

# Employment Agreement

WORKING DRAFT 2023-11-08

**WARNING:** This document may not meet your specific needs; it should not be relied on as a substitute for legal advice from a licensed attorney, and is provided **AS IS, WITH ALL FAULTS**. Without advice from an attorney, you could be putting your money and property at risk. To be referred to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690, or an authorized lawyer referral service in your state.

Company's full legal name and type of legal entity: **ABC Corporation**, a Texas corporation

Employee's full legal name and city and state of residence: **John A. Doe**, a resident of Houston, Harris County, Texas

Effective date of this Agreement: The last date signed below or the Employee's first day of work, whichever comes first.

Scheduled termination date for Employment: N/A — employment is "at will"

**The Employee certifies as follows**, intending that the Company rely on this certification in hiring the Employee:

- the Employee has read this entire Agreement;
- the Employee has had the opportunity to ask questions, and to consult an attorney or other advisor, about the terms and conditions of this Agreement;
- all of the Employee's responses to any requests, by or on behalf of the Company, for information or documents, in connection with the Employee's application for employment with the Company, are complete, accurate, and not misleading; and
- the Employee has no obligations, contractual or otherwise, inconsistent with his or her obligations set forth in this Agreement.

AGREED to as a binding contract by the Employee listed above:

AGREED to as a binding contract by the Company listed above, by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature *[optional - Company need not sign]*

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

\_\_\_\_\_  
Printed name AND TITLE

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

**Commented [DT1]:** Company signature is optional in case "HR" inadvertently lets that fall through the crack. **CAUTION:** Both parties might need to sign if the agreement contains a noncompetition clause or similar restraint.

18 **Table of Contents**

19 1. General definitions  
20 2. Employee's duties  
21 3. Restrictions  
22 4. Compensation and benefits  
23 5. At-will employment  
24 6. Company policies  
25 7. Innovations  
26 8. Confidential Information  
27 9. Personnel data  
28 10. Termination  
29 11. Noncompetition covenant  
30 12. Mandatory arbitration  
31 13. General provisions

32 **1. General definitions**

33 When used in this Agreement, the following terms have the meanings set forth below.

34 **Affiliate:** An "Affiliate" of a Person is any other Person that controls or is controlled by or is un-  
35 der common control with that Person.

36 For this purpose, "control" refers to the direct or indirect ownership of at least fifty percent  
37 (50%) of the equity or beneficial interest in such Person or the right to vote for or appoint a  
38 majority of the board of directors or other governing body of such Person.

39 **Agreement:** The terms "this Agreement" refers to, collectively:  
40 (1) the Agreement Document (*see below*);  
41 (2) any exhibit, schedule, appendix, addendum, or other document identified in the Agreement  
42 Document as being part of this Agreement; and  
43 (3) any other document expressly incorporated by reference into the Agreement Document.

44 **Agreement Document** refers to a document signed by the parties (manually, electronically, or  
45 otherwise) that incorporates these Model Provisions by reference or otherwise states that the  
46 parties are making the signed document subject to these Model Provisions.

47 **Company** refers to the corporation or other organization, identified in the Agreement Docu-  
48 ment, that is entering into this Agreement with the Employee, but not to any other Company  
49 Group Member except as expressly stated in this Agreement.

**Commented [DT2]:** This definition is set up so that any company within a "corporate family" can use it.

50 **Company Business** refers to the following:  
51 (1) any business engaged in by the Company or any other Company Affiliate during the Employ-  
52 ment, **and**  
53 (2) any other business as to which, during the Employment, Company or any other Company  
54 Group Member made demonstrable preparation to engage in the business, **IF** either or both of  
55 the following is true:  
56 (i) The Employee materially participated in that preparation; and/or  
57 (ii) in connection with that preparation, the Employee had access to Confidential Infor-  
58 mation.

**Commented [DT3]:** Note the two parts to this definition.

59 **Company Group Member** refers to the Company and its Affiliates.

60 **Company Innovation** refers to any *Innovation* that is made, created, conceived, or reduced to  
61 practice by any person if any of the following is true about the Innovation:  
62 (1) any equipment, supplies, facilities, or confidential information of Company or any other  
63 Company Group Member were used in any phase of the conception or development of the In-  
64 novation; or  
65 (2) the Innovation was made at least in part using time for which the person was compensated  
66 by Company or any other Company Group Member; or  
67 (3) the Innovation relates to any Company Business; or  
68 (4) the Innovation resulted, in whole or in part, from work which the person performed for  
69 Company or any other Company Group Member.  
70 The previous sentence applies whether the person worked alone or jointly with others, and  
71 whether or not during regular working hours; it also applies whether or not the Innovation is  
72 potentially patentable or copyrightable in the U.S. or elsewhere.

73 **Company Materials** refers to any and all Materials for which any of the following is true:  
74 (1) the Employee received the Materials from Company or any other Company Group Mem-  
75 ber, or  
76 (2) the Employee *created*, or help to create, the Materials during the Employment AND the Ma-  
77 terials relate to any Company Business; or  
78 (3) the Materials contain, or reflect, Confidential Information.

**Commented [DT4]:** Some companies use "invention assignment agreement" forms (or some such title) that are separate from the basic employment agreement.

79 **Confidential Information** refers to confidential information of Company or any other Company  
80 Group Member that the Employee learns in the course of the Employment — whether or not  
81 the information is marked as confidential — except for information that the Employee can  
82 show, with reasonable corroborating evidence, that:

83 (1) the information was in the Employee's possession or knowledge before the Employment  
84 began; or

85 (2) the information is or becomes generally known to persons who could take economic ad-  
86 vantage of it without breach of an obligation to a Company Group Member; or

87 (3) the Employee obtained the information from a party having the right to disclose it to the  
88 Employee without violation of an obligation to a Company Group Member.

89 No combination of information will be deemed to be within any of the exceptions (1)  
90 through (3) in the previous sentence, however — even if one or more component parts of the  
91 combination are within one or more exceptions — unless the combination itself and its econo-  
92 mic value and principles of operation are themselves within one or more of those exceptions.

93 **Create** and **Creation**, whether or not capitalized, (i) in respect of an invention, trade secret, or  
94 business idea, refer to the conception or reduction to practice thereof; (ii) in respect of a work  
95 of authorship, refer to fixation of the work, in whole or in part, in a tangible medium of expres-  
96 sion.

97 **Designated Owner** refers to (i) the Company or (ii) if from time to time the Company designates  
98 another Company Group Member, or one or more other organizations, to own certain inven-  
99 tions or other intellectual-property rights, the designated other organization.

100 **Employment** refers to the Employee's employment with the Company.

101 **Examples** (and corresponding terms such as for example), whether or not capitalized, are used  
102 in the Agreement for purposes of illustration, not of limitation, unless another meaning is clear  
103 from the context. For the avoidance of doubt, if in some places the Agreement uses longer ex-  
104 pressions such as "by way of example and not of limitation," such usage does not mean that the  
105 parties intend for shorter expressions such as "for example" to serve as limitations unless ex-  
106 pressly stated otherwise.

**Commented [DT5]:** Marking require-  
ments for confidential information are  
often found in nondisclosure agreements  
between companies, but for an employ-  
ment agreement, such a requirement  
would likely be unwieldy for the Com-  
pany to comply with.

**Commented [DT6]:** These are fairly  
standard exclusions from Confidential In-  
formation status (but two other exclu-  
sions are omitted).

**Commented [DT7]:** This is a "secret  
sauce" exclusion to the exclusions.

**Commented [DT8]:** In other words:  
Just getting the idea during the Employ-  
ment is enough to have the Company  
own it. (Of course, there might be proof  
problems ....)

**Commented [DT9]:** A large company  
might have a specific subsidiary or affil-  
iate that owns the IP for the entire corpo-  
rate family — possibly for tax-related  
reasons.

**Commented [DT10]:** This is to avoid  
*expresio unius est exclusion alterius*.

107 **Include** and like words (for example, includes, included, and including), whether or not capital-  
108 ized, are to be deemed followed by the phrase "without limitation" if not followed literally by  
109 that phrase. For the avoidance of doubt, if in some places the Agreement uses longer expres-  
110 sions such as "including but not limited to" or "including without limitation," such usage does  
111 not mean that the parties intend for other, shorter expressions such as "including" to serve as  
112 limitations unless expressly stated otherwise.

Commented [DT11]: Ditto.

113 **Innovation** refers to each of the following: (1) an invention, whether or not patentable or pa-  
114 tented; (2) a work of authorship copyrightable in the U.S. or elsewhere, whether or not regis-  
115 tered or registrable; (3) a trade secret; and (4) an idea that could be used in any Company Busi-  
116 ness.

117 **Materials** refers to reports, notes, emails, manuals, computer programs or data, photographs,  
118 and all other recorded, written, or printed matter, in any format, including but not limited to  
119 electronic, magnetic, optical, and hard-copy formats.

120 **Person** refers to a natural person, corporation, partnership, or other legal entity, or a joint ven-  
121 ture of two or more of any of them.

122 **Tribunal** refers to an arbitration panel, court, or other body of competent jurisdiction that is de-  
123 ciding a matter arising out of or relating to this Agreement.

## 124 **2. Employee's duties**

125 (a) **Position:** The Employee is being initially hired for a particular position; the Company may  
126 change the Employee's position, title, and specific job responsibilities from time to time in its  
127 discretion.

128 (b) **Best efforts:** The Employee will perform all the duties and such other functions as the Com-  
129 pany may require, to the best of the Employee's ability, giving the Company the full benefit of  
130 the Employee's knowledge, expertise and technical skill.

131 (c) **Work hours:** Whenever so required for the proper fulfillment of the Employee's duties, the  
132 Employee will work such hours as the Company may prescribe, with additional compensation if  
133 and to the extent required by applicable law.

134 (d) **Travel:** The Employee will attend and work at any premises of the Company Group Mem-  
135 bers wherever situated, and travel and work both in this country and abroad, as may be re-  
136 quired for the proper fulfillment of the Employee's duties.

137 (e) **Compliance with policies, etc.:** The Employee will comply with all lawful rules, regulations,  
138 policies, procedures, ethical standards, and special instructions that may be adopted by the  
139 Company from time to time — **except** that if such policies conflict with the express provisions  
140 of this Agreement, then the terms of this Agreement will govern.

141 (f) **Full-time work:** The Employee will devote his or her full productive time, ability and atten-  
142 tion and his or her best efforts to the business of the Company, except to the extent otherwise  
143 authorized in writing by the Company.

144 (g) **Knowledge:** The Employee will make available to the Company any and all information of  
145 which the Employee has knowledge and which the Employee has a reasonable belief is or  
146 would be relevant to the Company's business, to the extent that this is possible without violat-  
147 ing any obligation of confidentiality that the Employee may have to a former employer.

### 148 3. Restrictions on activities

149 (a) **No conflicting activities:** The Employee will not engage, directly or indirectly, in the plan-  
150 ning, operation or management of any activity that competes with the Company or otherwise  
151 conflicts with the Company's business interests.

152 (b) **Other work:** The Employee will not work on a full- or part-time or independent-contracting  
153 basis for any other Person without the Company's prior written consent.

154 (c) **Company property:** The Employee will not remove or assist in removing any Company Ma-  
155 terials or other property of Company or any other Company Group Member from such com-  
156 pany's premises under any circumstances, either during the Employment or after its termina-  
157 tion, except as authorized by the Company.

### 158 4. Compensation and benefits

159 (a) **Compensation:** For all the services rendered by the Employee to Company or any other  
160 Company Group Member during the Employment, and for so long as the Employee remains em-  
161 ployed by the Company, the Employee will receive the compensation offered to and accepted  
162 by him or her, less withholding that is either required by law or agreed to by the Employee.

**Commented [DT12]:** In other words:  
No moonlighting, no side hustles.

**Commented [DT13]:** QUESTION:  
How does this tie in with the "Creation"  
definition (section 1)?

**Commented [DT14]:** Note how this  
paragraph is not limited to the Employ-  
ment term.

**Commented [DT15]:** This arguably  
duplicates 2(f), but it can be a useful  
sound bite.

**Commented [DT16]:** Low-hanging  
fruit for possible termination for cause  
and/or post-employment litigation

163 (b) **Pay schedule:** The Employee's compensation will be payable in installments at such times  
164 as the Company customarily pays its other employees — but in any event no less often than  
165 monthly or the minimum frequency required by applicable law for comparably-situated em-  
166 ployees, whichever is more often.

**Commented [DT17]:** Flexibility for the Company.

167 (c) **Benefits (if applicable):** The Employee will be entitled to participate in any group medical,  
168 dental, disability, and life insurance plans, 401(k) plans, pension or profit-sharing plans, stock  
169 option plans, and similar benefits that may be offered by the Company — if any — on the same  
170 or similar basis as comparably-situated employees.

171 The Employee also understands that these benefits may be changed or eliminated at the sole  
172 discretion of the Company.

173 (d) **Bonus (if applicable):** In addition to the compensation and benefits referred to above, the  
174 Employee may receive bonus compensation at such intervals and frequency as determined ap-  
175 propriate in the sole discretion of the Company.

176 The Company will not be obligated to the Employee for any bonus compensation not otherwise  
177 so authorized.

178 The Employee acknowledges that he or she must be employed by the Company at the time the  
179 bonus is authorized in order to be eligible for a bonus.

180 (e) **Vacation (if applicable):** The Employee will be entitled to vacations of a duration (1) con-  
181 sistent with the Company's policies as promulgated from time to time, or (2) if longer, as re-  
182 quired by applicable law for comparably-situated employees.

**Commented [DT18]:** This employ-  
ment agreement form was written for  
use in multiple countries, some of which  
had mandatory vacation laws (IIRC).

183 (f) **Tax responsibility:** The Employee alone, and not the Company, will be responsible for the  
184 payment of all taxes required by applicable law in respect of the payments to be made and ben-  
185 efits to be provided under this Agreement or otherwise (except to the extent withheld by the  
186 Company).

187 (g) **Expense reimbursement:** (1) The Company will cause the Employee to be reimbursed for  
188 reasonable business expenses actually incurred by him or her, with the Company's authoriza-  
189 tion, in connection with the Employment.

**Commented [DT19]:** "Reasonable"  
and "actually incurred" should provide  
tools for dealing with suspected expense  
fraud.

190 (2) All such reimbursement will be done in accordance with the Company's then-current travel  
191 policies and applicable tax-authority requirements or guidelines.



192 (h) **No other compensation or benefits:** For the avoidance of doubt, the compensation and  
193 other benefits described in this "Compensation and benefits" section represent all, and the  
194 only, compensation and benefits to which the Employee is entitled from the Company or any  
195 other Company Group Member.

**Commented [DT20]:** This is a "road-block" clause, intended to forestall employee claims of implied promises to additional compensation or employee benefits

196 (i) **Withholding:** Except to the extent otherwise prohibited by law, the Company is authorized  
197 to withhold — from cash compensation or other payment of any kind, if any, which the Em-  
198 ployee may be due — any past-due amounts, of any kind, that the Employee owes to the Com-  
199 pany, if any.

**Commented [DT21]:** This is different from tax withholding.

## 200 5. **At-will employment**

201 For the avoidance of doubt, to the greatest extent **not prohibited by law**, the parties intend that  
202 the Employee will be an "at-will" employee during the entire time of the Employment.

**Commented [DT22]:** This is its own section for emphasis.

**Commented [DT23]:** Note the phrasing: "Not prohibited by law," as opposed to "allowed by law."

## 203 6. **Company policies**

204 (a) **Policy documents:** The Company may in its sole discretion establish, amend, maintain and  
205 distribute (including but not limited to publication on an internal Web site) policies, employee  
206 manuals and/or personnel policy manuals.

207 (1) **Policies are not contractual:** The Employee acknowledges and agree that those policies and  
208 manuals are not part of the contractual terms of this Agreement and do not constitute a sepa-  
209 rate contract, but instead are only general policies and guidelines of the Company's employees.

210 (2) **Compliance obligation:** The Employee will adhere to and follow all rules, regulations and  
211 policies of the Company set forth in those policies and manuals as they now exist or may later  
212 be amended or modified.

**Commented [DT24]:** Problem: This duplicates 2(e).

## 213 7. **Innovations**

214 (a) **Ownership:** The Designated Owner will be the sole owner of any and all Company Innova-  
215 tions and any Company Materials that the Employee may *create* during the Employment.

216 (1) The same will be a "**work made for hire**" to the greatest extent permitted by law.

217 (2) In addition, the Employee: (i) **hereby assigns**, and (ii) agrees to assign, any Company Innova-  
218 tion that is not automatically owned by the Company as of its creation.

**Commented [DT25]:** "Work made for hire" is a copyright concept. In the patent world, "hired to invent" and "set to experimenting" are somewhat analogous concepts.

**Commented [DT26]:** This has in mind the case of *Stanford Univ. v. Roche* (U.S. 2011).

219 (b) **Disclosure to Company:** The Employee will promptly disclose to the Company, without ad-  
220 ditional compensation, any such Company Innovation and Company Materials.

221 (c) **IP protection:** (1) The Employee will assist one or both of the Company and the Designated  
222 Owner, at the Company's or the Designated Owner's expense, in protecting any intellectual  
223 property rights that may be available anywhere in the world for Company Innovations and  
224 Company Materials.

225 (2) Such assistance will include, for example, signing U.S. or foreign patent applications; copy-  
226 right registration applications; oaths or declarations relating to such patent- or copyright-regis-  
227 tration applications; assignments of ownership of such applications; and similar documents.

228 (d) **Moral rights:** To the extent that the Employee retains any so-called "moral rights" or simi-  
229 lar rights in a Company Innovation or in any Company Materials as a matter of law, the Em-  
230 ployee authorizes the Company and its successors, assigns, and licensees —

231 (1) to make any desired changes to any part of the Company Innovation or Company Materials;

232 (2) to combine any such part with other materials; and

233 (3) to withhold the Employee's identity in connection with any business operations relating to  
234 that Company Innovation or Company Materials;

235 in each case without additional compensation to the Employee.

## 236 8. Confidential Information

237 (a) **Confidentiality obligation:** Both during and after the Employment, the Employee will not  
238 disclose to anyone, directly or indirectly, nor will the Employee use —

239 (1) any Confidential Information of the Company or any other Company Group Member except

240 (i) as required in the course of the Employment or (ii) with the prior written consent of the

241 Company or the other Company Group Member, as applicable; nor

242 (2) any information of a Person as to which the Company is under an obligation of confidence,  
243 except as directed by the Company or with the prior consent of the owner of that information.

244 (b) **Exception for subpoenas, etc.:** Notwithstanding subdivision (a), the Employee may disclose  
245 Confidential Information if, and to the extent, required by legal process (e.g., a subpoena), pro-  
246 vided that the Employee notifies the Company immediately upon receiving or becoming aware  
247 of the legal process in question.

**Commented [DT27]: IMPORTANT:** This section (last updated 2012) does NOT have an affirmative disclosure of the Employee's whistleblower rights — that has significant implications under the 2016 Defend Trade Secrets Act.

**Commented [DT28]:** In the U.S., employees are under confidentiality obligations as a matter of common law; this section puts it in writing so as not to have to fight about it with an employee's (ignorant) lawyer.

**Commented [DT29]:** This provision can help the Employee in an indirect way: Sometimes a business partner of the Company will ask for the Company's employees to sign a confidentiality agreement directly with the business partner. If the Company decides to push back against such a request, it will help if the Company can point to specific language in the Employment Agreement that requires employees to preserve business partners' confidential information in confidence.

**Commented [DT30]:** This is where a Defend Trade Secrets Act disclosure could be inserted.

248 (c) **Confidential information of others:** (1) The Employee will strictly adhere to any obligations  
249 that he or she may have to former employers, consulting clients, or other Persons, insofar as  
250 the Employee's use or disclosure of confidential information of any such other Person is con-  
251 cerned.

**Commented [DT31]:** This clause could give the Company at least some help if a former employer of the Employee were to make a claim that the Employee stole the former employer's confidential information.

252 (2) The Employee represents that **to the best of his or her knowledge,** the Employment duties  
253 for the Company will not violate any such obligation.

**Commented [DT32]:** Note the "best of knowledge" phrasing.

254 (3) The Employee will **promptly advise** his or her supervisor if it appears to the Employee that  
255 his or her duties for the Company may call for him or her to use confidential information of a  
256 former employer or any other Person in breach of an obligation of confidence of the Employee.

**Commented [DT33]:** "Notification" clauses can be very useful. This does NOT say "give notice" — why?

257 (d) **Continued applicability:** For the avoidance of doubt, the requirements of this "Confidential  
258 Information" section will apply **after termination of this Agreement** without regard to whether  
259 the "Noncompetition covenant" section of this Agreement is in effect at the time in question.

**Commented [DT34]:** There's case law that if an employment agreement is "terminated," a noncompetition covenant dies with it — we wouldn't want that to happen to the confidentiality obligation.

## 260 9. Personnel data

261 (a) **Employee consent:** The Employee consents for the Company to hold computer records and  
262 personnel files relating to the Employee. These may include, but are not limited to, the Em-  
263 ployee's employment application, references, bank details, performance appraisals, holiday and  
264 sickness records, salary reviews and remuneration details and other records, (which may,  
265 where necessary, include sensitive data relating to the Employee's health, and data held for  
266 ethnic monitoring purposes).

**Commented [DT35]:** Note that this doesn't say "termination of the Employment" — is that a problem?

**Commented [DT36]:** This consent might be required in some jurisdictions such as the members of the European Union. **CAUTION:** Privacy law is evolving, so be sure to check the latest in the jurisdiction(s) of interest.

267 (1) The Employee acknowledges that the Company requires such personal data for personnel  
268 administration and management purposes and to comply with its obligations regarding the  
269 keeping of employee/worker records.

270 (2) The Employee will have a right of access to this data as prescribed by law.

271 (b) Data processing, disclosure, and **cross-border-transfer:** The Employee consents for the Com-  
272 pany to process personal data relating to the Employee for personnel administration and man-  
273 agement purposes, and when necessary for those purposes, make such data available to its ad-  
274 visors, to parties providing products and/or services to the Company (such as IT systems suppli-  
275 ers, pension, benefits and payroll administrators), to regulatory authorities (including tax au-  
276 thorities) and as required by law; and

**Commented [DT37]:** Cross-border transfer is regulated in the EU and likely in other places.

277 (c) To transfer any and all such data to and from the Company or any other Company Group  
278 Member, including outside the European Economic Area.

279 **10.Termination**

280 (a) **Termination by either party:** Either the Company or the Employee can terminate the Em-  
281 ployment at any time, for any reason, with cause (sometimes referred to as “for cause”) or  
282 without cause.

**Commented [DT38]:** This refers to termination of the Employment, not of this Agreement.

283 (b) **Waiver of notice period:** If the Employee tenders his or her resignation from the Employ-  
284 ment effective after a stated notice period, the Company may in its discretion waive the notice  
285 period (orally or in writing), in which case the Employment will end immediately upon the  
286 waiver.

287 (c) **Final compensation:** IF: The Employment is terminated for any reason; THEN:

288 (1) The Employee will be entitled only to the Employee's earned compensation, as well as any  
289 other benefits earned and due prior to termination.

**Commented [DT39]:** Another “road-block” clause.

290 (2) The Company will then have no further obligations to the Employee except as may be ex-  
291 pressly provided otherwise in the Agreement Document or in a separate authorized written  
292 agreement with the Company.

293 (d) **Property return:** Upon any termination of the Employment for any reason, the Employee  
294 will preserve intact and promptly deliver to the Company all originals and all copies of all Com-  
295 pany Materials, as well as all other property of Company or any other Company Group Mem-  
296 ber, that are in the Employee's possession, custody, or control.

**Commented [DT40]:** More low-hanging fruit for possible post-employment litigation.

297 (e) **Exit interview:** Upon any termination of the Employment for any reason, the Employee will  
298 participate in an exit interview at a time and place reasonably determined by the Company. In  
299 connection with the exit interview, the Employee will provide the Company with such infor-  
300 mation as it may reasonably request about the Employee's reasons for leaving; his or her future  
301 employment plans, if any; and any Company Innovations and/or Company Materials that the  
302 Employee may have created or may have in his or her possession.

**Commented [DT41]:** Ditto — and also might help head off lawsuits by the employee.

303 (f) **Continued enforceability:** Termination of the Employment for any reason will not affect the  
304 continued enforceability of this Agreement of those provisions that by their nature are in-  
305 tended to continue in effect after termination.

**Commented [DT42]:** “By their nature” survival clauses are subject to dispute.

306 (g) **No false identification:** After termination of the Employment, the Employee will not iden-  
307 tify or hold out him- or herself as being connected with or employed by the Company, nor any  
308 other Company Group Member, in any capacity, unless the Employee is in fact so connected or  
309 employed at the time in question.

**Commented [DT43]:** This provision addresses the possible situation in which, say, a sales employee's employment is terminated, after which the (former) employee begins holding himself out as an authorized reseller, dealer, etc., of his former company.

## 310 **11. Noncompetition covenant** \*

311 (a) **Confidential information access:** The Company intends to provide the Employee, during  
312 the Employment, with access to pre-existing and new Confidential Information on an as-needed  
313 basis commensurate with the Employee's duties, including but not limited to access to appro-  
314 priate portions of the Company's computer network.

**Commented [DT44]:** This part, drafted in the early 2000s, is based on a peculiarity of Texas noncompetition law as then interpreted by SCOTX; be sure to check for case-law updates.

315 (b) **Post-termination restrictions:** To aid in the protection of the Company's legitimate interests  
316 in such Confidential Information, the Employee agrees that, beginning on the date that the  
317 Company first provides him or her with such access in any form, and ending on the date set  
318 forth in the Agreement Document — one year after the termination of the Employment if not  
319 otherwise specified in the Agreement Document — unless the Company in its sole discretion  
320 gives its prior written consent, the Employee will not, directly or indirectly,

321 (1) participate, for the benefit of the Employee or any other Person, in any business that com-  
322 petes with any Company Business anywhere in the world, where the Employment materially  
323 related to such Company Business during the Employment; nor

324 (2) without limiting clause (1), entice, induce or encourage any customer or prospective cus-  
325 tomer of Company or any other Company Group Member to transfer or remove its business  
326 from that company if the Employee had any material involvement with the business in question  
327 during the Employment; nor

328 (3) interfere, directly or indirectly, with the relationship between the Company or any other  
329 Company Group Member and that company's employees by inducing any such employee to ter-  
330 minate his or her employment, whether or not such employee would thereby breach his or her  
331 employment agreement with that company; nor

332 (4) solicit for employment, directly or indirectly, on behalf of the Employee or any other

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\* Not applicable unless so stated in the Agreement Document. **CAUTION:** California law [**UPDATE: And the law in some other jurisdictions**] basically prohibits employers from requiring employees to agree to post-employment noncompetition covenants; an employer that includes such a covenant in its employment agreement might be liable for damages.

333 Person, any employee of the Company or any other Company Group Member; nor  
334 (5) induce or assist any other Person to engage in any of the activities described in subdivisions  
335 (1) through (4).

336 (c) **Materiality of noncompetition covenant:** The Employee acknowledges that the Company  
337 would not permit him or her to have, or to continue to have, access to Confidential Infor-  
338 mation without the Employee's agreement to the provisions of this "Noncompetition covenant"  
339 section.

340 (d) **Release from covenant:** IF: The Employee has never been provided with any such access to  
341 Confidential Information in any way at the time the Employment is terminated — including but  
342 not limited to never having been provided access to an email account or other access to a com-  
343 puter network of Company or any other Company Group Member — THEN: The Employee will  
344 be automatically released from the restrictions in subdivision (a).

345 (e) **Tolling:** (1) The parties intend that, if the Employee violates the post-termination re-  
346 strictions set forth in subdivision (b), the Company shall not be deprived of the benefit of those  
347 restrictions due to the time required to enforce those restrictions.

348 (2) Accordingly, the restrictions in subdivision (b) will end the agreed length of time after the  
349 later of (i) the date of termination of the Employment for any reason, and (ii) the date of entry  
350 by a court of competent jurisdiction of a final judgment enforcing the restrictions in subdivi-  
351 sion (b), as written or as modified by the court.

352 (f) **Consent to competitive employment:** The Company will not unreasonably withhold its con-  
353 sent to the Employee's taking a job at a company that competes with one or more of the Com-  
354 pany Group Members, BUT ONLY IF, before starting the new job, the Employee provides the  
355 Company with a document reasonably satisfactory to the Company, signed by both the Em-  
356 ployee and an authorized representative of the competing company, containing a written de-  
357 scription of (1) the Employee's duties in the new job, and (2) the specific ways by which the  
358 competing company will ensure that the Employee will neither use nor disclose trade secrets or  
359 other Confidential Information of Company or any other Company Group Member.

**Commented [DT45]:** This release provision is intended:  
(1) to try to help the parties amicably resolve any dispute involving the non-competition provision; and  
(2) to try to make the non-competition covenant more "saleable" to a judge or arbitration panel.

360 (g) **Exception:** The Employee may acquire a direct or indirect ownership interest of not more  
361 than 5% of the outstanding securities of any corporation which is engaged in activities prohib-  
362 ited by subdivision (a) IF such securities are listed on any recognized securities exchange or  
363 traded in the over-the-counter market in the United States, PROVIDED THAT such investment is  
364 of a totally passive nature and does not involve the Employee's devoting time to the manage-  
365 ment or operations of such corporation.

**Commented [DT46]:** This is a pretty standard exception to a post-employment noncompetition clause.

366 (h) **Modification of restrictions:** IF: A Tribunal determines that any of the restrictions set forth  
367 in this "Noncompetition covenant" section is unreasonably broad or otherwise unenforceable  
368 under applicable law; THEN:

**Commented [DT47]:** This is a so-called "blue-pencil provision."

369 (1) the Tribunal's determination shall be binding only within the geographic area in which the  
370 Tribunal has jurisdiction; and

371 (2) the restriction will not be terminated or rendered unenforceable; instead, the Tribunal is  
372 hereby authorized and requested restriction — solely for purposes of enforcement within the  
373 geographic area of the Tribunal's jurisdiction — to reform the to the minimum extent required  
374 to render it enforceable.

## 375 **12. Mandatory arbitration \***

376 (a) Except to the extent affirmatively prohibited by law or as otherwise agreed in writing be-  
377 tween the parties, any dispute, controversy or claim that in any way arises out of or relates to  
378 this Agreement or the Employment will be submitted to binding arbitration.

379 (b) Any such arbitration will be conducted in English-language arbitration, in the city of the  
380 Company's office in which the Employee is principally employed, in accordance with the Na-  
381 tional Rules for the Resolution of Employment Disputes of the American Arbitration Association  
382 in effect on the date of the demand for arbitration, available on the Web  
383 at <http://www.adr.org>).

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\* Not applicable unless so stated in the Agreement Document. NOTE: The validity of mandatory-arbitration clauses in employment contracts is the subject of no small controversy.

384 (c) Notwithstanding subdivision (a), to protect Innovations or Confidential Information, or  
385 other proprietary rights, the Company or any Company Group Member may seek temporary or  
386 preliminary injunctive relief in a court of competent jurisdiction without waiving its right to ar-  
387 bitration.

388 (d) Judgment upon the award rendered by the arbitrator(s) may be entered in any court having  
389 jurisdiction.

### 390 **13. General provisions**

391 (a) **Amendments:** Except as otherwise provided in this Agreement, any amendment or modifi-  
392 cation of this Agreement must be in writing and signed by an authorized officer of the Com-  
393 pany, and any other attempt to amend or modify this Agreement, orally or in writing, will be  
394 void.

395 (b) **Amendments – unilateral (going forward):** (1) The Company may unilaterally amend this  
396 Agreement, or any exhibit, schedule, or appendix of this Agreement, on a going-forward basis,  
397 by giving at least five business days' notice to the Employee. EXCEPT AS STATED in subdivi-  
398 sions (2) and (3), if the Employee does not resign before the end of the time specified in the no-  
399 tice, then the amendment will go into effect automatically without further action by the par-  
400 ties.

401 (2) For the avoidance of doubt, without the Employee's express written agreement, a unilateral  
402 amendment by the Company will not retroactively eliminate or modify any right already exer-  
403 cised by the Employee under this Agreement.

404 (3) For the avoidance of doubt, no unilateral amendment will retroactively modify any binding  
405 dispute-resolution provisions of this Agreement for then-pending disputes (for example, bind-  
406 ing-arbitration provisions) unless the parties expressly agree otherwise.

407 (c) **Assignment:** All of the terms and provisions of this Agreement will be binding upon and in-  
408 sure to the benefit of and be enforceable by the respective heirs, executors, administrators, le-  
409 gal representatives, successors and assigns of the parties hereto, except that the Employee's  
410 duties and responsibilities under this Agreement are of a personal nature and will not be assign-  
411 able or delegable by the Employee in whole or in part.

**Commented [DT48]:** Flexibility for the Company.

**Commented [DT49]:** No assignment by Employee.



412 (d) **Entire agreement:** (1) This Agreement sets forth the final, complete, exclusive, and binding  
413 statement of the agreement of its signatory parties concerning the subject matter of the Agree-  
414 ment; it supersedes all prior agreements and undertakings, both written and oral, between or  
415 on behalf of the signatory parties with respect to that subject matter.

416 (2) Except as stated in this Agreement, there are no promises, understandings, representations,  
417 or warranties of any kind between the parties concerning its subject matter.

418 (3) Neither party is entitled to rely on any representation by the other party, or in the case of  
419 the Employee, by any other Company Group Member, concerning the same.

**Commented [DT50]:** A no-reliance clause.

420 (e) **Equitable relief:** (1) The Employee acknowledges and agrees that if he or she materially vio-  
421 lates this Agreement's provisions concerning Confidential Information (or, if applicable, the  
422 "Noncompetition covenant" section" of this Agreement), it would result in harm to the Com-  
423 pany, or to one or more other Company Group Members, that was not capable of being re-  
424 dressed by an award of money damages alone.

**Commented [DT51]:** This is a "WOULD result in irreparable harm," not "COULD result ...."

425 (2) In any such event, the Company may seek one or more of a preliminary injunction, a tempo-  
426 rary restraining order, a permanent injunction, or comparable equitable relief, in any court of  
427 competent jurisdiction, to restrain any further or continued violation, to order that the Em-  
428 ployee comply with this Agreement, or both.

**Commented [DT52]:** Unlike some agreement forms, this injunction provision does NOT include a waiver by the Employee of any requirement that the Company post a bond as a prerequisite to obtaining a preliminary injunction

429 (2) Any other affected Company Group Member, if any, will have the same right as the Com-  
430 pany to seek equitable relief against the Employee.

431 (3) The right to seek such equitable relief will be in effect even if this Agreement requires arbi-  
432 tration of disputes.

433 (f) **Governing law:** The laws that apply in the location specified in the Agreement Document  
434 will govern any claim, controversy, or other dispute arising out of or relating to (i) this Agree-  
435 ment, or (ii) the interpretation or enforcement of this Agreement, without regard to conflicts-  
436 of-law or choice-of-law rules.

**Commented [DT53]:** This is a holdover from the original agreement for.

437 (g) **Job change.** If the Employee changes jobs from one Company Group Member to another,  
438 this Agreement will be deemed automatically assigned by the first Company Group Member to  
439 the other Company Group Member.

440 (h) **Non-exclusive remedies:** Except as otherwise stated in this Agreement, each remedy pro-  
441 vided in this Agreement shall be in addition to any other remedy provided by this Agreement or  
442 by law.

443 (i) **Non-U.S. supplemental terms:** IF: The Company is organized under the laws of a country or  
444 other jurisdiction outside the United States of America and its territories and possessions;  
445 THEN: The terms of any country-specific addendum signed by the parties, if any, will be  
446 deemed part of this Agreement and will take precedence over any inconsistent provision(s) in  
447 these Model Provisions.

**Commented [DT54]:** At BindView we had several country-specific supplements.

448 (j) **Notices:** All notices and statements with respect to this Agreement must be in writing.  
449 (1) Notices to the Company are to be addressed to the Employee's supervisor at the Company,  
450 with a copy to the Company's counsel, its human-resources manager, or both.  
451 (2) Notices to the Employee may be delivered to him or her in person or by email, or may be  
452 delivered to the Employee's then-current address as indicated in the Company's payroll rec-  
453 ords.

**Commented [DT55]:** This was written before the "Three Rs of Notice" idea.

454 (k) **Section headings:** The section and subsection headings of this Agreement are for conven-  
455 ience only and are not intended to define, limit, or expand its provisions.

456 (l) **Severability.** IF: A Tribunal determines that any provision of this Agreement, or its applica-  
457 tion to anyone or under any circumstances, is invalid or unenforceable and declines to reform  
458 such provision; THEN: For purposes of the dispute being decided by the Tribunal:  
459 (1) except as otherwise provided in this Agreement, the provision(s) in question are to be  
460 deemed struck from this Agreement and the remainder of this Agreement is to be fully en-  
461 forced; and  
462 (2) the invalidity or unenforceability of the provision(s) in question (i) are not to affect any  
463 other provision of this Agreement which can be given effect without the struck provision(s), and  
464 (ii) are not to be considered to invalidate or render unenforceable such provision in any other  
465 jurisdiction.

**Commented [DT56]:** Severability provisions can have unanticipated consequences.

466 (m) **Signatures and delivery:** (1) The Agreement Document may be signed and delivered in sep-  
467 arate counterpart originals; all such counterparts will be deemed to constitute one and the  
468 same instrument.  
469 (2) Any counterpart may comprise one or more duplicates, any of which may be signed by less  
470 than all of the parties provided that each party whose execution is required signs at least one of  
471 the same.  
472 (3) Delivery of a counterpart may be effected (for example) by transmitting a signed signature  
473 page by FAX, by emailed PDF, or by other electronic transmission means.

474 (n) **Third-party beneficiaries:** (1) Each Company Group Member other than the Company (if  
475 any) is intended to be a third-party beneficiary of this Agreement to the extent stated in the  
476 Agreement.

477 (2) The parties do not intend for any other party to benefit from any right or obligation under  
478 this Agreement unless the Agreement Document expressly so states.

479 (o) **Waiver:** (1) No effect is to be given to any claim that a party waived a right, obligation, or  
480 condition (collectively, "term") stated in this Agreement, or that the party waived a breach of  
481 this Agreement, unless the alleged waiver (i) was in writing; and (ii) was signed by the waiving  
482 party or by an individual authorized to make binding commitments on behalf of that party.

483 (2) For the avoidance of doubt, a party's waiver of a term or breach of this Agreement will af-  
484 fect only that term or breach; it is not to be deemed a waiver of any other term or breach. Like-  
485 wise, the fact that a party, at a given moment in time, did not enforce one or more terms is not  
486 be deemed a waiver by that party of its right to enforce any term at any other time.

487 – END –

488 *REMAINDER OF PAGE INTENTIONALLY BLANK*