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*Carlton Fields practices law in California through Carlton Fields Jorden Burt, LLP*

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**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_ company (“Company”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an individual resident of the State of \_\_\_\_\_\_\_\_\_\_\_ (“Employee”). Employee and Company are each called a “Party” and together are called “Parties.”

RECITALS

WHEREAS, Company is interested in hiring Employee; and

WHEREAS, Employee desires to become employed by Company on such terms and conditions;

NOW, THEREFORE, in consideration of Employee’s employment by Company and the mutual covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

# Employment. Company hereby employs Employee. Employee shall serve as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the Company, and in any other position agreed upon by the Parties, subject to the terms and conditions set forth in this Agreement. Employee shall devote his or her entire business time, attention, skill and efforts, with undivided loyalty, to the performance of his or her duties under this Agreement and shall use his or her best efforts to promote the business of Company. Employee shall not engage in activities that materially interfere with the performance of his or her duties hereunder or that are in conflict with, competitive with, or adverse to, the interests of Company.

# Term. Employee’s employment by Company shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and shall be at-will. The period of time between commencement of Employee’s at-will employment and its end shall be referred to in this Agreement as the “Employment Period.” Employee acknowledges that the Parties are subject to ongoing post-employment rights and obligations described in Sections 5 and 6.

# Compensation and Benefits.

## Base Salary. Employee shall be paid a salary of \_\_\_\_\_\_\_\_\_\_ per year (“Base Salary”), commencing on the date of this Agreement. Base Salary shall be paid in accordance with Company’s regular payroll practices generally applicable to management and employees.

## **[IF APPLICABLE]** Medical Reimbursements. The Parties have agreed to $\_\_\_\_ per month that will be added to Employee’s paycheck as a taxable expense reimbursement.

## **[IF APPLICABLE]** Vacation and Holidays. Employee shall be entitled to such vacation time, consistent with Company policy, as shall be agreed upon by Company and Employee during the Employment Period. Additionally, Employee shall be entitled to such holiday benefits as are generally provided by Company in accordance with its regular practices.

## **[IF APPLICABLE]** Expense Reimbursement. Company shall reimburse Employee for all reasonable out-of-pocket expenses incurred by Employee in the performance of duties under this Agreement. Employee shall provide Company with receipts or other records substantiating such expenses in accordance with the policies of Company.

## Deductions and Withholdings. All amounts payable hereunder shall be subject to deduction and withholding as required by law.

# Termination. Employee’s employment may be terminated by Company at any time and for any lawful reason. In the event of termination of employment, Employee shall receive all accrued compensation due Employee. Employee shall not receive any employment compensation from Company, other than as otherwise described in this Agreement or required by law, following his or her Termination Date.

# Protective Covenants.

## Employee’s Acknowledgements. Employee acknowledges that:

### Company has developed relationships with its customers, these relationships are very valuable to Company, and Company has a legitimate need to protect these customer relationships, reputation, and good will;

### the continued success of Company depends upon the use and protection of confidential and proprietary information, and Employee will have access to some or all of this information, and that such information, described more fully below as Protected Information, constitutes the valuable, special, and unique property of Company;

### Company engages in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (collectively, the “Business”), and the Business will also include, in the future, all other activities, products, and/or services of the type conducted, authorized, offered, or provided by Company during the term of Employee’s employment and within two years of the termination of Employee;

### it is reasonable and appropriate for the covenant not to compete in Section 5(b) below to apply throughout the georgraphic area in which the Company does business during Employee’s term of employment and, after termination of said employment, throughout the geographic area in which the Employee is working at the time of termination (the “Restricted Territory”);

### the restrictions contained in Sections 5(b), 5(c), 5(d) and 5(e) below (the “Protective Covenants”) are reasonable and appropriate for Employee;

### the duration of the Protective Covenants stated in Sections 5(b), 5(c), and 5(d) is reasonable and appropriate;

### Employee is willing to be bound by the Protective Covenants;

### there are trade secrets and confidential information involving the operations of the Company which derive economic value, actual or potential, from not being generally known to, and not readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use (including, without limitation, (A) Company’s technology and product development information, applications, engineering information, design work, computer programming, computer hardware and software, and systems analysis; (B) lists of actual or potential customers, price lists and other pricing information (including estimates and bids); (C) marketing methods and techniques, current and anticipated customer requirements and needs, customer, vendor and supplier information (including email addresses), market studies and business plans; (D) historical financial statements, financial projections and budgets, historical and projected revenues and expenses, and any financial information relating to the Company’s owners or affiliates; (E) any information that is marked “confidential” or in some comparable manner, and any other information or material that is a trade secret, under applicable law, pertaining to the Company’s business operations; and, finally, (F) any information that is otherwise confidential or proprietary information) (all of such trade secrets and confidential or proprietary information is collectively referred to in this Agreement as “Protected Information”); and

### each of the acknowledgements above is true and correct.

## **[IF APPLICABLE – NOTE THAT CERTAIN EMPLOYEES MAY NOT BE SUBJECT TO NONCOMPETITION AGREEMENTS UNDER CERTAIN STATE LAWS]** Non-Compete. For two (2) years following the Termination Date (the “Restricted Period”), Employee will not, directly or indirectly, within the Restricted Territory, either (i) have any ownership interest (whether as proprietor, partner, member, stockholder or otherwise) in, or act as an agent, employee, officer, director, contractor, or adviser or consultant to, any business or individual who is engaged, or which Employee reasonably knows is undertaking to become engaged, in the Business, or (ii) otherwise personally engage in the Business. In addition, while working for the Company, Employee acknowledges that he or she has a duty of loyalty to Company, as well as other fiduciary duties, and as part of these obligations, agrees that he or she will not engage in any form of competition against Company. The provisions of this Section 5 shall not prohibit Employee’s investment in or ownership of less than five percent (5%) of any class of stock of a company having securities listed on a national stock exchange or quoted on the NASDAQ national market inter-dealer quotation system.

## Covenants Relating to Restricted Customers. During the Restricted Period, Employee will not, directly or indirectly by assisting others, do any of the following: (i) solicit or attempt to solicit any Restricted Customer, as defined below, to seek Business products or services from anyone other than Company, or (ii) solicit or attempt to solicit any Restricted Customer to stop seeking Business products or services from Company. “Restricted Customer” means any customer to whom Business products or services were provided by Company prior to the commencement of the Restricted Period, or which Company actively solicited in connection with providing Business products or services prior to the commencement of the Restricted Period.

## Covenants Relating to Company Employees. Employee covenants that Employee will not, directly or indirectly, during the Restricted Period, solicit, request, or induce (i) any employee of Company to seek employment with any Person other than Company , or (ii) any employee of Company to terminate employment and accept employment with another Person.

## Trade Secrets: Confidentiality Commitments. Employee covenants that:

### Employee will not use the Protected Information to the detriment of Company (or any customer of Company); and

### Employee will hold the Protected Information in strict confidence, and without limiting the foregoing, will never disclose the Protected Information, or any portion of the Protected Information, to anyone at any time or times, except as authorized by Company, and will return any hard copy or computerized documents containing Protected Information to Company in the event of termination of Employee’s relationship with Company.

It is also agreed that the agreements in Section 5(e)(ii) will not apply to the extent that Employee can demonstrate either: (A) that the same information is currently publicly available or becomes publicly available and that such public availability did not result from the disclosure of such information by Employee either (1) by improper means of Employee or from acts or omissions of another person that Employee knows, or should have reason to know, misappropriated, or improperly disclosed such information, or utilized improper means to acquire it or acquired it under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (2) by accident or mistake; or (B) that such Protected Information is legally required by law to be disclosed, in which event such Protected Information may be disclosed only in accordance with the next sentence. Protected Information described in clause (B) immediately above may be disclosed only to the extent such disclosure is legally required, and after giving Company notice of such legally required disclosure so that Company may seek a protective order or other similar or appropriate relief. Employee shall also undertake in good faith to have such disclosed information treated confidentially consistent with the terms of this Agreement. Without limiting the preceding covenants in this Section 5(e), any trade secret within the Protected Information will also be entitled to all of the protections and benefits under any applicable law. If a court of competent jurisdiction determines that any information which Company deems to be a trade secret is not a trade secret, then such information will be considered confidential or proprietary information for purposes of this Section 5(e).

## Tolling of Restricted Periods. If Employee is in violation of any of the Protective Covenants in Section 5(b), 5(c) or 5(d), then the time period in such violated Section will be automatically extended for the period of such breach.

## Independent Agreements. The covenants set forth in Section 5 (and in each portion thereof) are and will be construed as separate and independent agreements. If any provision of Section 5 is held invalid, void or unenforceable, it will in no way render invalid, void or unenforceable any other provision of Section 5 not declared invalid, void or unenforceable, and this Agreement will in that case be construed and enforced as if the void, invalid or unenforceable provision was omitted from this Agreement. Accordingly, the existence of any claim or cause of action by Employee against Company shall not constitute a defense to the enforcement by Company of Employee’s covenants, obligations or undertakings in this Section 5.

## Modification. It is understood and agreed by the Parties that if any part of Sections 5(b), 5(c) or 5(d) is deemed by a court of competent jurisdiction to be too broad to permit enforcement to its full extent, then such restriction will be enforced to the maximum extent permitted by applicable law; and Employee and Company consent and agree that such scope may be judicially modified accordingly in any proceeding brought to enforce such provisions of this Agreement.

## Remedies. Employee agrees that any violation by Employee of any portion of Section 5 will result in irreparable damage and harm to Company and that Company will be without an adequate remedy at law in the event of any such violation. Employee agrees, therefore, that if Employee violates any portion of Section 5, then Employee may seek injunctive relief and such other remedies as may be appropriate under applicable law. Company will not, by seeking or obtaining any particular relief, be deemed to have precluded themselves from obtaining any other relief to which it may be entitled.

## Notice Obligations during Restricted Period. Employee shall be required to provide Company with written notice prior to engaging in any activity which violates, or which may violate, any covenant contained in Section 5. Without limiting the generality of the foregoing, prior to accepting employment with any other employer during the Restricted Period, Employee shall notify Company in writing of the name, address, and telephone number of any prospective employer and the scope of Employee’s proposed employment. Company shall be entitled to provide copies of this Agreement to prospective or actual employers of Employee during the Restricted Period.

## Preexisting Restrictive Covenants. Employee warrants that he or she has provided to Company any and all restrictive covenants to which Employee is a party by virtue of any prior employment, regardless of whether said employment was as an employee, independent contractor, owner, agent, or otherwise, at or prior to the time that his or her employment with Company commenced.

## No Limitation of Other Restrictive Covenants. For avoidance of doubt, nothing contained in this Section 5 shall in any way be construed as limiting, restricting, or shortening the length, geographic scope or extent of any other restrictive covenants (including any covenants not to compete) agreed to by Employee in favor of Company.

# Assignment of Intellectual Property. Any Intellectual Property designed, devised, developed, perfected or made by Employee shall be promptly disclosed to Company by Employee and become the property of Company, and Employee hereby assigns, transfers, and conveys such Intellectual Property to Company. Employee further agrees to make and provide to Company, at Company expense, any documents, instruments, or other materials necessary or convenient to vest, secure, evidence, or maintain Company’s ownership of the Intellectual Property, and patents, copyrights, trademarks, and similar foreign and domestic property rights with respect to the Intellectual Property. Any Intellectual Property conceived, designed, devised, developed, perfected, or made by the Employee within one (1) year after termination of Employee’s employment with the Company shall be conclusively presumed to have been conceived during Employee’s employment with the Company, and the burden of proving otherwise shall rest with Employee.

## Survival of Covenants. The covenants by Employee in Sections 5 and 6 are essential elements of this Agreement. If Employee’s employment with Company is terminated or otherwise ends, this Agreement will continue in full force and effect as is necessary or appropriate for Company to enforce any of the covenants in Sections 5 and 6.

## Authority; No Conflict. This Agreement constitutes the legal, valid, and binding obligation of the Employee, enforceable against the Employee in accordance with its terms. Employee has the unrestricted right, authority, and capacity to execute and deliver this Agreement and to perform his or her obligations under this Agreement. Employee’s execution, delivery, and performance of this Agreement will not result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, any contract applicable to Employee. Employee is not required to give any notice or to obtain any consent from any person in connection with Employee’s execution and delivery of this Agreement.

## Notices. All notices, consents, waivers and other communications under this Agreement must be sent in writing and will be deemed to have been duly given when (a) delivered by hand, (b) sent by facsimile (with written evidence of receipt), provided that a copy is mailed by registered mail, return receipt requested, (c) three business days after being sent by certified mail, return receipt requested, or (d) when received by the addressee, if sent by a nationally recognized delivery service, in each case to the respective addresses last given by each party to the other.

## Successors and Assigns. This Agreement shall be binding and inure to the benefit of the Parties and their respective successors and assigns; provided that Employee shall be prohibited from assigning any of Employee’s rights, title, or interest in this Agreement. Employee specifically agrees to assignment of all rights provided Company by Sections 5 and 6 of this Agreement and acknowledges that those rights may be enforced by a successor in interest to Company or any affiliate, parent, or subsidiary corporations. The Agreement accrues to the benefit of the Company, its agents, successors, assigns, and parent, and subsidiary corporations.

## Amendment; Waiver. No change or modification of this Agreement shall be valid or binding unless in writing and signed by both Parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom the waiver is sought to be enforced. A valid waiver of any provision of this Agreement shall be limited to the instance specified in such writing and, unless otherwise expressly stated, shall not be effective as a continuing waiver or repeal of such provision.

## Governing Law; Consent to Jurisdiction. The validity, performance, construction and effect of this Agreement shall be governed by the substantive laws of the State of [\_\_\_\_\_\_\_\_], without regard to the provisions for choice of law thereunder. Both Parties agree that the state courts in any county of the State of [\_\_\_\_\_\_\_\_], or in a case involving diversity of citizenship or a federal question, the federal courts located in any such county, shall have exclusive jurisdiction of any action or proceeding under this Agreement and that service of any summons and complaint or other process may be made by registered or certified mail directed to any Party as provided by Section 9 above, each Party hereby waiving personal service thereof. Each Party further waives any claims or defenses regarding convenience, appropriateness, or jurisdiction of such forum.

# Attorney’s Fees. In the event of a dispute between or among the Parties with respect to this Agreement, the prevailing party shall be entitled to recover such Party’s reasonable attorney’s fees and costs, whether incurred during trial, on appeal, or in bankruptcy proceedings.

# Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS IN THIS SECTION 14.

# Severability. In the event any provision or portion of this Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, for any reason, under present or future law, such provision shall be severable and the remainder thereof shall not be invalidated or rendered unenforceable or otherwise adversely affected.

# Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings between the Parties with respect to the subject matter hereof.

# Negotiated Agreement. Employee acknowledges that he or she was either represented by experienced counsel in connection with the negotiation of this Agreement or declined the opportunity for such representation, and the Parties agree that this Agreement shall be construed as drafted by both of them, as Parties of equivalent bargaining power, and not for or against either of them as the drafter.

# Headings. The headings of sections herein are included solely for convenience of reference and shall not control the meaning or interpretation or any of the provisions of this Agreement. All Section references herein are to Sections of this Agreement unless otherwise specified.

# Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Employee has executed, and the Company has caused this Agreement to be executed by its duly authorized officer, as of the date first above written.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Company): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Employee):**

By: By:

Printed Name: Date:

Title:

Date: