

PTRA

WARNING: Professional advice should be obtained before using this specimen contract. The Association is not engaged in rendering legal advice, and advises you to consult with your attorney before entering into any agreements because of differences in state laws.

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made as of the _____ day of _____, 20__, by and between _____, a _____ corporation with its principal place of business located at _____ ("Employer") and _____, an individual residing at _____ ("Employee").

WHEREAS, Employer is an agent engaged in sale of highly specialized and technical products, which business requires a highly trained and motivated sales force; and

WHEREAS, Employee desires to be a sales representative for Employer; and

WHEREAS, Employee agrees to serve Employer upon the terms and conditions agreed to and set forth herein

NOW, THEREFORE, in consideration of the above recitals which are incorporated herein and made part of this Agreement and the mutual promises and covenants herein contained, it is agreed by and between the parties hereto as follows:

1. Association and Term. Employer agrees to employ Employee, and Employee agrees to become an employee of Employer upon the terms and conditions hereinafter set forth. Subject to the provisions of termination provided hereinafter, the term of this Agreement shall begin as of _____, 20__, and terminate

on _____, 20__, and shall thereafter be renewed for successive one (1) year terms, unless employment is terminated as otherwise provided. Employer may, from time to time and at Employer's sole discretion, conduct periodic reviews of Employee's performance.

2. Duties of Employee. Employee shall be engaged by Employer as a sales representative in a specific territory as detailed in Exhibit "A" attached hereto and incorporated herein and Employee shall have such duties of that position as specified from time to time by the Employer in its sole discretion. Employer shall have the right, in its sole discretion, from time to time, to change Employee's territory. Employee covenants that he or she shall use his or her best efforts to promote the sale of those products which Employer may be authorized, from time to time, to sell in the territory.

Employee shall perform his or her duties faithfully, intelligently, to the best of his or her ability and in the best interests of Employer for the term of this Agreement, and shall abide by Employer's reasonable policies as they are communicated to Employee from time to time.

During the term of his or her employment under this Agreement, Employee shall devote his or her entire working time, attention, energies and skill to the benefit and business of the Employer, and shall not during the term of this Agreement be employed by any other person, firm, corporation, or otherwise in any business. Employee, may, however, make passive investments, as long as Employee does not invest in companies that compete with the business of Employer.

3. Duties of Employer. Employer shall assist Employee in his or her work by advice, instruction, and cooperation. Employer shall have the power to oversee and supervise Employee with respect to the means and manner in which Employee

performs his or her functions. Employer shall furnish to Employee from time to time material pertinent to Employee's job function, including but not limited to, pricing information, delivery information, sale and promotional material, samples and technical information, as Employer receives such information and as it may relate to the efforts of Employee.

4. Compensation. Employee shall be compensated on a commission basis. Employee shall receive commissions equal to that percent of the commissions received by Employer from sales made by Employee as specified in Exhibit "B" attached hereto and incorporated herein, less the amount of payments made by the Employer for Employee's social security taxes, unemployment compensation taxes and worker's compensation premiums. Employee's commissions shall be adjusted to reflect these payments. Employee shall receive such commissions on or about the tenth (10th) day of the month following the month when Employer has been paid for sales made by Employee.

ALTERNATE PROVISION

4. Compensation. Employee shall be compensated as specified in Exhibit "B" attached hereto and incorporated herein. [**Note:** If Employee is to receive a salary as all or part of his or her compensation, is to receive expense reimbursement or benefits, is to receive a draw against commissions, etc., this paragraph and/or Exhibit "B" should be used and care taken to spell out exactly what the Employee will receive.]

5. Termination. Within the first ninety (90) days of Employee's employment by Employer, Employer may terminate this Agreement with or without cause immediately upon giving written notice to Employee. Thereafter, either party shall have the right to terminate this Agreement with or without cause upon giving thirty (30) days prior written notice to the other party. If Employee shall give written notice of termination, Employer shall have the right to immediately terminate the Employee's employment.

This Agreement may be immediately canceled at any time by the Employer, without notice, for cause, which shall include but not be limited to the happening of any of the following events: (1) The Employee's failure to promptly and adequately perform the duties assigned to him or her by Employer, such performance to be judged in the sole discretion of Employer; (2) the Employee's breach of any provision of this Agreement; (3) habitual absenteeism; (4) a pattern of conduct which tends to hold the Employer up to ridicule in the community; (5) conduct disloyal to the Employer; and/or (6) conviction of any crime involving moral turpitude.

6. Non-Competition. (a) During the term of the Employee's employment, whether pursuant to this Agreement, any renewal hereof or otherwise, except as contemplated herein, and for a period of six (6) months after the failure to renew or termination of his or her employment with the Employer, by Employer or Employee, regardless of whether the failure to renew or termination was for cause, any reason or no reason, the Employee shall not, directly or indirectly, within the territory covered by Employee; enter into, engage in, be employed by, or consult with any business in competition with the business of Employer as it is then conducted and/or was conducted for two (2) years preceding said termination. The restrictions of this Section 6 shall extend to any and all activities of the Employee, whether as an independent contractor, partner or joint venturer, or as an officer, director, stockholder, agent, employee or salesman for any person, firm, partnership, corporation or other entity, or otherwise.

(b) During his or her employment with the Employer, except as contemplated herein, and for a period of one (1) year following the termination of his or her employment with the Employer whether by Employee or Employer, regardless of whether the termination was for cause, any reason or no reason, the Employee agrees that he or she will refrain from and will not, directly or indirectly, as independent contractor, employee, consultant, agent, partner, joint venturer, or otherwise, (1) solicit

any of the employees of the Employer to terminate their employment or (2) accept employment with, contact, act as a manufacturer's representative or distributor for, or seek or accept remuneration from any individual, firm, corporation, manufacturer or otherwise that has been a customer of Employer for which Employer has acted as an agent or has represented at any time within the two (2) years prior to the end of Employee's employment.

(c) The period of time during which the Employee is prohibited from engaging in certain business practices pursuant to Sections 6(a) or (b) shall be extended by any length of time during which the Employee is in breach of such covenants.

(d) It is understood by and between the parties hereto that the foregoing restrictive covenants set forth in Sections 6(a) through (c) are essential elements of this Agreement, and that, but for the agreement of the Employee to comply with such covenants, the Employer would not have agreed to enter into this Agreement. Such covenants by the Employee shall be construed as agreements independent of any other provision in this Agreement. The existence of any claim or cause of action of the Employee against the Employer, whether predicated on this Agreement, or otherwise, shall not constitute a defense to the enforcement by the Employer of such covenants.

(e) It is agreed by the Employer and Employee that if any portion of the covenants set forth in this Section 6 are held to be invalid, unreasonable, arbitrary or against public policy, then such portion of such covenants shall be considered divisible as to time and/or geographic area. The Employer and Employee agree that, if any arbitrator or court of competent jurisdiction determines the specified time period or the specified geographic area applicable to this Section 6 to be invalid, unreasonable, arbitrary or against public policy, a lesser time period and/or geographic area which is determined to be reasonable, non-arbitrary and not against public policy may be enforced against the Employee. The Employer and the Employee agree that the

foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by the Employer and Employee's access to the Employer's proprietary and confidential information.

7. Confidential Information. During the term of the Agreement and thereafter, Employee shall not, without the prior written consent of Employer, divulge, disclose, give or sell to any person, firm or corporation whatsoever any information which Employee received directly or indirectly from Employer or which Employee acquires or develops in the course of, or incident to his or her employment by Employer including but not limited to, prices, discounts, terms and conditions of sale, customers, business affairs, products, product specifications, designs, plans, manufacturing processes, trade secrets, data and know-how, ideas or technical information. The Employee acknowledges that all such information as described previously in this Section 7, as it may exist from time to time, is a valuable, special and unique asset of the Employer's business and constitutes trade secrets of the Employer.

8. Disclosure. The Employee agrees that he or she will fully disclose and disclose only to the Employer all ideas, methods, plans, developments, improvements or patentable inventions, of any kind, known, made or discovered by him during the performance of his or her duties under this Agreement. The Employee also agrees that he or she will fully disclose and disclose only to the Employer all ideas, methods, plans, developments, improvements or patentable inventions which relate directly or indirectly to the business of the Employer and which are known, made or discovered by the Employee at any time during the term of his employment by the Employer. All disclosures are to be made promptly after conception or discovery of the idea, method, plan, development, improvement or invention. Nothing in this Section 8 shall be construed as requiring any communication to the Employer of the ideas, method, plan, development, improvement or invention if lawfully protected by any other lawful

prohibition against such communication.

9. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which Employer has its principal place of business.

10. Severability. If any term or provision of this Agreement or application thereof to any circumstance shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement and the application of such term of provision to circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. Binding Nature. The provisions of this Agreement shall inure to the benefit of and be binding upon the Employer and its respective successors, legal representatives, and assigns. This Agreement is a personal employment contract and the rights, obligations and interests of the Employee hereunder may not be sold, assigned, or otherwise transferred.

12. Entire Agreement. This Agreement contains the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements. Except as otherwise provided herein, this Agreement may be changed or modified only by an agreement in writing signed by the parties hereto.

13. Notice. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and hand-delivered or sent by certified or registered mail, first class, return receipt requested at the addresses first listed above. Either party may change its address for notice purposes by notifying the other party of such change of address, such notice to be in writing.

14. Confidentiality of Terms. The parties to this Agreement hereby agree that the

terms and conditions of this Agreement are and will remain confidential and shall not be disclosed to any person or entity who is not a party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

Employee:

Employer:

By:_____

EXHIBIT A

TERRITORY

EXHIBIT B
COMPENSATION