Fall 2007

Semester Project for Engineering Management

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IMSE 405/805
Semester Project

This is an *open-ended* project. **Due to the open nature of this project, when in doubt - ASK!**

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**THE SCENARIO**

Picture several years down the road. You and your partner(s) invent a Fresh Breath Tester.

*Description:* Check your breath — quickly, discreetly! Blow into vent and semiconductor sensors measure sulfur compounds. Hearts and faces are displayed as a ratings scale on the LCD. More hearts and happy faces indicate fresh breath. It runs on 2 AAA batteries.

Suppose I am a venture capital firm who has bought into your idea of producing a Fresh Breath Tester. I have greatly impressed with your prototype and your business plan. Your business plan explored the potential market, your advertising strategy, your marketing strategy, and your marketing agreements. This plan sold me that this will be a great product and will easily sell 10,000 units per week. As a result, I have decided to fund you and your partner in expanding your company.

My only concern is that your business plan only briefly discusses the actual production of the breath tester. I agree that we can sell 10,000 units a week – the question is, what company organization is needed to support production of 10,000 units per week?

Before I will give you the money, I want to see a detailed operational plan about your production process and organization.

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**ASSUMPTIONS**

Let’s make the following assumptions about the production and assembly of the breath testers.

1. In your corporate structure, there are 1 million (1,000,000) shares of stock in the company. In exchange for my financing the operations, I will receive 49% of the shares (thus, 490,000). The remaining shares are yours to distribute however you want (*e.g.*, a certain number to each partner, some set aside for employee rewards, some shares unissued).

2. Your team has contracted with a manufacturing company in Mexico to do the majority of the assembly work. Specifically, the Mexican facility will install and soldier components on the circuit board that is the heart of breath tester and will mold and finish the “shells.” At your facility, the assembly process is not complex. An operator has to take the circuit board and insert it into the bottom shell of the case. The operator then takes the top shell...
of the case and connects it with the bottom shell (thus encasing the circuit board between both). A timing study has been performed and it takes an average of 2 minutes to do this final assembly step.

(3) Once assembled, a breath tester must go through a quality assurance test. The testing process will be automated by a machine(s) – which can test 200 breath testers per hour. While the testing process is automated, there is still a need for a human operator to load the parts on the machine and monitor its progress. You will assume that it is a full time job for someone to load and watch a testing machine. If a breath tester fails the quality test (5% of them fail), it must be manually adjusted. This adjustment process is performed by a human and requires 5 minutes per breath tester. There is no scrap or defect for this line – all testers are fixed in the 5 minutes.

(4) After the testing phase (or manual adjust), all breath testers are manually placed in individual packages (1 breath tester per package). Assume it take 1 minute to pack each tester. Testers are then placed 25 testers per carton. Assume it takes 3 minutes to load and close each carton. Carton are stored until they are shipped.

(5) Every Saturday at 6 pm, a semi-truck(s) arrives carrying 10,000 circuit boards, 10,000 upper shells, and 10,000 bottom shells. Once these are unloaded, the same trucks are loaded with the 10,000 completed breath testers. Your facility only makes 10,000 testers – no more, and no less.

(6) Beyond the above assumptions, you have no formal plans.

**GRADING OF MATERIAL**

I will base my grading on the following criteria:

- Professionalism
- Uniqueness
- Conciseness
- Completeness
- Informativeness
- Clarity
- Accurateness
- Format

**TIME LINE**

The project is broken into 7 separate (but related) tasks. Here is the due date for each part:

- Task 1 → due on or before Class 5 (February 8\textsuperscript{th})
- Task 2 → due on or before Class 6 (February 15\textsuperscript{th})
- Task 3 → due on or before Class 8 (March 1\textsuperscript{st})
- Task 4 → due on or before Class 10 (March 22\textsuperscript{nd})
- Task 5 → due on or before Class 12 (April 5\textsuperscript{th})
- Task 6 → due on or before Class 14 (April 19\textsuperscript{th})
- Task 7 → due on or before Class 15 (April 26\textsuperscript{th})
**TASK 1**

Address the following two issues:

1. What is the name of your company?
2. Develop complete employee contracts for each of your team members.  [*suggestion:* look at the example employee contract in our notes – Section A.5 (p. 26). I have posted this plus an example of two ”real” agreements on the blackboard web site. You may steal and edit whatever you want – the key is to come up with a final contract for each of you.]

**Task 1 Project Deliverable:** Provide me with a memo giving the company name and providing a high-level overview of your employment agreements. Attach the completed and detailed contracts as an addendum to this memo.

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**TASK 2**

Develop an employee manual for the hourly employees in your company. Be sure to make sure it covers all the components that we discussed in class.

*Suggestion:* I have posted the draft of an employee manual on the blackboard web site. Use this as a template to add/subtract/edit for your own situation.

**Task 2 Project Deliverable:** Provide me with a memo summarizing the key points in your employee manual. Include a copy of your manual along with this memo.

*In addition, modify anything from Task 1 that may have changed as a result of having completed this task.*

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**TASK 3**

Given the description of the manufacturing process, develop the layout of your manufacturing facility. Assume that you lack vision and have no plans to ever expand production beyond 10,000 units per week or in improving the design of your breath tester. Example of issues to address include (but are not limited to):

- what will be the flow of parts through the manufacturing process?
- determine the physical arraignment of the manufacturing process
- what will be the layout of the manufacturing process/flow?
- what will be the overall layout of the facility (from offices space, to the manufacturing floor, to meeting rooms, to the restroom, to the entrance)

*Suggestion:* we will contract out the actual design and building of the facility, but you and your partners need to have a rough facility outline to be able to present to them.

**Task 3 Project Deliverable:** A diagram of some type indicating the layout and required square footage for different areas of the facility.

*In addition, modify anything from Task 1 and 2 that may have changed as a result of having completed this task.*
**TASK 4**

Currently, the only employees of your company are yourself and your partner(s). To be able to weekly produce 10,000 breath testers, decide how many additional people you need to hire. You also need to hire the non-production personnel (e.g., secretaries, janitors). Assume that employees fall into one of two classifications: hourly and salary.

Given the production requirements, your layout of the manufacturing facility, your employee benefits (as outlined in the Employee Handbook), determine all the different job classifications you want to hire and the number of employees you require for each classification (e.g., 3 quality control inspectors). For each job classification (e.g., secretary, production supervisor, quality control inspector), develop a position description (employment advertisement) which includes:

- a description of the job
- required education level
- specific required skills (e.g., knowledge of a computer software package, forklift driver)
- pay range

**Suggestion:** to simply your process, I would encourage you to go to a job search web site (a good one is www.monster.com) and search key positions for examples of job descriptions.

In addition to the above, for each of the hourly job classifications, complete a Job Requirements Checklist [**suggestion:** see Section A.2 – p. 15 in your class notes. A copy of this checklist is available on the blackboard web site.]

**Task 4 Project Deliverable:** A memo outlining the total number of employees in the company and a high-level breakdown of their responsibilities. As an addendum to this memo, include:

1. a copy of your company organization chart which breaks down your company into the professional staff positions and hourly supervisor level positions (hence, this will indicate the direct lines of communication within your company)
2. the detailed job description for each job classification
3. the job requirements checklists for hourly employees

   **In addition, modify anything from Task 1, 2, 3 that may have changed as a result of having completed this task.**

**TASK 5**

Determine how rewards and incentives will be given to the hourly employees. Example of issues to address include (but are not limited to):

- how will different types of employees be rewards
- what types of rewards are you going to provide to employees?
- what does one have to do to achieve an award?
- how will rewards be given?
- how often will rewards be given?

**Task 5 Project Deliverable:** Provide me with a memo detailing your hourly worker reward and incentive program.

   **In addition, modify anything from Task 1, 2, 3, and 4 that may have changed as a result of having completed this task.**
**TASK 6**

Develop a list of manufacturing production risk factors and your contingency plan for handling each. Focus only on potential problems that can impact your being able to weekly produce 10,000 breath testers.

*Suggestion:* on the blackboard web site is an example of risks that companies can experience (it includes all types of issues).

**Task 6 Project Deliverable:** A memo outlining the productions risk and your contingency plan for each.

*In addition, modify anything from Task 1, 2, 3, 4, and 5 that may have changed as a result of having completed this task.*

**TASK 7**

Combine all the material from the previous six tasks into a single report. Be sure to update the material to reflect any changes you might have decided, that I have suggested, and that your fellow classmates have suggested.

**Task 7 Project Deliverable:** Turn in your complete operational plan.
SAMPLE EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement ("Agreement") is made and effective this [date], by and between [company] ("Company") and [executive] ("Executive").

NOW, THEREFORE, the parties hereto agree as follows:

1. Employment.

Company hereby agrees to initially employ Executive as its [title] and Executive hereby accepts such employment in accordance with the terms of this Agreement and the terms of employment applicable to regular employees of Company. In the event of any conflict or ambiguity between the terms of this Agreement and terms of employment applicable to regular employees, the terms of this Agreement shall control. Election or appointment of Executive to another office or position, regardless of whether such office or position is inferior to Executive's initial office or position, shall not be a breach of this Agreement.

2. Duties of Executive.

The duties of Executive shall include the performance of all of the duties typical of the office held by Executive as described in the bylaws of the Company and such other duties and projects as may be assigned by a superior officer of the Company, if any, or the board of directors of the Company. Executive shall devote his entire productive time, ability and attention to the business of the Company and shall perform all duties in a professional, ethical and businesslike manner. Executive will not, during the term of this Agreement, directly or indirectly engage in any other business, either as an employee, employer, consultant, principal, officer, director, advisor, or in any other capacity, either with or without compensation, without the prior written consent of Company. In addition to the duties described herein, Executive is also authorized and directed to do the following: [list any other specific duties and authorizations].

3. Compensation.

Executive will be paid compensation during this Agreement as follows: A. A base salary of [salary, e.g. $75,000 (seventy-five thousand dollars)] per year, payable in installments according to the Company's regular payroll schedule. The base salary shall be adjusted at the end of each year of employment at the discretion of the board of directors.

B. An incentive salary equal to [list incentive pay rate] of the adjusted net profits (hereinafter defined) of the Company beginning with the Company's year end [list first year of incentive salary] and each fiscal year thereafter during the term of this Agreement. "Adjusted net profit" shall be the net profit of the Company before federal and state income taxes, determined in accordance with generally accepted accounting practices by the Company's independent accounting firm and adjusted to exclude: (i) any incentive salary payments paid pursuant to this Agreement; (ii) any contributions to pension and/or profit sharing plans; (iii) any extraordinary gains or losses (including, but not limited to, gains or losses on disposition of assets); (iv) any refund or deficiency of federal and state income taxes paid in a prior year; and (v) any provision for federal or state income taxes made in prior years which is subsequently determined to be unnecessary. The determination of the adjusted net profits made by the independent accounting firm employed by the Company shall be final and binding upon Executive and Company. The
incentive salary payment shall be made within thirty (30) days after the Company's independent accounting firm has concluded its audit. If the final audit is not prepared within ninety (90) days after the end of the fiscal year, then Company shall make a preliminary payment equal to fifty percent (50%) of the amount due based upon the adjusted net profits preliminary determined by the independent accounting firm, subject to payment of the balance, if any, promptly following completion of the audit by the Company's independent accounting firm. The maximum incentive salary payable for any one year shall not exceed [maximum incentive compared to base] of the then applicable base salary of Executive.


A. Holidays. Executive will be entitled to at least [number of paid holidays] paid holidays each calendar year and [number of personal days] personal days. Company will notify Executive on or about the beginning of each calendar year with respect to the holiday schedule for the coming year. Personal holidays, if any, will be scheduled in advance subject to requirements of Company. Such holidays must be taken during the calendar year and cannot be carried forward into the next year. Executive is not entitled to any personal holidays during the first six months of employment.

B. Vacation. Following the first six months of employment, Executive shall be entitled to [number of vacation days] paid vacation each year.

C. Sick Leave. Executive shall be entitled to sick leave and emergency leave according to the regular policies and procedures of Company. Additional sick leave or emergency leave over and above paid leave provided by the Company, if any, shall be unpaid and shall be granted at the discretion of the board of directors.

D. Medical and Group Life Insurance. Company agrees to include Executive in the group medical and hospital plan of Company and provide group life insurance for Executive at no charge to Executive in the amount of [amount of group life insurance] during this Agreement. Executive shall be responsible for payment of any federal or state income tax imposed upon these benefits.

E. Pension and Profit Sharing Plans. Executive shall be entitled to participate in any pension or profit sharing plan or other type of plan adopted by Company for the benefit of its officers and/or regular employees.

F. Automobile. Company will provide to Executive the use of an automobile of Executive's choice at a gross purchase price not to exceed [maximum purchase price]. Company agrees to replace the automobile with a new one at Executive's request no more often than once every two years. Company will pay all automobile operating expenses incurred by Executive in the performance of Executive's company duties. Company will procure and maintain in force an automobile liability policy for the automobile with coverage, including Executive, in the minimum amount of $1,000,000 combined single limit on bodily injury and property damage. Executive shall be entitled to reimbursement for all reasonable expenses, including travel and entertainment, incurred by Executive in the performance of Executive's duties. Executive will maintain records and written receipt as required by the Company policy and reasonably requested by the board of directors to substantiate such expenses.

5. Term and Termination.

A. The Initial Term of this Agreement shall commence on [start date] and it shall continue in effect for a period of [initial term]. Thereafter, the Agreement shall be renewed upon the mutual agreement of Executive and Company. This Agreement and Executive's employment may be
terminated at Company's discretion during the Initial Term, provided that Company shall pay to Executive an amount equal to payment at Executive's base salary rate for the remaining period of Initial Term, plus an amount equal to [severance pay during initial term] of Executive's base salary. In the event of such termination, Executive shall not be entitled to any incentive salary payment or any other compensation then in effect, prorated or otherwise.

B. This Agreement and Executive's employment may be terminated by Company at its discretion at any time after the Initial Term, provided that in such case, Executive shall be paid [severance pay after initial term] of Executive's then applicable base salary. In the event of such a discretionary termination, Executive shall not be entitled to receive any incentive salary payment or any other compensation then in effect, prorated or otherwise.

C. This Agreement may be terminated by Executive at Executive's discretion by providing at least thirty (30) days prior written notice to Company. In the event of termination by Executive pursuant to this subsection, Company may immediately relieve Executive of all duties and immediately terminate this Agreement, provided that Company shall pay Executive at the then applicable base salary rate to the termination date included in Executive's original termination notice.

D. In the event that Executive is in breach of any material obligation owed Company in this Agreement, habitually neglects the duties to be performed under this Agreement, engages in any conduct which is dishonest, damages the reputation or standing of the Company, or is convicted of any criminal act or engages in any act of moral turpitude, then Company may terminate this Agreement upon five (5) days notice to Executive. In event of termination of the agreement pursuant to this subsection, Executive shall be paid only at the then applicable base salary rate up to and including the date of termination. Executive shall not be paid any incentive salary payments or other compensation, prorated or otherwise.

E. In the event Company is acquired, or is the non-surviving party in a merger, or sells all or substantially all of its assets, this Agreement shall not be terminated and Company agrees to use its best efforts to ensure that the transferee or surviving company is bound by the provisions of this Agreement.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services;

   If to Company:
   [list company]
   [list company address]

   If to Executive:
   [list executive]
   [list executive address]

7. Final Agreement.
This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

This Agreement shall be construed and enforced in accordance with the laws of the state of [list state of governing law].
Headings used in this Agreement are provided for convenience only and shall not be used to
construe meaning or intent.
10. No Assignment.
Neither this Agreement nor any or interest in this Agreement may be assigned by Executive
without the prior express written approval of Company, which may be withheld by Company at
Company's absolute discretion.
11. Severability.
If any term of this Agreement is held by a court of competent jurisdiction to be invalid or
unenforceable, then this Agreement, including all of the remaining terms, will remain in full
force and effect as if such invalid or unenforceable term had never been included.
The parties agree that they will use their best efforts to amicably resolve any dispute arising out
of or relating to this Agreement. Any controversy, claim or dispute that cannot be so resolved
shall be settled by final binding arbitration in accordance with the rules of the American
Arbitration Association and judgment upon the award rendered by the arbitrator or arbitrators
may be entered in any court having jurisdiction thereof. Any such arbitration shall be conducted
in [location of arbitration], or such other place as may be mutually agreed upon by the parties.
Within fifteen (15) days after the commencement of the arbitration, each party shall select one
person to act arbitrator, and the two arbitrators so selected shall select a third arbitrator within ten
(10) days of their appointment. Each party shall bear its own costs and expenses and an equal
share of the arbitrator's expenses and administrative fees of arbitration.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first
above written.

[company signature block]   [executive signature block]

[company signature block]   [executive signature block]
[company signature block]   [executive signature block]
[company signature block]   [executive signature block]
EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT is entered into by and between ______________________________, a ____________________ corporation (the “Company”), and ____________________, the undersigned individual (“Executive”).

RECITAL

The Company and Executive desire to enter into an Employment Agreement setting forth the terms and conditions of Executive’s employment with the Company.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Company and Executive agree as follows:

1. Employment.

   (a) Term. The Company hereby employs Executive to serve as [President of the Company] [and CEO] and to serve in such additional or different position or positions as the Company may determine in its sole discretion. The term of employment shall be for a period of ________ (__) years (“Employment Period”) to commence on the date hereof, unless earlier terminated as set forth herein.

   (b) Duties and Responsibilities. Executive will be reporting to [the Company’s Board of Directors] [____________________]. Within the limitations established by the Bylaws of the Company, the Executive shall have each and all of the duties and responsibilities of that position and such other or different duties on behalf of the Company, as may be assigned from time to time by [the Company’s Board] [____________________].

   (c) Location. The initial principal location at which Executive shall perform services for the Company shall be ____________________.

2. Compensation.

   (a) Base Salary. Executive shall be paid a base salary (“Base Salary”) at the annual rate of $__________, payable in bi-weekly installments consistent with Company’s payroll practices. The annual Base Salary shall be reviewed on or before [January 1] of each year, unless Executive’s employment hereunder shall have been terminated earlier pursuant to this Agreement, starting on ____________________ by the Board of Directors of the Company to determine if such Base Salary should be increased for the following year in recognition of services to the Company.

   (b) Payment. Payment of all compensation to Executive hereunder shall be made in accordance with the relevant Company policies in effect from time to time,
including normal payroll practices, and shall be subject to all applicable employment and withholding taxes.

(c) **Bonus.** Executive shall also be entitled to a bonus determined as follows: [e.g., at the sole discretion of the Board of Directors or under a formula if certain goals are met.]

3. **Other Employment Benefits.**

   (a) **Business Expenses.** Upon submission of itemized expense statements in the manner specified by the Company, Executive shall be entitled to reimbursement for reasonable travel and other reasonable business expenses duly incurred by Executive in the performance of his duties under this Agreement.

   (b) **Benefit Plans.** Executive shall be entitled to participate in the Company’s medical and dental plans, life and disability insurance plans and retirement plans pursuant to their terms and conditions. Executive shall be entitled to participate in any other benefit plan offered by the Company to its employees during the term of this Agreement (other than stock option or stock incentive plans, which are governed by Section 3(d) below). Nothing in this Agreement shall preclude the Company or any affiliate of the Company from terminating or amending any employee benefit plan or program from time to time.

   (c) **Vacation.** Executive shall be entitled to _______ (__) weeks of vacation each year of full employment, exclusive of legal holidays, as long as the scheduling of Executive’s vacation does not interfere with the Company’s normal business operations.

   [(d) **Stock Options.** Executive shall be entitled to options to acquire shares of the Common Stock of the Company pursuant to the terms of [a Stock Option Plan to be adopted by the Company] [the Company’s existing Stock Option Plan dated __________, 19__], subject to the following terms:

   (1) The options will vest only as follows:

<table>
<thead>
<tr>
<th>Event</th>
<th>Vesting Amount</th>
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<tbody>
<tr>
<td>If Executive is still an employee of the Company on ________</td>
<td>Options to acquire ________ shares of Common Stock</td>
</tr>
<tr>
<td>If Executive is still an employee of the Company on ________</td>
<td>Options to acquire ________ shares of Common Stock</td>
</tr>
<tr>
<td>If Executive is still an employee of the Company on ________</td>
<td>Options to acquire ________ shares of Common Stock</td>
</tr>
</tbody>
</table>
If Executive is still an employee of the Company on __________
Options to acquire __________ shares of Common Stock

(2) The exercise price for the options shall be at __________ dollar ($__) per share, as appropriately adjusted for stock splits, stock dividends, and the like.

(3) The vested options shall be exercisable until the earlier of five (5) years after vesting or 90 days after termination of Executive’s employment with the Company. No additional vesting of options shall occur after Executive’s death, disability, or cessation of employment with the Company for any reason or no reason.

(4) Issuance of the options shall be in accordance with all applicable securities laws and the other terms and conditions of the Company’s Stock Option Plan and form of the Stock Option Agreement [to be adopted by the Company].

(e) No Other Benefits. Executive understands and acknowledges that the compensation specified in Sections 2 and 3 of this Agreement shall be in lieu of any and all other compensation, benefits and plans.

4. Executive’s Business Activities. Executive shall devote the substantial portion of his entire business time, attention and energy exclusively to the business and affairs of the Company and its affiliates, as its business and affairs now exist and as they hereafter may be changed. [Executive may serve as a member of the Board of Directors of other organizations that do not compete with the Company, and may participate in other professional, civic, governmental organizations and activities that do not materially affect his ability to carry out his duties hereunder.]

5. Termination of Employment.

(a) For Cause. Notwithstanding anything herein to the contrary, the Company may terminate Executive’s employment hereunder for cause for any one of the following reasons: (1) conviction of a felony, any act involving moral turpitude, or a misdemeanor where imprisonment is imposed, (2) commission of any act of theft, fraud, dishonesty, or falsification of any employment or Company records, (3) improper disclosure of the Company’s confidential or proprietary information, (4) any action by the Executive which has a detrimental effect on the Company’s reputation or business, (5) Executive’s failure or inability to perform any reasonable assigned duties after written notice from the Company of, and a reasonable opportunity to cure, such failure or inability, (6) any breach of this Agreement,
which breach is not cured within ten (10) days following written notice of such breach, (7) a course of conduct amounting to gross incompetence, (8) chronic and unexcused absenteeism, (9) unlawful appropriation of a corporate opportunity, or (10) misconduct in connection with the performance of any of Executive’s duties, including, without limitation, misappropriation of funds or property of the Company, securing or attempting to secure personally any profit in connection with any transaction entered into on behalf of the Company, misrepresentation to the Company, or any violation of law or regulations on Company premises or to which the Company is subject. Upon termination of Executive’s employment with the Company for cause, the Company shall be under no further obligation to Executive, except to pay all accrued but unpaid base salary and accrued vacation to the date of termination thereof.

(b) **Without Cause.** The Company may terminate Executive’s employment hereunder at any time without cause, provided, however, that Executive shall be entitled to severance pay in the amount of __________ (__) weeks of Base Salary in addition to accrued but unpaid Base Salary and accrued vacation, less deductions required by law, but if, and only if, Executive executes a valid and comprehensive release of any and all claims that the Executive may have against the Company in a form provided by the Company and Executive executes such form within seven (7) days of tender.

(c) **Resignation.** Upon termination of employment, Executive shall be deemed to have resigned from the Board of Directors of the Company if [he][she] is a director.

(d) **Cooperation.** After notice of termination, Executive shall cooperate with the Company, as reasonably requested by the Company, to effect a transition of Executive’s responsibilities and to ensure that the Company is aware of all matters being handled by Executive.

6. **Disability of Executive.** The Company may terminate this Agreement without liability if Executive shall be permanently prevented from properly performing his essential duties hereunder with reasonable accommodation by reason of illness or other physical or mental incapacity for a period of more than [120] consecutive days. Upon such termination, Executive shall be entitled to all accrued but unpaid Base Salary and vacation.

7. **Death of Executive.** In the event of the death of Executive during the Employment Period, the Company’s obligations hereunder shall automatically cease and terminate; provided, however, that within 15 days the Company shall pay to Executive’s heirs or personal representatives Executive’s Base Salary and accrued vacation accrued to the date of death.

8. **Confidential Information and Invention Assignments.** Executive [is simultaneously executing] [has executed] a Confidential Information and Invention Assignment Agreement (the “Confidential Information and Invention Assignment Agreement”). The obligations under the Confidential Information and Invention Assignment Agreement shall survive termination of this Agreement for any reason.

9. **Exclusive Employment.** During employment with the Company, Executive will not do anything to compete with the Company’s present or contemplated
Executive will not enter into any agreement which conflicts with his duties or obligations to the Company. Executive will not during his employment or within one (1) year after it ends, without the Company’s express written consent, directly or indirectly, solicit or encourage any employee, agent, independent contractor, supplier, customer, consultant or any other person or company to terminate or alter a relationship with the Company.

10. Assignment and Transfer. Executive’s rights and obligations under this Agreement shall not be transferable by assignment or otherwise, and any purported assignment, transfer or delegation thereof shall be void. This Agreement shall inure to the benefit of, and be binding upon and enforceable by, any purchaser of substantially all of Company’s assets, any corporate successor to Company or any assignee thereof.

11. No Inconsistent Obligations. Executive is aware of no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with his undertaking employment with the Company. Executive will not disclose to the Company, or use, or induce the Company to use, any proprietary information or trade secrets of others. Executive represents and warrants that he or she has returned all property and confidential information belonging to all prior employers.

12. Miscellaneous.

(a) Attorneys’ Fees. Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to legal proceedings in connection with this Agreement or Executive’s employment with the Company, the party or parties prevailing in such legal proceedings shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys’ fees and costs in such legal proceedings from the non-prevailing party or parties; provided, however, that nothing herein is intended to affect the provisions of Section 12(l).

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles.

(c) Entire Agreement. [Except with respect to the Stock Option Plan and Stock Option Agreement referenced in Section 3(d),] this Agreement, [together with the attached exhibits and the Confidential Information and Invention Assignment Agreement,] contains the entire agreement and understanding between the parties hereto and supersedes any prior or contemporaneous written or oral agreements, representations and warranties between them respecting the subject matter hereof.

(d) Amendment. This Agreement may be amended only by a writing signed by Executive and by a duly authorized representative of the Company.

(e) Severability. If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision,
covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

(f) Construction. The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against the Company or Executive.

(g) Rights Cumulative. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party hereto (or by its successor), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.

(h) Nonwaiver. No failure or neglect of either party hereto in any instance to exercise any right, power or privilege hereunder or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged and, in the case of the Company, by an officer of the Company (other than Executive) or other person duly authorized by the Company.

(i) Remedy for Breach; Attorneys’ Fees. The parties hereto agree that, in the event of breach or threatened breach of any covenants of Executive, the damage or imminent damage to the value and the goodwill of the Company’s business shall be inestimable, and that therefore any remedy at law or in damages shall be inadequate. Accordingly, the parties hereto agree that the Company shall be entitled to injunctive relief against Executive in the event of any breach or threatened breach of any of such provisions by Executive, in addition to any other relief (including damages) available to the Company under this Agreement or under law. The prevailing party in any action instituted pursuant to this Agreement shall be entitled to recover from the other party its reasonable attorneys’ fees and other expenses incurred in such action.

(j) Notices. Any notice, request, consent or approval required or permitted to be given under this Agreement or pursuant to law shall be sufficient if in writing, and if and when sent by certified or registered mail, with postage prepaid, to Executive’s residence (as noted in the Company’s records), or to the Company’s principal office, as the case may be.

(k) Assistance in Litigation. Executive shall, during and after termination of employment, upon reasonable notice, furnish such information and proper assistance to the Company as may reasonably be required by the Company in connection with any litigation in which it or any of its subsidiaries or affiliates is, or may become a party; provided, however, that such assistance following termination shall be furnished at mutually agreeable times and for mutually agreeable compensation.

(l) Arbitration. Any controversy, claim or dispute arising out of or relating to this Agreement or the employment relationship, either during the existence of the employment relationship or afterwards, between the parties hereto, their assignees, their
affiliates, their attorneys, or agents, shall be settled by arbitration in [City], [State]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association (but the arbitration shall be in front of an arbitrator appointed by JAMS/Endispute (“JAMS”)), with the following exceptions if in conflict: (a) one arbitrator shall be chosen by JAMS; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator(s), together with other expenses of the arbitration incurred or approved by the arbitrator(s); and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the JAMS’ rules and regulations) of the proceedings has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity; provided however, that nothing in this subsection shall be construed as precluding the Company from bringing an action for injunctive relief or other equitable relief or relief under the Confidential Information and Invention Assignment Agreement. The arbitrator shall not have the right to award punitive damages, consequential damages, lost profits or speculative damages to either party. The parties shall keep confidential the existence of the claim, controversy or disputes from third parties (other than the arbitrator), and the determination thereof, unless otherwise required by law or necessary for the business of the Company. The arbitrator(s) shall be required to follow applicable law. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

Alternate (l):

[(l) Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement or the employment relationship, either during the existence of the employment relationship or afterwards, between the parties hereto, their assignees, their affiliates, their attorneys, or agents, shall be litigated solely in state or federal court in [City], [State]. Each party (1) submits to the jurisdiction of such court, (2) waives the defense of an inconvenient forum, (3) agrees that valid consent to service may be made by mailing or delivery of such service to the California Secretary of State (the “Agent”) or to the party at the party’s last known address, if personal service delivery can not be easily effected, and (4) authorizes and directs the Agent to accept such service in the event that personal service delivery can not easily be effected. EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.]
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth below.

[COMPANY]

EXECUTIVE:

By: ____________________________  ____________________________
Name: __________________________
Title: __________________________

Date: ___________

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EXECUTIVE EMPLOYMENT AGREEMENT
This Executive Employment Agreement (hereinafter referred to as the "Agreement") is made and effective this ________, 199_, by and between _____________________ (hereinafter referred to as the "Company") and _______________________ (hereinafter referred to as the "Executive").

NOW, THEREFORE, the parties hereto agree as follows:

1. Employment.
Company hereby agrees to initially employ Executive as its [Office Title] and Executive hereby accepts such employment in accordance with the terms of this Agreement and the terms of employment applicable to regular employees of Company. In the event of any conflict or ambiguity between the terms of this Agreement and terms of employment applicable to regular employees, the terms of this Agreement shall control. Election or appointment of Executive to another office or position, regardless of whether such office or position is inferior to Executive's initial office or position, shall not be a breach of this Agreement.

2. Duties of Executive.
The duties of Executive shall include the performance of all of the duties typical of the office held by Executive as described in the bylaws of the Company and such other duties and projects as may be assigned by a superior officer of the Company, if any, or the board of directors of the Company. Executive shall devote his entire productive time, ability and attention to the business of the Company and shall perform all duties in a professional, ethical and businesslike manner. Executive will not, during the term of this Agreement, directly or indirectly engage in any other business, either as an employee, employer, consultant, principal, officer, director, advisor, or in any other capacity, either with or without compensation, without the prior written consent of Company. In addition to the duties described herein, Executive is also authorized and directed to do the following: [Other Specific Duties or Authorization].

3. Compensation.
Executive will be paid compensation during this Agreement as follows:

A. A base salary of $ _____ (dollar amount spelled out) per year, payable in installments according to the Company's regular payroll schedule. The base salary shall be adjusted at the end of each year of employment at the discretion of the board of directors.

B. An incentive salary equal to _______ of the adjusted net profits hereinafter defined) of the Company beginning with the Company's year end [First Incentive Year] and each fiscal year thereafter during the term of this Agreement. "Adjusted net profit" shall be the net profit of the Company before federal and state income taxes, determined in accordance with generally accepted accounting practices by the Company's independent accounting firm and adjusted to exclude:
   (i) any incentive salary payments paid pursuant to this Agreement;
   (ii) any contributions to pension and/or profit sharing plans;
   (iii) any extraordinary gains or losses (including, but not limited to, gains or losses on disposition of assets); (iv) any refund or deficiency of federal and state income taxes paid in a prior year; and
   (v) any provision for federal or state income taxes made in prior years which is subsequently determined to be unnecessary. The determination of the adjusted net profits made by the independent accounting firm employed by the Company shall be final and binding upon Executive and Company.

The incentive salary payment shall be made within thirty (30) days after the Company's independent accounting firm has concluded its audit. If the final audit is not prepared within
ninety (90) days after the end of the fiscal year, then Company shall make a preliminary payment equal to fifty percent (50%) of the amount due based upon the adjusted net profits preliminarily determined by the independent accounting firm, subject to payment of the balance, if any, promptly following completion of the audit by the Company's independent accounting firm. The maximum incentive salary payable for any one year shall not exceed [Maximum Incentive Compared to Base] of the then applicable base salary of Executive.

Benefits.

A. Holidays. Executive will be entitled to at least [Number of Paid Holidays] paid holidays each calendar year and [Number of Personal Days] personal days. Company will notify Executive on or about the beginning of each calendar year with respect to the holiday schedule for the coming year. Personal holidays, if any, will be scheduled in advance subject to requirements of Company. Such holidays must be taken during the calendar year and cannot be carried forward into the next year. Executive is not entitled to any personal holidays during the first six months of employment.

B. Vacation. Following the first six months of employment, Executive shall be entitled to [Number of Vacation Days] paid vacation days each year.

C. Sick Leave. Executive shall be entitled to sick leave and emergency leave according to the regular policies and procedures of Company. Additional sick leave or emergency leave over and above paid leave provided by the Company, if any, shall be unpaid and shall be granted at the discretion of the board of directors.

D. Medical and Group Life Insurance. Company agrees to include Executive in the group medical and hospital plan of Company and provide group life insurance for Executive at no charge to Executive in the amount of [Amount of Group Life Insurance] during this Agreement. Executive shall be responsible for payment of any federal or state income tax imposed upon these benefits.

E. Pension and Profit Sharing Plans. Executive shall be entitled to participate in any pension or profit sharing plan or other type of plan adopted by Company for the benefit of its officers and/or regular employees.

F. Automobile. Company will provide to Executive the use of an automobile of Executive's choice at a gross purchase price not to exceed [Maximum Purchase Price]. Company agrees to replace the automobile with a new one at Executive's request no more often than once every two years. Company will pay all automobile operating expenses incurred by Executive in the performance of an Executive's company duties. Company will procure and maintain in force an automobile liability policy for the automobile with coverage, including Executive, in the minimum amount of $1,000,000 combined single limit on bodily injury and property damage.

G. Expense Reimbursement. Executive shall be entitled to reimbursement for all reasonable expenses, including travel and entertainment, incurred by Executive in the performance of Executive's duties. Executive will maintain records and written receipts as required by the Company policy and reasonably requested by the board of directors to substantiate such expenses.

5. Term and Termination.

A. The Initial Term of this Agreement shall commence on [Start Date] and it shall continue in effect for a period of [Initial Term]. Thereafter, the Agreement shall be renewed upon the mutual agreement of Executive and Company. This Agreement and Executive's employment may be terminated at Company's discretion during the Initial Term, provided that Company shall pay to Executive an amount equal to payment at Executive's base salary rate for the remaining period of
Initial Term, plus an amount equal to [Severance Pay During Initial Term] of Executive's base salary. In the event of such termination, Executive shall not be entitled to any incentive salary payment or any other compensation then in effect, prorated or otherwise.

B. This Agreement and Executive's employment may be terminated by Company at its discretion at any time after the Initial Term, provided that in such case, Executive shall be paid [Severance Pay After Initial Term] of Executive's then applicable base salary. In the event of such a discretionary termination, Executive shall not be entitled to receive any incentive salary payment or any other compensation then in effect, prorated or otherwise.

C. This Agreement may be terminated by Executive at Executive's discretion by providing at least thirty (30) days prior written notice to Company. In the event of termination by Executive pursuant to this subsection, Company may immediately relieve Executive of all duties and immediately terminate this Agreement, provided that Company shall pay Executive at the then applicable base salary rate to the termination date included in Executive's original termination notice.

D. In the event that Executive is in breach of any material obligation owed Company in this Agreement, habitually neglects the duties to be performed under this Agreement, engages in any conduct which is dishonest, damages the reputation or standing of the Company, or is convicted of any criminal act or engages in any act of moral turpitude, then Company may terminate this Agreement upon five (5) days notice to Executive. In event of termination of the agreement pursuant to this subsection, Executive shall be paid only at the then applicable base salary rate up to and including the date of termination. Executive shall not be paid any incentive salary payments or other compensation, prorated or otherwise.

E. In the event Company is acquired, or is the non-surviving party in a merger, or sells all or substantially all of its assets, this Agreement shall not be terminated and Company agrees to use its best efforts to ensure that the transferee or surviving company is bound by the provisions of this Agreement.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services;
If to Company:
___Company Name/Address_____
If to Executive:
___Executive Name/Address_____

7. Final Agreement.
This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

This Agreement shall be construed and enforced in accordance with the laws of the state of 

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

10. No Assignment.
Neither this Agreement nor any or interest in this Agreement may be assigned by Executive
without the prior express written approval of Company, which may be withheld by Company at Company's absolute discretion.

11. Severability.
If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

The parties agree that they will use their best efforts to amicably resolve any dispute arising out of or relating to this Agreement. Any controversy, claim or dispute that cannot be so resolved shall be settled by final binding arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration shall be conducted in [Arbitration Location], or such other place as may be mutually agreed upon by the parties. Within fifteen (15) days after the commencement of the arbitration, each party shall select one person to act as arbitrator, and the two arbitrators so selected shall select a third arbitrator within ten (10) days of their appointment. Each party shall bear its own costs and expenses and an equal share of the arbitrator's expenses and administrative fees of arbitration.

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

_____________________________________________
Company Signature

______________________________________________
Executive Signature
CHECKLIST OF EMPLOYMENT AGREEMENT ISSUES
FROM THE PERSPECTIVE OF THE EMPLOYEE

SUMMARY: This checklist is intended to outline the major issues associated with negotiating senior executive employment agreements. Portions of this list may not be applicable in particular circumstances and other matters not on this list may need to be addressed.

1. **Scope of Employment**
   a. What is the title of the Employee’s job?
   b. What are the Employee’s responsibilities?
   c. Can the Employee be demoted? Can Employee’s responsibilities be substantially modified, decreased, or increased?
   d. Is Employee guaranteed a seat on the Board of Directors while an employee?
   e. Where is the place of employment?
   f. Can Employee be relocated unilaterally to another city, or only with the Employee’s consent?
   g. Is the Employee allowed to be involved in other activities (e.g., a directorship on other Boards, involvement in community activities)?

2. **Salary**
   a. What is the base salary?
   b. When is it payable?
   c. Does the salary go up each year by a designated amount or by cost of living increases?
   d. Are there designated times for performance reviews?

3. **Bonuses**
   a. Does Employee get a signing bonus?
   b. Is Employee entitled to a guaranteed bonus?
   c. Are there bonuses to be tied to objective performance standards?
   d. Are target bonus levels or minimum bonuses to be established?

4. **Benefits**
   a. Will the Employee participate in all benefit plans of the Company?
   b. Which of these plans should be in place for the Employee? Are all of the payments for the benefits the responsibility of the Company?
   (1) Health and medical (including spouse and dependent coverage)
   (2) Disability
   (3) 401(k)
   (4) Pension
   (5) Cafeteria Plan
   (6) Life insurance
   (7) Stock Option/Stock Grant
   (8) Vision
   (9) Dental
   (10) Executive Financial Counseling
c. How much vacation per year is Employee entitled? Does unused vacation continue to accrue for the benefit of Employee and payable on termination of employment?

d. Is there a designated sick pay policy?

e. Any special loans or forgiveness arrangements?

f. Are some of the benefits taxable to the Employee? Should Employee be reimbursed for the tax?

5. Term and Termination

a. How long is the employment term?

b. Is the Employee given the right to terminate at the Employee’s discretion prior to the end of the term?

c. Does the Agreement get renewed automatically on a year-to-year basis unless the Company gives the Employee notice of non-renewal at least 90 days in advance of the end of the term?

d. Is the employment “at will”?

e. What are the grounds, if any, on which employers can terminate?

f. What are the terms, if any, for compensation in the event of early termination?

g. What are the circumstances that the Employee can be fired “for cause”, such as:
   (1) Conviction of a felony or any act involving moral turpitude;
   (2) Commission of any act of theft, fraud, dishonesty or falsification of an employment record;
   (3) Material uncured breach of the Employment Agreement;
   (4) Failure to perform reasonable assigned duties; and/or
   (5) Improper disclosure of the Company’s confidential information.

h. Employee needs to avoid “for cause” definitions that give the Company too much latitude for termination.

i. Is Employee entitled to severance pay on termination? How much?

j. If the Employee is terminated without cause, is it clear that Employee will get all salary and benefits that Employee would otherwise have been entitled to for the remaining term of the Agreement?

k. If terminated without cause, is the Company required to continue paying for benefits or COBRA benefits for some period of time?

6. Reimbursement of Expenses

a. Will the Employee’s business expenses be reimbursed promptly?

b. Is there a car or car allowance, cellular phone provided, or other such amenities?

c. Are moving expenses to be reimbursed?

d. Is there a relocation package available for Employee (e.g., the Company purchasing Employee’s house on a move?)

7. Liability Protection for the Employee

a. Does the Company have Directors’ & Officers’ (“D&O”) insurance coverage? Is the Company required to maintain a minimum amount of such coverage?

b. Do the Company Bylaws provide for indemnification protection for officers and employees?

c. Does the Company’s Articles of Incorporation limit the liability of officers and directors to the maximum extent permitted by law?

D. Is there an Indemnification Agreement that protects the employee, covering:
(1) Indemnification protection for claims
(2) Automatic advancement of legal expenses
(3) Protection even if the Employee is no longer employed by the Company?
(Note statutory limitations on indemnification.)

8. Stock Option Grants
   a. Will Employee get stock options?
   b. What percent of the Company do the options represent? (Note: In venture capital
      backed privately held companies, the usual price for Common Stock options is
      1/10 of the price for the latest round of Preferred Stock issuance.)
   c. What is the exercise price for the options?
   d. Are any options deemed automatically vested upon grant?
   e. How long will unvested options vest? monthly? yearly cliff vesting?
   f. How long is the option exercisable?
   g. Does the option exercise period terminate 90 days after termination of
      employment or can it be longer?
   h. Are the shares obtained upon exercise of an option subject to repurchase on
      termination of employment? If so, at what price? (From the Employee’s
      perspective, repurchase rights should not be included or should be limited.)
   i. Are the shares obtained upon exercise of an option subject to a right of first
      refusal? If so, on what terms?
   j. Is the option a tax advantaged Incentive Stock Option?
   k. Does vesting of options accelerate on a change of control of the Company? Or,
      on other events such as termination of employment by the Company without
      cause?

9. Stock Grants
   a. Will the Employee be granted stock?
   b. Is this stock subject to vesting? What is the vesting period?
   c. Is this stock subject to repurchase rights or rights of first refusal?
   d. Should Employee file a § 83(b) IRC election?
   e. Does vesting accelerate on a change of control of the Company? Or, other event
      such as termination of employment by the Company without cause?
   f. Does Employee have to pay anything for the grant?
   g. What tax will the Employee have to pay for the Grant? Will the Company also
      pay Employee an amount to cover the tax?
   h. Does Employee have a right of first refusal for future Company stock issuances to
      avoid dilution?

10. Confidentiality Restrictions*
   a. What restrictions have been imposed on the Employee by the prior employer?
   b. The Employee must be careful not to use or divulge confidential information of a
      prior employer -- the new employer will often want a covenant from the
      Employee prohibiting such use or disclosure.
   c. If there are confidentiality restrictions on the Employee, are the following
      excluded from the definition of “confidential information”?:

* Note: Many companies have a separate form of employer Confidentiality and Invention
Assignment Agreement that can be incorporated by reference.
(1) Information that is or was publicly known, or which becomes publicly known through no fault of Employee
(2) Information that is or was obtained from a third party who had the right to disclose the information without restriction
(3) Information independently derived by the Employee without reference to the confidential information
(4) Information that was already lawfully in Employee’s possession or knowledge prior to the disclosure of the confidential information
d. How long do the confidentiality restrictions last? Indefinitely? A set number of years after disclosure to the Employee?

11. Invention Assignment Issues
a. What is the scope of the Company’s rights to the Employee’s development of new inventions, trade secrets, and ideas? Are these the Company’s only if they specifically relate to Company business and developed during Company time?
b. Do the invention assignment provisions comply with the California Labor Code or other applicable law?

12. Breach of Agreement
a. Is the Company required to give notice to the Employee of any alleged breaches of the Agreement and an opportunity to cure?

13. Disability and Death
a. What is a disability event?
b. What happens on disability? Does the Employee continue to receive salary and benefits?
c. What happens on death? Can medical and other benefits continue for some period for the spouse and children?

14. Post-Employment Limitations
a. Are there limitations on the Employee soliciting Company employees? For what period?
b. Is there a covenant not to compete after termination of employment?
   (1) For what geographic regions?
   (2) For what period?
   (3) How can the covenant be limited?
   (4) Are the restrictions enforceable under applicable law? (Generally not permitted in California.)

15. Dispute Resolution
a. How are disputes to be resolved?
b. Should arbitration be considered?
c. In what city must disputes be brought if litigated or arbitrated?

16. Golden Parachute
a. In the event of a change of control of the Company, is Employee entitled to terminate employment and receive a “golden parachute” payment (e.g., two or three times the yearly salary)?
b. What are the tax implications of the golden parachute payment? Will the Company also gross up the parachute payment to cover the tax?
c. Will the Company reimburse the Employee’s expenses in connection with an IRS audit claiming additional tax?
17. **Representations and Warranties of the Company**
   a. Are there specific representations and warranties of the Company that should be set forth (e.g., financial resources, venture capital backing)?
   b. Has Employee been promised something orally that should be reflected in the Employment Agreement?

18. **Miscellaneous Provisions**
   a. Is the Company prohibited from assigning the Agreement?
   b. Is there an attorneys’ fees clause where the prevailing party in a dispute would be entitled to recoup its attorneys’ fees incurred?
   c. **Choice of Law**

Integration Clause
EXECUTIVE ENGAGEMENT AGREEMENT
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THIS AGREEMENT is made as of the 9th day of December, 1999, by and between FILM ROMAN, INC., a Delaware Corporation, 12020 Chandler Street, North Hollywood, California 91607 ("Company") and PRODUCERS SALES ORGANIZATION, a California Corporation, c/o Fairlea Ranch, P. O. Box 93603 ("Contractor") furnishing the services of John W. Hyde ("Executive").

In consideration of the mutual covenants contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Employment:
----------

1.1 Company shall engage Contractor to furnish the services of Executive and Contractor and Executive accept such engagement with the Company upon the terms and conditions set forth in this agreement.

1.2 During Term (defined below) Contractor shall furnish Executive's services to serve as a consultant; additionally, during the period from the commencement of the Term through December 31, 2001 and, at Company's option, during the period from January 1, 2002 through December 31, 2002, Executive shall have the title of President and Chief Executive Officer of Company and such subsidiaries as may be designated by Company.

In addition to consulting to the Company, Executive's obligations (and rights) while serving as President and Chief Executive Officer shall be commensurate with those normally performed by a President and Chief Executive Officer. In rendering services hereunder Executive shall report only to the Board of Directors (the "Board"). In this connection Executive shall promptly establish and submit a business plan to the Board, and Executive shall adhere to the Company's business plan as proposed by Executive and approved by the Board. In preparing the business plan it is contemplated that Executive will (i) incorporate proposals for substantial cost cuts in the operation of the Company, (ii) incorporate proposals for implementing infusion of cash for the Company, it being understood by Executive that this will be a major goal of the business plan and (iii) make recommendations for restructuring of the accounting and administrative departments of the Company.

Executive shall serve as a Member of the Board during the Term hereof, but not otherwise.

1.3 Executive shall devote Executive's best efforts and Executive's exclusive full business time and attention to the business of Company (except that such services shall be non-exclusive during the third contract period [defined below] if Company does not elect to continue Executive as President and Chief Executive Officer during that period). In connection with the foregoing, Executive shall be expected to render services at such times and at such places as the Board may from time to time designate; provided, however, that if Board were to designate or to determine that Executive is to render services outside of the Metropolitan Los Angeles Area, Executive shall not be required to render such services for any continuous period of more than thirty (30) days without his consent. Executive may continue to exercise direct oversight over Fairlea Ranch and his involvement with Crownstar, LLC, provided such activities do not interfere with his performance hereunder.

1.4 Executive shall cooperate with Company to enable Company to obtain, at its expense, life insurance on the life of Executive for the benefit of Company in such amounts as Company may from time to time determine.
2. Term: 

The Term ("Term") of this Agreement shall commence as of December 9, 1999, and shall continue unless sooner terminated as elsewhere provided for three (3) consecutive "contract periods," as follows:

(i) first contract period: December 9, 1999 through December 31, 2000;
(ii) second contract period: January 1, 2001 through December 31, 2001; and
(iii) third contract period: January 1, 2002 through December 31, 2002.

3. Termination: 

3.1 Company's Right to Terminate: Company shall have the right to terminate the Term of this agreement prior to the expiration date specified herein:

(i) Upon the death of Executive;

(ii) For cause. "Cause" as used herein means (a) conviction of a felony or a crime involving moral turpitude or the commission of any other act involving willful malfeasance with respect to Company, (b) gross negligence or willful misconduct with respect to Company, (c) Executive's failure to adhere to Board policies or the Board-approved business plan which is not cured within five (5) business days after notice of the same from Company, or (d) any other material breach of this agreement not covered above which is not cured within five (5) business days after notice of the same from Company.

(iii) As provided in paragraphs 8 and 9 below; and

(iv) Without cause.

3.2 Effect of Termination: 

(a) With Cause: If Company terminates this agreement for cause Company shall have no further obligation to pay Contractor any compensation (other than accrued but unpaid compensation or expense reimbursement and accrued but unpaid vacation days, if any).

(b) Death, Disability: If Company terminates this agreement because of Executive's death or disability (as defined below) Company shall have the obligation to pay Contractor Contractor's compensation hereunder up to the time of such termination (including that attributable to vacation time allowed to Executive which has accrued but not been taken), and any unpaid expense reimbursement.

(c) Without Cause: If termination hereunder is without cause Company shall pay all remaining compensation for the remainder of the first and second contract periods of the Term and the third contract period if Company has elected to cause Executive to serve as President and Chief Executive Officer during such third contract period subject to Company's right to fully mitigate payment obligations by crediting against such amounts any sums received by Contractor or Executive for Executive's services rendered to any other company.
or entity not controlled by Executive in an entertainment executive capacity.

4. Compensation:

Company shall pay Contractor the following compensation for its furnishing of Executive's services hereunder.

(a) For the first contract period, Company shall pay Contractor monthly payments of $20,833.33 for each calendar month of such period, or prorata for any portion of the calendar month which payment is based on an annual payment at the rate of $250,000.00 per annum.

(b) For each month of the second contract period Company shall pay Contractor at the rate of $22,916.67 per month for each month of such period, i.e. based on a rate of $275,000.00 per annum.

(c) If Company elects to continue to require Contractor to furnish Executive's services both as a consultant and as President and Chief Executive Officer during the third contract period then Company shall pay Contractor the sum of $25,000.00 per month for each month of such period, i.e. based on the rate of $300,000.00 per annum. If Company elects to require Contractor to furnish Executive's services as a consultant only then Company shall pay to Contractor only such amounts as may be equal to the annual base fee and fees for meetings then paid to other Members of the Board.

It is understood that Executive shall not be entitled to any payments as a Board Member except as provided in paragraph 4.(c) above. Additionally neither Contractor nor Executive shall be entitled to any stock options granted to Board Members it being understood that the stock options granted to Contractor and Executive shall be only those provided for in paragraph 7 below.

5. Expenses:

5.1 Executive is authorized to incur reasonable expenses in connection with Company's business in such amounts as may be from time to time approved by the Company. Company agrees to pay or to reimburse Contractor, or at its direction, Executive for such expenses which are reasonably incurred by Executive on behalf of or for the benefit of Company upon the presentation by Contractor or Executive from time to time of an itemized account of such expenditures setting forth the date, the purposes for which incurred, and the amounts thereof, and such other information as Company may reasonably require, together with such receipts showing payments as Executive has been able to obtain. If Executive is required to travel, he shall receive business class airfare (first class if business class not available) except on flights within California, and first class accommodations.

5.2 Executive shall be entitled to a car allowance in the amount of Five Hundred Dollars ($500.00) per month, which amount shall be reported as income to Contractor and shall cover all normal work-related automobile expenses and shall be payable in accordance with Company's then-existing policies (currently, payment to be made at the beginning of each applicable month).}

6. Benefits:

6.1 During any periods during which Executive is serving as President and Chief Executive Officer and during which PSO is entitled to payments hereunder Company shall reimburse PSO for any amounts paid by it under any health plan maintained by it for Executive's benefit, it being understood
however that the maximum reimbursement hereunder shall not exceed the amounts which Company would have been obligated to pay had Executive been insured (as an individual without dependents) under Company's then current health insurance plan.

(b) PSO shall secure and maintain workers compensation insurance pertaining to Executive's services unless Company is able to cover Executive under its workers compensation insurance coverage as the "special Employer" of Executive for such purposes. Whether or not Executive is so covered, PSO and Executive both will agree that they shall not make any third party claim with respect to any injury which Executive might receive.

(c) Company understands that Contractor affords Executive four (4) weeks paid vacation per year; Executive shall be entitled to such vacation time, consistent with the reasonable time requirements of Company without reduction of compensation to Contractor.

(d) Executive shall be entitled to designate the person to act as his assistant, provided that such assistant's salary is consistent with those generally paid by Company for assistants to members of top management. Company shall employ such assistant directly, on at-will basis.

7. Stock Options:

(a) In consideration for furnishing of Executive's services as aforesaid Contractor will be entitled to participate in the Company's Employee Stock Option Plan. Said Plan includes usual provisions included in a non-qualified stock option plan including the right to satisfy the exercise price with cash, promissory notes (if secured to the reasonable satisfaction of Company) or, with Company's agreement, stock in the Company. Executive acknowledges that such Plan is not intended to be an "Incentive stock option" within the meaning of Section 422A of the Internal Revenue Code of 1986 as amended and is to be considered in all respects as "non-qualified." Contractor and Executive have been furnished with a copy of Company's 1996 Stock Option Plan ("Plan") and a copy of Company's standard form Non-Qualified Stock Option Agreement.

(b) Subject to Contractor's and Executive's execution of Company's standard form of Non-Qualified Stock Option Agreement (as modified by this Agreement) effective as of the date hereof Company grants to Contractor the right and option to purchase from Company all or any part of an aggregate of 100,000 shares of Company's common stock and effective as of January 3, 2000, the right and option to purchase from Company all or any part of an aggregate of 400,000 shares of Company's common stock, both options upon the terms and conditions set forth in the Company's standard Non-Qualified Stock Option Agreement, subject to the Plan, except as hereby modified.

(c) Specific terms applying to such options are as follows:

(i) Price: the exercise price for the 100,000 shares shall be the market value as of the close of market on the date immediately preceding the date of the grant, i.e. close of market on December 8, 1999, and the exercise price for the 400,000 shares shall be the market value as of the close of market on December 31, 1999 (the last market date preceding January 3, 2000).

(ii) Term: the options shall expire on the 10/th anniversary of the grant date unless terminated earlier per the Plan;

(iii) Vesting: Options with respect to all 500,000 shares shall vest in equal quarterly increments over a three (3)
year period commencing January 1, 2000; the first quarterly increment shall vest on March 30, 2000, and each subsequent quarterly increment shall vest at the expiration of each calendar quarter thereafter;

(iv) Termination for Cause: In the event for termination for cause, all options granted shall terminate effective as of the date of such termination;

(v) Termination for Death or Disability: In the event of termination for death or disability, all unvested options shall terminate effective as of the date of such termination;

(vi) Termination Without Cause: In the event of termination without cause, the options granted hereunder, to the extent not theretofore vested, shall vest effective as of such termination; and

(vii) Exercise in the Event of Termination: Except for termination of the agreement for cause (in which event all options shall terminate on the date of termination) all options to the extent exercisable at the time of termination shall be exercisable for a period of six (6) months immediately following the month of termination, unless they expire sooner because of any other conditions specified in the Plan.

Contractor's rights will otherwise be identical to those generally accorded the other participants in the Plan for whom exceptions are not extended and Executive will be subject to the such generally applied arrangements, terms and conditions. Notwithstanding anything above to the contrary, with respect to stock options granted Contractor, Company may elect to require Contractor to exercise such options on a cashless basis, deducting from the number of option shares to be received a number of shares equal in value to the exercise price of the option as determined in accordance with the provisions of the Plan, as applicable.

8. Incapacity: -----------------

8.1 If Executive is physically or mentally incapacitated from rendering services hereunder, and if Executive's incapacity or disability shall continue for a period or aggregate of periods of eight (8) consecutive weeks or more during any contract period of the Term of this Agreement, Company may, at its option, terminate and cancel this Agreement by notice mailed or delivered to Contractor at any time prior to Executive's return to work hereunder. Executive shall be deemed to be physically or mentally incapacitated if Executive is unable for any physical or mental reason whatsoever to devote full time to the business of the Company, as determined by the Board.

8.2 If Company determines that Executive is permanently disabled and if Contractor and Executive do not agree, determination shall be made by a panel of three (3) doctors, the first to be chosen by Company, the second to be chosen by Contractor and the third to be chosen by the first two. Any doctor selected by a party will not be affiliated, associated or related to the party selecting that doctor in any manner whatsoever. The opinion of a majority of the panel of doctors shall be binding on the parties hereto. Each party shall bear its own cost for their own doctor, and the parties shall split the cost of the third doctor (unless it is determined that Executive is not permanently incapacitated, in which event all doctor costs shall be borne by Company).

9. Force Majeure; Discontinuance of Business: -----------------------------------------

If Company is prevented from or materially hampered or interrupted in
conducting its business by reason of any present or future statute, law, ordinance, regulation, order, judgment or decree, or by reason of any act of God, or by reason of any contingency beyond the control of Company, then, if all other top management Employees are also suspended. Executive's services and Contractor's compensation hereunder may be suspended as often as any such event occurs and during such period of time as any such event continues while all such other Employees' salaries continue to be suspended. The term of this agreement shall automatically be extended by the period of any suspension hereunder. If such suspension continues for sixteen (16) consecutive weeks or more either party may terminate the Term while such suspension is still in effect, except that Company may negate Contractor's termination by then terminating such suspension with the understanding that the Term may not again be suspended for the same cause.

10. Contractor's and Executive's Warranties and Indemnification

(a) Contractor and Executive each warrant that they have the right to enter into and fully perform this Agreement. Executive further warrants that Executive has an agreement with Contractor pursuant to the terms of which Executive is engaged as an employee of Contractor.

(b) Contractor and Executive agree that Executive shall be considered for all purposes as an employee of Contractor. Contractor shall assume all obligations of employer; without limiting the foregoing Contractor shall assume all obligations to pay any and all taxes due with respect to payments made hereunder and all obligation to withhold taxes from any payments which may be made by Contractor to Executive. Additionally, Contractor shall assume and pay the entire employee share (to the extent not paid by Executive) of any payments required to be paid on account of FICA, SDI, SUI or any other fund. In the event of any contest or audit with respect to any payments made hereunder, Contractor shall assume and pay all expenses and/or liabilities incurred in connection with such audit.

Contractor and Executive shall defend, indemnify and hold Company free and harmless from and against any claim, demand, loss or liability arising out of any breach by its/him of any obligations outlined above.

(c) Executive's Inducement and Guarantee:

As an inducement to Company to enter into this Agreement with Contractor, by execution below and by execution of the attached Inducement Letter, Executive warrants and guarantees that Executive will perform any obligations which are required of him under this Agreement and will not do anything or take any action or fail to take any action which would cause Contractor to be in breach of its obligations to furnish Executive's services under the Agreement. Executive further warrants that in the event, for any reason, Contractor should be dissolved or otherwise unable to furnish Executive's service, then Executive shall contract directly with Company with respect to the furnishing of such services on the same terms and conditions as set forth herein.

11. Company's Rights:

11.1 Contractor and Executive acknowledges that Company, shall own all right, title and interest in and to the results of Executive's services hereunder, including all material developed or conceived by Executive within the
scope of his engagement. Company shall have the right to use all such materials and the elements thereof and the programs or other productions in which the material is contained worldwide and in perpetuity, without limitation or restriction whatsoever and Company may distribute, broadcast and otherwise exhibit, use and/or exploit, in whole or in part, worldwide, in perpetuity, same in any manner and through any media, whether presently in existence or subsequently devised, as Company may elect. Executive hereby waives the so-called "moral rights" of an author. Contractor and Executive agrees and acknowledges that for purposes of Section 201 of the United States Copyright Act and for ownership purposes, all materials and the results and proceeds of Executive's services shall be considered "works for hire" and Company shall have all ownership rights in the material and services of Executive hereunder as the author thereof. Company shall have no obligation to use the product of Executive's services.

If for any reason any materials and/or the results and proceeds of Executive's services hereunder are not considered works for hire which are owned by Company then Contractor and Executive shall, and do hereby, assign to Company, in perpetuity, all right (including but not limited to rights of copyright), title and interest in and to such materials and/or the results and proceeds of Executive's services, without any restriction or reservation whatsoever.

11.2. Existing Rights and Properties:  
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(a) Contractor and/or Executive currently own or control certain audiovisual or other intellectual properties or rights in certain audiovisual or other intellectual properties (all herein for convenience the "PSO Properties").

(b) If at any time during the Term hereof (including the third contract period) Contractor or Executive should determine to make or permit others to make any use whatsoever of any PSO Property (other than "smartTalk"), Contractor (on its own behalf or on behalf of Executive) shall promptly notify Company to such effect. Thereafter for a period of fifteen (15) days Contractor shall negotiate only with Company with respect to Company's acquiring such PSO Property or rights therein for use by Company. If during the forty-five (45) day "first negotiation" period Contractor and Company are unable to reach an agreement with respect to such PSO Property, then Contractor shall be free to enter into negotiations with other parties with respect to their acquiring such PSO Property, provided however that if Contractor proposes to enter into any agreement with any third party on terms equal to or more or less favorable than those last negotiated between Contractor and Company, Contractor shall first offer such terms to Company and Company shall have a "right of last refusal" for five (5) business days thereafter within which to accept or reject the same. Any offer made by Contractor hereunder shall be capable of being accepted solely by the payment of money, it being understood that such offers shall not be subject to conditions other than the payment of money that Company might not be able to meet due to the nature of the conditions. An offer which is changed in any way shall be deemed a new offer. It is understood that the first negotiation/last refusal procedure outlined above shall apply to each PSO Property now owned, created or hereafter acquired by Contractor and/or Executive.

(c) Notwithstanding anything above to the contrary it is understood that Executive shall not render any services whatsoever in connection with the use of any PSO Property (which is not accepted by Company) during the first and second contract periods hereof and during the third contract period if Company elects to continue to require Contractor to cause Executive to render as President and Chief Executive Officer during the third contract period.

Notwithstanding that Executive may not render services in connection with a PSO Property during the term as aforesaid, Contractor or
Executive may receive credit in connection with any use of such PSO property, provided that the according of such credit to Executive (other than executive producer or producer credit for "Scudder" and/or "smartTalk" which have heretofore been established) shall be subject to Company's prior reasonable approval, it being understood that Company's refusal to agree to the according of such credit because of its belief that the same would conflict with Company's business shall not be an unreasonable disapproval hereunder.

11.3. Company shall have the right to use, disseminate, reproduce, print and publish Executive's name, likeness, voice and biographical material concerning Executive as news or informative matter in connection with Company's business.

11.4. Executive's services and rights herein granted are unique in character and value such that the loss thereof could not be reasonably compensable in damages in an action at law. Accordingly, Company shall be entitled to equitable relief by way of injunction or otherwise to prevent the breach or continued breach of this Agreement. The sole right of Executive as to any breach or alleged breach hereof by Company shall be the recovery of money damages, and the rights herein granted by Executive shall not be terminated by reason of such breach. The waiver by either party of any breach hereof shall not be deemed a waiver of any prior or subsequent breach hereof. All remedies of either party shall be cumulative and the pursuit of one remedy shall not be deemed a waiver of any other remedy.

12. Federal Communications Act: 
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Reference is hereby made to Section 507 of the Federal Communications Act, making it a criminal offense for any person, in connection with the production or preparation of any program intended for broadcasting, to accept or pay any money, service or other valuable consideration for the inclusion of any matter as part of any such program or program matter without disclosing in advance the same to the employer of the person to whom such payment is made or to the person for whom such program is being produced, or to the station over which such program is broadcast. Executive understands that it is the policy of Company not to permit any Employee of Company to accept or pay any such consideration, and Executive represents and agrees that Executive has not accepted and will not accept, and has not paid and will not pay, any money, services, or other valuable consideration for the inclusion of any "plug," reference or product identification, or any other matter in the programs produced hereunder.

13. Confidential Information: 
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Executive acknowledges that the information, observations, work product, trade secrets and data obtained by Executive while engaged by Company and its subsidiaries concerning the business or affairs of the Company or any subsidiary thereof ("Confidential Information") are the property of Company or such subsidiary. Therefore, Executive agrees that Executive shall not disclose to any unauthorized person or use for Executive's own account any Confidential Information without the prior written consent of the Board, unless and to the extent that the aforementioned matters (i) become generally known to and available for use by the public other than as a result of Executive's acts or omissions to act or (ii) must be disclosed under a subpoena or other governmental order or (iii) was possessed by Executive prior to Executive's employment by the Company. Executive shall deliver to Company at the termination of the employment period, or at any other time Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Confidential Information, work product or the business of Company or any subsidiary which Executive may then possess or have under Executive's control.
14. **Non-Compete, Non-Solicitation:**

During Executive's engagement and for two (2) years after the end of the Term Contractor and Executive will not attempt to hire or to solicit (for its/its own purposes or for any other company) any regular employee (other than Executive's assistant) of or independent contractor rendering artistic or production services to Company other than freelance actors or others who render services to Company on a non-exclusive basis. Further, during Executive's engagement and for three (3) years after the end of the Term Contractor and Executive will not (i) transfer or attempt to transfer any projects in which Company is involved (whether in negotiation, development or production) from Company to Executive or to any other company and/or (ii) encourage any company or business with whom Company is doing business (e.g. a network or other exhibitor) from ceasing to do business with Company with respect to any project which is then in negotiation, development or production.

15. **Notices:**

All notices required to be given hereunder shall be in writing and shall be delivered personally, electronically, or by express, certified or registered mail to the respective addresses of the parties hereto set forth elsewhere in this Agreement, or at such other addresses as may be designated by written notice. Delivery of any notice shall be deemed conclusively made (i) if personally delivered at the time of delivery, (ii) if delivered by transmittal over electronic or telephonic transmitting devices (such as telex or telecopy) to the addressee's telecopy or telex number, at the time of transmittal, provided that the party to whom the notice is delivered has a compatible device, (iii) if delivered by any private overnight express mail service, twenty-four (24) hours after deposit with such service (this period shall be seventy-two (72) hours if addressed to or from a party outside the United States), (iv) if mailed, properly addressed and postage prepaid, three (3) business days from date of mailing (seven (7) business days if mailed to or from a country other than U.S.). A copy of any notice hereunder to Company shall also be given to the Law Offices of Dixon Q. Dern, P.C., 1901 Avenue of the Stars, Suite 400, Los Angeles, California 90406; a copy of any notice to Company shall also be given to Leroy Bobbitt, Esq., Bobbitt & Roberts, 1260 26th/ Street, #150 South, Santa Monica, California 90404.

16. **Immigration:**

Company's engagement of Contractor to furnish services of Executive is subject to Executive's compliance with the terms and provisions of the Federal Immigration and Naturalization Act. In that regard concurrently with the execution of this agreement Executive shall provide Company with such proof of Company's United States Citizenship or authorization to work in the United States as may be required by the Immigration and Naturalization Service and shall also complete and return to Company an I-9 Form or such other forms as may be required.

17. **Arbitration:**

Any controversy or claim arising out of relating to this agreement the breach thereof or the coverage of this arbitration provision shall be settled by arbitration pursuant to the provisions of Section 1280 et seq. of the California Code of Civil Procedure, or such substitute provisions therefor then in effect. Any arbitrators selected shall have experience in or knowledge of the business in which the parties are primarily engaged. Any such arbitration shall be conducted in Los Angeles, California before a single arbitrator or, if the
parties are unable to agree upon a single arbitrator, then before three arbitrators, one selected by each party and the third (i.e. neutral) arbitrator to be selected by the other two arbitrators. If the parties or the arbitrator(s) appointed by the parties are unable to agree upon the selection of a neutral arbitrator then any party may at its election require that the neutral arbitrator shall be selected by the American Arbitration Association, Los Angeles, California. The arbitration of all issues including the determination of the amount of any damages suffered by any party hereto by reason of the acts or omissions of another shall be to the exclusion of any court of law (except for court actions permitted as provided below). The parties each acknowledge that they are giving up the right to a trial by jury or by the court. The arbitrator(s) shall have the full authority to award legal or equitable relief, such as but not limited to specific performance, as the arbitrator(s) deem appropriate. However, the arbitrator(s) shall not have authority or jurisdiction to award punitive damages, the same being waived. There shall be no discovery except as authorized by the arbitrator(s). The decision of the arbitrator or a majority of the arbitrators shall be final and binding on all parties and their respective heirs, executors, administrators, successors and assigns. Any action to secure judicial confirmation of the arbitration award may be brought in any state or federal court of competent jurisdiction. The prevailing party in any proceeding brought under this paragraph or in any proceeding brought to enforce an arbitration award hereunder shall be entitled to its costs and to its reasonable attorneys fees incurred in connection with the preparation and conduct of any such arbitration and/or any other proceeding hereunder. Arbitration hereunder shall not in any event (i) prevent any party from seeking and obtaining interim equitable relief including but not limited to prohibitory or mandatory injunctions, specific performance or extraordinary writs in any court of law or equity having jurisdiction nor (ii) prevent any party from enjoining any other party in any action brought by or against a third party with respect to the subject matter of the arbitration nor (iii) prevent any party from filing legal action hereunder to effectuate any attachment or garnishment, provided that such party stipulates in such action, at any other party's request, to arbitration on the merits of the case, nor (iv) prevent a party from filing legal action to compel arbitration under the arbitration provisions hereof.

18. General Provisions:

18.1 Warranties: Contractor and Executive warrants that each is free to enter into this Agreement and will not do or permit any act which will interfere with or derogate from the full performance of Executive's services or Company's exercise of the rights herein granted.

18.2 Indemnity: Contractor and Executive shall hold Company, its licensees and assigns, and the directors, officers, employees and agents of the foregoing, harmless from all claims, liabilities, damages, costs and legal fees arising from any breach by Contractor or Executive of any warranty or agreement made by Contractor and/or Executive hereunder. Company will hold Contractor and Executive harmless from all claims, liabilities, damages, costs and legal fees arising from the use of any material supplied Executive by Company or incorporated at Company's discretion. The party receiving notice of any claim or action subject to indemnity hereunder shall promptly notify the other party. This indemnity shall survive any termination or expiration of this Agreement.

18.3 Waiver: A waiver by either party of any of the terms or
conditions of this agreement in any one instance shall not be construed to be a waiver of such term or condition for the future, or any subsequent breach thereof; all remedies, rights, undertakings, obligations and agreements contained in this agreement shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

18.4 Construction: This agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and fully to be performed therein. In view of the fact that this agreement was in whole or in part negotiated and entered into in California, the parties consent to and agree to submit to the jurisdiction of the courts of the State of California (and/or the federal courts within California), and each party agrees that service of process may be effected by mail (certified or registered mail, return receipt requested), to or by personal service upon such party (or any officer of a corporate party) at such party's address as set forth in this agreement or such other address as such party may specify in writing.

Wherever the context of this agreement requires it, each gender shall be deemed to embrace and include the others, and the singular shall be deemed to embrace and include the plural.

18.5 Severability of Provisions: If any provision hereof as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provisions hereof, the application of such provision in any other circumstances or the validity or enforceability hereof.

18.6 Entire Understanding: This agreement contains the entire understanding of the parties hereto relating to the subject matter herein contained and supersedes any and all prior negotiations, understanding and agreements (including but not limited to the Term Sheet dated December 8, 1999) between the parties (whether oral or in writing); this agreement cannot be changed, rescinded or terminated except by a writing signed by the Company.

18.7 Successors and Assigns: Except where expressly provided to the contrary, this agreement, and all provisions hereof, shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, assigns, administrators, executors, heirs and devisees. In this regard it is understood that without limiting the foregoing Company may assign this Agreement in whole or in part to Film Roman, Inc., a California Corporation, and/or delegate to that subsidiary the responsibility for making payments and discharging other obligations of Company hereunder.

18.8 Paragraph Titles: The titles of the paragraphs of this agreement are for convenience only and shall not in any way affect the interpretation of any paragraphs of this agreement or of the agreement itself.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

FILM ROMAN, INC.
"Company"

By /s/ Dixon Q. Dern

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Its Secretary

PRODUCERS SALES ORGANIZATION

By: /s/ John W. Hyde

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Its ------------------------

APPROVED:

/s/ John W. Hyde

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JOHN W. HYDE

15
EMPLOYMENT AGREEMENT

THIS AGREEMENT is made as of the 31st day of December, 1999, by and between FILM ROMAN, INC., a California corporation, 12020 Chandler Street, North Hollywood, California 91607 ("Company") and JON VEIN, 101 No. Las Palmas Avenue, Los Angeles, California 90004 ("Executive").

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Employment:

1.1 Company shall employ Executive and Executive accepts such employment with the Company upon the terms and conditions set forth in this agreement.

1.2 During the Term defined below Executive shall serve as a senior executive of Company as Executive Vice President performing (i) services as supervisor of the business affairs and internal legal areas, (ii) services overseeing feature development and production, and (iii) any other duties including all activities incidental thereto which are consistent with Executive's title as may be assigned to him by the Company's Chief Executive Officer or the Board of Directors ("Board"); Executive shall be included in consideration of material business decisions of management.

1.3 Executive shall devote Executive's best efforts and Executive's exclusive full business time and attention (as required by the Chief Executive Officer of the Company or the Board) to the business and affairs of Company, its parent, and their direct or indirect wholly owned subsidiaries, if any. In connection with the foregoing, Executive shall be located at and perform his services primarily at the Company's principal executive offices located in the greater Los Angeles Metropolitan area (it being understood that the performance of Executive's duties shall include business travel from time to time outside of such area).

1.4 Executive shall perform Executive's duties and responsibilities to the best of Executive's abilities in a diligent, trustworthy, business-like and efficient manner and shall comply with Company's reasonable instructions and regulations in all matters, including, if applicable, artistic taste.

1.5 Reference is made to Company's "Executive Handbook" as the same may be currently in effect or hereafter modified (modifications, if any, which are inconsistent with specific provisions of this agreement shall not be deemed incorporated herein). Said Executive Handbook shall be deemed a part of this Agreement, except that the Company's termination rights hereunder shall be only as set forth in this Agreement and if there are any other inconsistencies between the handbook and this agreement the provisions of this Agreement shall prevail.

1.6 Executive shall cooperate with Company to enable Company to obtain, at its expense, life insurance on the life of Executive for the benefit of Company in such amounts as Company may from time to time determine, but failure to qualify for insurance shall not be a breach hereof.

2. Term:

2.1 The term (herein "Term") of this agreement shall commence as of January 1, 1999, and shall continue, unless sooner terminated as elsewhere herein provided, for two (2) consecutive "contract years" as defined below. The
date on which the Term is scheduled to expire shall be referred to herein as the "Expiration Date."

2.2 The term "contract year" as used above means each period of fifty-two (52) consecutive weeks; provided, however, that if the Term were to expire in the middle of any week, the Term shall be deemed extended so as to expire on the Friday of such week.

3. Termination and Effect of Termination:

3.1 Expiration of Term. Executive's employment by the Company and this Agreement shall automatically expire and terminate on the expiration of the Term unless sooner terminated pursuant to the provisions of this Section 3.

3.2 Death. Executive's employment by the Company and this Agreement shall automatically terminate upon Executive's death.

3.3 Disability. The Company shall have the right and option, exercisable by giving written notice to Executive, to terminate Executive's employment by the Company and this Agreement at any time after Executive has been unable to perform the services or duties required of Executive in connection with Executive's employment by the Company as a result of physical or mental disability (or disabilities) which has (or have) continued for a period of 60 days in the aggregate, during any twelve (12) month period. Executive shall be deemed to be physically or mentally incapacitated if Executive is unable for any reason whatsoever to devote substantial time to the business of the Company, as determined by the Board in good faith. If the Company determines that Executive is disabled or incapacitated and if Executive does not agree, determination shall be made by a panel of three (3) doctors, the first to be chosen by the Company, the second to be chosen by Executive and the third to be chosen by the first two. Any doctor selected by a party will not be affiliated, associated or related to the party selecting that doctor in any manner whatsoever. The opinion of a majority of the panel of doctors shall be binding on the parties hereto. Each party shall bear its own cost for their own doctor, and the parties shall split the cost of the third doctor (unless it is determined that Executive is not permanently incapacitated, in which event all doctor costs shall be borne by Company).

3.4 For Cause. The Company shall have the right and option, exercisable by giving written notice to Executive, to terminate Executive's employment by the Company and this Agreement at any time after the occurrence of any of the following events or contingencies (any such termination being deemed to be a termination "for cause"):

(i) Executive materially breaches, materially repudiates or otherwise materially fails to comply with or perform any of the terms of this Agreement, any duties of Executive in connection with Executive's employment by the Company or any of the Company's policies or procedures, or deliberately interferes with the compliance by any other Executive of the Company with any of the foregoing; provided, that if any action or omission by Executive constituting one of the foregoing is curable and does not constitute any of the events or actions described in clause (ii), below, Executive shall have five (5) business days to cure such breach following notice thereof from the Company (which notice shall be written or, if immediate written notice is not possible, oral notice may
be given, provided that such oral notice is confirmed in writing within the foregoing five business day period.) (For purposes of this clause (i) and clauses (iii) and (iv), below, an action (or omission) shall be "intentional" if Executive knows, or reasonably should have known, that such action (or omission) constitutes a material breach hereof). For these purposes, actions (or omissions) by the Executive which he in good faith believes to be in the best interests of the Company and are permitted by this Agreement shall not be deemed in any circumstance to constitute an action (or omission) which he "reasonably should have known" to constitute a material breach of this Agreement;

(ii) The conviction by Executive of a felony or the pleading by Executive of no contest (or similar plea) to any felony (other than a crime for which vicarious liability is imposed upon Executive solely by reason of Executive's position with the Company, and not by reason of Executive's conduct). For purposes of this clause, the Company shall bear the burden of proof in any action in which the Company attempts to terminate Executive based upon the "commission of a felony" unless a judgment of "guilty" has been entered against Executive in a court of competent jurisdiction with respect to such felony; or

(iii) Any act or omission by Executive constituting fraud, gross negligence or willful misconduct in connection with Executive's employment by the Company; provided, that if any action or omission by Executive constituting one of the foregoing is curable and does not constitute any of the events or actions described in clause (ii) above, Executive shall have five (5) business days to cure such breach following notice thereof from the Company (which notice shall be written or, if immediate written notice is not possible, oral notice may be given, provided that such oral notice is confirmed in writing within the foregoing five business day period).

3.5 Employment Beyond the Term. The Company shall have no obligation to renew or extend the Term. Neither (i) the expiration of the Term, (ii) the failure or refusal of the Company to renew or extend the Term, this Agreement, or Executive's employment by the Company upon the Expiration of the Term nor (iii) the termination of this Agreement by the Company pursuant to any provision of this Section 3, shall be deemed to constitute a termination of Executive's employment by the Company "without cause" for the purpose of triggering any rights of or causes of action by Executive. The Company agrees to provide Executive with at least three months notice of its determination whether to extend the Term or allow the Term to expire; provided, however, if the Company provides Executive with less than three months notice, the Term shall be automatically extended at Executive's option to that date which is three months following the giving of any such notice.

3.6 Consequences of Termination. If this Agreement, the Term or Executive's employment by the Company is terminated or expires pursuant to any provision of this Section 3 (other than Section 3.2, 3.3 or 3.7), or is terminated by Executive, Executive's right to receive salary or other compensation from the Company and all other rights and entitlements of Executive pursuant to this Agreement or as an Executive of the Company shall forthwith cease and terminate, and the Company shall have no liability or obligation whatsoever to Executive, except that:

(i) The Company shall be obligated to pay to Executive not later than five days following the effective date
of such termination all unpaid salary, vacation and reimbursable expenses which shall have accrued as of the effective date of such termination; and

(ii) The terms and conditions of applicable Executive Benefit Plans, if any, shall control Executive's entitlement, if any, to receive benefits thereunder.

In event of termination other than for cause Executive shall retain rights to stock options which have theretofore vested as provided in the Stock Option Agreements, as amended hereby.

3.7 Termination Without Cause. The Company shall not be obligated to -------------------------
utilize Executive's services or any of the results and proceeds thereof or to permit Executive to retain any corporate office or to continue to do so; and the Company shall have the unilateral right, at any time, without notice, in the Company's sole and absolute discretion, to terminate Executive's employment by the Company, without cause, and for any reason or for no reason (the Company's "Termination Rights"). The Company's Termination Rights are not limited or restricted by, and shall supersede, any policy of the Company requiring or favoring continued employment of its Executives during satisfactory performance, any seniority system or any procedure governing the manner in which the Company's discretion is to be exercised. No exercise by the Company of its Termination Rights shall, under any circumstances, be deemed to constitute (i) a breach by the Company of any term of this Agreement, express or implied (including without limitation a breach of any implied covenant of good faith and fair dealing), (ii) a wrongful discharge of Executive or a wrongful termination of Executive's employment by the Company, or (iii) a wrongful deprivation by the Company of Executive's corporate office (or authority, opportunities or other benefits relating thereto). If the Company elects to terminate Executive's employment by the Company without cause prior to the expiration of the Term, the Company shall have no obligation or liability to Executive pursuant to this Agreement or otherwise, except to pay to Executive not later than the effective date of such termination (i) all unpaid vacation which shall have accrued as of the effective date of such termination, (ii) a lump-sum payment equal to the aggregate amount of salary provided in Section 4.1 hereto that would have been payable to Executive during the remainder of the Term, as if Executive's employment by the Company had not been terminated. If the Company terminates Executive's employment without cause prior to the Expiration Date, Executive shall have no obligation to mitigate and the Company shall have no right to offset the Company's payment obligations against any employment income received by Executive.

3.8 Termination by Executive. Executive shall have the right to ------------------------
terminate the term of this Agreement prior to the expiration date specified herein:

(i) If the Company materially breaches this Agreement (including, but not limited to, the provisions of Section 1.2 hereof) and such breach is not cured within five (5) business days after receipt of written notice from Executive alleging such breach; or

(ii) Executive shall have the right and option, exercisable by giving written notice to the Company, to terminate Executive's employment by the Company and this Agreement at any time during the 90-day period following the occurrence of a Change of Control, in which case the Company shall make the payments required by Section 3.7.
For purposes of this agreement the term "Change of Control" shall have the same meaning here as in the Company's current Stock Option Plan namely,

(a) A merger or acquisition in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the State of the Company's incorporation.

(b) The sale, transfer or other disposition of all or substantially all of the assets of the Company, or

(c) any other corporate reorganization or business combination in which fifty (50%) percent or more of the Company's outstanding voting stock is transferred to different holders in a single transaction or a series of related transactions.

3.9 Consequences of Termination - By Reason of Death or Disability.

If this Agreement, the Term or Executive's employment by the Company is terminated or expires pursuant to the provisions of Section 3.2 (Death) or Section 3.3 (Disability), Executive's right to receive salary or other compensation from the Company and all other rights and entitlements of Executive pursuant to this Agreement or as an Executive of the Company shall forthwith cease and terminate, and the Company shall have no liability or obligation whatsoever to Executive, except that:

(i) The Company shall be obligated to pay to Executive or Executive's estate, as applicable, not later than the effective date of such termination all unpaid salary, vacation and reimbursable expenses which shall have accrued as of the effective date of such Termination;

(ii) The Company shall be obligated to pay to Executive or Executive's estate, as applicable, an amount equal to the Base Salary that would have accrued during the six months following the effective date of such termination, as if such termination had not occurred; and

(iii) The terms and conditions of applicable Executive Benefit Plans, if any, and the Stock Option Agreements referred to below and as hereby amended shall control Executive's entitlement, if any, to receive benefits thereunder.

4. Salary and Bonuses: Provided Executive fully and faithfully renders all services required hereunder and is not otherwise in material breach hereof, Company will pay salary (in equal weekly or bi-weekly installments) and bonuses as follows:

4.1 Base Salary:

(a) First contract year - for the period from January 1, 1999 until August 3, 1999: at rate of $235,000.00 per annum and for the period from August 4, 1999 until December 31, 1999: at rate of $250,000.00 per annum.

(b) Second contract year - for the period from January 1, 2000 until August 3, 2000: at rate of $250,000.00 per annum and for the period from August 4, 2000 until December 31, 2000: at rate of $275,000 per annum.
Nothing herein shall preclude Company from reviewing and increasing any compensation provided for herein which review shall occur not more often than semi-annually; any such increases shall require the approval of the Board.

4.2 Bonuses: Executive may be entitled to an annual performance bonus as from time to time determined by the Board of Directors (it being acknowledged that there is no obligation to grant such a Bonus).

4.3 Feature Film Bonuses.

(a) Executive shall receive bonuses with respect to the project currently entitled, "There Goes The Neighborhood," which was the subject of a development-production agreement between Company and Universal Pictures dated as of March 4, 1996. If such project goes into production as either a motion picture or a television program or television series produced by Company or under its authority such bonuses shall equal:

(i) five percent of fixed fees including production fee (limited to $1 million of production fees) and any animation production fee (limited to $1.5 million to $2.0 million of such fees) payable to Company with respect to each such motion picture or television production or episode of a television series; and

(ii) seven percent of any contingent payments such as gross participations, adjusted gross participations, net profit participations or the like, no matter how characterized.

Said bonuses shall be payable only to the extent Company actually receives revenues upon which bonuses are based and at the time when the same are so received by the Company, or within sixty (60) days thereafter, whether such revenues are received during or after the Term. If Company becomes obligated to return any portion of a payment, Executive shall likewise return his share of the same. The bonuses referred to in this subparagraph (a) are fully vested.

(b) Omitted

4.4 Compliance with Laws. Company's obligation for payment of compensation hereunder shall be subject to all present and future laws, rules, regulations and executive orders affecting such obligation. No withholding, deduction, reduction or limitation of payments hereunder by reason of any such law, rule, regulation or order shall be deemed a breach of this agreement or relieve Executive from Executive's obligations hereunder or give Executive any right to terminate this agreement. If Company is unable to make full payments hereunder because of any wage control law or regulation, Company shall pay Executive any portion of such payment (which is not paid when due) at such time when such law or regulation no longer prohibits such payment (unless such law or regulation prohibits such retroactive payments).

5. Expenses:

5.1 (a) Company shall reimburse Executive for such expenses which are reasonably incurred by Executive on behalf of or for the benefit of Company in accordance with the Company's then current expense reimbursement policies applicable to senior executive officers (which in any event shall be no less favorable than that applicable to the Chief Executive Officer) and the
presentation by Executive from time to time of an itemized account of such expenditures setting forth the date, the purposes for which incurred, and the amounts thereof, and such other information as Company may reasonably require, together with such receipts showing payments as Executive has been able to obtain. Company shall either pay for or reimburse Executive for all such travel expenses as well as reasonable living expenses while he is outside of the greater Los Angeles area.

(b) Further, Executive shall be entitled to a Company telephone credit card. Executive shall also be entitled to a car allowance in the amount of Five Hundred Dollars ($500.00) per month, which amount shall be reported on Executive's W-2 or on Form 1099 (as Company may determine) and shall cover all normal work-related automobile expenses and shall be payable in accordance with Company's then existing policies (currently, payment to be made at the beginning of each applicable month). Company shall reimburse Executive for 75% of all charges relating to cellular telephone, and car telephone uses pertaining to Company's business upon receipt of substantiating vouchers. With respect to the car allowance, cellular telephone and car telephone, Company shall treat Executive in accordance with the Company's then current policies applicable to senior executive officers (which in any event shall be no less favorable than that applicable to the Chief Executive Officer).

6. Benefits:

6.1 Medical Plans, etc.

(a) During the Term, Executive shall also be entitled to and shall be accorded all rights and benefits under any life insurance, disability, health and major medical insurance policy or policies, and any other plans or benefits, 401(K) Plan and pension plans which Company may provide during the Term ("Employee Benefit Plans") to senior executive officers generally.

(b) During each contract year Executive shall also be entitled to (i) three (3) weeks of paid vacation at times to be mutually agreed to and (ii) sick leave on a basis accorded other senior executives generally during the Term.

(c) Provided that Executive meets qualifications (including medical qualifications) for the same, Company shall furnish Executive with term life insurance having a face value of $500,000.00, which insurance coverage shall remain in effect during the Term hereof.

6.2 Employee Stock Options:

(a) Executive is currently entitled to participate in the Employee Stock Option Plan of Film Roman, Inc., a Delaware corporation ("FRI Delaware"). Said Plan includes usual provisions included in a non-qualified stock option plan including the right to satisfy the exercise price with cash, promissory notes (if secured to the reasonable satisfaction of FRI Delaware) or stock in the FRI Delaware. Executive acknowledges that such Plan is not intended to be an "incentive stock option" within the meaning of Section 422A of the Internal Revenue Code of 1986 as amended and is to be considered in all respects as "non-qualified." Executive's entitlement to participate in the Plan is set forth in two (2) existing Stock Option Agreements both dated June 17, 1998; one Stock Option Agreement relates to options pertaining to 62,500 shares and the other relates to options pertaining to 40,000 shares.

(b) Additionally Company has caused FRI Delaware to grant to Executive stock options concurrently herewith under the Plan pursuant to a Stock Option Agreement dated January 1, 1999, containing the terms and conditions summarized below, to purchase seventy-five thousand (75,000) shares of FRI
Delaware's common stock at an exercise price equal to its fair market value (as defined in the Plan) as of December 17, 1998, which options shall vest as follows:

(i) an option as to 37,500 shares to vest immediately upon effective date of this agreement; and

(ii) an option as to 37,500 shares to vest in twelve monthly installments, the first installment date being the first day of the second contract year with respect to 6,250 shares; the following 10 installment dates being the first day of each of the following ten months with respect to 2,840 shares; and the last installment date being the first day of the last month of the second contract year with respect to 2,850 shares.

Said options shall remain exercisable for a period ending on the earlier to occur of (i) ten (10) years from the date of the grant, (ii) nine months from the effective date of termination of this Agreement for any reason other than Death (Section 3.2) or Disability (Section 3.3); and (iii) two years from the effective date of termination of this Agreement by reason of Death (Section 3.2) or Disability (Section 3.3).

(c) With respect to all stock options granted Executive, Executive may elect to exercise such options on a cashless basis, deducting from the number of option shares to be received a number of shares equal in value to the exercise price of the option as determined in accordance with the provisions of the Plan, as applicable. Without limiting the foregoing, in the event of termination of this Agreement, unvested stock options granted hereunder shall be canceled as and to extent provided in the Plan; except that if termination of this agreement is by reason of Death (as provided in Section 3.2), Disability (as provided in Section 3.3), without cause (as provided in Section 3.7 above) or by Executive (as provided in Section 3.8 (i), (ii) or (iii) above) then and in such event all options granted hereunder under subparagraph (b) but not yet vested shall be accelerated and shall be considered vested as of the date of such termination.

7. Company’s Rights:

7.1 Executive acknowledges that Company, as employer of Executive, shall own all right, title and interest in and to the results of Executive's services hereunder within the scope of his employment, including all material developed or conceived by Executive within the scope of Executive's employment. Company shall have the right to use all such materials and the elements thereof and the programs or other productions in which the material is contained worldwide and in perpetuity, without limitation or restriction whatsoever and Company may distribute, broadcast and otherwise exhibit, use and/or exploit, in whole or in part, worldwide, in perpetuity, same in any manner and through any media, whether presently in existence or subsequently devised, as Company may elect. Executive hereby waives the so-called "moral rights" of an author. Executive agrees and acknowledges that for purposes of Section 201 of the United States Copyright Act and for ownership purposes, Company is the "employer for hire" of Executive and shall have all ownership rights in the material and services of Executive hereunder as the author thereof. Company shall have no obligation to use the product of Executive's services.

7.2 Without limiting the foregoing, Executive agrees that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, and all similar or related information which relates to
Company's or any of its subsidiaries' actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by Executive within the scope of his employment while employed by Company or its predecessor belong to Company or such subsidiary. Executive will promptly disclose to the Board and perform all actions reasonably requested by the Board at Company's expense (whether during or after the Term) to establish and confirm such ownership (including, without limitation, assignments, consents, powers of attorney and other instruments).

7.3 Company shall have the right to use, disseminate, reproduce, print and publish Executive's name, likeness, voice and approved biographical material concerning Executive as news or informative matter in connection with Company's business.

7.4 Executive's services and rights herein granted are unique in character and value such that the loss thereof could not reasonably be compensable in damages in an action at law. Accordingly, Company shall be entitled to seek equitable relief by way of injunction or otherwise to prevent the breach or continued breach of this Agreement. The sole right of Executive as to any breach or alleged breach hereof by Company shall be the recovery of money damages, and the rights herein granted by Executive shall not be terminated by reason of such breach. The waiver by either party of any breach hereof shall not be deemed a waiver of any prior or subsequent breach hereof. All remedies of either party shall be cumulative and the pursuit of one remedy shall not be deemed a waiver of any other remedy.

8. Federal Communications Act:
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To the extent that the same may be deemed applicable to any product hereunder, reference is hereby made to Section 507 of the Federal Communications Act, making it a criminal offense for any person, in connection with the production or preparation of any program intended for broadcasting, to accept or pay any money, service or other valuable consideration for the inclusion of any matter as part of any such program or program matter without disclosing in advance the same to the employer of the person to whom such payment is made or to the person for whom such program is being produced, or to the station over which such program is broadcast. Executive understands that it is the policy of Company not to permit any employee of Company to accept or pay any such consideration, and Executive represents and agrees that Executive has not accepted and will not accept, and has not paid and will not pay, any money, services, or other valuable consideration for the inclusion of any "plug," reference or product identification, or any other matter in the programs produced hereunder.

9. Confidential Information:
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Executive acknowledges that the information, observations, work product, trade secrets and data obtained by Executive while employed by Company and its subsidiaries concerning the business or affairs of the Company or any subsidiary thereof ("Confidential Information") are the property of Company or such subsidiary. Therefore, Executive agrees that Executive shall not disclose to any unauthorized person or use for Executive's own account any Confidential Information without the prior written consent of the Board, unless and to the extent that the aforementioned matters (i) become generally known to and available for use by the public other than as a result of Executive's acts or omissions to act in breach of this Agreement or (ii) must be disclosed under a subpoena or other governmental order or (iii) was possessed by Executive prior to Executive's employment by the Company or (iv) are disclosed within scope of period, or at any other time Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Confidential Information, work product or the
business of Company or any subsidiary which Executive may then possess or have under Executive's control; provided that Executive may retain his personal rolodex and sample agreements.

10. Non-Compete, Non-Solicitation:

10.1 Executive acknowledges that in the course of Executive's employment with Company Executive has and will become familiar with Confidential Information concerning Company and its subsidiaries and that Executive's services have been and will be of special, unique and extraordinary value to Company and its subsidiaries. Therefore, during the Term, Executive will not be an employee, consultant, advisor, or director of any other person, firm or corporation which is a Competitive Business. Further, Executive shall not become financially interested or associated with, directly or indirectly, a Competitive Business.

10.2 Notwithstanding anything to the contrary contained herein, Executive may own up to five percent (5%) of any class of a Competitive Business' outstanding securities which are listed on any national securities exchange, registered under Section 12(g) of the Securities Exchange Act of 1934 or otherwise publicly traded, provided that the holdings of Executive of any such security of a Competitive Business do not represent more than 10% of the aggregate of Executive's investment portfolio at any time. For these purposes, "Competitive Business" means all persons engaging in any business which directly competes with that of the business of the Company.

10.3 During Executive's employment and for two (2) years after the end of the Term Executive will not attempt to solicit (for Executive's own purposes or for any other company) any employee of, or independent contractor rendering exclusive services to, Company at the time of such attempt or solicitation. Further, during Executive's employment and for two (2) years after the end of the Term Executive will not (i) transfer or attempt to transfer any projects in which Company is involved (whether in negotiation, development or production) from Company to Executive or to any other company and/or (ii) encourage any company or business with whom Company is doing business (e.g. a network or other exhibitor) from ceasing to do business with Company with respect to any project which is then in negotiation, development or production.

11. Notices:

All notices required to be given hereunder shall be in writing and shall be delivered personally, or by express, certified or registered mail to the respective addresses of the parties hereto set forth elsewhere in this Agreement, or at such other addresses as may be designated by written notice. Delivery of any notice shall be deemed conclusively made (i) if personally delivered at the time of delivery, (ii) if delivered by any private overnight express mail service, twenty-four (24) hours after deposit with such service (this period shall be seventy-two (72) hours if addressed to or from a party outside the United States), and (iii) if mailed, properly addressed and postage prepaid, three (3) business days from date of mailing (seven (7) business days if mailed to or from a country other than U.S.). A copy of any notice hereunder to Company shall also be given to Dixon Q. Dern, 1901 Avenue of the Stars, Suite 400, Los Angeles, California 90067.

12. Immigration:

Company's engagement of Executive is subject to Executive's compliance with the terms and provisions of the Federal Immigration and Naturalization Act which compliance has been effected. In that regard concurrently with the
execution of this agreement Executive shall provide Company with such proof of Executive's United States Citizenship or authorization to work in the United States as may be required by the Immigration and Naturalization Service and shall also complete and return to Company an I-9 Form or such other forms as may be required.

13. Arbitration:
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Any controversy or claim arising out of, or relating to, this agreement, the breach thereof, or the coverage of this arbitration provision shall be settled by arbitration pursuant to the provisions of Section 1280, et seq. of the California Code of Civil Procedure (or such substitute provisions therefor then in effect); provided, that any arbitrator(s) selected shall have experience in or knowledge of the business(es) in which Company is engaged. Any such arbitration shall be conducted in Los Angeles, California. The arbitration of such issues, including the determination of the amount of any damages suffered by any party hereof by reason of the acts or omissions of another shall be to the exclusion of any court of law except as set forth below. The decision of the arbitrators or a majority of them shall be final and binding on all parties and their respective heirs, executors, administrators, successors and assigns. Any action to secure a judicial confirmation of the arbitration award may be brought in any state or federal court of competent jurisdiction. If the parties or the arbitrators appointed by them are unable to agree upon the selection of a neutral arbitrator then either party may, at its election, require that the arbitration shall be conducted under the auspices and rules of the American Arbitration Association (AAA) and that the neutral arbitrator shall be selected by the AAA. Arbitration hereunder shall not, in any event, (i) prevent any party from seeking and obtaining equitable relief, including, but not limited to, prohibitory or mandatory injunctions, specific performance or extraordinary writs, in any court of law or equity having jurisdiction, nor (ii) prevent any party from joining any other party as defendant in any action brought by or against a third party, nor (iii) prevent any party from filing legal action hereunder to effectuate any attachment or garnishment, provided that such party stipulates in such action, at any other party's request, to arbitration on the merits of said case, nor (iv) prevent a party from filing legal action to compel arbitration under the arbitration provisions hereof.

14. General Provisions:
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14.1 Warranties: Executive warrants that he is free to enter into this Agreement and will not knowingly do or permit any act which will interfere with or derogate from the full performance of his services or Company's exercise of the rights herein granted.

14.2 Indemnity: Executive shall hold Company, its licensees and assigns, and the directors, officers, employees and agents of the foregoing, harmless from all claims, liabilities, damages, costs and legal fees arising from any breach by Executive of any warranty or agreement made by Executive hereunder. Company will hold Executive harmless from all claims, liabilities, damages, costs and legal fees arising from the use of any material supplied by Company or incorporated at Company's discretion or in connection with or arising out of the performance of his duties pursuant to this agreement. The party receiving notice of any claim or action subject to indemnity hereunder shall promptly notify the other party. This indemnity shall survive any termination or expiration of this Agreement. Company shall maintain directors and officers liability coverage during the Term which coverage shall apply to all officers of Company including
Executive, to extent provided therein.

14.3 Waiver: A waiver by either party of any of the terms or conditions of this agreement in any one instance shall not be construed to be a waiver of such term or condition for the future, or any subsequent breach thereof; all remedies, rights, undertakings, obligations and agreements contained in this agreement shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

14.4 Construction: This agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and fully to be performed therein. In view of the fact that this agreement was in whole or in part negotiated and entered into in California, the parties consent to and agree to submit to the jurisdiction of the courts of the State of California (and/or the federal courts within California), and each party agrees that service of process may be effected by mail (certified or registered mail, return receipt requested), to or by personal service upon such party (or any officer of a corporate party) at such party's address as set forth in this agreement or such other address as such party may specify in writing.

Wherever the context of this agreement requires it, each gender shall be deemed to embrace and include the others, and the singular shall be deemed to embrace and include the plural.

14.5 Public Announcement. Subject to the Company's obligations as a public company, the Company shall provide Executive with the right to review and approve any public announcement of the terms, provisions, or execution of this Agreement; provided, however, that Executive shall not unreasonably withhold such approval. Further, the Company and Executive shall mutually approve the timing of the release of any public announcement made with respect to Executive's employment; provided, however, that any such release shall be made within ten days of the date of execution of this Agreement.

14.6 Severability of Provisions: If any provision hereof as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provisions hereof, the application of such provision in any other circumstances or the validity or enforceability hereof.

14.7 Entire Understanding: This agreement and the Stock Option Agreements referred to above contain the entire understanding of the parties hereto relating to the subject matter herein contained and supersede any and all prior negotiations, understanding and agreements between the parties (whether oral or in writing); this agreement cannot be changed, rescinded or terminated except by a writing signed by the parties.

14.8 Successors and Assigns: Except where expressly provided to the contrary, this agreement, and all provisions hereof, shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, assigns, administrators, executors, heirs and devisees.

14.9 Section Titles: The titles of the Sections of this agreement are
EXHIBIT 10.5

January 14, 2000

TO:       Jon F. Vein
FROM:     Dixon Q. Dern

Please refer to that certain agreement (the "Employment Agreement") made as of December 31, 1999, by and between Film Roman, Inc. ("Company") and you ("Executive"). Please refer further to the two Stock Option Agreements dated June 17, 1998 between Executive and Company; which such Stock Option Agreement relate to options pertaining to 62,500 shares and the other relates to options pertaining to 40,000.

As additional consideration for Executive's execution of the Employment Agreement, Company (on its own behalf and on behalf of Film Roman, Inc., Delaware) agrees that the vesting schedule referred to in paragraph 2.3(c) of each Stock Option Agreement shall be and is hereby modified so that any options under either Stock Option Agreement not vested as of December 31, 1999, shall vest in twelve (12) equal monthly installments commencing on the first day of January 2000 and thereafter on the first day of each successive month.

Please indicate your agreement with the foregoing by signing in space provided below.

FILM ROMAN, INC.
Task 1 - Another Example of an Employment Contract

By: /s/ John W. Hyde

ACCEPTED AND AGREED TO:

/s/ Jon F. Vein

JON F. VEIN
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<Company name> Employee Manual

I. Introduction

This manual is intended to outline and explain <Company name>’s practices and policies. This employee handbook also summarizes current Company benefits. Please refer to the actual plan documents for information and answers to specific benefit questions.

This employee manual should be regarded as a set of guidelines only. It is not a contract. Neither the policies in this manual, nor any other written or verbal communication by a company officer, manager or supervisor are intended to create a contract of employment or a warranty of benefits. The policies in this manual may be amended, modified, deleted or otherwise changed by <Company name> without prior notice. This manual supersedes and replaces all prior employee manuals, handbooks, policies or procedures. If you have any questions about any of the policies or procedures in this manual, please consult <Contact for policy issues>.

II. At-Will Employment

<Company name> has an at-will employment policy, which means that the term of employment is for no definite period and may be terminated by the employee or by <Company name> at any time and for any reason, with or without cause or advance notice.

III. Equal Employment Opportunity

It is <Company name>’s policy to provide equal employment opportunity for all applicants and employees. <Company name> does not unlawfully discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth or related medical conditions), national origin, ancestry, age, physical disability, mental disability, medical condition, family-care status, veteran status, marital status or sexual orientation. <Company name> also makes reasonable accommodations for disabled employees. Finally, <Company name> prohibits the harassment of any individual on any of the bases listed above. For information about the types of conduct that constitute impermissible harassment and <Company name>’s internal procedures for addressing harassment complaints, please refer to the Policy against Harassment below.

This nondiscrimination policy applies to all areas of employment including recruitment, hiring, training, promotion, compensation, benefits, transfer, and social and recreational programs. It is the responsibility of every manager and employee to conscientiously follow this policy. Any employee having any questions regarding this policy should discuss them with <Contact for policy issues>.

IV. Policy against Harassment

<Company name> is committed to providing a workplace free of sexual harassment (which includes harassment based on gender, pregnancy, childbirth or related medical conditions), as well as harassment based on such factors as race, color, religion, national origin, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, family-care or medical-leave status, or veteran status. <Company name> strongly disapproves of and will not tolerate harassment of employees by managers, supervisors or coworkers. Similarly, <Company
name> will not tolerate harassment by its employees of nonemployees with whom <Company name> employees have a business, service or professional relationship.

Harassment includes verbal, physical and visual conduct that creates an intimidating, offensive or hostile working environment or that interferes with work performance. Such conduct constitutes harassment when (1) submission to the conduct is made either an explicit or implicit condition of employment; (2) submission to or rejection of the conduct is used as the basis for an employment decision; or (3) the harassment interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.

Harassing conduct can take many forms and includes, but is not limited to, the following: slurs, jokes, statements, gestures, assault, impeding or blocking another's movement or otherwise physically interfering with normal work, pictures, drawings or cartoons based upon an employee's sex, race, color, national origin, religion, age, physical disability, mental disability, medical condition, ancestry, marital status, sexual orientation, family-care or medical-leave status, or veteran status.

Sexually harassing conduct in particular includes all of these prohibited actions as well as other unwelcome conduct such as requests for sexual favors, conversation containing sexual comments and unwelcome sexual advances.

Any incident of harassment, including work-related harassment by any company personnel or any other person, should be reported promptly to the employee's supervisor or manager (or to any other member of management) or to <Contact for policy issues>, who is responsible for investigating the matter. Managers who receive complaints or who observe harassing conduct should inform <Contact for policy issues> immediately. <Company name> emphasizes that an employee is not required to complain first to their supervisor if that supervisor is the individual who is harassing the employee.

Every reported complaint of harassment will be investigated thoroughly, promptly and in a confidential manner. In addition, <Company name> will not tolerate retaliation against any employee for cooperating in an investigation or for making a complaint to <Contact for policy issues> or any other manager.

In the case of Company employees, if harassment is established, <Company name> will discipline the offender. Disciplinary action for a violation of this policy can range from verbal or written warnings up to and including immediate termination depending upon the circumstances. With regard to acts of harassment by customers or vendors, corrective action will be taken after consultation with the appropriate management personnel.

V. Internal Complaint Review Procedure

A. Purpose and Scope

The purpose of the Internal-Complaint Review Policy is to afford all employees of <Company name> the opportunity to seek internal resolution of their work-related complaints. This policy is intended to supplement the Open-Door Policy set forth in this Handbook/Manual, which states the
philosophy of <Company name> that all employees have free access to their immediate supervisors or to other Company supervisors of their choice to informally express their work-related concerns.

**B. Procedure**

1. **Filing of Complaint**

   Employees should file written complaints with <Contact for filing employee complaints> as soon as possible after the events that give rise to the employee's work-related concerns. The written complaint should set forth in detail the bases for the employee's complaint.

2. **Investigation**

   <Contact for filing employee complaints> dates and logs all written complaints and sends the employee an acknowledgment that the complaint is under review.

   <Contact for filing employee complaints> or his/her/its designee investigates the complaint, meeting separately with the employee and with others who either are named in the complaint or who may have knowledge of the facts set forth in the complaint. <Company name> will attempt to treat all internal complaints and their investigation as confidential, recognizing, however, that in the course of investigating and resolving internal complaints some dissemination of information to others may be appropriate.

   On completion of the investigation, <Contact for filing employee complaints> orally reports its findings and conclusions to the employee. If the complaint is resolved to the employee's satisfaction, the terms of the resolution should be recorded and signed by both the employee and a representative of <Contact for filing employee complaints>.

C. **Appeal**

   If the complaint is not resolved to the employee's satisfaction, the employee may submit a written request for review of the complaint to <Contact for employee complaint appeals>. On completion of the appeal review, the employee should receive an oral explanation of the conclusion reached and the reasons for that conclusion. Decisions resulting from appeal reviews by <Contact for employee complaint appeals> will be final.

D. **Nonretaliation**

   If an employee has filed a complaint in good faith, the employee should not be disciplined or otherwise penalized because of the complaint, regardless of whether or not the complaint is sustained. If it appears that the complaint was not filed in good faith, approval of the Personnel Manager should be obtained before taking any action.
VI. Hours of Work, Overtime and Payday

A. Hours of Work

<Company name> work hours are from <example: 9 a.m to 5 p.m.>, Monday through Friday, with one hour, unpaid, for lunch. Nonexempt employees receive two 10-minute paid break periods for each full workday, one in midmorning and one in midafternoon. <Company name> reserves the right to modify employees' starting and quitting times and the number of hours worked.

B. Overtime Pay

1. Overtime Definition and Pay Rates

<Company name> will pay overtime consistent with applicable federal and state law and regulations.

2. Workweek and Workday

Unless otherwise provided, the workweek on which weekly overtime calculations will be based begins each Sunday at midnight; and each workday on which daily overtime calculations will be based begins at midnight.

3. Preauthorization

No nonexempt employee may work overtime without the express prior approval of their supervisor.

C. Other Types of Pay

1. Reporting Pay

An employee who reports to work at <Company name>'s request, whether for a regularly scheduled shift or otherwise, will be paid a minimum of four hours' pay at the regular straight-time rate, without regard to the number of hours actually worked, unless the reasons for lack of work are beyond <Company name>'s control.

2. Callback Pay

Any employee who is called back to work for a second work period in any one workday and is furnished with less than two hour's work is paid a minimum of two hours pay at the regular straight-time rate for the second work period, without regard to the number of hours actually worked, unless the reasons for lack of work are beyond <Company name>'s control.

3. Shift Premium/Nonexempt Employees

<Company name> reserves the right to establish shifts of work. Employees are assigned to a scheduled workweek and shift when hired by <Company name>. These assignments may change during the course of employment. When there are changes in an employee's workweek or shift assignment, the employee will receive a minimum of five working days' notice.
Employees assigned to a shift other than the first shift (day shift) are paid a shift differential in addition to their regular base rate of pay. Employees assigned to work on the second shift (swing shift) are paid at their regular base rate plus a \( \text{example: ten percent (10\%)} \) differential. Employees assigned to work on the third shift (night shift) are paid their base rate plus a \( \text{example: fifteen percent (15\%)} \) differential. Employees who are called to work prior to the start of their assigned shift, or who work into the shift following their assigned shift, will be paid the shift differential, if any, applicable to their assigned shift for all hours worked that workday. Shift differential is included in an employee's base rate of pay for the purposes of calculating overtime compensation.

4. Holiday Pay

Employees are paid their regular straight-time wages for Company-paid holidays as set forth under the guideline entitled Holidays. To receive holiday pay, the employee must work the regularly scheduled workdays preceding and following the \( \text{Company name} \) holiday, or receive prior approval from their supervisor to take the time off. Nonexempt employees who work during a Company-paid holiday are paid at 1 1/2 times their regular base rate.

5. Pay Advances

If an employee wishes to be paid in advance for vacation or because of emergency circumstances, a Pay-Advance Request form must be completed and submitted to \( \text{Contact for employee benefits issues} \). A vacation pay advance will be made only if the employee will be on vacation on the regularly scheduled payday(s) and only if the employee submits a request \( \text{example: ten (10)} \) working days prior to the beginning of the vacation.

D. Place and Time for Payment of Wages

1. Regular Paydays

Employees are paid \( \text{Frequency of paycheck distribution} \). Employees' time cards must be filled out before paychecks will be issued. If a payday falls on a holiday, paychecks will be distributed on the preceding workday. Checks are distributed \( \text{Contact for paycheck distribution} \) on the date assigned for payment. If the employee is absent when the paycheck is distributed, the employee may claim the paycheck from \( \text{Contact for paycheck distribution} \) when the employee returns.

2. Payment on Resignation of Termination

If an employee resigns, their paycheck will be available on the final day of work provided the employee has given at least \( \text{example: 72 hours' prior notice} \). If an employee resigns without giving \( \text{example: 72 hours' notice} \) or fails to return to work, their paycheck will be mailed by regular mail to their last known address not later than \( \text{example: 72 hours} \) after the date when an employee is considered to have terminated. If an employee is terminated involuntarily, their paycheck will be available at the time of discharge. The employee's final paycheck will include payment for all wages due and not previously paid and for accrued but unused vacation time, minus authorized deductions.
E. Performance and Pay Review

<Company name> is a meritocracy. Compensation and benefits are tied directly to your performance. Hourly and salaried nonexempt employees receive performance reviews approximately every <example: 12 months>. Exempt employees receive performance reviews <example: annually>. The purpose of the review is to evaluate your current level of performance, to examine the progress you have made since the last review and to establish goals for your next review.

VII. Employee Benefits

<Company name> provides benefits for its regular full-time eligible employees. However, <Company name> reserves the right to eliminate or modify any of its benefits at any time.

A. Insurance Benefits

1. Worker's Compensation Insurance

<Company name> carries workers' compensation insurance coverage as required by law to protect employees who are injured on the job. This insurance provides medical, surgical and hospital treatment in addition to payment for loss of earnings that result from work-related injuries. Compensation payments begin from the first day of an employee's hospitalization or after the third day following the injury if an employee is not hospitalized. The cost of this coverage is paid completely by <Company name>.

2. Medical and Dental Insurance

All regular full-time employees and their dependents are eligible to participate in <Company name>'s health and dental insurance plan starting <Time required for insurance plan eligibility>. Contact <Contact for employee benefits issues> for more information about plan specifics.

3. Life Insurance

All regular full-time employees are eligible for group life insurance <Time required for insurance plan eligibility>. Consult plan documents for more specific information.

4. Accidental Death and Dismemberment

All regular full-time employees become eligible for accidental death and dismemberment insurance <Time required for insurance plan eligibility>. Consult plan documents for more specific information.

5. Premium Payments for Employees on Leave

<Company name> will pay the premiums for continuation of group insurance benefits during the first <example: 3 months> of any authorized leave. Thereafter, the employee must reimburse <Company name> for such premium costs if the employee wishes to remain covered under the group plans.
6. Conversion/Postemployment Insurance Options

Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), eligible employees and their dependents may be entitled to continue insurance coverage after employment with <Company name> ends.

7. Insurance-Coverage Information

More detailed information about eligibility requirements and insurance coverage is available from <Contact for employee benefits issues>.

B. Retirement Program

<Company name>'s Retirement Plan is available to all regular full-time employees who have completed at least one year of credited service. Employees become members and participants in <Company name>'s Retirement Plan upon meeting plan eligibility requirements. The plan is funded through a trustee and meets all the requirements of the Employee Retirement Income Security Act of 1974. Plan details and eligibility requirements are available from <Contact for employee benefits issues>.

C. Other Benefits

In addition to insurance and retirement benefits, <Company name> also provides the following benefits to eligible employees:

- Educational Assistance
- Credit-Union Membership
- Stock-Purchase Plan
- Employee Discounts

Information on these benefits can be obtained from <Contact for employee benefits issues>.

D. Stock-Option Plan

Eligible employees are required to sign a stock option agreement to participate in <Company name>'s stock-option plan. Consult the plan documents for more information about eligibility and other details of our stock-option plan. The plan description is available from <Contact for employee benefits issues>.

VIII. Holidays, Vacation, Sick Leave and Leaves of Absence

A. Holidays

<Company name> observes the following standard holidays and provides all full-time employees time off with pay at their normal base rate unless otherwise provided in this policy:

- New Year's Day
- Presidents' Day
- Independence Day
- Memorial Day
- Martin Luther King Jr. Day
- Thanksgiving Day
1. Pay in Lieu of Time Off

<Company name> may, in its discretion, require an employee to work on scheduled holidays and provide pay in lieu of time off.

2. Weekends and Vacations

Holidays falling on a Saturday or Sunday are normally observed on the preceding Friday or the following Monday respectively. Holidays that occur during an employee's vacation are not to be counted as vacation days taken.

3. Eligibility

Part-time and temporary employees are ineligible for holiday benefits. All employees are ineligible for holiday benefits that accrue while on leave of absence.

4. Rate of Pay

Nonexempt employees who work on a scheduled holiday will be paid at 1 1/2 times their normal base rate for all hours worked, plus eight hours' straight-time pay for the holiday. Double time will be paid for all hours worked in excess of 12 hours on a holiday, in addition to the eight hours' straight-time pay for the holiday.

B. Vacation Policy

<Company name> provides vacation benefits to eligible employees to enable them to take paid time off for rest and recreation. <Company name> believes this time is valuable for employees in order to enhance their productivity and to make their work experience with <Company name> personally satisfying. <Company name> also provides long-service employees with additional vacation benefits as years of service are accumulated.

1. Accrual of Vacation Time

All regular full-time employees who have completed <example: three (3) months> of continuous service, measured from the date of hire, are eligible for vacation benefits. Continuous service is defined as service that is uninterrupted by termination of employment and subsequent rehire by <Company name> or a break in service that has been bridged. Vacation accrues up to a maximum of <example: 10 days> per year.

2. Part-time and Temporary Employees

Regular part-time employees working a minimum of <example: twenty (20) hours> per week accrue vacation benefits on a pro-rata basis. Temporary employees and employees who work less than <example: three (3) hours> per week do not accrue vacation benefits.
3. **Maximum Accrual**

Vacation accruals may not exceed twice an employee's current annual entitlement (for example 40 days for an employee with more than 10 years of service). Once this maximum is reached, all further accruals will cease. Vacation accruals will recommence after the employee has taken vacation and their accrued hours have dropped below the two-year maximum.

4. **Pay in Lieu of Vacation**

No employee will receive pay in lieu of vacation except on the termination of their employment, as described below, unless the employee has deferred their vacation at <Company name>'s request.

5. **Vacation Accrual During Leaves of Absence**

No vacation accrues during an unpaid leave of absence or while on disability salary continuation. Vacation accruals recommence when the employee returns to work.

6. **Vacation Pay on Termination**

On termination of employment, the employee is paid all accrued but unused vacation at the employee's base rate of pay at the time of their termination.

7. **Vacation Approval**

All vacations must be approved in advance.

8. **Vacation Scheduling**

Scheduling of vacations is to be done in a manner consistent with <Company name>'s operational requirements. Vacation requests should be submitted by employees to their immediate supervisor for approval at least two weeks prior to the commencement of a vacation period. In the event that two or more employees have requested vacations covering the same period and may not be absent simultaneously, preference shall be given to the employee with the greater length of service. If an employee wishes to receive their pay prior to going on vacation, they must make a vacation request at least four weeks in advance. Subject to supervisor approval, an employee may otherwise schedule and take vacation at any time once it has accrued.

9. **Vacation Use**

All vacation days should be taken not later than the calendar year immediately following the year in which they accrue, unless prior approval is obtained from the supervisor.

10. **Vacation Advances**

An employee is not permitted to borrow on future accrual of vacation benefits, except with the approval of <Contact for employee benefits issues>. In no case may vacation time be borrowed or taken before an employee becomes eligible to begin accruing vacation as described above. If an
employee has used any vacation days before they have been accrued and then leaves the employment of <Company name>, the amount of pay for any vacation time taken that has not accrued at the time of termination will be deducted from the employee's final paycheck.

11. Holidays Occurring during Vacation

If an observed Company holiday (see guideline entitled Holidays) occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday period. An employee may add to their vacation period by adding to or using the holiday period in place of accrued vacation time.

12. Vacation Increments

Accrued vacation must be taken by eligible employees in increments of at least <Vacation increments>.

13. Vacation for Family-Care and Medical-Leave Purpose

Employees who request family care or medical leave pursuant to <Company name>'s Family-Care and Medical-Leave policy must apply any available accrued vacation pay to their family or medical leave.

C. Sick Leave

In order to help prevent loss of earnings caused by accident or illness, or by other emergencies, <Company name> has established paid sick and emergency leave.

1. Eligibility

All regular full-time employees are eligible for five days' sick leave per calendar year. Regular part-time employees are eligible to accrue sick leave on a pro-rata basis. Employees do not accrue sick leave during their introductory periods. Temporary employees are ineligible to earn or receive sick-leave benefits.

2. Use

- Sick leave may be taken for personal illness, emergency, or disability, or for a family-care leave purpose as described in <Company name>'s family-care and medical-leave policy.

- Hours absent for medical and dental appointments will be treated as sick leave.

- New employees who are absent due to illness or disability during their introductory periods will not be compensated.

- Sick leave may be accumulated up to a total of <example: twenty (20)> days.
• <Company name> retains the right to request a verification from a licensed health-care provider for all absences due to illness or disability. Sick pay may be withheld if a satisfactory verification is not received.

• Sick leave will not accrue during any leave of absence.

3. Pay in Lieu of Sick Leave

No employee will receive pay in lieu of sick leave under any circumstances, and employees will not receive pay for unused sick leave on termination of employment.

D. Leaves of Absence

<Company name> provides (A) family-care and medical leave for up to 12 weeks per year in accordance with the federal Family and Medical Leave Act of 1993; (B) disability leave as required to reasonably accommodate employees with a qualified disability under the Americans with Disabilities Act (ADA) or with a workplace injury; and (C) leave for other legally required absences as set forth below. Employees having any questions regarding this policy should contact <Contact for employee benefits issues>.

E. Family-Care and Medical Leave

1. Eligibility

To be eligible for family-care and medical leave, an employee must (1) have worked for <Company name> for at least <example: 12 months> prior to the date on which the leave is to commence; and (2) have worked at least <example: 1,250 hours> in the 12 months preceding the leave. However, employees who work at a location where <Company name> employs fewer than 50 persons within 75 miles are not eligible for family-care and medical leave.

2. Permissible Uses of Family-Care and Medical Leave

Family-care leave may be requested for (1) the birth or adoption of an employee's child; (2) the placement of a foster child with the employee; or (3) the serious health condition of an employee's child, spouse, or parent. Medical leave may be requested for an employee's own serious health condition. A serious health condition is one that requires either in-patient care in a medical facility or continuing treatment or supervision by a health-care provider.

3. Substitution of Paid Leave for Family-Care and Medical Leave

Employees are required to substitute accrued vacation time and other paid personal leave (except sick leave) for all family-care and medical leaves. Employees are required to substitute sick leave only for medical leaves. Employees may elect to substitute sick leave for other types of family-care leave.
4. Amount of Leave

Provided all the conditions of this policy are met, an employee may take a maximum of 12 weeks of family-care and medical leave in a rolling 12-month period measured backwards from the date the employee's leave commences. Parents who are both employed by <Company name> may take a maximum combined total of 12 weeks of family care leave in a 12-month period for the birth, adoption or foster care of their child.

The substitution of paid leave for family-care or medical leave does not extend the total duration of family care and medical leave to which an employee is entitled to beyond 12 weeks in a 12-month period. For example, if an employee has accrued four weeks of unused paid-vacation time at the time of the request for family care or medical leave, that paid-vacation time will be substituted for the first four weeks of family-care or medical leave, leaving up to eight additional weeks of unpaid leave.

Family care leave taken for the birth, adoption or foster-care placement of a child generally must be taken in blocks of at least two weeks' duration; however, <Company name> will provide employees with family-care leave for birth, adoption, or foster care placement for less than two weeks' duration on any two (2) occasions. Family care leaves for the birth, adoption or foster-care placement of a child must be concluded within one year of the birth, adoption or placement.

Family-care or medical leave for the employee's own serious health condition or for the serious health condition of the employee's spouse, parent or child may be taken intermittently or on a reduced schedule where medically necessary. If leave is taken intermittently or on a reduced schedule, <Company name> retains the discretion to transfer the employee temporarily to an alternative position with equivalent pay and benefits which better accommodates the employee's leave schedule.

5. Effect on Benefits

During an employee's family-care or medical leave, for up to a maximum of 12 weeks in a 12-month period, <Company name> shall continue to pay for the employee's participation in <Company name>'s group health plans, retirement plans and supplemental unemployment-benefit plans to the same extent and under the same terms and conditions as would apply had the employee not taken leave.

If the employee fails to return from the leave for a reason other than the recurrence or continuation of the health condition that brought about the leave or other circumstances beyond the employee's control, <Company name> can recover any health premiums paid by <Company name> on the employee's behalf during any unpaid periods of the leave.

Employees on family-care and medical leave accrue employment benefits, such as sick leave, vacation benefits or seniority only when paid leave is being substituted for unpaid leave and only if the employee would otherwise be entitled to such accrual.

6. Procedure for Requesting Family-Care and Medical Leave

a) Notice Requirements
Employees should notify <Company name> of their request for family-care or medical leave as soon as they are aware of the need for such leave. For foreseeable events, if possible, the employee must provide 30 calendar days' advance notice to <Company name> of the need for family-care or medical leave. For events that are unforeseeable 30 days in advance, but are not emergencies, the employee must notify <Company name> as soon as they learn of the need for the leave. If the leave is requested in connection with a planned, nonemergency medical treatment, the employee may be requested to reschedule the treatment so as to minimize disruption of <Company name>'s business.

If an employee fails to provide the requisite 30-day advance notice for foreseeable events without any reasonable excuse for the delay, <Company name> reserves the right to delay the taking of the leave until at least 30 days after the date the employee provides notice of the need for family-care or medical leave.

All requests for family-care or medical leave should include the anticipated date(s) and duration of the leave. Any requests for extensions of a family-care or medical leave must be received at least five (5) working days before the date on which the employee was originally scheduled to return to work and must include the revised anticipated date(s) and duration of the family-care or medical leave.

b) Medical Certification

Any request for medical leave for an employee's own serious health condition or for family-care leave to care for a child, spouse or parent with a serious health condition must be supported by medical certification from a health-care provider. For foreseeable leaves, employees must provide the required medical certification before the leave begins. When this is not possible, employees must provide the required certification within 15 calendar days after <Company name>'s request for certification unless it is not practicable under the circumstances to do so. Failure to provide the required medical certification may result in the denial of foreseeable leaves until such certification is provided. In the case of unforeseeable leaves, failure to provide the required medical certification within 15 days of being requested to do so may result in a denial of the employee's continued leave. Any request for an extension of the leave also must be supported by an updated medical certification.

The medical certification for a child, spouse or parent with a serious health condition shall include (a) the date on which the serious health condition commenced; (b) the probable duration of the condition; (c) the health-care provider's estimate of the amount of time needed for family care; (d) the health-care provider's assurance that the health-care condition warrants the participation of the employee to provide family care; and (e) in the case of intermittent or reduced-schedule leave where medically necessary, the probable duration of such a schedule.

The medical certification for leave for the employee's own serious health condition shall include (a) the date on which the serious health condition commenced; (b) the probable duration of the condition; (c) a statement that, due to the serious health condition, the employee is unable to perform the functions of their position; and (d) in the case of intermittent leave or reduced-schedule leave where medically necessary, the probable duration of such a schedule. In addition, the
certification may, at the employee's option, identify the nature of the serious health condition involved. If <Company name> has reason to doubt the validity of the certification provided by the employee, <Company name> may require the employee to obtain a second opinion from a doctor of <Company name>'s choosing at <Company name>'s expense. If the employee's health-care provider and the doctor providing the second opinion do not agree, <Company name> may require a third opinion, also at <Company name>'s expense, performed by a mutually agreeable doctor who will make a final determination. Before permitting the employee to return to work, <Company name> also may require the employee to provide medical certification that they are able to return to work.

7. Effect on Reinstatement

Employees returning from family care or medical leave are entitled to reinstatement to the same or comparable position consistent with applicable law. <Company name> retains the right to deny reinstatement to employees who are among the highest paid 10 percent (10%) of <Company name>'s employees and whose reinstatement would cause substantial and grievous economic injury to <Company name>'s operations.

IX. Leave of Absence

A. Pregnancy-Related Disability Leave or Transfer

1. Eligibility and Duration

Any employee who is disabled on account of pregnancy, childbirth or related conditions may take a pregnancy-related disability leave of up to four months, in addition to any family-care or medical leave to which the employee may be entitled under Section VIII.E of this policy (Family Care and Medical Leave).

   a) Temporary Transfer before Childbirth

   Any employee affected by pregnancy is entitled to transfer temporarily to a less strenuous or hazardous position or to less strenuous or hazardous duties if the transfer is medically necessary and the transfer can be reasonably accommodated.

2. Substitution of Paid Leave for Pregnancy-Related Disability Leave

   An employee taking pregnancy-related disability leave must substitute any available sick pay for her leave and may, at her option, substitute any accrued vacation time for her leave. The substitution of paid leave for pregnancy-related disability leave does not extend the total duration of the leave to which an employee is entitled.

3. Effect on Benefits

   If an employee taking a pregnancy-related disability leave is also eligible for family-care and medical leave, then the employee is entitled to <Company name>'s continuation of benefits as described above, up to a maximum of 12 weeks in a 12-month period.
4. Other Terms and Conditions of Leave

The provisions of <Company name>'s Family-Care and Medical-Leave policy regarding the leave's effect on pay, notice requirements, medical certification requirements and reinstatement also apply to all pregnancy-related disability leaves. However for pregnancy-related disabilities, there is no process for obtaining more than one medical opinion, and there is no reinstatement exception for key employees. For the purpose of applying those provisions, an employee's pregnancy-related disability is considered to be a serious health condition.

B. Other Disability Leaves

In addition to medical or pregnancy-related disability leaves described above, employees may take a temporary disability leave of absence if necessary to reasonably accommodate a workplace injury or an ADA-qualified disability. Any disability leave under this section may run concurrently with any medical leave to which the employee is entitled under this policy.

For the first 90 days of disability leave, the employee will be covered by the firm's short-term disability policy, which provides for salary continuation as described above. After 90 days, the employee is covered by <Company name>'s long-term disability policy. For a precise description of long-term disability benefits, employees should obtain a copy of the policy from <Company name>'s long-term disability-insurance carrier or from the Human Resources Department.

Employees taking disability leave must comply with the Family-Care and Medical-Leave provisions regarding substitution of paid leaves, notice and medical certification. For the purpose of applying these provisions, a disability leave will be considered to be medical leave.

If a disability leave under this section extends beyond 12 weeks in a 12-month period, the employee will not be entitled to any continued employer contributions towards any employee benefit plan. An employee, however, may elect to continue participating in such benefit plans, at the employee's own expense, to the extent permitted by such plans.

The duration of a leave under this section shall be consistent with applicable law, but in no event shall the leave extend past the date on which an employee becomes capable of performing the essential functions of their position, with or without reasonable accommodation. For a full explanation of leave duration and reinstatement rights, employees should contact the <Contact for employee benefits issues>.

C. Legally Required Leaves of Absence

Employees will be granted a leave of absence as required by law for the purpose of fulfilling any required legal or military obligation (for example: jury duty, appearance as a witness in a legal proceeding, military-reserve duty, appearance at school by a parent when requested pursuant to the Education Code or performance of emergency duty by a volunteer firefighter).

Employees are required to provide reasonable advance notice of any need for such leave and are expected to return to work each day or portion of the day that they are not selected for jury duty or called as a witness. For nonexempt employees, this leave will be unpaid. For exempt employees,
salary during leave will be offset by any amounts received as jury or witness fees or as military pay, and no salary will be paid for workweeks in which no Company work is performed.

Employees who do not have sufficient time outside of their regular working hours to vote in a statewide election may request time off to vote. If possible, employees should make their request at least two days in advance of the election. Up to two hours of paid time off will be provided, at the beginning or end of the employee's regular shift, whichever will allow the most free time for voting and the least time off work.

X. Workplace Rules and Procedures

A. Rules of Conduct and Discipline

1. Policy

Employees are expected to observe certain standards of job performance and good conduct. When performance or conduct does not meet Company standards, <Company name> will endeavor when it deems appropriate to provide the employee a reasonable opportunity to correct the deficiency. If, however, the employee fails to make the correction, they will be subject to discipline including termination.

The rules set forth below are intended to provide employees with fair notice of what is expected of them. Necessarily, however, such rules cannot identify every type of unacceptable conduct and performance. Therefore, employees should be aware that conduct not specifically listed below but which adversely affects or is otherwise detrimental to the interests of <Company name>, other employees or customers may also result in disciplinary action. Nothing in these rules is intended to modify the at-will nature of your employment with the company.

2. Job Performance

Employees may be disciplined for poor job performance, including but not limited to the following:

- Unsatisfactory work quality or quantity;
- Poor attitude (for example, rudeness or lack of cooperation);
- Excessive absenteeism, tardiness, or abuse of break and lunch privileges;
- Failure to follow instructions or Company procedures; or
- Failure to follow established safety regulations.

3. Misconduct

Employees may be disciplined for misconduct, including but not limited to the following:

- Insubordination;
• Dishonesty;
• Theft;
• Discourtesy;
• Misusing or destroying Company property or the property of another on Company premises;
• Violating conflict-of-interest rules;
• Disclosing or using confidential or proprietary information without authorization;
• Falsifying or altering Company records, including the application for employment;
• Interfering with the work performance of others;
• Altercations;
• Harassing, including sexually harassing, employees or customers;
• Being under the influence of, manufacturing, dispensing, distributing, using, or possessing alcohol or illegal or controlled substances on Company property or while conducting Company business;
• Gambling on Company premises or while conducting Company business;
• Sleeping on the job or leaving the job without authorization;
• Possessing a firearm or other dangerous weapon on Company property or while conducting Company business; or
• Being convicted of a crime that indicates unfitness for the job or raises a threat to the safety or well-being of <Company name>, its employees, customers or property; or
• Failing to report to <Company name> within five days any conviction under any criminal-drug statute for a violation occurring in the workplace.

4. Attendance

In addition to the general rules stated above, employees may be disciplined for failing to observe the following specific requirements relating to attendance:

• Reporting to work on time, observing the time limits for rest and lunch periods, and obtaining approval to leave work early; and
• Notifying the supervisor in advance of anticipated tardiness or absence.
5. Discipline Procedure

Except as set forth below, discharge for poor performance ordinarily will be preceded by an oral warning and a written warning.

<Company name> reserves the right to proceed directly to a written warning or to termination for misconduct or performance deficiency without resort to prior disciplinary steps when <Company name> deems such action appropriate. Nothing in these rules is intended to modify the at-will nature of your employment with the company.

B. Personnel Records

The information in the employee's personnel file is permanent and confidential, and must be kept up-to-date. The employee should inform the Personnel Manager immediately whenever there are changes in personal data such as address, telephone number, marital status, number of dependents, and person(s) to notify in case of emergency. The employee is also responsible for maintaining a current group life-insurance beneficiary designation.

The employee has the right to inspect their personnel file at reasonable times at a reasonable place and on reasonable notice. In addition, employees have the right to request copies of all employment-related documents they have signed. An employee may inspect only their own personnel file and only in the presence of the Personnel Manager.

Personnel files are the property of <Company name> and may not be removed from <Company name>'s premises without written authorization from the Personnel Manager.

C. Conflicts of Interest

Employees are expected to devote their best efforts and attention to the full-time performance of their jobs. They are expected to use good judgment, to adhere to high ethical standards and to avoid situations that create an actual or potential conflict between the employee's personal interests and the interests of <Company name>. A conflict of interest exists when the employee's loyalties or actions are divided between <Company name>'s interests and those of another, such as a competitor, supplier or customer. Both the fact and the appearance of a conflict of interest should be avoided. Employees unsure if a certain transaction, activity or relationship constitutes a conflict of interest should discuss it with their immediate supervisor or the Personnel Manager for clarification. Any exceptions to this guideline must be approved in writing by <Contact for policy issues>.

While it is not feasible to describe all possible conflicts of interest that could develop, some of the more common conflicts, from which employees should refrain, include the following:

- Accepting personal gifts or entertainment from competitors, customers, suppliers or potential suppliers;
- Working for a competitor, supplier or customer;
- Engaging in self-employment in competition with <Company name>;
• Using proprietary or confidential Company information for personal gain or to <Company name>'s detriment;

• Having a direct or indirect financial interest in or relationship with a competitor, customer or supplier, except that ownership of less than 1 percent (1%) of the publicly traded stock of a corporation will not be considered a conflict;

• Developing a personal relationship with a subordinate employee of <Company name> that might interfere with the exercise of impartial judgment in decisions affecting <Company name> or any employees of <Company name>.

• Using Company assets or labor for personal use;

• Acquiring any interest in property or assets of any kind for the purpose of selling or leasing it to <Company name>; or

• Committing <Company name> to give its financial or other support to any outside activity or organization; or

If an employee or someone with whom an employee has a close relationship (a family member or close companion) has a financial or employment relationship with a competitor, customer, supplier or potential supplier, the employee must disclose this fact in writing to the Personnel Department. Employees should be aware that if they enter into a personal relationship with a subordinate employee or with an employee of a competitor, supplier or customer, a conflict of interest may exist, which requires full disclosure to <Company name>.

Part-time employees may engage in outside employment, provided they disclose such employment and get written approval from their immediate supervisor.

Failure to adhere to this guideline, including failure to disclose any conflicts or to seek an exception, will result in discipline up to and including termination of employment.

D. Solicitation, Distribution and Bulletin Boards

Employees may engage in solicitation on Company premises only during their nonworking time. Nonworking time means time during meals or breaks and before or after work.

Employees may distribute or circulate noncompany written materials only during nonworking time and only in nonwork areas. If an employee is not certain whether an area is a work or nonwork area, they should consult their immediate supervisor for clarification.

Solicitation or distribution in any way connected with the sale of any goods or services for profit is strictly prohibited anywhere on Company property at any time. Similarly, solicitation or distribution of literature for any purpose by nonemployees is strictly prohibited on <Company name>'s property at any time. The sole exception to <Company name>'s no-solicitation rule applies to <Company name>'s annual participation in <Specify a charity>. 

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E. Security and Confidential Information

The security of employees, employee property and Company property is of vital importance to <Company name>. All employees share responsibility to ensure that proper security is maintained.

1. Proprietary and Confidential Information

Company property includes not only tangible property like desks and typewriters, but also intangible property such as information. Of particular importance are proprietary information and confidential information. Proprietary information includes all information obtained by Company employees during the course of their work. This Manual, for example, contains proprietary information. Confidential information is any Company information that is not known generally to the public or the industry. Customer lists, customer files, personnel files, computer records, financial and marketing data, process descriptions, research plans, formulas and trade secrets are examples of confidential information.

Given the nature of <Company name>'s business, protecting proprietary and confidential information is of vital concern to <Company name>. This information is one of the most important assets of <Company name>. It enhances <Company name>'s opportunities for future growth and indirectly adds to the job security of all employees.

Employees must not use or disclose any proprietary or confidential information they obtain during employment with <Company name> except as required by their jobs. This obligation remains even after an employee's employment relationship with <Company name> ends. If an employee is in a position that gives him or her access to particularly sensitive information, the employee might be required to sign a written nondisclosure agreement. In addition, all employees must observe good security practices. They are expected to keep proprietary and confidential information secure from outside visitors and all other persons who do not have a legitimate reason to see or use such information.

Company rules regarding document control, restricted access to areas of the facility and other such procedures must be strictly observed by each employee. Failure to adhere to Company policies regarding proprietary and confidential information will be considered grounds for discipline including dismissal.

In addition to observing this policy, you will be asked to sign a written nondisclosure agreement.

2. Obligations on Termination

On termination of employment, whether voluntary or involuntary, all Company documents and other tangible Company property in the employee's possessions or control must be returned to <Company name>.

3. Security Regulations

The Security Department maintains and promulgates a security-procedures manual, which specifically sets out <Company name>'s rules and regulations for maintaining control of entrances,
exits, restricted areas, document control and record keeping. Specific regulations regarding the
protection of Company property, traffic throughout the facilities and designation of restricted areas
are issued by the Security Department and posted on Company bulletin boards. Employees are
expected to abide by these regulations.

F. Technology Use and Privacy

<Company name> provides various Technology Resources to authorized employees to assist
them in performing their job duties for <Company name>. Each employee has a responsibility to
use <Company name>’s Technology Resources in a manner that increases productivity, enhances
<Company name>’s public image and is respectful of other employees. Failure to follow
<Company name>’s policies regarding its Technology Resources may lead to disciplinary measures
up to and including termination of employment. Moreover, <Company name> reserves the right to
advise appropriate legal authorities of any violation of law by an employee.

1. Technology-Resources Definition

Technology Resources consist of all electronic devices, software and means of electronic
communication including, but not limited to the following: personal computers and workstations;
laptop computers; mini and mainframe computers; computer hardware such as disk drives and tape
drives; peripheral equipment such as printers, modems, fax machines and copiers; computer
software applications and associated files and data, including software that grants access to external
services such as the Internet; electronic mail; telephones; cellular phones; pagers; and voice mail
systems.

2. Authorization

Access to <Company name>’s Technology Resources is within the sole discretion of
<Company name>. Generally, employees are given access to <Company name>’s various
technologies based on their job functions. Only employees whose job performance will benefit
from the use of <Company name>’s Technology Resources will be given access to the necessary
technology. Additionally, employees must successfully complete Company-approved training
before being given access to <Company name>’s Technology Resources.

3. Use

<Company name>’s Technology Resources are to be used by employees only for the purpose
of conducting Company business. Employees may, however, use <Company name>’s Technology
Resources for the following incidental personal uses so long as such use does not interfere with the
employee's duties, is not done for pecuniary gain, does not conflict with <Company name>’s
business and does not violate any Company policy:

• To send and receive necessary and occasional personal communications;
• To prepare and store incidental personal data (such as personal calendars, personal
  address lists and similar incidental personal data) in a reasonable manner;
• To use the telephone system for brief and necessary personal calls; and
• To access the Internet for brief personal searches and inquiries during meal times or other breaks or outside of work hours provided that employees adhere to all other usage policies.

<Company name> assumes no liability for loss, damage, destruction, alteration, disclosure or misuse of any personal data or communications transmitted over or stored on <Company name>'s Technology Resources. <Company name> accepts no responsibility or liability for the loss or nondelivery of any personal electronic mail or voice mail communications or any personal data stored on any Company property. <Company name> strongly discourages employees from storing any personal data on any of <Company name>'s Technology Resources.

4. Improper Use

a) Prohibition Against Harassing, Discriminatory and Defamatory Use

<Company name> is aware that employees use electronic mail for correspondence that is less formal than written memoranda. Employees must take care, however, not to let informality degenerate into improper use. As set forth more fully in <Company name>'s Policy Against Harassment, <Company name> does not tolerate discrimination or harassment based on gender, pregnancy, childbirth (or related medical conditions), race, color, religion, national origin, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, family-care or medical-leave status, veteran status or any other status protected by state and federal laws. Under no circumstances may employees use <Company name>'s Technology Resources to transmit, receive or store any information that is discriminatory, harassing or defamatory in any way (for example: sexually-explicit or racial messages, jokes or cartoons).

b) Prohibition Against Violating Copyright Laws

Employees must not use <Company name>'s Technology Resources to copy, retrieve, forward or send copyrighted materials unless the employee has the author's permission or is accessing a single copy only for the employee's reference.

c) Other Prohibited Uses

Employees may not use any of <Company name>'s Technology Resources for any illegal purpose, violation of any Company policy, in a manner contrary to the best interests of <Company name>, in any way that discloses confidential or proprietary information of <Company name> or third parties, or for personal or pecuniary gain.

5. Access To Technology Resources

All messages sent and received, including personal messages, and all data and information stored on <Company name>'s electronic-mail system, voice mail system, or computer systems are Company property regardless of the content. As such, <Company name> reserves the right to access all of its Technology Resources including its computers, voice mail, and electronic-mail systems at any time in its sole discretion.

a) Privacy
Although <Company name> does not wish to examine personal information of its employees, on occasion <Company name> may need to access its Technology Resources including computer files, electronic-mail messages, and voice mail messages. Employees should understand, therefore, that they have no right of privacy with respect to any messages or information created or maintained on <Company name>’s Technology Resources, including personal information or messages. <Company name> may at its discretion inspect all files or messages on its Technology Resources at any time for any reason. <Company name> may also monitor its Technology Resources at any time in order to determine compliance with its policies, for purposes of legal proceedings, to investigate misconduct, to locate information or for any other business purpose.

b) Passwords

Certain of <Company name>’s Technology Resources can be accessed only by entering a password. Passwords are intended to prevent unauthorized access to information. Passwords do not confer any right of privacy upon any employee of <Company name>. Thus, even though employees may maintain passwords for accessing Technology Resources, employees must not expect that any information maintained on Technology Resources, including electronic-mail and voice mail messages, are private. Employees are expected to maintain their passwords as confidential. Employees must not share passwords and must not access coworkers' systems without express authorization.

c) Data Collection

The best way to guarantee the privacy of personal information is not to store or transmit it on <Company name>’s Technology Resources. To ensure that employees understand the extent to which information is collected and stored, below are examples of information currently maintained by <Company name>. <Company name> may, however, in its sole discretion and at any time alter the amount and type of information that it retains.

- Telephone Use and Voicemail: Records are kept of all calls made from and to a given telephone extension. Although voicemail is password protected, an authorized administrator can reset the password and listen to voice mail messages.

- Electronic Mail: Electronic mail is backed up and archived. Although electronic mail is password protected, an authorized administrator can reset the password and read electronic mail.

- Desktop Facsimile Use: Copies of all facsimile transmissions sent and received are maintained in the facsimile server.

- Document Use: Each document stored on Company computers has a history, which shows which users have accessed the document for any purpose.

- Internet Use: Internet sites visited, the number of times visited and the total time connected to each site is recorded and periodically monitored.

d) Deleted Information
Deleting or erasing information, documents or messages maintained on <Company name>'s Technology Resources is in most cases ineffective. All employees should understand that any information kept on <Company name>'s Technology Resources may be electronically recalled or recreated regardless of whether it may have been deleted or erased by an employee. Because <Company name> periodically backs up all files and messages, and because of the way in which computers reuse file storage space, files and messages may exist that are thought to have been deleted or erased. Therefore, employees who delete or erase information or messages should not assume that such information or messages are confidential.

e) The Internet and Online Services

<Company name> provides authorized employees access to online services such as the Internet. <Company name> expects that employees will use these services in a responsible way and for business-related purposes only. Under no circumstances are employees permitted to use <Company name>'s Technology Resources to access, download or contribute to the following:

- Gross, indecent, or sexually-oriented materials;
- Sports sites;
- Job-search sites;
- Entertainment sites;
- Gambling sites;
- Games, humor;
- Illegal drug-oriented sites;
- Personal pages of individuals; and
- Politically-oriented sites or sites devoted to influencing the course of legislation or public policy.

Additionally, employees must not sign guest books on Web sites or post messages to Internet news groups or discussion groups on Web sites. These actions will generate junk electronic mail and might expose <Company name> to liability or unwanted attention because of comments that employees may make. <Company name> strongly encourages employees who wish to access the Internet for nonwork-related activities to get their own personal Internet access accounts.

f) Confidentiality

Some of the information to which <Company name> has access is confidential. Employees should avoid sending confidential information over the Internet except when absolutely necessary. Employees also should verify electronic-mail addresses before transmitting any messages.
g) Monitoring

<Company name> monitors both the amount of time spent using online services and the sites visited by individual employees. <Company name> reserves the right to limit such access by any means available to it, including revoking access altogether.

h) Software Use

- License Restrictions

All software in use on <Company name>'s Technology Resources is officially licensed software. No software is to be installed or used that has not been duly paid for and licensed appropriately for the use to which it is being put. No employee may load any software on <Company name>'s computers by any means of transmission unless authorized in advance. Authorization for loading software onto <Company name>'s computers should not be given until the software to be loaded has been thoroughly scanned for viruses.

- Software for Home Use

<Company name> endeavors to license its software so that it may be used on portable computers and home computers in addition to office computers. Before transferring or copying any software from a Company Technology Resource to another computer, employees must request permission and receive written authorization from _________.

i) Confidential Information

<Company name> is very sensitive to the issue of protection of trade secrets and other confidential and proprietary information of both <Company name> and third parties (Confidential Information). Therefore, employees are expected to use good judgment and to adhere to the highest ethical standards when using or transmitting Confidential Information on <Company name>'s Technology Resources.

Confidential Information should not be accessed through <Company name>'s Technology Resources in the presence of unauthorized individuals. Similarly, Confidential Information should not be left visible or unattended. Moreover, any Confidential Information transmitted via Technology Resources should be marked with the following legend: "This message contains confidential information. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use or distribute this information. If you have received this message in error, please call <Telephone number> or return it promptly by mail."

j) Security

<Company name> has installed a variety of programs and devices to ensure the safety and security of <Company name>'s Technology Resources. Any employee found tampering or disabling any of <Company name>'s security devices will be subject to discipline up to and including termination.

k) Audits
<Company name> may perform auditing activity or monitoring to determine compliance with these policies. Audits of software and data stored on <Company name>'s Technology Resources may be conducted without warning at any time.

G. Drug-Free Workplace

1. Purpose of Guideline

It is the intent of <Company name> to maintain a workplace that is free of drugs and alcohol and to discourage drug and alcohol abuse by its employees. <Company name> has a vital interest in maintaining safe and efficient working conditions for its employees. Substance abuse is incompatible with health, safety, efficiency and success at <Company name>. Employees who are under the influence of a drug or alcohol on the job compromise <Company name>'s interests, endanger their own health and safety and the health and safety of others, and can cause a number of other work-related problems, including absenteeism and tardiness, substandard job performance, increased workloads for coworkers, behavior that disrupts other employees, delays in the completion of jobs, inferior quality in products or service, and disruption of customer relations.

To further its interest in avoiding accidents, to promote and maintain safe and efficient working conditions for its employees, and to protect its business, property, equipment and operations, <Company name> has established this Guideline concerning the use of alcohol and drugs. As a condition of continued employment with <Company name>, each employee must abide by this Guideline.

2. Employee Cooperation

Early detection of substance-abuse problems benefits everyone. For example, it benefits the employee with the substance-abuse problem because it gives him or her the opportunity to correct the problem before it leads to serious harm to the employee or others; it benefits the employee's coworkers who otherwise might have to carry an extra burden by covering for the substance abuser or who otherwise might be exposed to serious injury; and it benefits <Company name> because it gives <Company name> an opportunity to prevent accidents and avoid the performance problems and other losses associated with substance abuse. Accordingly, all employees should understand that coworkers with substance-abuse problems should be encouraged to seek assistance.

3. Definitions

For purposes of this Guideline:

"Illegal drugs or other controlled substances" means any drug or substance that (a) is not legally obtainable; or (b) is legally obtainable but has not been legally obtained; or (c) has been legally obtained but is being sold or distributed unlawfully.

"Legal drug" means any drug, including any prescription drug or over-the-counter drug, that has been legally obtained and that is not unlawfully sold or distributed.
"Abuse of any legal drug" means the use of any legal drug (a) for any purpose other than the purpose for which it was prescribed or manufactured; or (b) in a quantity, frequency or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.

"Reasonable suspicion" includes a suspicion that is based on specific personal observations such as an employee's manner, disposition, muscular movement, appearance, behavior, speech or breath odor; information provided to management by an employee, by law enforcement officials by a security service or by other persons believed to be reliable; or a suspicion that is based on other surrounding circumstances.

"Possession" means that an employee has the substance on their person or otherwise under their control.

4. Prohibited Conduct

The prohibitions of this section apply whenever the interests of <Company name> may be adversely affected, including any time the employee is:

- On Company premises;
- Conducting or performing Company business, regardless of location;
- Operating or responsible for the operation, custody or care of Company equipment or other property; or
- Responsible for the safety of others.

5. Alcohol

The following acts are prohibited and subject an employee to discharge:

- The unauthorized use, possession, purchase, sale, manufacture, distribution, transportation or dispensation of alcohol; or
- Being under the influence of alcohol.

6. Illegal Drugs

The following acts are prohibited and subject an employee to discharge:

- The use, possession, purchase, sale, manufacture, distribution, transportation or dispensation of any illegal drug or other controlled substance; or
- Being under the influence of any illegal drug or other controlled substance.

7. Legal Drugs

The following acts are prohibited and subject an employee to discharge:
The abuse of any legal drug;

The purchase, sale, manufacture, distribution, transportation, dispensation or possession of any legal prescription drug in a manner inconsistent with law; or

Working while impaired by the use of a legal drug whenever such impairment might:

Endanger the safety of the employee or some other person;

Pose a risk of significant damage to Company property or equipment; or

Substantially interfere with the employee's job performance or the efficient operation of <Company name>’s business or equipment.

8. Disciplinary Action

a) Discharge for Violation of Guideline

A first violation of this Guideline will result in immediate discharge whenever the prohibited conduct:

- Caused injury to the employee or any other person, or in the sole opinion of management endangered the safety of the employee or any other person;

- Resulted in significant damage to Company property or equipment, or in the sole opinion of management posed a risk of significant damage;

- Involved the sale or manufacture of illegal drugs or other controlled substances;

- Involved in the possession, distribution, or dispensation of illegal drugs or other controlled substances or alcohol in a quantity greater than for personal use;

- Involved an employee who had not completed the introductory period or was a casual, seasonal or temporary employee;

- Involved the failure of an employee to report a criminal conviction as required by below.

b) Discretion Not to Discharge

In circumstances other than those described above, <Company name> in the discretion of management can choose not to discharge an employee for a first violation of this Guideline if the employee satisfactorily completes participation in an approved drug- or alcohol-abuse assistance or rehabilitation program.

c) Effect of Criminal Conviction
An employee who is convicted under a criminal-drug statute for a violation occurring in the workplace or during any Company-related activity or event will be deemed to have violated this Guideline.

d) Written Warning

An employee who is not discharged for a first violation of this Guideline will receive a final written warning and immediate suspension without pay for a period of <example: 3> calendar days.

e) Effect of Second Violation

A second violation of this Guideline at any time will result in immediate discharge.

f) Effect of Discharge on Eligibility for Rehire

Employees who are discharged for a violation of this Guideline will not be eligible for rehire by <Company name>.

9. Drug-Free Awareness Program

a) Employee Awareness

<Company name> has established a Drug-Free Awareness Program that is designed to inform employees about the dangers of drug abuse in the workplace and to help assure that employees are familiar with this Guideline and with the disciplinary actions that can result from a violation of this Guideline. From time to time, employees will be requested to attend one of the sessions of the Drug-Free Awareness Program. During each such session, employees will be given current information about available programs for counseling and rehabilitation.

b) Management Awareness

Managers and supervisors should be attentive to the performance and conduct of those who work with them and should not permit an employee to work in an impaired condition or otherwise in violation of this Guideline. When management has reasonable suspicion to believe an employee or employees are working in violation of this Guideline, prompt action will be taken.

10. Criminal Convictions

Employees are required by this Guideline to notify <Company name> of any conviction under a criminal-drug statute for a violation occurring in the workplace or during any Company-related activity or event, no later than five days after any such conviction. When required by federal law, <Company name> will notify any federal agency with which it has a contract of any employee who has been convicted under a criminal drug statute for a violation occurring in the workplace.
11. Use of Legal Drugs

<Company name> recognizes that employees may, from time to time, be prescribed legal drugs that when taken as prescribed or according to the manufacturer's instructions may result in their impairment. Employees may not work while impaired by the use of legal drugs if the impairment might endanger the employee or someone else, pose a risk of significant damage to Company property or substantially interfere with the employee's job performance. If an employee is so impaired by the appropriate use of legal drugs, they may not report to work. To accommodate the absence, the employee may use accrued sick leave or vacation time.

The employee may also contact <Contact for employee benefits issues> to determine whether or not they qualify for an unpaid leave of absence, such as family-care or medical leave. Nothing in this Guideline is intended to sanction or encourage the use of accrued sick leave or vacation time to accommodate absences due to the abuse of legal drugs. Furthermore, nothing in this Guideline is intended to diminish <Company name>'s commitment to employ and reasonably accommodate qualified disabled individuals. <Company name> will reasonably accommodate qualified disabled employees who must take legal drugs because of their disability and who because of their appropriate use of such drugs cannot perform the essential functions of their positions adequately or safely.

12. Unregulated or Authorized Conduct

a) Customary Use of Over-the-Counter Drugs

Nothing in this Guideline is intended to prohibit the customary and ordinary purchase, sale, use, possession or dispensation of over-the-counter drugs so long as that activity does not violate any law or result in an employee being impaired by the use of such drugs in violation of this Guideline.

b) Off-the-Job Conduct

Unless an employee is in a designated safety-sensitive position, this Guideline is not intended to regulate off-the-job conduct so long as the employee's off-the-job use of alcohol or drugs does not result in the employee being under the influence of or impaired by the use of alcohol or drugs in violation of this Guideline. If an employee is in a designated safety-sensitive position, they will be subject to drug testing as described below.

c) Authorized Use of Alcohol

<Company name> may provide alcohol for consumption at certain events such as social functions. The consumption of alcohol at these events does not violate this policy.

13. Confidentiality

Disclosures made by employees to the <Contact for employee benefits issues> concerning their use of legal drugs will be treated confidentially and will not be revealed to managers or supervisors unless there is an important work-related reason to do so in order to determine whether it is advisable for the employee to continue working. Disclosures made by employees to <Contact
for employee benefits issues> concerning their participation in any drug or alcohol rehabilitation program will be treated confidentially.

14. Drug Testing

a) Testing of Applicants for Designated Safety-Sensitive Positions

As part of <Company name>’s employment screening process, any applicant to whom an offer of employment is made must pass a test for controlled substances under the procedures described below. The offer of employment is conditioned on a negative test result. Applicants will be informed of <Company name>’s drug testing policy in the employment application.

b) Testing of Employees in Designated Safety-Sensitive Positions

- Annual Testing

Employees in the position(s) of <Specify safety-sensitive position(s)> will be required to submit to annual drug testing under the procedures described below. The testing will be scheduled by the Human-Resources Department and will occur in the employee's company-anniversary month. If an employee refuses to cooperate with the administration of the drug test, the refusal will be handled in the same manner as a positive test result.

- Reasonable Suspicion Testing

If an employee occupies a designated safety-sensitive position and their supervisor or manager has a reasonable suspicion that the employee is working in an impaired condition or otherwise in violation of this Guideline, the employee will be asked about any observed behavior and offered an opportunity to give a reasonable explanation. If the employee is unable to explain the behavior, they will be requested to take a drug test in accordance with the procedures outlined below.

If the employee refuses to cooperate with the administration of the drug test, the refusal will be handled in the same manner as a positive test result.

- Acknowledgment and Consent

Any employee subject to testing under this policy will be asked to sign a form acknowledging the procedures governing testing and consenting to (1) the collection of a urine sample for the purpose of determining the presence of alcohol or drugs, and (2) the release to <Company name> of medical information regarding the test results. Refusal to sign the agreement and consent form or to submit to the drug test will result in the revocation of an applicant's job offer or will subject an employee to discipline up to and including termination.

- Confidentiality

All drug testing records will be treated as confidential.
H. Inspections and Searches on Company Premises

1. Purpose of the Guideline

<Company name> believes that maintaining a workplace that is free of drugs, alcohol, and other harmful materials is vital to the health and safety of its employees and to the success of <Company name>’s business. <Company name> also intends to protect against the unauthorized use or removal of Company property. In addition, <Company name> intends to assure its access at all times to Company premises and Company property, equipment, records, documents, and files. Accordingly, <Company name> has established this Guideline concerning inspections and searches, on Company premises. This Guideline applies to all employees of <Company name>.

2. Definitions

For purposes of this Guideline:

"Prohibited materials" means firearms or other weapons; explosives and/or hazardous materials or articles; illegal drugs or other controlled substances as defined in <Company name>’s Drug-Free Workplace Guideline; drug-related paraphernalia; and alcoholic beverages or Company property that an employee is not authorized to have in their possession.

"Company property" includes all documents, records, software, and files relating to <Company name>’s business; and all equipment, hardware and other property of any kind whether owned, leased, rented or used by <Company name>.

"Company premises" includes all premises and locations owned or leased by <Company name> or under the control of <Company name>, including parking lots, lockers and storage areas.

"Reasonable suspicion" includes a suspicion that is based on specific personal observations such as an employee's manner, disposition, muscular movement, appearance, behavior, speech or breath odor; information provided to management by an employee, by law enforcement officials, by a security service or by other persons believed to be reliable; or a suspicion that is based on other surrounding circumstances.

"Possession" means that an employee has the substance or company property on their person or otherwise under their control.

3. Inspections and Searches

a) Access to Company Property

In order to ensure access at all times to Company property and because employees properly in possession of Company property or information related to company business may not always be available to produce the property or information when needed in the ordinary course of <Company name>’s business, <Company name> reserves the right to conduct a routine inspection or search at any time for Company property on Company premises. <Company name> reserves the right to access information and communications stored on Company Technology Resources at all times.
Routine searches or inspections for Company property may include an employee's office, desk, file cabinet, closet, computer files, voicemail or similar places where employees may store Company property or Company-related information, whether or not the places are locked or protected by access codes.

Because even a routine search for Company property might result in the discovery of an employee's personal possessions, all employees are encouraged to refrain from bringing into the workplace any item of personal property that they do not wish to reveal to <Company name>.

b) Inspections and Searches for Prohibited Materials

- Inspections or searches for prohibited materials in or on Company premises also will be conducted whenever <Company name> has reasonable suspicion that a particular employee or employees may be in possession of such materials in violation of this Guideline.

- Inspections or searches for prohibited materials may be conducted by an independent security service or by <Company name> with its own personnel. In all cases, a member of management should be present.

- Inspections or searches for prohibited materials may be conducted from time to time even when there is no immediate reason to suspect the presence of the materials. In such cases, <Company name> (may or will) announce the inspection in advance, except for inspections or searches conducted at locations where employees enter or exit Company premises.

- Inspections or searches for prohibited materials may include an employee's office, desk, file cabinet, closet, or other locations where employees may place personal possessions including, but not limited to, employee lockers and vehicles, when on company premises, and/or other items of personal property worn or carried while on company premises.

- Employees who refuse to cooperate during an inspection or search will not be forcibly detained or searched. They will be informed, however, that <Company name> will base any disciplinary decision on the information that is available, including their refusal to consent to the search as well as the information that gave rise to a reasonable suspicion that the employee was in possession of prohibited materials, if applicable, and that their failure or refusal to cooperate could deprive <Company name> of information that may clear them of suspicion. In addition, <Company name> reserves the right to take appropriate action to prevent the unauthorized removal from Company premises of Company property.

c) Disciplinary Action

- Employees found to be in possession of prohibited materials in violation of this Guideline or have used Company property in an unauthorized manner and/or are found to be in violation of other <Company name> policies and guidelines will be subject to
discipline up to and including discharge, regardless of <Company name>'s reason for conducting the search or inspection.

- If an employee refuses to cooperate with a search or inspection that is based on reasonable suspicion that the employee is in possession of prohibited materials, <Company name> may take that refusal into consideration in determining appropriate disciplinary action. Discipline will be based on all available information, including the information giving rise to the reasonable suspicion. It is therefore to the employee's advantage to cooperate with the search or inspection whenever prohibited materials are present.

I. Termination

   1. Voluntary Termination

      <Company name> will consider an employee to have voluntarily terminated their employment if an employee does any of the following:

      - Elects to resign from <Company name>;
      - Fails to return from an approved leave of absence on the date specified by <Company name>; or
      - Fails to report for work without notice to <Company name> for three consecutive days.

   2. Involuntary Termination

      An employee may be terminated involuntarily for reasons that include poor performance, misconduct or other violations of <Company name>'s rules of conduct as set forth below. Notwithstanding this list of rules, <Company name> reserves the right to discharge with or without cause and with or without prior notice.

   3. Termination Due to Reorganizations, Economics or Lack of Work

      From time to time, <Company name> may need to terminate an employee as a consequence of reorganizations, job eliminations, economic downturns in business or lack of work. Should <Company name> consider such terminations necessary, <Company name> will attempt to provide all affected employees with advance notice when practical. Layoff benefits associated with such terminations, if any, will be as specified in the notice.

J. Severance Pay

In the event of an involuntary termination for reasons other than misconduct or other violation of <Company name>'s rules of conduct or a termination due to reorganizations, economics or lack of work, an employee will be provided severance pay in accordance with the severance pay schedule and policies in effect at the time of the termination. This severance pay is provided voluntarily by <Company name> to assist employees through the period following a termination.
Employees who are entitled to severance pay, pay in lieu of notice, or other payments as a consequence of their termination under any other contractual or legal requirement are not entitled to severance pay under this policy except and only to the extent that the severance pay provided under this policy exceeds any severance pay, pay in lieu of notice, or other compensation to which the employees may otherwise be entitled as a consequence of their termination. Employees will be notified at or before the time of their termination of the amount of severance pay they will receive in connection with their termination.

XI. Workplace Safety

A. Policy

<Company name> is committed to providing and maintaining a healthy and safe work environment for all employees. Accordingly, <Company name> has instituted an Injury and Illness Prevention Program designed to protect the health and safety of all personnel. Every employee will receive a copy of <Company name>'s General Safety Rules and will receive health and safety training as part of the Injury and Illness Prevention Program. A complete copy of the Injury and Illness Prevention Program is kept by <Contact for policy issues> and is available for your review.

You are required to know and comply with <Company name>'s General Safety Rules and to follow safe and healthy work practices at all times. You also are required to report immediately to your supervisor any potential health or safety hazards and all injuries or accidents. First aid supplies are located <Location of first aid supplies>. The location of the nearest doctor and/or medical facility is posted <Location of nearest medical facility>.

B. Safety Rules

Safety is to be given primary importance in every aspect of planning and performing all <Company name> activities. We want to protect you against industrial injury and illness, as well as minimize the potential loss of production. Please report all injuries (no matter how slight) to your manager immediately, as well as anything that needs repair or is a safety hazard. Below are some general safety rules. Your manager or department head may post other safety procedures in your department or work area:

- Avoid overloading electrical outlets with too many machines.
- Use flammable items such as cleaning fluids with caution.
- Walk – don't run.
- Report to your manager if you or a coworker becomes ill or is injured.
- Ask for assistance when lifting heavy objects or moving heavy furniture.
- Keep cabinet doors and file and desk drawers closed when not in use.
- Sit firmly and squarely in chairs that roll or tilt.
• Avoid horseplay or practical jokes.

• Start work on any machine only after safety procedures and requirements have been explained (and you understand them).

Remember, failure to adhere to these rules will be considered serious infractions of safety rules and will result in disciplinary actions.

XII. Miscellaneous

A. Open-Door Policy

<Company name> has an Open-Door Policy that encourages employee participation in decisions affecting them and their daily professional responsibilities. Employees who have job-related concerns or complaints are encouraged to talk them over with their supervisor or any other management representative with whom they feel comfortable. <Company name> believes that employee concerns are best addressed through this type of informal and open communication.

Employees are encouraged to raise work-related concerns with their immediate supervisor, or with a supervisor or other management representative of their choice, as soon as possible after the events that cause the concern. Employees are further encouraged to pursue discussion of their work-related concerns until the matter is fully resolved. Although <Company name> cannot guarantee that in each instance the employee will be satisfied with the result, <Company name> will attempt in each instance to explain the result to the employee if the employee is not satisfied. <Company name> will also attempt to keep all such expressions of concern, the results of its investigation and the terms of the resolution confidential. However, in the course of investigating and resolving the matter, some dissemination of information to others may be appropriate.

Employees who conclude that their work-related concerns should be brought to the attention of <Company name> by written complaint and formal investigation may avail themselves of the "Internal Complaint Review" procedure set forth in this Manual.

B. Travel and Expense Accounts

<Company name> will reimburse employees for reasonable expenses incurred throughout business travel or entertainment. You must have receipts for all expenses over <example: $25>. Mileage will be reimbursed at the official IRS rate. Travel expenses must be turned in by the <example: 1st and the 15th of each month>. You may obtain expense reports from <Contact for employee benefits issues>.

C. Employment of Relatives

Relatives of present employees may be hired by <Company name> only if (1) the individuals concerned will not work in a direct supervisory relationship, and (2) the employment will not pose difficulties for supervision, security, safety or morale. "Relatives" are defined as spouses, children, sisters, brothers, mothers or fathers, and persons related by marriage. Present employees who marry or who become related by marriage will be permitted to continue employment with <Company name> only if they do not work in a direct supervisory relationship with one another, or otherwise
pose difficulties for supervision, security, safety or morale. If employees who marry or who become related by marriage do work in a direct supervisory relationship with one another, <Company name> will attempt to reassign one of the employees to another position for which they are qualified if such a position is available. If no such position is available, then one of the employees will be required to leave <Company name>. The decision as to which employee will leave is left solely to the spouse-employees.

D. Exit Interview

Employees who leave <Company name> for any reason may be asked to participate in an exit interview. This interview is intended to permit terminating employees the opportunity to communicate their views regarding their work with <Company name>, including job duties, job training, job supervision and job benefits. At the time of the interview, employees are expected to return all Company-furnished property, such as uniforms, tools, equipment, ID cards, keys, credit cards, documents and handbooks. Arrangements for clearing any outstanding debts with <Company name> and for receiving final pay also will be made at this time.

E. Violence in the Workplace

<Company name> recognizes that workplace violence is a growing concern among employers and employees across the country. <Company name> is committed to providing a safe, violence-free workplace and strictly prohibits employees, consultants, customers, visitors or anyone else on Company premises or engaging in a Company-related activity from behaving in a violent or threatening manner. As part of this policy, <Company name> seeks to prevent workplace violence before it begins and reserves the right to deal with behavior that suggests a propensity towards violence even prior to any violent behavior occurring.

<Company name> believes that prevention of workplace violence begins with recognition and awareness of potential early warning signs and has established procedures for responding to any situation that presents the possibility of violence. More information is available from <Contact for policy issues>.

1. Workplace Violence Defined

Workplace violence includes:

Threats of any kind;

• Threatening, physically aggressive, or violent behavior such as intimidation of or attempts to instill fear in others;

• Other behavior that suggests a propensity toward violence, which can include belligerent speech, excessive arguing or swearing, sabotage or threats of sabotage of Company property, or a demonstrated pattern of refusal to follow Company policies and procedures;

• Defacing Company property or causing physical damage to the facilities; or
• With the exception of security personnel, bringing weapons or firearms of any kind on Company premises, in Company parking lots or while conducting Company business.

2. Reporting

If any employee observes or becomes aware of any of the above-listed actions or behavior by an employee, customer, consultant, visitor or anyone else, they should notify <Contact for policy issues> immediately. Furthermore, employees should notify <Contact for policy issues> if any restraining order is in effect or if a potentially violent nonwork related situation exists that could result in violence in the workplace.

3. Investigation

All reports of workplace violence will be taken seriously and will be investigated promptly and thoroughly. In appropriate circumstances, <Company name> will inform the reporting individual of the results of the investigation. To the extent possible, <Company name> will maintain the confidentiality of the reporting employee and of the investigation but may need to disclose results in appropriate circumstances, for example, in order to protect individual safety. <Company name> will not tolerate retaliation against any employee who reports workplace violence.

4. Corrective Action and Discipline

If <Company name> determines that workplace violence has occurred, <Company name> will take appropriate corrective action and will impose discipline on offending employees. The appropriate discipline will depend on the particular facts, but may include written or oral warnings, probation, reassignment of responsibilities, suspension, or termination. If the violent behavior is that of a nonemployee, <Company name> will take appropriate corrective action in an attempt to ensure that such behavior is not repeated. Under certain circumstances, <Company name> may forego disciplinary action on the condition that the employee takes a medical leave of absence. In addition, <Company name> may request that the employee participate in counseling, either voluntarily or as a condition of continued employment.

F. Arbitration

<Company name> strongly believes in and endorses expeditious, nonjudicial resolution of employment disputes. All employees are therefore asked to sign a separate arbitration agreement, submitting any potential employment disputes to arbitration.

***

[End of document.]
Job Requirements Checklist

Employment Title: ________________________________

Use the following checklists to analyze the demands of particular jobs in relation to the qualifications of job applicants. In order to measure the extent to which an activity is required in a job, place an A, B, C or N/A in each designated blank as follows:

A - Minor - Activity or condition exists less than 20% of work time.
B - Moderate - Activity or condition exists between 20-60% of work time.
C - Major - Activity or condition exists 60% or more of work time.
N/A - Not applicable

<table>
<thead>
<tr>
<th>PHYSICAL DEMAND</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strength</strong></td>
<td></td>
</tr>
<tr>
<td>Standing</td>
<td>_____ %</td>
</tr>
<tr>
<td>Walking</td>
<td>_____ %</td>
</tr>
<tr>
<td>Sitting</td>
<td>_____ %</td>
</tr>
<tr>
<td>Lifting</td>
<td>_____ lb. _____</td>
</tr>
<tr>
<td>Carrying</td>
<td>_____ lb. _____</td>
</tr>
<tr>
<td>Pushing</td>
<td>_____ lb. _____</td>
</tr>
<tr>
<td><strong>Reaching</strong></td>
<td></td>
</tr>
<tr>
<td>Handling</td>
<td>______</td>
</tr>
<tr>
<td>Fingering</td>
<td>______</td>
</tr>
<tr>
<td>Feeling</td>
<td>______</td>
</tr>
<tr>
<td>Throwing</td>
<td>______</td>
</tr>
<tr>
<td><strong>Eye-Hand Coordination</strong></td>
<td>______</td>
</tr>
<tr>
<td><strong>Foot-Hand-Eye Coordination</strong></td>
<td>______</td>
</tr>
<tr>
<td>Other</td>
<td>______</td>
</tr>
<tr>
<td><strong>Communicating</strong></td>
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</tr>
<tr>
<td>Ordinary</td>
<td>______</td>
</tr>
<tr>
<td>Other</td>
<td>______</td>
</tr>
<tr>
<td><strong>Hearing</strong></td>
<td></td>
</tr>
<tr>
<td>Ordinary</td>
<td>______</td>
</tr>
<tr>
<td>Other</td>
<td>______</td>
</tr>
<tr>
<td><strong>Stooping</strong></td>
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<tr>
<td>Kneeling</td>
<td>______</td>
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<tr>
<td>Crouching</td>
<td>______</td>
</tr>
<tr>
<td>Crawling</td>
<td>______</td>
</tr>
<tr>
<td>Turning/Twisting</td>
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</tr>
<tr>
<td>Bending at Waist</td>
<td>______</td>
</tr>
<tr>
<td>Other</td>
<td>______</td>
</tr>
<tr>
<td><strong>Seeing</strong></td>
<td></td>
</tr>
<tr>
<td>Acuity - Near</td>
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</tr>
<tr>
<td>Acuity - Far</td>
<td>______</td>
</tr>
<tr>
<td>Depth Perception</td>
<td>______</td>
</tr>
<tr>
<td>Accommodation</td>
<td>______</td>
</tr>
<tr>
<td>Color Vision</td>
<td>______</td>
</tr>
<tr>
<td>Field of Vision</td>
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</tr>
<tr>
<td>Other</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>PHYSICAL CONDITION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Working Area</strong></td>
</tr>
<tr>
<td>Inside</td>
</tr>
<tr>
<td>Outside</td>
</tr>
</tbody>
</table>
### Environment and Occupational Hazards

<table>
<thead>
<tr>
<th><strong>Temperature</strong></th>
<th><strong>Atmospheric Conditions</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant cold</td>
<td>Fumes</td>
</tr>
<tr>
<td>Constant heat</td>
<td>Odors</td>
</tr>
<tr>
<td>Changing temperatures</td>
<td>Mists</td>
</tr>
<tr>
<td></td>
<td>Dusts</td>
</tr>
<tr>
<td><strong>Humidity or Damp</strong></td>
<td>Oil/Grease</td>
</tr>
<tr>
<td></td>
<td>Dirt</td>
</tr>
<tr>
<td><strong>Noise</strong></td>
<td>Gases</td>
</tr>
<tr>
<td>Noise level (dB)</td>
<td>Ventilation</td>
</tr>
<tr>
<td>Exposure (hours/day)</td>
<td>Lighting</td>
</tr>
<tr>
<td></td>
<td>Other</td>
</tr>
</tbody>
</table>

**Unavoidable Hazards**

- Mechanical
- Electrical
- Burns
- Moving objects
- Heights
- Cramped quarters
- Other

**Mental Requirements**

- Understand and carry out oral instructions.
- Read and carry out simple written instructions.
- Read work orders, scrap tickets, job lot tickets, graphs, logs, schedules.
- Read and verify car numbers, alloy identities, etc.
- Read and carry out complicated instructions.
- Observe and read instruments, gauges, dials, etc. to determine operating conditions.
- Read and interpret detailed prints, sketches, layouts, specifications, etc.
- Identify and list production data such as quantities, pressures, alloys, operating conditions.
- Prepare detailed records or reports such as inventory records, receiving reports, operating logs, lab analyses, quantities, etc.
- Estimate size, form, quality or quantity of objects.
- Estimate speed of moving objects.
- Inspect, examine and observe for obvious product or equipment defects.
- Inspect, examine and observe for product or equipment defects not easily identified.
- Count, make simple arithmetic additions and subtractions.
- Compute and calculate amounts of additives, results of tests, etc.
- Use measuring devices such as tapes, gauges, rules, weight scales, where reading is direct and obvious.
- Use measuring devices such as micrometers, calibrated steel tapes, calipers, etc. where precision and interpretation are required.
- Make routine lab tests, such as titrations, specify gravity, etc.
- Plan and schedule movement or flow of materials or products.
- Operate automotive equipment such as autos and trucks.
Task 4 - Job Requirements Checklist

Operate industrials trucks such as forklifts, flat beds, tractors.  
Operate overhead cranes and hoists.  
Use non-power head tools such as hammers, wrenches, etc.  
Use hand power tools.  
Set up and operate machine tools such as lathes, milling machines, saws, etc.  

Assemble or disassemble objects.  
Determine malfunctioning of units by observing.  
Determine nature and location of malfunction.  
Perform repair and maintenance of equipment.  
Perform a journeyman craft activity.  

Make adjustments to obtain specified operating conditions such as turning valves; switches; moving and setting controls; adjusting furnaces, pumps; etc.  
Control activities of a single processing unit.  
Control activities of several processing units.  
Operate equipment requiring specialized knowledge of process.  
Plan own work activities.  

Plan work activities of others.  
Direct work activities of others.  
Coordinate work activities of others.  
Train other workers.  
Work alone.  

Work as a member of a team.  
Work without supervision.  
Work with minimum amount of supervision.  
Work under pressure.  
Work rapidly for long periods.  

Work on several tasks at the same time.
Three Examples –Launch Media (a web content provider), Transcrypt (manufacturer of cellular phones), and Peet Coffee and Roasting (coffee stores)

RISK FACTORS for Launch Media

You should consider carefully the following risk factors and all other information contained in this prospectus before purchasing our common stock. Investing in our common stock involves a high degree of risk. Additional risks and uncertainties that are not yet identified or that we currently think are immaterial may also materially adversely affect our business and financial condition in the future. Any of the following risks could materially adversely affect our business, operating results and financial condition and could result in a complete loss of your investment.

WE HAVE A LIMITED OPERATING HISTORY THAT MAKES AN EVALUATION OF OUR BUSINESS DIFFICULT
We incorporated in February 1994 and published the first issue of Launch on CD-ROM in May 1995. We first made launch.com available over the Internet in October 1997. Because we have a limited operating history, you must consider the risks and difficulties frequently encountered by early-stage companies such as Launch in new and rapidly evolving markets, including the market for advertising on the Internet and other digital media. Historically, Launch on CD-ROM has accounted for the majority of Launch's audience. Accordingly, Launch has derived its revenues principally from advertising sales against the Launch on CD-ROM audience and, to a lesser extent, from subscriptions for Launch on CD-ROM. Any future growth in our business will depend substantially upon our ability to meet the challenges described in the risk factors below.

WE HAVE A HISTORY OF LOSSES AND ANTICIPATE INCREASED LOSSES
We incurred net losses of $4.5 million in 1996, $6.7 million in 1997 and $13.4 million in 1998. As of December 31, 1998, our accumulated deficit was $27.6 million. We have not achieved profitability and expect to incur operating losses for the foreseeable future. We expect these operating losses to increase for at least the next year. We will need to generate significant revenues to achieve and maintain profitability, and we cannot assure you that we will be able to do so. Even if we do achieve profitability, we cannot assure you that we can sustain or increase profitability on a quarterly or an annual basis in the future. If our revenues grow more slowly than we anticipate or if our operating expenses exceed our expectations, our financial performance will likely be adversely affected. See "Selected Financial Data."

QUARTERLY OPERATING RESULTS ARE VOLATILE AND MAY CAUSE OUR STOCK PRICE TO FLUCTUATE
Our future revenues and operating results are likely to vary significantly from quarter to quarter due to a number of factors, many of which are outside of our control. Accordingly, you should not rely on quarter-to-quarter comparisons of our results of operations as an indication of future performance. It is possible that in some future periods our operating results will be below the expectations of public market analysts and investors. In this event, the price of our common stock will likely decline. Factors which may cause our revenues and operating results to fluctuate include the following: - our ability to attract and retain advertisers; - our ability to attract and retain our audience; - new Web sites, services or products introduced by us or by our competitors; - the timing and uncertainty of sales cycles; - mix of online advertisements sold; -
seasonal declines in advertising sales, which typically occur in the first and third calendar quarters; - the level of Web and online services usage; - our ability to successfully integrate operations and technologies from acquisitions or other business combinations; - technical difficulties or system downtime affecting the Internet generally or the operation of launch.com; and - general economic conditions, as well as economic conditions specific to digital media and the music industry. To attract and retain a larger audience, we plan to significantly increase our expenditures for sales and marketing, content development, and technology and infrastructure development. Many of these expenditures are planned or committed in advance in anticipation of future revenues. Because advertising orders are typically short term and subject to cancellation without penalty until shortly before the advertisement runs, our quarterly operating results are difficult to forecast. If our revenues in a particular quarter are lower than we anticipate, we may be unable to reduce spending in that quarter. As a result, any shortfall in revenues would likely adversely affect our quarterly operating results.

WE MUST INCREASE ADVERTISING SALES TO GROW OUR BUSINESS
Our revenues for the foreseeable future will depend substantially on sales of advertising. In 1997, advertising sales accounted for 59.3% of our net revenues, and in 1998 they accounted for 60.6% of our net revenues. If we do not increase advertising revenues, our business may not grow or survive. Increasing our advertising revenues depends upon many factors, including our ability to do the following: - conduct successful selling and marketing efforts aimed at advertisers; - increase the size of the launch.com audience; - increase the amount of revenues per advertisement; - aggregate our target demographic group of 12 to 34 year old active music consumers, and, in particular, the Generation Y segment of this group; - increase awareness of the Launch brand among advertisers; - target advertisements to appropriate segments of our audience; - make Launch available through evolving broadband distribution channels; and - accurately measure the size and demographic characteristics of our audience.

Our failure to achieve one or more of these objectives could adversely affect our business. Our revenues for the foreseeable future will be substantially dependent on advertising and sponsorships. Advertising revenues are difficult to forecast, especially because the market for advertising on digital media has emerged relatively recently. In 1998, we derived 26.8% of our net revenues from advertising barter transactions. We have historically entered into barter transactions with advertisers that we do not believe would pay cash for such advertisements. We expect to substantially reduce both the dollar volume and frequency of such transactions in future periods. Further, advertising orders are typically short term and subject to cancellation without penalty until shortly before the advertisement runs. In each quarterly period, we derive a significant portion of our revenues from sales of advertising to a limited number of customers. Accordingly, the loss of a key advertising relationship or the cancellation or deferral of even a limited number of orders could adversely affect our quarterly performance.

SALES CYCLES VARY FOR ADVERTISING AND MAY CAUSE OUR OPERATING RESULTS TO FLUCTUATE
Our dependence on advertising subjects us to additional risks because the sales cycles for these sales vary significantly. The time between the date of initial contact with a potential advertiser or sponsor and receipt of a purchase order from the advertiser may range from as little as six weeks to up to nine months. During these sales cycles, we may expend substantial funds and
management resources but not obtain advertising revenues. Therefore, if these sales are delayed or do not otherwise occur, our operating results for a particular period may be adversely affected. Advertising sales are subject to delays over which we have little or no control, including the following: - advertisers' budgetary constraints; - internal acceptance reviews by advertisers and their agencies; - the timing of completion of advertisements by advertisers; and - the possibility of cancellation or delay of projects by advertisers or sponsors.

WE MUST INCREASE THE SIZE OF OUR AUDIENCE TO ATTRACT ADVERTISERS AND STRATEGIC ALLIANCES
Increasing the size of our audience is critical to selling advertising and to increasing our revenues. If we cannot increase the size of our audience, then we may be unable to attract new or retain existing advertisers. In addition, we may be at a relative disadvantage to other digital media companies with larger audiences who may be able to leverage their audience to access more advertisers and significant strategic alliances. To attract and retain our audience, we must do the following: - continue to offer compelling music content; - encourage our users to become part of our community; - conduct effective marketing campaigns to acquire new members; - develop new and maintain existing distribution relationships with other Web sites; - update and enhance the features of launch.com; - increase awareness of the Launch brand; - make Launch available through broadband distribution channels as they achieve widespread consumer acceptance; and - offer targeted, relevant products and services. Our failure to achieve one or more of these objectives could adversely affect our business, and we cannot assure you that we will be successful in these efforts. A significant element of our strategy is to build a loyal community of registered members on launch.com because we believe community features help retain actively engaged users. The concept of developing such a community on the Web is unproven, and if it is not successful, then it may be more difficult to increase the size of our audience. We also depend on establishing and maintaining distribution relationships with high-traffic Web sites to increase our audience. There is intense competition for placements on these sites, and we may not be able to enter into such relationships on commercially reasonable terms or at all. Even if we enter into distribution relationships with these Web sites, they themselves may not attract significant numbers of users. Therefore, launch.com may not obtain additional users from these relationships. Moreover, we have paid in the past, and may pay in the future, significant fees to establish these relationships. We also intend to increase our financial expenditures on marketing the Launch brand because we believe brand awareness will be critical to increasing our audience, especially because there are few barriers to entry for Internet businesses. If we do not increase our revenues as a result of our branding and other marketing efforts or if we otherwise fail to promote our brand successfully, our business could be adversely affected.

WE NEED TO CONTINUE TO DEVELOP COMPELLING CONTENT TO ATTRACT OUR TARGET AUDIENCE
Our future success depends on our ability to continue to develop content that is interesting and engaging to our target audience. If our audience determines that our content does not reflect its tastes, then our audience size could decrease or the demographic characteristics of our audience could change. Either of these results would adversely affect our ability to attract advertisers. Our ability to develop compelling content depends on several factors, including the following: - quality of our editorial staff; - technical expertise of our production staff; - access to recording
artists; and - access to content controlled by record labels, publishers and artists. Further, consumer tastes change, particularly those of Generation Y, and we may be unable to react to those changes effectively or in a timely manner.

WE DEPEND ON THE MUSIC INDUSTRY FOR OUR CONTENT
Because much of our content, including recording artist interviews, audio and video performances and music, are provided to us by record labels and artists at minimal or no charge, we depend on our good relations with record labels and artists to offer compelling content. We have no long-term contracts with any of the record labels or artists, and we cannot assure you that they will continue to make their content available to us on reasonable terms or at all. If record labels, music publishers or artists charge significant fees for their content or discontinue their relationships with us, then our content offering could be adversely affected.

WE NEED NEW DISTRIBUTION TECHNOLOGIES TO INCREASE ACCESSIBILITY OF OUR CONTENT
To experience the full extent of our high-quality audio and full-motion video content, consumers must access such content either from a CD-ROM, DVD-ROM or over a high-bandwidth connection, such as cable or direct subscriber line modem or satellite data broadcast. If such broadband distribution networks do not achieve widespread consumer acceptance, we may be unable to effectively distribute our audio and video content in its most compelling format. We cannot assure you that broadband distribution networks will ever achieve consumer acceptance, and if they do not, our growth may be limited.

WE DEPEND ON A LIMITED NUMBER OF ADVERTISERS, AND THE LOSS OF A NUMBER OF THESE ADVERTISERS COULD ADVERSELY AFFECT OUR OPERATING RESULTS
Historically, a limited number of advertisers has accounted for a significant percentage of our revenues. Although no advertiser accounted for more than 10% of total net revenues in 1998, our four largest advertisers accounted for 23.5% of total net revenues. We anticipate that our results of operations in any given period will continue to depend to a significant extent upon revenues from a small number of advertisers. In addition, particularly because few advertisers are contractually obligated to purchase any advertising in the future, we anticipate that the mix of advertisers in each fiscal period will continue to vary. In order to increase our revenues, we will need to attract additional significant advertisers on an ongoing basis. Our failure to sell a sufficient number of advertisements or to engage a sufficient number of advertisers during a particular period could adversely affect our results of operations.

WE MUST MAINTAIN AND ESTABLISH STRATEGIC ALLIANCES TO INCREASE OUR AUDIENCE AND ENHANCE OUR BUSINESS
In an attempt to increase audience, build brand recognition and enhance content, distribution and commerce opportunities, we have entered into strategic alliances with various media and Internet-related companies such as NBC Multimedia, Inc., America Online, Inc., Microsoft Corporation, Snap! LLC and Infoseek Corporation (Go Network). Our failure to maintain or renew our existing strategic alliances or to establish and capitalize on new strategic alliances could have an adverse affect on our business. Our future success depends to a significant extent upon the success of such alliances. Occasionally, we enter into agreements with strategic
partners that may prohibit us from entering into similar arrangements with competitors of our strategic partners. Such exclusivity provisions may limit our ability to enter into favorable arrangements with complementary businesses and thereby limit our growth. We cannot assure you that we will achieve the strategic objectives of these alliances, that any party to a strategic alliance agreement with Launch will perform its obligations as agreed upon or that such agreements will be specifically enforceable by Launch. In addition, some of our strategic alliances are short term in nature and may be terminated by either party on short notice.

**COMPETITION AMONG MEDIA AND OTHER COMPANIES FOCUSED ON MUSIC IS INTENSE**

Competition among media companies seeking to attract the active music consumer is intense. Increased competition could result in advertising price reduction, reduced margins or loss of market share, any of which could adversely affect our business. Traditional media companies, such as television broadcasters, magazine publishers and radio stations, are constantly refining their content and strategies to increase their audiences and advertising revenues. Further, the number of Web sites competing for the attention and spending of members, users and advertisers has increased, and we expect it to continue to increase, particularly because there are so few barriers to entry on the Web. We compete for members, users and advertisers with the following types of companies: - publishers and distributors of traditional media, such as television, radio and print, including MTV, CMT, Rolling Stone and Spin, and their Internet affiliates; - online services and Web sites, including those targeted at music consumers, such as SonicNet, mp3.com and UBL; - Web retrieval and other Web "portal" companies, such as Excite, Inc., Infoseek Corporation, Lycos, Inc. and Yahoo! Inc.; and - online music retailers, such as CDNow, Inc. and Amazon.com, Inc. Because we compete for advertisers with traditional advertising media, our business could be adversely affected if advertisers do not view digital media as effective for advertising. Competition is likely to increase significantly as new companies enter the market and current competitors expand their services. Many of these potential competitors are likely to enjoy substantial competitive advantages, including the following: - larger audiences; - larger technical, production and editorial staffs; - greater name recognition; - better access to content; - more established Internet presence; - larger advertiser bases; and - substantially greater financial, marketing, technical and other resources. If we do not compete effectively or if we experience any pricing pressures, reduced margins or loss of market share resulting from increased competition, our business could be adversely affected.

**THE LOSS OF ANY KEY PERSONNEL COULD ADVERSELY AFFECT OUR BUSINESS**

Our future success depends to a significant extent on the continued services of our senior management and other key personnel, and particularly David B. Goldberg, Launch's chief executive officer, and Robert D. Roback, Launch's president. The loss of either of these individuals or certain other key employees would likely have an adverse effect on our business. We have an employment agreement with only one of our executive officers, and we do not anticipate that other executive officers or key personnel will enter into employment agreements. We expect that we will need to hire additional personnel in all areas during 1999. Competition for personnel throughout our industry is intense. We may be unable to retain our current key 12 16 employees or attract, integrate or retain other highly qualified employees in the future. We have in the past experienced, and we expect to continue to experience, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. If we do not succeed in
attracting new personnel or retaining and motivating our current personnel, our business could be adversely affected.

OUR GROWTH IN OPERATIONS IS PLACING A STRAIN ON OUR RESOURCES
We have experienced and are currently experiencing a period of significant growth in our operations. This growth has placed, and our anticipated future growth in our operations will continue to place, a significant strain on our resources. As part of this growth, we will have to implement new operational systems and procedures and controls to expand, train and manage our employee base and to maintain close coordination among our technical, accounting, finance, marketing, sales and production staffs. We will also need to continue to attract, retain and integrate personnel in all aspects of our operations. To the extent we acquire new businesses, we will also need to integrate new operations, technologies and personnel. Failure to manage our growth effectively could adversely affect our business.

ACCEPTANCE AND EFFECTIVENESS OF DIGITAL MEDIA FOR ADVERTISING ARE UNPROVEN, WHICH DISCOURAGES SOME ADVERTISERS FROM ADVERTISING ON LAUNCH
Our future is highly dependent on an increase in the use of the Internet and other forms of digital media for advertising. If the Internet advertising market fails to develop or develops more slowly than we expect, then our business could be adversely affected. Moreover, the market for advertising on other forms of digital media, such as broadband distribution, is even less developed than Internet advertising, and if that market does not develop, then our growth may be limited. The Internet advertising market is new and rapidly evolving, and we cannot yet gauge the effectiveness of advertising on the Internet as compared to traditional media. As a result, demand for Internet advertising is uncertain. Many advertisers have little or no experience using the Internet for advertising purposes. The adoption of Internet advertising, particularly by companies that have historically relied upon traditional media for advertising, requires the acceptance of a new way of conducting business, exchanging information and advertising products and services. Such customers may find advertising on the Internet to be undesirable or less effective for promoting their products and services relative to traditional advertising media. Different pricing models are used to sell Internet advertising. It is difficult to predict which, if any, will emerge as the industry standard. This uncertainty makes it difficult to project our future advertising rates and revenues. Any failure to adapt to pricing models that develop or respond to competitive pressures could adversely affect our advertising revenues. Moreover, "filter" software programs that limit or prevent advertising from being delivered to an Internet user's computer are available. Widespread adoption of this software could adversely affect the commercial viability of Internet advertising.

TRACKING AND MEASUREMENT STANDARDS FOR ADVERTISING ARE EVOLVING AND CREATE UNCERTAINTY ABOUT THE VIABILITY OF OUR BUSINESS MODEL
There are currently no standards for the measurement of the effectiveness of advertising on the Internet and other digital media, and the industry may need to develop standard measurements. The absence or insufficiency of these standards could adversely impact our ability to attract and retain advertisers. We cannot assure you that such standard measurements will develop. In addition, currently available software programs that track Internet usage and other tracking
methodologies are rapidly evolving. We cannot assure you that the development of such software or other methodologies will keep pace with our information needs, particularly to support the growing needs of our internal business requirements and advertising clients. It is important to our advertisers that we accurately measure the demographics of our user base and the delivery of advertisements on our Web site. We depend on third parties to provide certain of these measurement services. If they are unable to provide these services in the future, we would need to perform them ourselves or obtain them from another provider, if available. This could cause us to incur additional costs or cause interruptions in our business during the time we are replacing these services. Companies may choose to not advertise on Launch or may pay less for advertising if they do not perceive our measurements or measurements made by third parties to be reliable.

WE MAY HAVE LIABILITY FOR INFORMATION RETRIEVED FROM THE WEB
Because users of our Web site may distribute our content to others, third parties might sue us for defamation, negligence, copyright or trademark infringement or other matters. These types of claims have been brought, sometimes successfully, against online services in the past. Others could also sue us for the content that is accessible from our Web sites through links to other Web sites or through content and materials that may be posted by launch.com members. Such claims might include, among others, that by directly or indirectly hosting the personal Web sites of third parties, we are liable for copyright or trademark infringement or other wrongful actions by such third parties through such Web sites. It is also possible that if any third-party content information provided on launch.com contains errors, third parties could make claims against us for losses incurred in reliance on such information. We may also enter into agreements that entitle us to receive a share of revenue from the purchase of goods and services through direct links from our Web sites to their Web sites. Such arrangements may subject us to additional claims, including potential liabilities to consumers of such products and services, based on the access we provide to such products or services, even if we do not provide such products or services ourselves. While our agreements with these parties may provide that we will be indemnified against such liabilities, such indemnification, if available, may not be adequate. Our insurance may not adequately protect us against these types of claims and even to the extent that such claims do not result in liability, we could incur significant costs in investigating and defending against such claims.

WE EXPECT TO MAKE ACQUISITIONS WHICH MAY DILUTE OUR STOCKHOLDERS' INTERESTS IN LAUNCH
As part of our business strategy, we expect to review acquisition prospects that would complement our current content offerings, increase our market share or otherwise offer growth opportunities. Such acquisitions could cause our operating results or the price of our common stock to decline. To date, we have had limited experience in these types of transactions. While we have no current agreements or commitments with respect to any such acquisitions, other than the pending acquisition of SW Networks, we may acquire businesses, products or technologies in the future. Because business acquisitions typically involve significant amounts of intangible assets, future operating results may be adversely affected by amortization of intangible assets acquired. In the event of such future acquisitions or business combinations, we could do the following: - issue equity securities that would dilute current stockholders' percentage ownership in us; - incur substantial debt; or - assume contingent liabilities.
WE MAY BE UNABLE TO EFFECTIVELY INTEGRATE MUSICVIDEOS.COM, SW NETWORKS OR OTHER BUSINESSES WE MAY ACQUIRE IN THE FUTURE

Acquisitions and business combinations entail numerous operational risks, including the following: - difficulties in the assimilation of acquired operations, technologies or products; - diversion of management's attention from other business concerns; - risks of entering markets in which we have no or limited experience; and - potential loss of key employees of acquired organizations. We cannot assure you that we will be able to successfully integrate any businesses, products, technologies or personnel that we might acquire in the future, and our failure to do so could damage our business. We may not be able to effectively integrate the operations of acquired businesses with its ongoing operations. Such failure could harm our business by diverting management and other resources. Further, the personnel of acquired businesses may elect not to continue with Launch after completion of any acquisition, which could diminish the value of any acquisition. In that regard, we cannot assure you that the personnel of Musicvideos.com or of SW Networks will continue as employees of Launch. The acquisition of SW Networks from Sony Music poses risks because continuation of the SW Networks business requires us to integrate our content development operations with those of SW Networks. Content developed by SW Networks after the acquisition will be sold, in part, to radio stations throughout the United States, and we have not previously sold content to traditional media. As compensation for providing content to radio stations, we will typically receive either on-air inventory of radio advertisements or direct cash payments. To the extent that radio stations pay for our content with radio advertisement inventory, we intend to continue SW Networks' practice of selling the majority of this inventory to traditional radio advertisers. Selling radio advertising is highly competitive. We will depend on Global Media, a third-party advertising agency, to sell a majority of its radio advertisement inventory. We will compete for traditional media advertising sales with national radio networks and syndicators. National radio networks typically have larger and more established sales organizations as compared to Launch. We cannot assure you that Global Media will effectively sell our inventory of radio advertisements. In addition, the competitive pressures of traditional media advertising sales may adversely affect our business.

WE MAY NEED ADDITIONAL FINANCING TO ACHIEVE OUR BUSINESS OBJECTIVES

We currently anticipate that our available cash resources, combined with the net proceeds from this offering, will be sufficient to meet our anticipated working capital and capital expenditure requirements for at least the 12 months following the date of this prospectus. If we raise additional funds by issuing equity or convertible debt securities, the percentage ownership of our then-current stockholders will be reduced, and such securities may have rights, preferences or privileges senior to those of such stockholders. We cannot assure you that additional financing will be available on terms favorable to us, or at all. If adequate funds are not available or are not available on acceptable terms, our ability to fund our expansion, take advantage of unanticipated opportunities, develop or enhance services or products or otherwise respond to competitive pressures would be significantly limited. This limitation could adversely affect our business. We may need to raise additional funds in order to do the following: - fund more rapid expansion; - develop new or enhance existing services or products; - fund distribution relationships; - respond to competitive pressures; or - acquire complementary products, businesses or technologies. See
"Management's Discussion and Analysis of Financial Condition and Results of Operations -- Liquidity and Capital Resources" for a discussion of our working capital and capital expenditures.

**IF THE USE OF DIGITAL MEDIA, INCLUDING THE INTERNET, DOES NOT CONTINUE TO GROW, OUR MARKET MAY NOT DEVELOP ADEQUATELY**

Our market is new and rapidly evolving. If usage of digital media, and in particular the Internet, does not continue to grow, our business will be adversely affected. A number of factors may inhibit such usage, including, but not limited to the following: - inadequate network infrastructure; - security concerns; - inconsistent quality of service; and - limited availability of cost-effective, high-speed access. Even if digital media usage grows, the infrastructure necessary for such growth may not be able to support the demands placed on it by this growth, and its performance and reliability may decline. In addition, Web sites have experienced interruptions in their service as a result of outages and other delays occurring throughout the Internet network infrastructure. If these outages or delays frequently occur in the future, digital media and, in particular, Internet usage, as well as the usage of launch.com, could grow more slowly than we expect or even decline.

**WE NEED TO ADAPT TO RAPID TECHNOLOGICAL CHANGE TO REMAIN COMPETITIVE**

Our market is characterized by rapidly changing technologies, frequent new product and service introductions and evolving industry standards. The recent growth of digital media, and in particular, the Internet, and intense competition in our industry exacerbate these market characteristics. To achieve our goals, we need to effectively integrate the various software programs and tools required to enhance and improve our product offerings and manage our business. Our future success will depend on our ability to adapt to rapidly changing technologies by continually improving the performance features and reliability of our products and services. We may experience difficulties that could delay or prevent the successful development, introduction or marketing of new products and services. In addition, new enhancements must meet the requirements of our current and prospective users and must achieve significant market acceptance. We could also incur substantial costs if we need to modify our service or infrastructures or adapt our technology to respond to these changes.

**GOVERNMENTAL REGULATION OF THE WEB MAY RESTRICT OUR BUSINESS**

There are currently few laws or regulations that specifically regulate communications or commerce on the Web. Laws and regulations may be adopted in the future, however, that address issues such as user privacy, pricing, and the characteristics and quality of products and services. For example, the Telecommunications Act sought to prohibit transmitting certain types of information and content over the Web. Several telecommunications companies have petitioned the Federal Communications Commission to regulate Internet service providers and online services providers in a manner similar to long distance telephone carriers and to impose access fees on these companies. Any imposition of access fees could increase the cost of transmitting data over the Internet. Moreover, it may take years to determine the extent to which existing laws relating to issues such as property ownership, libel and personal privacy are applicable to the Web. Any new laws or regulations relating to the Web could adversely affect our business.

**OUR SYSTEMS MAY FAIL OR LIMIT USER TRAFFIC**
Substantially all of our launch.com communications hardware and computer hardware operations are located at Exodus Communications, Inc.'s facilities in Irvine, California. Exodus provides Web site hosting services. Fire, floods, earthquakes, power loss, telecommunications failures, break-ins and similar events could damage these systems and cause interruptions in our services. Computer viruses, electronic break-ins or other similar disruptive problems could result in reductions or termination of our services by our customers or otherwise adversely affect our Web site. Our business could be adversely affected if our systems were affected by any of these occurrences. Our insurance policies may not adequately compensate us for any losses that may occur due to any failures or interruptions in our systems. We do not presently have any backup systems or a formal disaster recovery plan. Our Web site must be able to accommodate a high volume of traffic and deliver frequently updated information. Our Web site has experienced in the past and may in the future experience slower response times or decreased traffic for a variety of reasons. In addition, our users depend on Internet service providers, online service providers and other Web site operators for access to our Web site. Many of them have experienced significant outages in the past, and could experience outages, delays and other difficulties due to system failures unrelated to our systems. Moreover, the Internet network infrastructure may not be able to support continued growth. Any of these problems could adversely affect our business.

WE MAY BE SUBJECT TO LIABILITY FOR MISUSE OF USERS' PRIVATE INFORMATION
Our privacy policy provides that we will not willfully disclose any individually identifiable information about any user to a third party without the user's consent unless required by law. This policy is displayed to users of our personalized services when they initially register and is easily accessible on launch.com. Despite this policy, however, if third persons were able to penetrate our network security or otherwise misappropriate our users' personal information or credit card information, we could be subject to liability. We also rely on a third-party provider for our e-commerce services. If we experience service problems with our e-commerce transactions, we could also be subject to liability. This liability could include claims for unauthorized purchases with credit card information, impersonation or other similar fraud claims. It could also include claims for other misuses of personal information, such as for unauthorized marketing purposes. These claims could result in litigation. In addition, the Federal Trade Commission, the European Union and certain state and local authorities have been investigating certain Internet companies regarding their use of personal information. We could incur additional expenses if new regulations regarding the use of personal information are introduced or if these authorities choose to investigate our privacy practices. Like most Web sites, we typically place certain information commonly referred to as cookies on a user's hard drive without the user's knowledge or consent. We use cookies for a variety of reasons, including enabling us to limit the frequency with which a user is shown a particular advertisement. Certain currently available Internet browsers allow users to modify their browser settings to remove cookies at anytime or to prevent cookies from being stored on their hard drives. In addition, some Internet commentators, privacy advocates and governmental bodies have suggested limiting or eliminating the use of cookies. Any reduction or limitation in the use of cookies could limit the effectiveness of this technology.

WEB SECURITY CONCERNS COULD HINDER E-COMMERCE
A significant barrier to e-commerce and communications over the Internet has been the need for secure transmission of confidential information. Internet usage may not increase at the rate we expect unless some of these concerns are adequately addressed and found acceptable by the market. Internet usage could also decline if any well-publicized compromise of security occurred. We may incur significant costs to protect against the threat of security breaches or to alleviate problems caused by such breaches. Any such protections may not be available at a reasonable price or at all. If a third person were able to misappropriate our users' personal information, users could sue us or bring claims against us.

WE DEPEND UPON INTELLECTUAL PROPERTY RIGHTS AND LICENSED MATERIAL
A significant portion of the music content available on Launch is licensed from publishers, record labels and artists. We frequently either do not have written contracts or have short-term contracts with copyright owners, and, accordingly, our access to copyrighted content depends upon the willingness of such parties to continue to make their content available. Further, the parties who license material to us may face increasing costs to develop or acquire that material as a result of evolving laws regarding intellectual property, and these licensors may pass any such additional costs to us. If the fees for music content increase substantially or if significant music content becomes unavailable, our ability to offer music content could be materially limited. We currently use certain content without first obtaining a license because we believe that a license is not required under existing law. However, this area of law remains uncertain and may not be resolved for a number of years. When this area of law is resolved, we may be required to obtain licenses for such content. Licenses may not be available on reasonable terms, if at all. Any limit on our content offering could adversely affect our business. Copyrighted material that Launch develops internally, as well as trademarks relating to the Launch brand and other proprietary rights, are important to our success and our competitive position. We seek to protect our copyrights, trademarks and other proprietary rights, but these actions may be inadequate. Launch has trademark applications pending in several jurisdictions, but we cannot guarantee that we will be able to register our trademarks in all jurisdictions in which we intend to do business. We generally enter into confidentiality or license agreements with our employees, consultants and corporate partners, and generally control access to and distribution of our proprietary information. We cannot assure you that the steps we have taken will prevent misappropriation of our proprietary rights, particularly in foreign countries where laws or law enforcement practices may not protect our proprietary rights as fully as in the United States. If third parties were to use or otherwise misappropriate our copyrighted materials, trademarks or other proprietary rights without our consent or approval, our competitive position could be harmed, or we could become involved in litigation to enforce our rights. In addition, we rely on a third party to provide services enabling our e-commerce transactions. We could become subject to infringement actions by third parties based upon our use of intellectual property provided by our third-party provider. There is no provision for indemnification of Launch by the third-party provider. It is also possible that we could become subject to infringement actions based upon the content licensed from third parties. Any such claims or disputes could subject us to costly litigation and the diversion of our financial resources and technical and management personnel. Further, if our efforts to enforce our intellectual property rights are unsuccessful or if claims by third parties against Launch are successful, we may be required to change our trademarks, alter the content
and pay financial damages. We cannot assure you that such changes of 19 23 trademarks, alteration of content or payment of financial damages will not adversely affect our business.

**IMPOSITION OF SALES AND OTHER TAXES ON E-COMMERCE TRANSACTIONS MAY HINDER E-COMMERCE**

Launch generally does not collect sales or other taxes in respect of goods sold to users on launch.com. However, one or more states may seek to impose sales tax collection obligations on out-of-state companies, such as Launch, which engage in or facilitate online commerce. A number of proposals have been made at the state and local level that would impose additional taxes on the sale of goods and services through the Internet. Such proposals, if adopted, could substantially impair the growth of electronic commerce and could adversely affect our opportunity to derive financial benefit from electronic commerce. Moreover, if any state or foreign country were to successfully assert that Launch should collect sales or other taxes on the exchange of merchandise on its system, our results of operations could be adversely affected. Legislation limiting the ability of states to impose taxes on Internet-based transactions has been proposed in the U.S. Congress. We cannot assure you that this legislation will ultimately become law or that the tax moratorium in the final version of this legislation will be ongoing. Failure to enact or renew this legislation, once enacted, could allow various states to impose taxes on Internet-based commerce, which could adversely affect our business.

**YEAR 2000 COMPLIANCE ISSUES COULD ADVERSELY AFFECT OUR BUSINESS**

Launch may discover Year 2000 compliance problems in its systems that will require substantial revision. The failure of Launch to fix or replace its systems on a timely basis could have a material adverse effect on Launch's business. In addition, governmental agencies, utility companies, Internet access companies, third-party service providers and others outside of Launch's control may not be Year 2000 compliant. Failure of third parties to be Year 2000 compliant could also prevent Launch from publishing its content, decrease the use of the Internet or prevent users from accessing launch.com, which could have a material adverse effect on Launch's business. The failure by Launch's advertisers to be Year 2000 compliant could cause them to defer or cancel advertisements scheduled to appear in the Launch media properties, which could adversely affect Launch's operating results.

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**RISK FACTORS for Transcrypt**

**RISKS RELATED TO THE E.F. JOHNSON ACQUISITION**

Transcrypt acquired E.F. Johnson, effective July 31, 1997, with the expectation that the acquisition will result in benefits to the consolidated company. However, the process of integrating and rationalizing management, administrative organizations, facilities, management information systems and other aspects of operations, while managing a larger and geographically expanded entity, presents a significant challenge to the management of the Company. There can be no assurance that the integration process will be successful or that the anticipated benefits of the acquisition will be fully realized. In addition, the integration of certain operations will require substantial dedication of the Company's management resources, which may distract attention
from the day-to-day business of the Company. The difficulties of integration may be increased by the necessity of coordinating geographically separated organizations, integrating personnel with disparate business backgrounds and combining different corporate cultures. Integrating the two companies has caused the Company to incur certain additional expenses, and there can be no assurance that there will not continue to be substantial costs associated with the integration process or that the integration process will not result in decreased sales or loss of management personnel of the combined companies. The inability of management to integrate the operations of the two companies successfully would have a material adverse effect on the Company. Additionally, E.F. Johnson has recently experienced significant financial difficulties prior to its acquisition by Transcrypt. E.F. Johnson incurred a net loss of $26.5 million in 1996 (including $13.5 million in nonrecurring charges) and a net loss of $6.2 million in the first six months of 1997. E.F. Johnson may continue to incur losses, which may deplete or impair the Company's cash reserves and negatively impact the Company's borrowing capacity. Furthermore, E.F. Johnson incurred significant past due accounts payable prior to its acquisition by Transcrypt, which has affected the availability and delivery of components for certain of E.F. Johnson's products. Although Transcrypt has reduced these payables in part, it is uncertain whether these vendors may continue to delay shipments. A number of vendors have also increased prices and terms, including requiring cash in advance. Finally, the Company may be susceptible to unknown contingent liabilities, financial claims or lawsuits from customers and vendors of E.F. Johnson, among others, any of which could have a material adverse effect on the Company. To compensate the Company in the event of breaches of certain representations and warranties, the prior owners of E.F. Johnson have delivered to the Company a $500,000 cash bond and personal guarantees for an additional $500,000. However, the Company is unable to predict whether these amounts would be adequate to cover any unknown liabilities of E.F. Johnson. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business -- the E.F. Johnson Acquisition."

COMPETITION
The information security and wireless communications equipment industries, and the LMR market segment in particular, are highly competitive. Competition in the sale of stand-alone and digital products, which the Company expects to account for an increasing percentage of its business, is more intense than for add-on and analog products. In addition, other wireless communication technologies, including cellular telephone, paging, specialized mobile radio ("SMR"), satellite communications and personal communication services ("PCS") currently compete and are expected to compete in the future with certain of the Company's stand-alone products. Many of the Company's competitors or potential competitors have significantly greater financial, managerial, technical and marketing resources than the Company. Accordingly, there can be no assurance that the Company will be able to continue to compete effectively in its markets, that competition will not intensify or that future competition will not have a material adverse effect on the Company. In addition, there can be no assurance that new competitors will not arise and begin to compete in the markets for the Company's products. Motorola and Ericsson hold a dominant position in the market for wireless communication products, especially in the LMR and cellular telephone market segments. In North America, Motorola and Ericsson are the leading providers of LMR equipment. While the Company believes that it is the third largest supplier in the North American LMR equipment market, its share of such market is relatively small in comparison to Motorola and Ericsson. In addition to providing equipment to
the industry, Motorola is one of the largest SMR operators in the United States. Motorola and Ericsson have financial, technical, marketing, sales, manufacturing, distribution and other resources substantially greater than those of the Company, and have entrenched market positions in certain segments of the North American LMR market. Certain of the Company's competitors, including Motorola and Ericsson, have established trade names, trademarks, patents and other intellectual property rights and substantial technological capabilities. The Company believes that the wireless communications equipment industry is undergoing a period of consolidation which may involve the acquisition or merger of some of the significant manufacturers of these types of products and a concentration of market share in a relatively few companies. There can be no assurance that consolidations in the industry would not result in the strengthening of the Company's existing competitors or the creation of new competitors, some of which may have significantly greater financial, managerial, technical and marketing resources than the Company. See "Business -- Competition."

RELIANCE ON MOTOROLA
Motorola is one of the Company's largest customers and a key supplier. On a Pro Forma combined basis, the Company's sales to Motorola amounted to $1.3 million and $1.6 million, respectively, during the first half of 1997 and in 1996, and the Company purchased an aggregate of $1.4 million and $4.6 million, respectively, in components from Motorola during these periods. In addition, the Company relies on Motorola to provide MicroTAC(TM) and StarTAC(TM) cellular telephones for resale by the Company as an upgraded, secure cellular telephone. The Company's dependence on Motorola, both as a customer and supplier, is expected to continue. The Company also is dependent on continuing access to certain proprietary Motorola intellectual property used in the products of both Transcrypt and E.F. Johnson. Although the Company believes that its relationship with Motorola is good, there can be no assurance that Motorola will continue to purchase products from or supply components and technology to the Company on the scale or at the prices that it now does. Internal decisions or allocations of resources within Motorola could lead to reduced purchases of the Company's products or to the modification or discontinuation of components used in the Company's products. In addition, the Company may increasingly be perceived by Motorola as a competitor, particularly in light of its acquisition of E.F. Johnson. This perception could impact Motorola's willingness to do business with the Company. Although the Company has certain contractual relationships with Motorola, both as a customer and a supplier, most of these agreements are subject to termination in certain circumstances and expire by their terms within one to ten years. Any reduction of the Company's contractual relations with Motorola or a decision by Motorola to reduce purchases of the Company's products or to reduce or eliminate the provision of components and technology to the Company could have a material adverse effect on the Company. See "Business -- Motorola Relationship."

TRANSITION FROM ADD-ON TO STAND-ALONE PRODUCTS
Prior to the third quarter of 1996, the Company sold almost exclusively add-on products, such as scrambling modules, for use with LMRs and cellular telephones manufactured by other companies. The Company's acquisition of E.F. Johnson has resulted in an increased concentration of the Company's sales of stand-alone products, as E.F. Johnson manufactures exclusively stand-alone products. In general, add-on products carry higher gross margins than stand-alone products. To the extent that sales of stand-alone products increase in the future
relative to add-on product sales, the Company's gross margins are likely to decline compared to historical levels. In addition, in connection with its entry into the stand-alone market, the Company is offering to certain of its customers extended credit terms on those products. These terms present increased risks of, among other things, delayed or reduced collection of accounts receivable.

**TRANSITION FROM ANALOG TO DIGITAL PRODUCTS**
The Company believes that the LMR and cellular telephone markets will in the future migrate from analog to digital equipment, due primarily to bandwidth capacity constraints and the perception that digital transmissions are more secure than analog transmissions. As a result, the Company is seeking to upgrade many of the LMR products of E.F. Johnson to be compatible with digital LMR communications standards, including APCO 25. However, there can be no assurance that the Company will be able to effect this transition on a timely basis or that E.F. Johnson's digital products will compete successfully in the LMR marketplace. The failure of E.F. Johnson's products to compete successfully in the marketplace would have a material adverse effect on the Company. In addition, a significant delay in the marketplace acceptance of digital LMR communications standards could result in decreased sales of the Company's APCO 25 products. Furthermore, the transition from analog to digital communications could result in a decrease in demand for the Company's add-on security modules, as customers may perceive digital communications to be more secure than communications using analog devices.

**MANAGEMENT OF GROWTH**
The Company recently consummated the acquisition of E.F. Johnson, and may in the future continue to expand the scope of its operations and the products which it offers through additional acquisitions of complementary businesses, products or technologies. The Company's growth has resulted, and will continue to result, in an expansion of the Company's facilities and work force. This growth can be expected to place a significant strain on the Company's financial, managerial and other resources. To manage growth effectively, the Company will need to continue to improve and upgrade its operational, financial and management information systems, and to attract, train, motivate, manage and retain key executives and employees. In addition, if the Company were to identify one or more additional acquisition candidates in the future, there is no assurance that the Company would be able to integrate the acquired business, products or technologies into the Company's existing business and operations, that the integration would not cause an excessive diversion of management time and resources or that the acquisition would not require that the Company issue additional equity securities to help finance such transaction. See "Business -- The Company's Strategy."

**RAPIDLY EVOLVING MARKETS**
The information security and wireless communications products markets in which the Company competes are rapidly evolving and can be expected to further evolve in the future as a result of changing technology, industry standards and customer requirements. The Company's ability to compete effectively will depend upon its ability to anticipate and react to these changes in a timely manner. The development of new technologies by existing or future competitors may place the Company at a competitive disadvantage by rendering some or all of the Company's existing or new products obsolete. The Company has invested heavily in the introduction of LMR products that comply with the APCO 25 standard. The Company believes that the APCO
25 standard will be accepted in the public safety and government markets, however, some manufacturers have adopted and actively support other digital LMR transmission standards for the public safety marketplace. The widespread acceptance of one or more other standards in the public safety market would have a material adverse effect on the Company. See "Business -- Competition" and "Business -- Industry Overview."

RISKS ASSOCIATED WITH INTERNATIONAL SALES
International sales constituted approximately 39.3% and 31.5% of the Company's revenues on a Pro Forma combined basis in the six months ended June 30, 1997 and the year ended December 31, 1996, respectively. International sales are subject to a number of risks not found in domestic sales, including unexpected changes in regulatory requirements, tariffs and other trade barriers, political and economic instability in foreign markets, difficulties in establishing foreign distribution channels, longer payment cycles, uncertainty in the collection of accounts receivable, increased costs associated with maintaining international marketing efforts and difficulties in protecting intellectual property. In particular, the Company has begun to offer financing for the purchase of its products by certain international customers, which presents increased risks of, among other things, delayed or reduced collection of accounts receivable. Because most of the Company's foreign sales are denominated in U.S. dollars, fluctuations in the value of international currencies relative to the U.S. dollar may also affect the price, competitiveness and profitability of the Company's products sold in international markets. Furthermore, the uncertainty of monetary exchange values has caused, and may in the future cause, some foreign customers to delay new orders or delay payment for existing orders. Some of the Company's products, particularly in the information security area, are subject to export controls under U.S. law, which in most cases requires the approval of the National Security Agency and the Department of Commerce in order to ship internationally. There can be no assurance that such approvals will be available to the Company or its products in the future in a timely manner or at all or that the federal government will not revise its export policies or the list of products and countries for which export approval is required. The Company's inability to obtain required export approvals would adversely affect the Company's international sales, which would have a material adverse effect on the Company. In addition, foreign companies not subject to United States export restrictions may have a competitive advantage in the international information security market. Recently, President Clinton issued an Executive Order removing most encryption products from the "munitions" list and transferring jurisdiction over the export of such products from the Department of State to the Department of Commerce. The Executive Order allows the export of products featuring digital encryption technology that previously could not be exported, which may increase competition for international sales of the Company's analog scrambling products. In response to industry opposition to the President's Executive Order and implementing interim regulations, Members of Congress have introduced legislation which would aggressively expand the ability of U.S. companies to export encryption products. The Company cannot predict the impact of the Executive Order on the international market for its products. See "Business -- Government Regulation and Export Controls."

RELIANCE ON PUBLIC SECTOR MARKETS
Public safety agencies and other governmental entities comprise a significant portion of the Company's current and anticipated customer base. Because many governmental customers purchase through dealers, the Company cannot determine the percentage of its products that are
ultimately sold to governmental agencies. However, the Company believes that domestic and international governments are the end users of most of its products. As the transition in the Company's product line from add-on to stand-alone products progresses and as competition for such sales intensifies, the Company expects that it will increasingly be subject to competitive bidding requirements for sales to governmental customers, which can be expected to result in lower prices and longer sales cycles with resulting lower margins. These bidding procedures often include the posting of bonds. Any inability by the Company to obtain requisite bonds would prevent the Company from bidding on LMR systems contracts, which could have a material adverse effect on the Company. See "Business -- Sales and Marketing."

**DEPENDENCE ON KEY PERSONNEL**
The Company's success depends to a significant extent upon a number of key employees. The loss of the services of one or more of these key employees or the Company's inability to attract and retain other qualified employees could have a material adverse effect on the Company. With the exception of policies covering John T. Connor and Jeffery L. Fuller, the Company's Chairman and Chief Executive Officer, respectively, the Company does not maintain any key-person life insurance policies. The Company believes that its future success will depend in part on its ability to attract, motivate and retain highly skilled engineering, technical, managerial and marketing personnel. Competition for such personnel is intense and the Company competes in the market for such personnel against numerous companies, including larger, more established companies with significantly greater financial resources than the Company. There can be no assurance that the Company will be successful in attracting, motivating or retaining such personnel. See "Management."

**DEPENDENCE ON SUPPLIERS**
Most of the Company's current and proposed products require essential electronic components supplied by outside vendors. Certain components may be available from only one supplier and may occasionally be in short supply. For example, in late 1993 and early 1994, there was a shortage of certain Motorola surface-mount microprocessors, which resulted in a substantial increase in the cost of these components. The Company's inability to obtain key components could result in lost sales, the need to maintain excessive inventory levels and higher component costs, which could increase the cost of producing the Company's products and have a material adverse effect on the Company.

**FLUCTUATIONS IN QUARTERLY OPERATING RESULTS**
The Company has experienced and expects to continue to experience quarterly variations in revenues and net income as a result of many factors, including the timing of customer orders, the timing of the introduction of new products, mix of product sales and general economic conditions. Due to the buying patterns of governmental customers, revenues for the first quarter tend to be lower than revenues for the fourth quarter of the preceding year. Purchases of equipment by governmental customers are also frequently characterized by long sales cycles and timing fluctuations. In addition, the Company's expansion has resulted and will result in the future in significant fixed costs that will be recognized before any related revenues are realized, which could adversely affect the Company's quarterly operating results. While the Company maintains a moderate backlog for wireless communications products as a result of its acquisition of E.F. Johnson, the Company has not historically maintained a significant backlog for its
products and does not maintain a significant backlog for information security products. As a result, the Company is dependent upon the receipt of current customer orders for its information security products. Any deferral of customer purchasing decisions or delays in shipments can produce significant variations in the Company's quarterly results. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Quarterly Results of Operations" and "Business -- Backlog."

REGULATORY ENVIRONMENT
Wireless communications and data encryption products are subject to regulation by United States and foreign laws and international treaties. The regulatory environment is inherently uncertain and changes in the regulatory structure and laws and regulations can adversely affect the Company and its customers. Such changes could make existing or planned products of the Company obsolete or unsaleable in one or more markets, which could have a material adverse effect on the Company. See "-- Risks Associated with International Sales" and "Business -- Government Regulation and Export Controls."

ENVIRONMENTAL REGULATION
The Company is subject to various federal, state and local environmental statutes, ordinances and regulations relating to the use, storage, handling and disposal of certain toxic, volatile or otherwise hazardous substances and wastes used or generated in the manufacturing and assembly of the Company's products. Under such laws, the Company may become liable for the costs of removal or remediation of certain hazardous substances or wastes that have been or are being released on or in its facilities, or have been or are being disposed of offsite as wastes. Such laws may impose liability without regard to whether the Company knew of, or caused, the release of such hazardous substances or wastes. Although the Company has not to date suffered any material adverse effects in complying with applicable environmental laws, there can be no assurance that any environmental assessments undertaken by the Company with respect to its facilities have revealed all potential environmental liabilities, that any prior owner or operator of its properties did not create any material environmental condition not known to the Company, or that an environmental condition that could result in penalties, expenses, or liability to the Company does not otherwise exist in any one or more of its facilities. In addition, the amount of hazardous substances or wastes produced or generated by the Company may increase in the future depending on changes in the Company's operations. Any failure by the Company to comply with present or future environmental laws could subject the Company to the imposition of substantial fines, suspension of production, alteration of manufacturing processes or cessation of operations, any of which could have a material adverse effect on the Company. Compliance with such environmental laws could require the Company to acquire expensive remediation equipment or to incur substantial expenses. Furthermore, the presence of hazardous substances on a property 10 or at certain offsite locations could result in the Company incurring substantial liabilities as a result of a claim by a private third party for personal injury or a claim by an adjacent property owner for property damage. The imposition of any of the foregoing liabilities could materially adversely affect the Company.

LIMITED PROTECTION OF INTELLECTUAL PROPERTY RIGHTS; RISK OF THIRD-PARTY CLAIMS OF INFRINGEMENT
The Company currently holds a number of domestic and international patents and has on file applications for additional patents. Although the Company assesses the advisability of patenting any technological development, it has historically relied, in the information security area, primarily on copyright and trade secret law and employee and third party non-disclosure agreements to protect its proprietary intellectual property and rights. The protection afforded by such means may not be as complete as patent protection. In addition, the laws of some countries do not protect trade secrets. There are limitations on the availability of patent protection as a means to protect the Company's products. Even when patent protection can be obtained, there are often limitations on the enforceability of such patent rights. The inability of the Company to preserve all of its proprietary intellectual property and rights could have a material adverse effect on the Company. In addition, the information security and wireless communications industries in which the Company sells its products are characterized by substantial litigation and assertions of claims regarding patent and other intellectual property rights. At various times over the last several years, most recently in December 1996, Ericsson has notified the APCO 25 Project Steering Committee and certain current and proposed manufacturers of APCO 25 products (including the Company and Motorola) that it believes that products complying with the APCO 25 standard will necessarily infringe various Ericsson patents and that APCO 25 manufacturers must obtain licenses under such patents. The Company does not believe that the APCO 25 standard or any of the Company's products infringe the relevant Ericsson patents or any valid intellectual property right of others. However, there can be no assurance that Ericsson will not continue to assert these or other claims of patent infringement or other wrongful conduct against the APCO 25 standard, manufacturers of APCO 25 products, including the Company, or present or future products of the Company, or that Ericsson would license its technology to the Company or other manufacturers. Further, there can be no assurance that any litigation which may be instituted in the future by Ericsson or any other party alleging infringement of intellectual property rights or other wrongful conduct will not have an adverse effect upon the Company, including the imposition of monetary damages, expenses of litigation, diversion of management and other resources and injunction against continued manufacture, use or sale of certain processes or products. See "Business -- Intellectual Property."

CONCENTRATION OF OWNERSHIP
Upon completion of this offering, the Company's principal stockholders (5% or greater ownership) will own beneficially, in the aggregate, approximately 26% of the Company's outstanding Common Stock (assuming no exercise of the Underwriters' over-allotment option). These stockholders will have the ability to influence the outcome of all corporate actions requiring stockholder approval and the election of the Company's directors. See "Principal and Selling Stockholders." POSSIBLE VOLATILITY OF SHARE PRICE Market prices for securities of technology companies tend to be highly volatile. The trading price of the Common Stock may fluctuate widely in response to quarterly variations in operating results, announcements of technical innovations or new products by the Company or companies in the same or closely related fields, changes in financial estimates by securities analysts, the operating and stock price performance of other companies that investors may deem comparable to the Company, general stock market and economic conditions, and other events or factors which may be unrelated to the operating performance of the Company. 11 13 DILUTION Purchasers of shares of Common Stock in this offering will suffer immediate and substantial dilution in the net
tangible book value per share of Common Stock of approximately $13.11 per share, assuming an offering price per share of $17.625. See "Dilution."

UNALLOCATED NET PROCEEDS
The Company has not yet identified specific uses for a substantial portion of the estimated net proceeds from this offering. Pending the identification of such uses, the Company expects that it will invest the net proceeds in short-term investment grade, interest-bearing instruments and use a portion of the net proceeds for working capital, repayment of certain long-term debt and general corporate purposes. The Company will have discretion in the use and investment of such proceeds. See "Use of Proceeds."

SHARES ELIGIBLE FOR FUTURE SALE
Upon completion of this offering, the Company will have outstanding 12,210,543 shares of Common Stock, of which the 2,000,000 shares offered hereby by the Company and the 2,000,000 shares offered hereby by the Selling Stockholders will, subject to certain exceptions, be freely tradable without restriction or registration under the Securities Act of 1933, as amended (the "Securities Act"). Of the remaining shares outstanding, 4,327,273 shares of Common Stock are "restricted" securities under the Securities Act, which the Company believes are subject to volume limitations on resale until at least June 30, 1998. All of the Company's directors, officers and optionees have agreed not to sell any Common Stock for a period of 180 days after this offering without the consent of Furman Selz LLC. An aggregate of 1,200,000 shares of Common Stock have been reserved for issuance under the Company's 1996 Stock Incentive Plan. As of the date of this Prospectus, an aggregate of 706,533 shares of Common Stock were issuable upon the exercise of vested stock options granted by the Company and an aggregate of 369,000 shares were subject to issuance upon the exercise of granted but unvested stock options. The Company has filed a registration statement on Form S-8 under the Securities Act covering the 1,200,000 shares of Common Stock reserved for issuance under the Company's 1996 Stock Incentive Plan. Future sales of a substantial number of shares of Common Stock, or the perception that such sales could occur, could have a material adverse effect on the prevailing market price for the Company's Common Stock. See "Shares Eligible for Future Sale" and "Management -- 1996 Stock Incentive Plan."

RISK FACTORS
You should carefully consider the following factors and other information in this prospectus before deciding to invest in shares of our common stock. We have included a discussion of each material risk that we have identified as of the date of this prospectus. If any of the following risks actually occur, our business, financial condition or operating results could suffer. As a result, our common stock's trading price could decline and you could lose all or part of the money you paid to buy our common stock.
Risk Factors Affecting Peet's Coffee & Tea

We may not be successful in the implementation of our business strategy or our business strategy may not be successful, either of which will impede our growth and operating results.

Our business strategy emphasizes the expansion of our non-retail distribution channels (including specialty grocery and gourmet food stores, online and mail order, and office and restaurant accounts). This business strategy represents a shift from our historic business strategy, which largely emphasized the opening and operation of retail stores. We do not know whether we will be able to successfully implement our business strategy or whether our business strategy will be successful. Our ability to implement this business strategy is dependent on our ability to:

. Market our products on a national or international scale and over the internet;
. Increase our brand recognition on a national and international scale;
. Enter into distribution and other strategic arrangements with third party retailers;
. Identify and lease strategic locations suitable for new stores; and
. Manage growth in administrative overhead and distribution costs likely to result from the planned expansion of our retail and non-retail distribution channels.

Our revenues may be adversely affected if we fail to implement our business strategy or if we divert resources to a business strategy that ultimately proves unsuccessful.

If we fail to continue to develop and maintain our brand, our business could suffer.

We believe that maintaining and developing our brand is critical to our success and that the importance of brand recognition may increase as a result of competitors offering products similar to our products. We intend to increase our marketing expenditures to create and maintain brand loyalty as well as increase awareness of our brand. If our brand-building strategy is unsuccessful, these expenses may never be recovered, and we may be unable to increase our future revenue or implement our business strategy.

Our success in promoting and enhancing the Peet's brand will also depend on
our ability to provide customers with high quality products and customer service. Although we take measures to ensure that we sell only fresh roasted whole bean coffee and our retail employees properly prepare our coffee beverages, we have no control over our whole bean coffee products once purchased by customers. Accordingly, customers may prepare coffee from our whole bean coffee incorrectly, store our whole bean coffee for longer periods of time or resell our whole bean coffee without our consent, in each case, potentially affecting the quality of the coffee prepared from our products. If customers do not perceive our products and service to be of high quality, then the value of our brand may be diminished and, consequently, our ability to implement our business strategy may be adversely affected.

Because our business is centered on a single product, specialty coffee, if the demand for specialty coffee decreases, our business could suffer.

Sales of specialty coffee constituted 83.5% of our 1999 operating revenue and 84.2% of our revenue for the first nine months of 2000. Demand for our products is affected by:

. Consumer tastes and preferences;

. National, regional and local economic conditions;

. Demographic trends;

. Consumer traffic trends at our individual retail stores; and

. The type, number and location of competing stores.

Because we are highly dependent on a single product--specialty coffee, a decrease in consumer demand for coffee would harm our business more than if we had more diversified product offerings, as do many of our competitors. If customer demand for specialty coffee decreases, our sales would decrease accordingly.

Our roasting methods are not proprietary, and therefore, competitors may be able to duplicate them, which would harm our competitive position.

We consider our roasting methods essential to the flavor and richness of our roasted whole bean coffee, and therefore, essential to our brand. Because we do not hold any patents for our roasting methods, it may be difficult for us to prevent competitors from copying our roasting methods. In addition, we trained the roasters at Quartersmaine Coffee Roasters in Washington D.C., a small coffee
roasting business previously owned by us. If our competitors copy our roasting methods or if Quartermaine Coffee Roasters begins to actively compete with us on a national scale, the value of our brand may be diminished, and we may lose customers to our competitors. In addition, competitors may be able to develop roasting methods that are more advanced than our roasting methods, which may also harm our competitive position.

We depend on the expertise of key personnel. If these individuals leave, our operations could suffer.

Our management is dependent to a large degree on the services of Christopher P. Mottern, Chief Executive Officer and President, and James A. Reynolds, Vice President, Coffee and Tea. In addition, we depend to a large degree on the expertise of our coffee roasters and purchasers. Our ability to source and purchase a sufficient supply of high quality coffee beans and roast coffee beans consistent with our quality standards could suffer if we lost the services of any of these individuals.

Because we are dependent on retail stores in California, a worsening of economic conditions, a decrease in consumer spending or a change in the competitive conditions in this market may substantially decrease our revenue and may adversely impact our ability to implement our business strategy.

Our California retail stores generated 81.0% of our 1999 revenue and 76.0% of our revenue for the first nine months of 2000. We expect that our California retail operations will continue to generate a substantial portion of our revenue. In addition, our retail stores provide us with a means for increasing brand awareness, building customer loyalty and creating a premium specialty coffee brand. As a result, an economic downturn or other decrease in consumer spending in California may not only lead to a substantial decrease in revenue, but may also adversely impact our ability to market our brand, build customer loyalty, or otherwise implement our business strategy.

If we are unable to continue leasing our retail locations or obtain leases for new stores, our existing operations and our ability to expand may be adversely affected.

All of our 58 retail locations are on leased premises. If we are unable to renew these leases, our revenue and profits could suffer. In addition, we intend to lease other premises in connection with the planned expansion of our retail locations. Because we compete with other retailers and restaurants for store sites and some landlords may grant exclusive locations to
our competitors, we may not be able to obtain new leases or renew existing leases on acceptable terms. This could adversely impact our revenue growth and brand-building strategy.

We may not be able to hire or retain additional management and other personnel as our business grows and our recruiting and training costs may increase as a result of turn-over, both of which may increase our costs and reduce our profits and may adversely impact our ability to implement our business strategy.

The success of our business depends upon our ability to attract and retain highly motivated, well-qualified management and other personnel, including technical personnel and retail employees. We face significant competition in the recruitment of qualified employees. Our ability to execute our business strategy may suffer if:

. We are unable to recruit or retain a sufficient number of qualified employees;

. The costs of employee compensation or benefits increase substantially; or

. The costs of outsourcing certain tasks to third party providers increase substantially.

In addition, we expend significant resources in training our retail managers and employees. During the past few years, retail employee turnover has increased to approximately 75% per year. If turnover continues to increase, we may incur additional recruiting and training costs.

Because we rely heavily on common carriers to ship our coffee on a daily basis, any disruption in their services or increase in shipping costs could adversely affect our business.

We rely on a number of common carriers to deliver coffee to our customers and retail stores. We consider roasted coffee a perishable product and we rely on these common carriers to deliver fresh roasted coffee on a daily basis. We have no control over these common carriers and the services provided by them may be interrupted as a result of labor shortages, contract disputes and other factors. If we experience an interruption in these services, we may be unable to ship our coffee in a timely manner. A delay in shipping could:

. Have an adverse impact on the quality of the coffee shipped, and thereby adversely affect our brand and reputation;

. Result in the disposal of an amount of coffee that could not be shipped
in a timely manner; and

. Require us to contract with alternative, and possibly more expensive, common carriers.

Any significant increase in shipping costs could lower our profit margins or force us to raise prices, which could cause our revenue and profits to suffer.

We have a significant amount of indebtedness, which imposes significant restrictions on our operations and may limit our ability to raise additional capital or implement our business plan.

As of October 1, 2000, we had a significant amount of indebtedness, including separate $7.0 million and $8.0 million term loans and a revolving credit facility from General Electric Capital Corporation. Our total indebtedness was approximately $20.7 million. Although we will repay a portion of our indebtedness with the proceeds from this offering, we will continue to have a significant amount of debt, which may:

. Require that a substantial portion of our cash flow from operations be dedicated to service our debt;

. Limit our ability to obtain additional capital; and

. Generally limit our flexibility to implement our business strategy or react to changes in our industry or economic conditions.

Our loan agreement with General Electric Capital Corporation contains financial and negative covenants that place restrictions on our operations, including:

. Limiting the number of stores we can open per fiscal year to three (with some exceptions);

. Limiting our ability to make capital expenditures, incur additional indebtedness and lease obligations, make investments, pay dividends or make other distributions to our shareholders and acquire or retire our common stock;

. Requiring us to maintain financial ratios on a monthly basis; and

. Prohibiting us from forming or acquiring subsidiaries, merging with or
into other companies or selling all or substantially all of our assets.

These restrictions could adversely impact our ability to implement our business plan or raise additional capital, if needed.

Because we are headquartered, and most of our stores are located, near major earthquake faults, we face potential disruption from earthquakes.

Our only coffee roasting and distribution facility and most of our stores are located near major earthquake faults. The impact of a major earthquake on our facilities, infrastructure and overall operations is difficult to predict and an earthquake could seriously disrupt our entire business process. We are uninsured for business disruptions caused by an earthquake.

Risk Factors Relating to Specialty Coffee Industry

Increases in the cost of high quality Arabica coffee beans could reduce our gross margin and profit.

Coffee is a trade commodity and, in general, its price can fluctuate depending on:

. Weather patterns in coffee-producing countries;

. Economic and political conditions affecting coffee-producing countries;

. Foreign currency fluctuations; and

. The ability of coffee-producing countries to agree to export quotas.

If the cost of our green coffee beans increases due to any of these factors, we may not be able to pass along those costs to our customers because of the competitive nature of the specialty coffee industry. If we are unable to pass along increased coffee costs, our margins will decrease and our profitability will suffer accordingly.

Decreased availability of high quality Arabica coffee beans could result in a decrease in revenue and jeopardize our ability to expand our business.

Arabica coffee beans of the quality we purchase are not readily available on the commodity markets. We depend on our relationships with coffee brokers, exporters and growers for the supply of our primary raw material, high quality Arabica coffee beans. If our relationships with coffee brokers, exporters and growers deteriorate, we may be unable to procure a sufficient quantity of high quality coffee beans. In such case, we may not be able to fulfill the demand of our existing customers, supply new retail stores or expand other channels of
distribution. A raw material shortage could result in decreased revenues or could impair our ability to expand our business.

Political instability in coffee growing regions could result in a decrease in the availability of high quality Arabica coffee beans needed for the continued operation and growth of our business and an increase in our operating costs.

We roast Arabica coffee beans from many different regions to produce 33 types and blends of coffee. The political situation in many of those regions, including Africa, Indonesia and Central and South America, can be unstable, and such instability could affect our ability to purchase coffee from those regions. If Arabica coffee beans from a region become unavailable or prohibitively expensive, we may be forced to discontinue particular coffee types and blends or substitute coffee beans from other regions in our blends. Frequent substitutions and changes in our coffee product lines may lead to cost increases, customer alienation and fluctuations in our gross margins. Furthermore, a worldwide supply shortage of the high quality Arabica coffee beans we purchase could have a material adverse effect on our business.

Competition in the specialty coffee market is intense and could affect our profitability.

The whole bean specialty coffee category is highly fragmented. Our primary competitors in whole bean specialty coffee sales include Gevalia, Green Mountain, Illy Cafe, Millstone, Seattle's Best and Starbucks. There are an estimated 500 smaller and regional brands that also compete in this category. In addition, we compete indirectly against all other coffee brands on the market. A number of nationwide coffee marketers, such as Kraft Foods, Procter & Gamble and Nestle, are distributing premium coffee brands in supermarkets. These premium coffee brands may serve as substitutes for our whole bean coffee. If we do not succeed in effectively differentiating ourselves from our competitors or our competitors adopt our strategies, then our competitive position will be weakened.

Despite competing in a fragmented product category whole bean specialty coffee brands are being established across multiple distribution channels. Several competitors are aggressive in obtaining distribution in specialty grocery and gourmet food stores, through online and mail order and in office and restaurant locations. We have only recently begun to penetrate these channels. Other competitors may have an advantage over us based on their earlier entry into these distribution channels.
Competition in the specialty coffee market is becoming increasingly intense as relatively low barriers to entry encourage new competitors to enter the specialty coffee market. Many of these new market entrants may have substantially greater financial, marketing and operating resources than us. In addition, many of our existing competitors have substantially greater financial, marketing and operating resources than us.

Adverse public or medical opinion about caffeine may harm our business.

Our specialty coffee contains significant amounts of caffeine and other active compounds, the health effects of some of which are not fully understood. A number of research studies conclude or suggest that excessive consumption of caffeine may lead to increased heart rate, nausea and vomiting, restlessness and anxiety, depression, headaches, tremors and sleeplessness. An unfavorable report on the health effects of caffeine or other compounds present in coffee could significantly reduce the demand for coffee, which could harm our business and reduce our sales and profits.