at \$125K per ann.) <sup>1</sup>	\$20,833
Base salary: June 1 – June 30 (1 month at \$250K per ann.)	\$20,833
<b>Total agreed base salary</b>	<b>\$41,666</b>
Target bonus percentage	50%
<b>Total agreed target bonus for Jan. 1 through June 30, 2022:</b>	<b>\$20,833</b>

<sup>1</sup> To simplify the computation, this assumes a start date of Friday, April 1, instead of your actual start date of Monday, April 4, 2022.

**Commented [DCT1]:** INTRO: 1) An executive of one client was hired to be CEO of another company (the “Company”). 2) I helped the executive negotiate his employment agreement, which was in the form of an offer letter. 3) The compensation details are to change; the Company asked the new CEO to have his counsel draft an amendment, and the CEO asked me to do it.

**Commented [DCT2]:** NOTE TO EXEC: This date will need to be updated, of course.

**Commented [DCT3]:** IMPORTANT: I’ve done one project for the Company as their counsel (at the new CEO’s request), so I’m going to have the CEO get a sign-off from someone else at the Company’s board chair to waive the potential conflict of interest — in fact, I might even put the waiver in the draft that goes to the Company.

**Commented [DCT4]:** Instead of doing a formal agreement, I started with the Word document of the offer letter.

**Commented [DCT5]:** I did several paragraphs explaining the background, as a set-up for the amendment provisions.

**Commented [DCT6]:** Note the extensive references to specific paragraphs in the employment agreement (“Offer Letter”).

**Commented [DCT7]:** The Offer Letter has a “worked example” of the initial bonus computation; the example is proving quite useful to show how the initial bonus computation is supposed to go.

**Commented [DCT8]:** Note the use of a table AND of a footnote — and the footnote makes a simplifying assumption.

4. BACKGROUND: SHORTFALL IN CASH PAYMENTS: Due to various circumstances:
- a. Your cash salary has been paid only at the \$125,000 annualized rate and not the agreed \$250,000 annualized rate starting at your Full-Time Start Date, for a shortfall of \$7,500 per month, totalling a \$52,500 shortfall for the seven-month period from your Full-Time Start Date through December 31, 2022; and
  - b. You have not been paid the agreed target bonus for the first half of 2022 (see paragraph 3), for an additional shortfall of \$20,833, even though you met your agreed performance goals for that period.

**Commented [DCT9]:** I didn't want to go into detail why there's been a shortfall in cash payments, because it might raise hackles with the Company and its counsel.

**Commented [DCT10]:** I put in an acknowledgement to document facts favorable to the CEO.

5. AGREED REDUCTION IN CASH SALARY: You and the Company agree that, retroactive to your Full-Time Start Date, your annualized cash salary will be \$160,000 instead of \$250,000 stated in paragraph 2.4 of the Offer Letter.

6. NEW ONE-TIME STOCK GRANT FOR SHORTFALL IN 2022 CASH COMPENSATION: To compensate you, dollar for dollar, for the shortfall of \$52,500 + \$20,833 = \$73,333 in payment of your promised cash compensation (see above), the Company will recommend to the Board, at its next meeting, as follows:
- that you are to receive a one-time grant under the Company's 2018 Equity Incentive Plan, of 222,221 restricted shares of Company common stock, based on a price of [PRICE]; and
  - that this one-time grant is to be six-sevenths vested as of December 1, 2022, and fully-vested as of December 31, 2022.

**Commented [DCT11]:** EXEC: I'm assuming you'll be getting restricted stock and not options — if that's not the case, then a few minor tweaks will be needed.

Note: The fair market value of the restricted-stock grant would normally be taxable income in 2022 if fully-vested in that year — I'm not a tax lawyer, so be sure to consult your tax adviser.

7. FUTURE STOCK GRANTS FOR REDUCED CASH COMPENSATION: Beginning January 1, 2023, until such time (if any) as you and the Company agree otherwise, the Company will compensate you for your work in each calendar year as stated in the following table (see also the note after the table):

**Commented [DCT12]:** Notes following a table are pretty conventional in financial statements.

(1) Cash salary (see paragraph 5), paid per your Offer Letter	\$160,000
(2) Grant of restricted shares of Company common stock, at then-current valuation [a], to be granted in January of that calendar year and vesting on a calendar-day basis, with full vesting on December 31 of that year.	\$90,000
(3) Target bonus for that year, as a grant of in fully-vested shares — valued as in (2) above — to be granted at the same time that a cash bonus (if any) would have been paid under paragraph 4.4 of your Offer Letter	50%

Notes:

[a] Per-share valuation is to be equal to the following, in descending order of preference:

- (1) if the Company’s common stock is publicly traded, then the closing price per share on the grant date;
- (2) if the Company has had an investment round in the previous [18?] months, then the pre-money valuation per share of that round;
- (3) if neither (1) or (2) applies, then a share valuation agreed to by you and the Company, if any;
- (4) if none of (1) through (3) applies, then the most-recent valuation per share established generally by the Board and not specifically for your share grant.

8. NO OTHER OFFER-LETTER MODIFICATIONS: Apart from the matters stated in this Amendment, your Offer Letter remains in effect as stated there.

Sincerely,

\_\_\_\_\_  
[BOARD CHAIR NAME]  
[CURRENT TITLE?]

\_\_\_\_\_  
Date signed

I agree to the terms set forth in this Amendment.

\_\_\_\_\_  
[EXEC NAME]

\_\_\_\_\_  
Date signed

**Commented [DCT13]:** NOTES TO EXEC: As I assume you’re aware:  
1) this valuation should be “fair market value” as of the date of grant, so that you’re not deemed to be recognizing income on the grant date; and

2) if the restricted shares won’t be fully vested in the tax year of grant, then presumably you’ll want to file an 83(b) election so that you’ll recognize income, and be taxed, on the value of the shares as of the grant date and not on (what we hope will be) the higher value at vesting.

(The 83(b) election question presumably doesn’t arise with your original option grant, as it’s an ISO — see, e.g., [here](#).)

Again, I’m not a tax lawyer ....

**Commented [DCT14]:** NOTE TO EXEC: The [LAW FIRM] people might have a better idea for valuation, given that I’m not familiar with the [COMPANY] cap table.

**Commented [DCT15]:** NOTE TO EXEC: What about baseball-style arbitration if you can’t agree?

**Commented [DCT16]:** Trying to handle ALL the potential cases here. (In the software world, this is literally referred to as a [CASE statement](#).)

**Commented [DCT17]:** I’m guessing this will be e-signed, as was the offer letter.