

Chapter 3

What Does It Look Like?

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Note: These documents are jurisdictionally specific and are not presented as models to be followed in legal practice.

Agency Agreement

EXCLUSIVE AGENCY AGREEMENT

This Exclusive Agency Agreement is made and entered into this [insert date] by and between [insert name] with its principal place of business located at [insert address] (the “Agent”) and [insert name] with its principal place of business located at [insert address] (the “Company”) (hereinafter referred to individually as a “Party” and collectively as “the Parties”).

WHEREAS, Company is in the business of developing, manufacturing and selling throughout the world [insert description of products];

WHEREAS, Agent is in the business of [insert description of business] and wishes to market and promote certain Company products in [insert list of countries];

WHEREAS, Company wishes to appoint Agent as its agent to market and promote such products in such countries on an exclusive basis;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions. In this Agreement, the following terms shall have the following respective meanings:

(a) “Agreement” means this Exclusive Agency Agreement and Exhibit A and Exhibit B hereto.

(b) “Confidential Information” means any and all information that is disclosed by one Party to the other Party and that relates to a Party’s business or the Parties’ business relationship hereunder, including, but not limited to, information concerning finances, products, services, customers and suppliers.

Any Confidential Information disclosed in tangible form shall be marked as “CONFIDENTIAL” or “PROPRIETARY” or by a similar legend by the disclosing Party prior to disclosure. Any Confidential Information disclosed orally or visually shall be identified as such prior to, concurrent with or following disclosure and summarized in writing by the disclosing Party to the receiving Party within thirty (30) calendar days of the disclosure.

Confidential Information shall not include information which (i) is in or comes into the public domain without breach of this Agreement by the receiving Party; (ii) was in the possession of the receiving Party prior to receipt from the disclosing Party and was not

acquired by the receiving Party from the disclosing Party under an obligation of confidentiality or non-use; (iii) is acquired by the receiving Party from a third party not under an obligation of confidentiality or non-use to the disclosing Party; or (iv) is independently developed by the receiving Party without use of any Confidential Information of the disclosing Party.

(c) “Effective Date” means the date first written above.

(d) “General Terms and Conditions of Sale” means the Company’s then-current general terms and conditions of sale, a current copy of which is attached under Exhibit A hereto.

(e) “Net Product Sales” means payments actually received by the Company on purchase orders for Products procured by the Agent from customers in the Territory during the Term and subsequently accepted by the Company, after deduction, where applicable, for: (i) discounts, including cash discounts or other rebates, (ii) freight, postage, transportation, insurance and duties on shipment of Products, (iii) special packing charges, and (iv) any tax, government charge or duty (including any tax such as value added or similar tax) levied on the sale, transportation or delivery of Products.

(f) “Products” means the Company products listed in Exhibit B attached hereto from time to time.

(g) “Term” means the period commencing on the Effective Date and terminating as set forth in Article 11 hereof.

(h) “Territory” means [insert list of countries covered by the agency].

(i) “Trademarks” means all trademarks, service marks, logos, brand names, trade names, domain names and/or slogans used by Company in connection with the Products from time to time (whether registered or unregistered).

2. Grant of Right

(a) Appointment. Subject to the terms and conditions of this Agreement, Company hereby appoints the Agent as its exclusive Agent to market and promote the Products, and to solicit purchase orders for the Products, in the Territory. Agent hereby accepts such appointment and agrees not to use a third party to perform its obligations pursuant to this Agreement without the prior written consent of Company. It is expressly agreed that the Agent has no authority to enter into agreements or make any commitments on the Company’s behalf.

(b) Restrictions on Agent’s Activities. Agent shall not: i) engage in any promotional activities relating to the Products directed primarily to customers outside the Territory, ii) solicit orders for Products from any prospective customer located outside the Territory, or iii) solicit orders for Products from any prospective customer located in the Territory with a view to their exportation.

(c) Restrictions on Company’s Activities. Subject to Article 2 (d) hereof, Company shall not, and shall procure an undertaking from its agents or other intermediaries for territories other than the Territory that they will not: i) engage in any promotional activities relating to

the Products directed primarily to customers in the Territory, (ii) solicit orders for Products from any prospective customer located in the Territory, or (iii) solicit orders for Products from any prospective customer located outside the Territory with a view to their exportation to the Territory.

(d) Reservation of Rights by Company. Company reserves the right to take the following actions at any time upon [insert number in words] ([insert number]) calendar days prior written notice to Agent without liability: (i) to add Products to or delete Products from Exhibit B hereto, (ii) to modify the design of or upgrade the Products or any part of the Products, and (iii) to sell the Products exclusively, on a direct or indirect basis, to certain types of customers or specific accounts in the Territory.

3. Trademarks

(a) Ownership. The Agent acknowledges Company's exclusive ownership of the Trademarks and acquires no right, title or interest in or to the Trademarks hereunder. Any and all goodwill associated with the Trademarks will inure exclusively to the benefit of Company. During the Term, the Agent shall not attempt to register any of the Trademarks or any trademarks, service marks, logos, brand names, trade names, domain names and/or slogans confusingly similar to the Trademarks. The Agent shall execute such documents and do all such acts and things as may be necessary in Company's reasonable opinion to establish Company's ownership of any rights in and to the Trademarks, at Company's expense.

(b) Grant of Rights. Company hereby grants to the Agent for the Term, and subject to the terms and conditions herein, a non-exclusive, non-transferable, revocable right to use the Trademarks in connection with the marketing and promotion of the Products in the Territory in accordance with the terms and conditions of this Agreement and any guidelines issued by Company from time to time. During the Term, Agent shall have the right to indicate to the public that it is an authorized Agent of the Products.

4. Agent's Obligations

In addition to such other duties and obligations as are set forth in this Agreement, the Agent shall:

(a) Diligently market and promote the Products, and solicit purchase orders for the Products, within the Territory;

(b) Maintain in the Territory an office and an adequately trained sales force knowledgeable of the Products;

(c) Develop promotional materials for the Products appropriate for use in the Territory, including modification of the Company's promotional materials, subject to the Company's advance approval of such materials;

(d) Participate in trade shows and exhibitions in the Territory where such participation will promote the Products;

(e) Assist the Company in providing support services to customers of the Products in the Territory;

(f) Fully and promptly answer all communications from the Company and its customers in the Territory;

(g) Render such assistance as the Company may reasonably request with respect to credit and collection matters;

(h) Prepare and maintain, and submit to the Company on a timely basis, all documentation and reports reasonably required from time to time to be prepared, maintained or submitted, including but not limited to, the following: (i) a database of information on current and prospective customers, which database shall at all times be the property of the Company, (ii) a quarterly report concerning current and prospective customers, actual or pending purchase orders, competitive products, trade conditions within the Territory and related matters, (iii) a quarterly marketing plan, and (iv) a written forecast of the number of Products expected to be ordered in the following [insert number in words] ([insert number]) month period, which forecast shall be submitted to the Company prior to the beginning of each calendar quarter.

All documentation and reports shall comply with any guidelines issued by the Company from time to time.

5. Company's Obligations.

In addition to such other duties and obligations as are set forth in this Agreement, the Company shall:

(a) Assist the Agent by providing an adequate supply of Product data sheets, price lists, catalogues and other promotional literature at no charge to the Agent;

(b) Provide to the Agent one demonstration unit of each Product, which demonstration units shall at all times be the property of the Company;

(c) Provide Product training and field sales support to the Agent's sales force at no charge to the Agent, with the frequency and content of the training to be determined by Company;

(d) Place advertisements in applicable publications and participate in trade shows and exhibitions where such participation will promote the Products; and

(e) Bear responsibility for collection of all customer payments.

6. Quotes and Purchase Orders

(a) The Agent may provide quotes for the Products at prices no less than the Company's then-current prices and on the basis of the Company's then-current terms of payment and General Terms and Conditions of Sale.

Any proposal at other prices or terms and conditions must be approved in advance by the Company.

The Company shall have the right, from time to time in its sole discretion and without notice, to amend prices, terms of payment and the General Terms and Conditions of Sale.

The Agent shall promptly forward to the Company copies of all proposals made by the Agent to current or prospective customers.

(b) All purchase orders for and offers to purchase Products received by the Agent shall promptly be forwarded to the Company and are subject to acceptance by the Company.

The Company reserves the right in its sole discretion to accept or reject any such order or offer, and to cancel or delay any order, in whole or in part, at any time after acceptance, without incurring any liability to the Agent for commissions, damages or otherwise.

The Company shall send the Agent a copy of all acceptances or rejections sent by it to customers with respect to purchase orders or offers procured by the Agent from customers.

(c) The Company shall invoice all customers directly, and all payments due from customers shall be made directly to the Company. In the event payment for Products is made by any customer to the Agent, the Agent shall immediately forward such payment to the Company.

7. Commissions and Expenses

(a) The Company shall pay to the Agent, as compensation for its services during the Term, a commission of [insert number in words] ([insert number]) % of the Net Product Sales.

Payment of commission shall be made by the Company to the Agent on or before the [insert number] day of the month following the calendar quarter of receipt by Company of payment for Products from its customer. At the time of payment of commission, the Company shall furnish the Agent with an itemized statement setting forth the computation of commissions.

(b) In the event of termination of this Agreement for any reason, the Company shall be obligated to pay commissions only with respect to purchase orders for Products procured by the Agent from customers in the Territory prior to termination of this Agreement and subsequently accepted by the Company.

Any adjustments which may be required pursuant to Article 7 (d) hereof shall be made notwithstanding any termination of this Agreement.

(c) Notwithstanding anything to the contrary set forth above, there shall be deducted from any commissions due the Agent an amount equal to: (i) commissions previously paid or credited to the Agent for sales of Products which are thereafter returned by the customer; and (ii) the applicable portion of commissions previously paid or credited to the Agent for sales of Products as to which any allowance or adjustment is credited to the customer for any reason.

(d) The Agent and the Company will agree on an acceptable quarterly expense level for the Agent. The Company will pay the agreed upon amount to the Agent in advance at the beginning of each calendar quarter following receipt of a proper invoice. Any additional expenditures or extraordinary expenses must be approved in advance by the Company in order to be reimbursed.

8. Non-Competition.

During the Term and for a period of one (1) year after voluntary termination of the Agreement by the Agent or termination by the Company pursuant to Article 11 (c) hereof, the Agent shall not, directly or indirectly, market, sell or promote the sale of, or otherwise commercially deal in or with, any products or services within the Territory that will then be in competition with the Products.

9. Confidentiality

(a) Obligations of Non-Disclosure and Non-Use. Unless otherwise agreed to in advance, in writing, by the disclosing Party or except as expressly permitted by this Agreement, the receiving Party will not, except as required by law or court order, use Confidential Information of the disclosing Party or disclose it to any third party for the Term and for a period of [insert number in words] ([insert number]) years thereafter.

The receiving Party may disclose Confidential Information of the disclosing Party only to those of its employees or contractors who need to know such information. In addition, prior to any disclosure of such Confidential Information to any such employee or contractor, such employee or contractor shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the terms and conditions of this Agreement. In any event, the receiving Party shall be responsible for any breach of the terms and conditions of this Agreement by any of its employees or contractors.

The receiving Party shall use the same degree of care to avoid disclosure of the disclosing Party's Confidential Information as the receiving Party employs with respect to its own Confidential Information of like importance, but not less than a reasonable degree of care.

(b) Return of Confidential Information. Upon the termination or expiration of this Agreement for any reason, or upon the disclosing Party's earlier request, the receiving Party will deliver to the disclosing Party all of the disclosing Party's property or Confidential Information in tangible form that the receiving Party may have in its possession or control. The receiving Party may retain one copy of the Confidential Information in its legal files.

10. Infringement of Intellectual Property Rights.

The Agent agrees that if it is notified or otherwise obtains knowledge of any actual or alleged infringement of the Trademarks or any other intellectual property rights of Company by a third party in the Territory, the Agent will promptly notify the Company. No legal proceedings shall be instituted by the Agent against any third party in respect of any such actual or alleged infringement without the prior written consent of Company. Agent shall cooperate fully with Company in any legal proceedings instituted by Company, at Company's expense.

11. Term and Termination

(a) Term. This Agreement shall commence on the Effective Date and shall, unless earlier terminated pursuant to Article 11 (b) or 11 (c) hereof, continue for a term of [insert number in words] ([insert number]) years following the Effective Date (the "Initial Term").

Upon expiration of the Initial Term and each Renewal Term thereafter, this Agreement will be automatically renewed for an additional one (1) year term (the "Renewal Term") unless terminated by either Party upon [insert number in words] ([insert number]) calendar days written notice to the other Party prior to the expiration of the Initial Term or any Renewal Term.

(b) Termination Without Cause. After the [insert number in words] year of this Agreement, this Agreement may be terminated by Company at any time for any reason by giving [insert number in words] ([insert number]) calendar days written notice of such termination to the Agent. Agent may terminate this Agreement at any time for any reason by

giving [insert number in words] ([insert number]) calendar days written notice of such termination to the Company.

(c) **Termination for Material Breach.** This Agreement may be terminated by either Party by giving [insert number in words] ([insert number]) calendar days written notice of such termination to the other Party in the event of a material breach by the other Party. "Material breach" shall include: (i) any violation of the terms of Articles 2 (b), 2 (c), 3, 8, 9 or 15, (ii) any other breach that a Party has failed to cure within [insert number in words] ([insert number]) calendar days after receipt of written notice by the other Party, (iii) Agent's failure to meet the agreed Net Products Sales target for a twelve month period, (iv) any activity or assistance by Agent of challenging the validity or ownership of the Trademarks or any other intellectual property rights of Company, (v) an act of gross negligence or willful misconduct of a Party, or (vi) the insolvency, liquidation or bankruptcy of a Party.

(d) **Effect of Termination.** Upon termination of this Agreement, the Agent shall cease all marketing and promotion of, and the solicitation of purchase orders for, the Products and promptly return to the Company all demonstration units, promotional literature and other similar materials or effects which the Company may have furnished to the Agent in connection with its activities hereunder. Upon any termination of this Agreement, the Company shall not be liable to the Agent for loss of future commissions, goodwill, investments, advertising or promotional costs or like expenses.

12. Force Majeure.

Either Party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, strikes, lock-outs or other serious labor disputes, riots, earthquakes, floods, explosions or other acts of nature.

The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the Parties' respective obligations hereunder shall resume.

In the event the interruption of the excused Party's obligations continues for a period in excess of [insert number in words] ([insert number]) calendar days, either Party shall have the right to terminate this Agreement upon [insert number in words] ([insert number]) calendar days' prior written notice to the other Party.

13. Limitation of Liability.

Except for violations of Article 3, 8 or 9, neither Party shall be liable to the other Party for any special, incidental, consequential, indirect or punitive damages (including loss of (anticipated) profits) arising in any way out of this Agreement, however caused and on any theory of liability.

14. Independent Contractors.

It is understood that both Parties hereto are independent contractors and engage in the operation of their own respective businesses.

Neither Party hereto is to be considered the agent of the other Party for any purpose whatsoever and neither Party has any authority to enter into any contract or assume any obligation for the other Party or to make any warranty or representation on behalf of the other Party.

Each Party shall be fully responsible for its own employees, servants and agents, and the employees, servants and agents of one Party shall not be deemed to be employees, servants and agents of the other Party for any purpose whatsoever.

15. Non-Publicity.

Each of Company and Agent agree not to disclose the existence or contents of this Agreement to any third party without the prior written consent of the other Party except: (i) to its advisors, attorneys or auditors who have a need to know such information, (ii) as required by law or court order, (iii) as required in connection with the reorganization of a Party, or its merger into any other corporation, or the sale by a Party of all or substantially all of its properties or assets, or (iv) as may be required in connection with the enforcement of this Agreement.

16. Assignment.

Neither Party may without written approval of the other assign this Agreement or transfer its interest or any part thereof under this Agreement to any third party except that a Party may assign its rights or obligations to a third party in connection with the merger, reorganization or acquisition of stock or assets affecting all or substantially all of the properties or assets of the assigning Party.

17. Injunctive Relief.

Each of Company and Agent acknowledge that a violation of Article 3, 8 or 9 would cause immediate and irreparable harm for which money damages would be inadequate. Therefore, the harmed Party will be entitled to injunctive relief for the other Party's breach of any of its obligations under the said Articles without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for such violation, but shall be in addition to all other remedies available at law or in equity.

18. Governing Law and Dispute Resolution.

This Agreement shall be governed by and construed in accordance with the laws of [insert name of country], without giving effect to any choice of law or conflict of law provisions. The Parties consent to the [insert "exclusive" or "non-exclusive"] jurisdiction and venue in the courts of [insert name of courts] in the city of [insert name of city].

19. General.

This Agreement constitutes the entire agreement of the Parties on the subject hereof and supersedes all prior understandings and instruments on such subject. In the event of any discrepancy between the provisions of the Exclusive Agency Agreement and the provisions of Exhibit A or Exhibit B, the terms and conditions of the Exclusive Agency Agreement shall prevail. This Agreement may not be modified other than by a written instrument executed by duly authorized representatives of the Parties.

20. Survival of Provisions.

The following provision of this Agreement shall survive the termination of this Agreement: Articles 7 (b), 8, 9, 11 (d), 15 and 20 and all other provisions of this Agreement that by their nature extend beyond the termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf of
[insert name of Company]

By:
Name:
Title:

Signed for and on behalf of
[insert name of Agent]

By:
Name:
Title:

Simple Power of Attorney

New Hampshire Power of Attorney, Application for Title

info.froebegroup.com/aspden/gabaldon/WDILL_Ch3-5/title5.pdf

Chapter 4

What Does It Look Like?

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Note: These documents are jurisdictionally specific and are not presented as models to be followed in legal practice.

Legal Notice of Termination of Authority

Sample 1: Idaho Department of Insurance Form

info.froebegroup.com/aspn/gabaldon/WDILL_Ch3-5/DisplayPDF.pdf

Sample 2: Illinois Physician Assistant Termination of Authority Form

info.froebegroup.com/aspn/gabaldon/WDILL_Ch3-5/f1885mpa.pdf

Chapter 5

What Does It Look Like?

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Form of Durable Power of Attorney

Sample 1: California

Durable Power of Attorney for Management of Property and Personal Affairs (Short Form)

Durable Power of Attorney for Management of Property and Personal Affairs (Short Form)

I, [principal's name], a resident of [name of county] County, California, appoint [attorney in fact's name] of [attorney in fact's address], whose telephone number is [attorney in fact's phone number], as my attorney in fact, referred to in this power of attorney as "my attorney in fact".

I intend to create a Durable Power of attorney (herein referred to as "this Power") pursuant to California Probate Code Section 4000 and following, specifically including the Uniform Durable Power of Attorney Act but specifically not including Probate Code Section 4600 and following relating to health care. This power is effective immediately upon its execution and shall not be affected by my subsequent disability or incapacity.

I give my attorney in fact the powers specified in this Power with the understanding that they will be used for my benefit and on my behalf and will be exercised only in a fiduciary capacity.

ARTICLE ONE — POWERS

Section 1.01. Real and Personal Property.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable for the management or maintenance of any real or personal property in which I own an interest when this Power is executed, or in which I later acquire an interest, including the power to acquire, sell, and convey ownership of property; control the manner in which property is managed, maintained, and used; change the form of title in which property is held, including the creation or change in survivorship interests in the property I own or in property in which I have an interest; satisfy and grant security interests and other encumbrances on property; obtain and make claims on insurance policies covering risks of loss or damage to property; accept or remove tenants; collect proceeds generated by property; ensure that any needed repairs are made to property; exercise rights of participation in real estate syndicates or other real estate ventures; make improvements to property; and perform any other acts described in

California Probate Code Sections 4451 and 4452, except those acts that conflict with or are limited by a more specific provision in this Power.

Section 1.02. Securities.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable with respect to any securities that I own when this Power becomes effective, or that are acquired thereafter, including the power to purchase and sell securities; exercise voting rights with respect to securities; collect dividends, interest, and any other proceeds generated by securities; transfer title to securities; and perform any other acts described in California Probate Code Section 4453, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this section, the term "securities" includes stocks, bonds, mutual funds, and all other types of securities and financial instruments, except commodity futures contracts and call and put options on stocks and stock indexes.

Section 1.03. Commodity Futures and Options.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable with respect to any commodity futures contracts and options that I own when this Power becomes effective, or that are acquired thereafter, including the power to purchase, sell, or exercise commodity futures contracts and options; establish, modify, and terminate option accounts with a broker; and perform any other acts described in California Probate Code Section 4454, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this section, the term "options" means call and put options on stocks and stock indexes traded on a regulated option exchange.

Section 1.04. Financial Institutions.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable in connection with any financial institution in which I have an account or an interest in an account when this Power is executed, or in which I later acquire an account or an interest in an account, including the power to continue, modify, or terminate existing accounts; open new accounts; draw, endorse, and deposit checks, drafts, and other negotiable instruments; prepare, receive, and deliver financial statements; establish, maintain, or close safe deposit boxes; borrow money; apply for and receive traveler's checks and letters of credit; extend payment periods with respect to commercial paper; and perform any other acts described in California Probate Code Section 4455, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this section, the term "financial institution" includes, but is not limited to, banks, trust companies, savings banks, commercial banks, building and loan associations, savings and loan companies or associations, credit unions, industrial loan companies, thrift companies, and brokerage firms.

Section 1.05. Business Operations.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable in connection with any business venture in which I have an interest when this Power is executed, or in which I later acquire an interest, including the power to execute and enforce my obligations and rights as a partner in any general or limited partnership to the extent permitted by law and any applicable

partnership agreement; the power to execute and enforce my obligations and rights as a member or manager of any LLC to the extent permitted by law and any applicable LLC operating agreement; enforce my rights as the holder of a bond or similar instrument issued by any business in which I have an interest; discharge my duties and enforce my rights in any sole proprietorship; expand, recapitalize, or reorganize any business to the extent my interest in that business allows; collect proceeds generated by any business in which I have an interest and to which I am entitled; sell or liquidate my interest in a business; and perform any other acts described in California Probate Code Section 4456, except those acts that conflict with or are limited by a more specific provision in this Power.

Section 1.06. Insurance and Annuities.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable with respect to any insurance or annuity contracts in which I have an interest when this Power is executed, or in which I later acquire an interest, including the power to acquire additional insurance coverage of any type or additional annuities; continue existing insurance or annuity contracts; agree to modifications in the terms of insurance or annuity contracts in which I have an interest; borrow against insurance or annuity contracts in which I have an interest, to the extent allowed under the contract terms; change beneficiaries under existing contracts and name beneficiaries under new contracts, [including or but not including] the power to designate [himself or herself or themselves] as the [beneficiary or beneficiaries]; receive dividends, proceeds, and other benefits generated by the contracts; transfer interests in insurance or annuity contracts to the extent permitted under the terms of those contracts; and perform any other acts described in California Probate Code Section 4457, except those acts that conflict with or are limited by a more specific provision in this Power.

Section 1.07. Retirement Plans.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable in order to maintain or participate in any retirement plan in which I have an interest when this Power is executed, or in which I later acquire an interest, including the power to select the manner in which benefits under the plan are to be paid; designate beneficiaries under the plan, [including or but not including] the power to designate [himself or herself or themselves] as the [beneficiary or beneficiaries]; make voluntary contributions to the plan; make rollovers from one plan into another; to the extent authorized by the plan, borrow from the plan and sell the assets of the plan; and perform any other acts described in California Probate Code Section 4462, except those acts that conflict with or are limited by a more specific provision in this Power.

Section 1.08. Estate, Trust, and Other Beneficiary Transactions.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable in order to act, to the extent an agent is permitted to do so by law and by any controlling instrument, with respect to any estate or trust in which I have an interest when this Power is executed, or in which I later acquire an interest, including the power to receive payments to which I am entitled from any estate or trust; participate in all proceedings concerning any estate or trust in which I have an interest; execute disclaimers of any interests I may have in any estate or trust; convey or release any contingent interests I may have in any estate or trust; make any election available to a surviving spouse under California Probate Code Section 13502 or 13503;

and perform any other acts described in California Probate Code Section 4458, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this section, the term "estate or trust" means all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which I am, may become, or claim to be entitled, as a beneficiary, to a share or payment. The powers described in this section do not include the power to create, modify, or revoke trusts.

Section 1.09. Power to Create, Modify, and Revoke Trusts.

I give my attorney in fact the power to take any action [he believes or she believes or they believe] necessary or desirable with respect to trusts that exist when this Power is executed or that are established thereafter (other than powers that I hold in a fiduciary capacity or solely by virtue of being a beneficiary of any trust), including the power to establish trusts for my benefit or the benefit of [my (wife or husband or partner),] my issue, and any other of my dependents; contribute or transfer assets to any trust in which I have an interest; and exercise any power I may have as an individual (not as a fiduciary), other than as a trust beneficiary, such as borrowing trust assets, amending or revoking a trust agreement, and voting shares of stock, but subject to the limitation that any trust I have created may be modified or revoked by my attorney in fact only if expressly permitted by the trust instrument and only as provided in the trust instrument. This section shall not be construed as limiting the authority of my attorney in fact to exercise any power, with respect to trusts, that I may hold in a fiduciary capacity or as a trust beneficiary, to the extent that such authority is specifically given elsewhere in this Power. [*Optional:* I give my attorney in fact the power to amend an administrative provision in a trust that I have created, but subject to the limitation that an administrative provision in a trust that I have created may be amended by my attorney in fact only if it is expressly permitted by the trust instrument. The powers described in this section do not include the power to revoke trusts, to amend any dispositive provision in a trust, to change trust beneficiaries or interest of trust beneficiaries, or to exercise, release, or let lapse any other power I may have, including any power of appointment and any power to withdraw assets, vote or direct the voting of shares of stock, manage or direct the investments subject to the trust, and borrow assets from the trust.]

Section 1.10. Claims and Litigation.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable with respect to any claim that I may have or that has been asserted against me and with respect to any legal proceeding in which I have an interest when this Power is executed, or in which I later acquire an interest, including the power to institute, prosecute, and defend legal proceedings and claims on my behalf; file actions to determine adverse claims, intervene in litigation, and act as amicus curiae in any proceedings affecting my interests; seek preliminary, provisional, or intermediate relief on my behalf; apply for the enforcement or satisfaction of judgments that have been rendered in my favor; participate fully in the development of claims and proceedings; [*optional:* submit any dispute in which I have an interest to arbitration;] submit and accept settlement offers and participate in settlement negotiations; handle all procedural aspects, such as service of process, filing of appeals, stipulations, verifications, waivers, and all other matters in any way affecting the process of any claim or litigation; fully participate in any voluntary or involuntary bankruptcy proceeding involving me or in which I am a claimant; satisfy judgments that have been rendered against me; and

perform any other acts described in California Probate Code Section 4459, except those acts that conflict with or are limited by a more specific provision in this Power. [*Optional: My attorney in fact need not submit to arbitration.*]

Section 1.11. Tax Matters.

For any tax year beginning with and including the year [insert year], and ending with and including the year [insert year], I give my attorney in fact the power to prepare and file any and all documents and take all actions that are necessary or that [he believes or she believes or they believe] to be desirable with respect to my local, state, or federal tax liability, including the power to participate in audits; exercise my rights to protest and appeal assessments; pay amounts due to the appropriate taxing authority; execute waivers, consents, closing agreements, and similar documents related to my tax liability; participate in all procedural matters connected with my tax liability; exercise any elections that may be available to me under applicable state or federal tax laws or regulations; and perform any other acts described in California Prob. Code Section 4463, except those acts that conflict with or are limited by a more specific provision in this Power.

Section 1.12. Personal and Family Maintenance.

I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable in order to effectively conduct my personal affairs and to discharge any and all obligations I may owe to myself and to family members and other third persons who are customarily or legally entitled to my support when this Power is executed, or that are undertaken thereafter, including the power to take steps to ensure that our customary standard of living is maintained; arrange for medical and dental care; continue existing charge accounts, open new charge accounts, and make payments thereon; provide for transportation; maintain correspondence; prepare, maintain, and preserve personal records and documents; maintain membership in any social, religious, or professional organization and make contributions thereto; and perform any other acts described in California Probate Code Section 4460, except those acts that conflict with or are limited by a more specific provision in this Power. [If I have granted my agent under my (durable power of attorney for health care or advance health care directive) the power to make certain decisions and exercise certain powers regarding my personal life and my medical care, my attorney in fact shall make any payments relating to those decisions or exercise of those powers as directed by my health care agent, and is hereby released from any and all liability for making any such payments.]

Section 1.13. Pets.

With respect to any animal that I own when this Power is executed or that is acquired thereafter, I give my attorney in fact the power to take any actions [he believes or she believes or they believe] necessary or desirable in order to effectively maintain the animal, including the power to house, or to arrange for the housing, support, and maintenance of the animal, and to pay reasonable boarding, kenneling, and veterinary fees, or if the support and maintenance of the animal becomes unreasonably expensive, to dispose of the animal in a humane fashion, preferably by finding another home for the animal.

Section 1.14. Funeral and Burial.

I give my attorney in fact the power to make payments during my lifetime for my funeral or other memorial service and for burial or cremation of my remains, including the purchase of a burial plot or other place for interment of my remains or ashes, as directed by my agent under my [durable power of attorney for health care or advance health care directive], for which payments my attorney in fact is hereby released from any and all liability.

Section 1.15. Gifts.

I give my attorney in fact the power to make gifts, grants, or other transfers without consideration, of cash or other property, either outright or in trust, including the power to forgive indebtedness and consent to gift splitting under Internal Revenue Code Section 2513 or successor sections. The powers granted under this section shall be exercised, if at all, in favor of [my (wife or husband or partner),] my issue, and any other of my dependents. Any gifts made pursuant to this section shall not be future interests within the meaning of Internal Revenue Code Section 2503, and the aggregate amount of any gifts made in any one calendar year to any one individual shall not exceed the amount that may be made free of federal gift tax to a person. The limitations in the preceding sentence shall not apply to any gifts that incur no federal gift tax, such as, for example, gifts that qualify for the unlimited federal gift tax marital deduction or charitable deduction.

Section 1.16. Gifts to Attorney in Fact Limited to Ascertainable Standard.

Notwithstanding any other provision in this Power, my attorney in fact may make gifts in amounts not to exceed the annual federal gift tax exclusion to [himself or herself or themselves], but only if [he is or she is or they are] in need of funds to meet the reasonable expenses of the following: (1) support in accordance with [his or her or their] accustomed manner of living; (2) medical, dental, hospital, and nursing services, and other costs relating to the health care of my attorney in fact; and (3) education of my attorney in fact.

Section 1.17. Government Benefits.

With respect to any government benefits either existing when this Power is executed or accruing thereafter, whether in this state or elsewhere, I give my attorney in fact the power to take all actions [he believes or she believes or they believe] necessary or desirable [*optional*: other than submit my claims to arbitration], including the power to execute and deliver vouchers related to government benefits; take possession of and store property as allowed under any government benefit program in which I have an interest; prepare and submit claims for government benefits to which I may be entitled; collect proceeds due to me under any government benefit plan; and perform any other acts described in California Probate Code Section 4461, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this section, the term "government benefits" means benefits from Social Security, Medicare, Medicaid, or other governmental programs, or from civil or military service.

Section 1.18. Nomination of Conservator.

If proceedings are initiated for the appointment of a conservator of my estate, I hereby nominate the following person[s], [in the order listed]: [nominee's name], of [street address], [city, state, and zip code], [and add alternate nominee's information]. I hereby waive the requirement of a bond if a person named above is appointed as conservator. I

request that, if a person named above person named above is appointed conservator of my estate, the court make an order granting to that person all or as many of those independent powers listed in California Probate Code Section 2591 as the court deems appropriate.

[ALTERNATE CLAUSE TO SECTION 1.18: *Use this clause If attorney in fact authorized to nominate conservators:*]

Section 1.18. Power to Nominate Conservator. If proceedings are initiated for the appointment of a conservator of my person, I authorize my attorney in fact to nominate whatever individual in [his or her or their] discretion [he believes or she believes or they believe] appropriate as conservator of my person, [including or but not including] [himself or herself or themselves]. I authorize my attorney in fact to waive the requirement of a bond for any person appointed, if [he believes or she believes or they believe] such a waiver is appropriate.

Section 1.19. All Other Matters.

Except for those actions that conflict with or are limited by another provision in this Power, I give my attorney in fact the power to act as my alter ego with respect to all matters and affairs that are not included in the other provisions in this Power, to the extent that a principal can act through an agent. This section does not authorize my attorney in fact to make health care decisions, as defined in California Probate Code Section 4612.

Section 1.20. Incidental Powers.

In connection with the exercise of any of the powers described in the preceding sections, I give my attorney in fact full authority, to the extent that a principal can act through an agent, to take all actions that [he believes or she believes or they believe] necessary, proper, or convenient, to the extent that I could take such actions myself, including the power to prepare, execute, and file all documents and maintain records; enter into contracts [*optional*: other than contracts that bind me to arbitration]; hire, discharge, and pay reasonable compensation to attorneys, accountants, expert witnesses, or other assistants; engage in litigation regarding a claim in favor of or against me; execute, acknowledge, seal, and deliver any instrument; and perform any other acts described in California Probate Code Section 4450, except those acts that conflict with or are limited by a more specific provision in this Power.

Section 1.21. Restrictions on Property Management Powers.

Notwithstanding any other provision in this Power, my attorney in fact shall not do any of the following: (1) exercise powers of the trustee under an irrevocable trust of which my attorney in fact is settlor and of which I am a trustee; (2) use my property to discharge the legal obligations of my attorney in fact, including but not limited to the support of the dependents of my attorney in fact, except for those dependents to whom I, along with my attorney in fact, owe a duty of support; and (3) exercise any incident of ownership over any insurance policy that I own and that insures the life of my attorney in fact.

Section 1.22. Power to Access Electronic Records.

I give my attorney in fact the power to take any actions necessary to access, manage, maintain and update any of my electronic records, including without limitation, electronic banking accounts, electronic investment accounts, debt management accounts, automatic bill payment directives, and social media accounts, as necessary or desirable in order to

effectively conduct my person and financial affairs, to discharge any and all obligations I may owe and to maintain my public reputation. This power shall include the power to access any of my passwords or other electronic profile data from applicable electronic record host entities.

ARTICLE TWO — AMPLIFYING PROVISIONS

Section 2.01. Determination of Incapacity.

For all purposes under this Power, I shall be deemed "incapacitated" if and so long as a court of competent jurisdiction has made a finding to that effect or a guardian or conservator of my person or estate duly appointed by a court of competent jurisdiction is serving, [*optional*: or upon certification by two physicians (licensed to practice under the laws of the state where I am domiciled at the time of the certification)] [*optional*:, or when a committee composed of: (1) one physician (licensed to practice under the laws of the state where I am domiciled at the time of the certification), (2) [insert name] or if he or she is unable or unwilling to act [insert name], and (3) any of my children who have attained age eighteen and are not otherwise serving on the committee, or if any one or more of them is unable or refuses to act, the other named individuals, acting unanimously, certified [by majority vote]] that I am unable properly to care for myself or for my person or property, which certification shall be made by each [physician or committee member] in a written declaration under penalty of perjury. A certified copy of the decree declaring incapacity or appointing a guardian or conservator, or the [physicians' or committee members'] certificate[s] shall be attached to the original of this document and recorded in the same county or counties as the original if the original is recorded.

Section 2.03. Reimbursement for Costs and Expenses.

My attorney in fact shall be entitled to reimbursement from my property for expenditures properly made in the execution of the powers conferred by me in this Power. My attorney in fact shall keep records of any such expenditures and reimbursement.

Section 2.04. No Compensation.

My attorney in fact shall not be entitled to compensation for the services rendered in the execution of any of the powers conferred by me in this Power.

Section 2.05. Limitation on Compensation.

The amount of compensation to which my attorney in fact shall be entitled pursuant to the preceding section shall not exceed \$ [e.g., 20] per [time period].

Section 2.07. Reliance by Third Parties.

To induce third parties to rely upon the provisions of this Power, I, for myself and on behalf of my heirs, successors, and assigns, hereby waive any privilege that may attach to information requested by my attorney in fact in the exercise of any of the powers described herein. Moreover, on behalf of my heirs, successors, and assigns, I hereby agree to hold harmless any third party who acts in reliance upon this Power for damages or liability incurred as a result of that reliance.

Section 2.08. Release of Medical Information.

My attorney in fact shall make any payments required for the provision and/or release of information or photocopies of any records to my agent under my [durable power of attorney for health care or advance health care directive] regarding my personal affairs or my physical or mental health, including medical, dental, and hospital records, as directed by my health care agent. My attorney in fact is hereby released from any and all liability for making any such payments.

Section 2.09. Ratification.

I ratify and confirm all that my attorney in fact does or causes to be done under the authority granted in this Power. All instruments of any sort entered into in any manner by my attorney in fact shall bind me, my estate, my heirs, successors, and assigns.

Section 2.10. Exculpation of My Attorney in Fact.

My attorney in fact shall not be liable to me or any of my successors in interest for any action taken or not taken in good faith, but shall be liable for any willful misconduct or gross negligence.

Section 2.11. Revocation and Amendment.

I revoke all prior General Powers of Attorney that I may have executed and I retain the right to revoke or amend this document and to substitute other attorneys in fact in place of my attorney in fact. Amendments to this document shall be made in writing by me personally (not by my attorney in fact) and they shall be attached to the original of this document and recorded in the same county or counties as the original if the original is recorded.

Section 2.12. Power to Petition Court.

I expressly eliminate, pursuant to California Probate Code Section 4503 the authority of [name(s) or description] to file a petition for the following [purpose or purposes]: [add description of purpose(s)].

ARTICLE THREE — GENERAL PROVISIONS

Section 3.01. Signature of Attorney in Fact.

My attorney in fact shall use the following form when signing on my behalf pursuant to this Power: "[principal's name] by [attorney in fact's name], [his or her] attorney in fact".

Section 3.02. Photostatic Copies.

Persons dealing with my attorney in fact may rely fully on a photostatic copy of this Power.

Section 3.03. Severability.

If any of the provisions of this Power are found to be invalid for any reason, such invalidity shall not affect any of the other provisions of this Power, and all invalid provisions shall be wholly disregarded.

Section 3.04. Governing Law.

All questions pertaining to validity, interpretation, and administration of this Power shall be determined in accordance with the laws of California.

Section 3.05. Explanation of Durable Power for Property Management.

I understand that this Power is an important legal document. Before executing this document, my lawyer explained to me the following: (1) this document provides my attorney in fact with broad powers to dispose, sell, convey, and encumber my real and personal property; (2) the powers granted in this Power will exist for an indefinite period of time unless I limit their duration by the terms of this Power or revoke this Power, and they will continue to exist notwithstanding my subsequent disability or incapacity; and (3) I have the right to revoke or terminate this Power at any time.

This Durable Power of Attorney is executed by me on [date], at [city/town], California.

_____ [signature]

[principal's name]

[Optional: Acceptance by Attorney in Fact]

_____ [signature]

[attorney in fact's name]

Dated: [date]

LAWYER'S CERTIFICATE

I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning [his or her] rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney.

[signature]

[attorney's name]

Law Firm: [firm name]

Address: [address]

Telephone Number: [number]

Dated: [date]

Sample 2: Texas

Power of Attorney

92.200 General, *Durable Power of Attorney*

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE:

THE *POWERS* GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE *DURABLE POWER OF ATTORNEY* ACT, SUBTITLE P, TITLE 2, TEXAS ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE *POWERS*, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS *POWER OF ATTORNEY* IF YOU LATER WISH TO DO SO.

I, _____ [*name and address of principal*], appoint _____ [*name and address of person appointed*] as my agent (*attorney-in-fact*) to act for me in any lawful way with respect to all of the following *powers* except for a *power* that I have crossed out below.

TO WITHHOLD A *POWER*, YOU MUST CROSS OUT EACH *POWER* WITHHELD.

Real property transactions;

Tangible personal property transactions;

Stock and bond transactions;

Commodity and option transactions;

Banking and other financial institution transactions;

Business operating transactions;

Insurance and annuity transactions;

Estate, trust, and other beneficiary transactions;

Claims and litigation;

Personal and family maintenance;

Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

Retirement plan transactions;

Tax matters.

IF NO *POWER* LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL *POWER OF ATTORNEY* AND MY AGENT (*ATTORNEY IN FACT*) SHALL HAVE THE *POWER* AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent (*attorney in fact*) the *power* to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE *POWERS* GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS *POWER OF ATTORNEY* IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This *power of attorney* is not affected by my subsequent disability or incapacity.

(B) This *power of attorney* becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS *POWER OF ATTORNEY* IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this *power of attorney*, I shall be considered disabled or incapacitated for purposes of this *power of attorney* if a physician certifies in writing at a date later than the date this *power of attorney* is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this *power of attorney*. A third party who accepts this *power of attorney* is fully protected from any action taken under this *power of attorney* that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the *durable power of attorney* is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this *power of attorney*.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following persons (each to act alone and successively, in the order named) as successor(s) to that agent:

1. _____ [*Name of first successor agent*].

2. _____ [*Name of second successor agent*].

Signed on: _____ [*date*].

_____ [*signature of principal*]

ACKNOWLEDGMENT

STATE OF TEXAS COUNTY OF _____

This document was acknowledged before me on _____ [*date*].

[*Seal*]

_____ [*signature of notary*]
_____ [*typed name*]

Notary Public in and for
the State of Texas

My commission expires _____ [*date*]

Warning to Agent

THE *ATTORNEY-IN-FACT* OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.