

Chapter 25

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

Shareholder Voting Agreement (Special Purpose)

Sample 1:

http://info.froebegroup.com/aspn/gabaldon/WDILL_Ch_25-27/Shareholder%20Support%20and%20Voting%20Agreement.pdf

Sample 2:

http://info.froebegroup.com/aspn/gabaldon/WDILL_Ch_25-27/Form%20of%20Voting%20Agreement%20and%20Irrevocable%20Proxy.pdf

Shareholder Agreement Including Voting, Employment, and Buy-Sell Provisions:

Sample Shareholder Agreement

AGREEMENT made and entered into as of the _____ day of _____, 2XXX, by and among John Doe, residing at [specify address] (hereinafter "Doe"), and Mark Smith, residing at [specify address] (hereinafter "Smith"), and XYZ, Inc. ("the Corporation").

WITNESSETH:

WHEREAS, all of the issued shares and outstanding stock of the Corporation are owned in the following percentages:

Doe 50%
Smith 50%

WHEREAS, the Shareholders hereto deem it to be in the best interest of the Corporation to act together concerning the management of the Corporation as well as to make provision for the contingency of the death or disability of any Shareholder and to set forth the manner and method by which a Shareholder may sell his stock during his lifetime.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS;

FIRST: MANAGEMENT AND OPERATION OF THE CORPORATION

A. 1. Directors and Officers. For the duration and term of this Agreement, the Shareholders will elect and continue in office as Directors of the Corporation the following:

Smith
Doe

The Officers of the Corporation shall be:

Smith - President; Treasurer
Doe - Vice President; Secretary

B. Voting. All decisions within the ordinary course of business shall be made by the unanimous consent of both the President and the Vice President, who shall have equal say in the management of the ordinary course of business of the Corporation. In addition, for the purposes of selling, terminating, liquidating, entering loans or changing the basic purposes of the Corporation, the quorum and voting requirements shall be 100 percent of all shareholders and/or directors. Simultaneously herewith the Certificate of Incorporation is being amended to provide for the terms of this section.

C. Checks. All cash, checks and instruments for the payment of monies are to be deposited in the Corporation's bank account. All checks drawn upon such account are to be signed jointly by the President and Vice President and/or their nominees.

D. Salaries. The President and Vice President agree to draw equal salaries, as voted upon by the Board of Directors of the Corporation.

E. Employment. The President and Vice President agree to work full-time and exclusively for the Corporation. Neither party shall be permitted to own an interest in, operate, join, control, participate in directly or indirectly, or be connected as an officer, employee, agent, independent contractor, partner, stockholder or principal of or in any corporation, partnership, firm, association, person or other entity soliciting orders for, selling, distributing or otherwise marketing products, goods, equipment and/or services which directly or indirectly compete with the business of the Corporation, without the express written consent of the other, which consent shall not be unreasonably withheld.

Both parties shall provide such services to the operation of the Corporation and Corporate business as shall be deemed proper and necessary, including keeping each other informed of all letters, accounts, writings and other information which shall come to their attention concerning the business of the Corporation.

Both parties shall keep or cause to be kept full records of each transaction of the Corporation and shall maintain such records at the principal office of the Corporation at [specify address], or at the principal office of the Corporation's accountant. Said records shall be open for inspection and examination by each of them, or their duly authorized representative, at all reasonable times.

Notwithstanding the foregoing, each of the Executive officers above named agree to be employed by the Corporation and the Corporation agrees to employ them under the following terms and conditions:

1. The employment of each such Officer shall continue so long as he is a Shareholder of the Corporation.

2. Each Executive Officer devotes all of his working time, energy and attention solely and exclusively to the business of the Corporation, and none of his working time to any other firm or business without the written consent of the other.

3. In the event any Executive Officer terminates his employment with the Corporation or it is determined by arbitration as hereinafter provided that such Officer has breached the terms of his employment hereunder, by committing acts constituting just cause to terminate such employment as determined by the arbitrators, or by failing to render exclusive time and attention to the business of the Corporation, or by participating, either directly or indirectly, in another business competitive with the business of the Corporation, then either of any such occurrences shall be deemed an offer to sell all of the shares that such Officer owns in the Corporation at the price, terms and conditions set forth in this Agreement.

F. Disability. In the event either Shareholder is unable to perform the normal duties of his employment due to physical or mental disability, then the following shall apply:

1. During the first three hundred sixty five (365) consecutive days of such disability the Corporation shall pay to the disabled Shareholder such weekly salary and compensation as was then being paid to the disabled Shareholder prior to the onset of disability.

2. After three hundred sixty five (365) consecutive days of disability, no further compensation or salary shall be paid to the disabled Shareholder.

3. After three hundred sixty five (365) days of such disability, the Corporation and the remaining shareholder shall, at any time thereafter and prior to the resumption of the normal duties of employment have the right to purchase all shares of stock of the disabled Shareholder as if the disabled Shareholder offered to sell all of his shares in the Corporation at the same price, terms and conditions set forth in the Article of this Agreement entitled Lifetime Sale of Shares.

4. There shall be deducted from any salary paid to a disabled Shareholder all payments received by the disabled Shareholder from any private or public disability insurance, the premiums of which were paid for by the Corporation.

G. Indemnity. In the event any Shareholder is held personally liable for any liability of the Corporation, then the other Shareholder shall indemnify him against fifty percent (50%) of any such personal liability.

H. Death Of A Shareholder. In the event of the death of a Shareholder, the legal representative of his Estate shall be required to sell all of decedent's shares of stock of the Corporation and he shall be deemed to have offered all of said shares to the Corporation and surviving Shareholder.

1. Acceptance. The Corporation shall be deemed to have accepted the offer to purchase as many shares as it may legally purchase. In the event the Corporation is unable to legally purchase all of such shares, the surviving Shareholder shall purchase those shares which the Corporation cannot legally purchase.

2. Closing. Closing shall be held at the office of the attorney for the Corporation,

[specify attorney], on a date and time to be mutually agreed upon but no later than ten (10) days after either the determination of the purchase price or appointment of a legal representative for the decedent's estate, whichever is later. The article of this Agreement entitled Manner Of Payment, sets forth the documents and papers to be executed and/or delivered at closing.

3. Purchase Price. The purchase price of a deceased Shareholder's stock shall be determined by the Shareholders in writing every six (6) months. If no such written determination has been agreed upon within six (6) months from date of death, then the price shall be fixed at the gross commission income received by the Corporation during the preceding full fiscal year.

4. The Corporation may obtain life insurance policies on the lives of each of the Shareholders. In the event such life insurance policies are so obtained, then the Corporation shall collect the proceeds thereof, hold same as trustee and turn same immediately over to the legal representative of the deceased Shareholder as payment on account for decedent's share of stock. In the event said insurance proceeds exceed the amount of the purchase price as hereinabove provided, then the legal representative of the decedent shall retain the amount of said proceeds as payment in full for decedent's stock. In the event the purchase price of decedent's stock as hereinabove provided exceeds the proceeds of insurance, then the balance of the purchase price shall be paid pursuant to the article of this Agreement entitled Deferred Payment. The amount of the insurance collected by the Corporation on decedent's life shall in all events constitute the minimum purchase price to be paid by the Corporation for the shares of the decedent.

5. If one of the two (2) Shareholders should die, and if the remaining Shareholder should die within ninety (90) days after the death of the first Shareholder, then, notwithstanding any agreement to the contrary, neither the Corporation nor the Estate of the second deceased Shareholder shall be obligated to purchase, nor shall the Estate of the first deceased Shareholder be obligated to sell the stock held by said Estate. In such event, the proceeds of the life insurance on the lives of both Shareholders shall be delivered to the Corporation and shall belong exclusively to the Corporation, which shall be immediately liquidated and dissolved, and the proceeds of liquidation, after payment in full of the liabilities of the Corporation shall be paid to the Estates of the deceased Shareholders, proportionately to the stock interest of the deceased Shareholders in the Corporation.

6. In the event the Corporation is not legally able to purchase all or part of said shares and the surviving Shareholder fails or refuses to purchase all or the balance of such shares as hereinabove provided, and such failure or refusal continues for a period of ten (10) days after written notice by the personal representative of the deceased Shareholder to the Corporation and surviving Shareholder, the parties do hereby agree that the Corporation shall and will be liquidated and dissolved forthwith and all salaries of all Officers and Directors shall immediately cease. The Corporation shall pay to the Estate of the decedent from the first proceeds of liquidation (after deducting or paying all liabilities of the Corporation), a sum equal to the purchase price for decedent's shares (as hereinafter provided), less a sum equal to all insurance proceeds received by such Estate from life insurance policies owned by the Corporation.

I. Lifetime Sale Of Shares. No Shareholder of the Corporation shall sell, transfer, pledge, hypothecate or assign or in any way dispose of all or any part of his stock except by sale to the Corporation or the other Shareholder as hereinafter provided. All of the stock certificates of the Corporation shall contain an endorsement that they are subject to the terms and provisions of this Agreement which shall state the following:

"The transferability of the stock represented by this Certificate is restricted by an Agreement filed with the Corporation among the parties hereto, bearing date the _____ day of _____, 199_, a copy of which Agreement may be examined at the office of the Corporation."

1. Offer. In the event a Shareholder desires to dispose of his stock in the Corporation, he shall offer by certified mail, return receipt requested, all of his shares to the Corporation and the other Shareholder at the purchase price set forth herein. The Corporation shall have the first option to purchase as many of the shares as it can legally purchase. If the Corporation cannot legally purchase all of the stock or fails to indicate acceptance of the offer by certified mail, return receipt requested, within twenty (20) days from the receipt of the offer, then the remaining Shareholder shall have the option to purchase all or the remaining balance of said shares. The remaining Shareholder if he desires to purchase the stock as offered, shall indicate his acceptance by certified mail, return receipt requested, to the seller and to the other Shareholder, within thirty (30) days after the receipt of the original offer. The purchase price shall be the smaller of: (a) the agreed upon value of the Corporation as agreed upon by the parties in their most recent six (6) month determination or (b) one (1) times the gross commission income of the Corporation for the fiscal year preceding the year in which the Shareholder offers to sell his stock pursuant to this paragraph.

Closing shall be held no later than ten (10) days after the purchase price is determined. At closing the selling Shareholder shall deliver to the purchaser, his shares of stock duly endorsed for transfer, with the appropriate transfer tax stamps affixed thereon, together with his resignation as an Officer and Director of the Corporation and an instrument stating that he is terminating any employment agreement with the Corporation.

At closing the selling Shareholder shall have the option to purchase any and all life insurance policies owned by the Corporation or the other Shareholder, on his life, at a price equal to the then cash surrender value of such policies or the sum of Ten Dollars (\$10.00), whichever is greater.

2. Failure To Purchase. In the event the Corporation is not legally able to purchase or does not purchase all or part of said shares and the remaining Shareholder fails or refuses to purchase all or the balance of such shares as hereinabove provided, and such failure or refusal continues for a period of ten (10) days after the original written notice of offer to sell, then the parties do hereby agree that the Corporation shall and will be liquidated and dissolved forthwith, that all salaries of all Shareholders, Officers and Directors shall immediately cease, and the net proceeds of liquidation shall be distributed to each shareholder pro rata to his interest in the Corporation.

3. Default. If either the Corporation or the remaining Shareholder defaults in payment after acceptance, and said default in payment continues for a period of ten (10) days after notice in writing, sent certified mail, return receipt requested from the seller, then the Corporation shall be liquidated and dissolved forthwith, all salaries of the Shareholders, Officers and Directors shall immediately cease, the purchase price for the seller's shares shall be paid out of the first proceeds of liquidation after deducting or paying all liabilities of the Corporation, and the accepting party or parties shall remain liable for any resulting deficiency and shall be required to pay the difference between the purchase price and the amount realized by the seller after liquidation.

4. Deferred Payment. That portion of the purchase price of the shares of a deceased Shareholder or selling Shareholder shall be paid as follows: Twenty-five percent (25%) at closing; and the balance in Thirty-Six (36) equal monthly consecutive payments. Such deferred payments shall commence one month after closing. All deferred payments shall be evidenced by a series of negotiable promissory notes bearing interest at the rate of eight percent (8%) per annum, and providing for acceleration in the event of default continuing ten (10) days after written notice of default. Starting one month after closing, the maker shall have the right to prepay all or any of said notes in the inverse order of their maturity without premium or penalty provided interest is paid to the date of payment.

5. Escrow. Upon the receipt of the purchase price in full or in cash and notes as hereinabove provided, the legal representative of the deceased Shareholder or the selling Shareholder, as the case may be, shall deliver the certificates for such shares (and all related documents) together with an executed standard form General Release in favor of the Corporation and the remaining Shareholder, to the attorney for the Corporation, who shall hold all such certificates and General Releases in escrow to secure payment therefor, until all of the unpaid balance has been received and collected by the seller, at which time he shall deliver them to the purchaser. The shares shall be duly endorsed to the purchaser and have appropriate tax transfer stamps affixed thereto. The purchaser shall have all rights of ownership during the time the shares are held in escrow and shall be entitled to vote said shares, and shall be entitled to receive any dividends or other emoluments so long as the purchaser is not in default under the terms of this Agreement.

6. Default. Upon default in payment of the notes, the seller shall have all rights of a secured party under the applicable provisions of the Uniform Commercial Code concerning Secured Transactions, as then in effect under the laws of the State of [specify state] which rights are incorporated herein by reference. The sole obligation of the Escrowee is to produce the escrowed shares and general releases at the public or private sale held pursuant to said Code provision. The Escrowee shall not have any liability except for fraud or gross negligence. In addition to the foregoing, if the Corporation is the purchaser and there is a default in payment of any notes and said default in payment continues for a period of ten (10) days after notice in writing thereof from the seller, then the Corporation shall be liquidated and dissolved forthwith, all salaries of all Shareholders, Officers and Directors shall immediately cease, and the purchase price for the seller's shares shall be paid out of the first proceeds of liquidation after deducting or paying all liabilities of the Corporation.

7. Additional Items At Closing. The legal representative of a deceased Shareholder

shall be required to deliver an appropriate tax waiver and a Certificate of Letters Testamentary or Letters of Administration to the attorney for the purchaser upon receipt of the purchase price in full or in cash and notes as hereinabove provided. All credit cards and corporate property of the selling or deceased Shareholder shall be delivered to the Corporation. The seller shall agree to indemnify the Corporation against any unknown and/or unauthorized charges on such cards or property.

8. Loans. Any loans owed to the Corporation by the deceased or selling Shareholder shall be paid to the Corporation out of the first monies received on the sale of the shares hereunder, and any loans owed to the deceased or selling Shareholder by the Corporation shall be paid at the time of closing.

9. Guaranty. The parties hereto further agree that in the event of a purchase or sale, the remaining Shareholder individually and/or his estate, shall remain personally liable to the seller.

J. Corporate Surplus. In the event the Corporation shall not have sufficient surplus to permit it to lawfully purchase the deceased or selling Shareholder's shares, the surviving Shareholder and the seller may promptly take such lawful measures, if any such measures are available, as may be appropriate or necessary in order to enable the Corporation to lawfully purchase and pay for seller's shares, including by way of limitation, a current appraisal of the assets of the Corporation to determine whether a reappraisal surplus is available.

K. Tax Liability. Acceptance by the seller of all or part of the purchase price of his stock pursuant to this Agreement shall constitute an agreement by the seller to indemnify the Corporation and its remaining Shareholder from and against any and all claims or liabilities of the Corporation which may arise subsequent to the date of closing with respect to taxes of any kind or nature found to be due to the United States or any State or Municipality for any periods prior to the date of closing. It is understood and agreed that liability of the selling Shareholder shall be limited to such proportion as is equivalent to his proportionate share or interest in the Corporation prior to closing. The seller shall be entitled to prompt notification by the Corporation of any and all notices of claims and shall have the right, at his sole cost and expense, to participate in any proceeding, legal or otherwise, with respect to such claim or liability. The indemnification provided for herein shall be a continuing one and shall survive closing.

L. Action In Violation Of This Agreement. In the event the shares of any Shareholder are transferred or disposed of in any manner without complying with the provisions of this Agreement, or if such shares are taken in execution or sold in any voluntary or involuntary legal proceeding, execution sale, bankruptcy, insolvency or in any other manner, the Corporation and the Shareholder shall, upon actual notice thereof, in addition to their rights and remedies under this Agreement, be entitled to purchase such shares from the transferee thereof, under the same terms and conditions set forth in this Agreement as if the transferee had offered to sell such shares, but in no event shall the purchase price exceed the amount paid for the said shares by the transferee if such shares were acquired by the transferee for consideration. The Corporation may, at its option, refuse to transfer on its books and records any shares transferred in violation of this Agreement.

Any Shareholder who shall petition any Court for the dissolution of the Corporation, other than pursuant to the specific right to cause the Corporation to be liquidated and dissolved as

provided in this Agreement, shall be deemed to have offered his shares for sale under the same terms and conditions as set forth in this Agreement.

M. Illegality. If any provision of this Agreement shall be determined by the arbitrators or any Court having jurisdiction, to be invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby, but shall continue in full force and effect as though such invalid, illegal or unenforceable provision or provisions were not originally a part hereof.

N. Termination. This Agreement shall remain in full force and effect for as long as the two Shareholders of the Corporation, or until the adjudication of the Corporation as a bankrupt or until the dissolution of the Corporation.

O. Waiver. No waiver or modification of any of the provisions of this Agreement or any of the rights or remedies of the parties hereto shall be valid unless such change is in writing, signed by the party to be charged therewith. No waiver of any of the provisions of this Agreement shall be deemed a waiver of any other provision.

P. Arbitration. Any claim or controversy arising among or between the parties hereto pertaining to the Corporation, or any claim or controversy arising out of or respecting any matter contained in this Agreement or any differences as to the interpretation or performance of any of the provisions of this Agreement shall be settled by arbitration in [specify location] before three arbitrators of the American Arbitration Association under its then prevailing rules.

In any arbitration involving this Agreement, the arbitrators shall not make any award which will alter, change, cancel or rescind any provision of this Agreement, and their award shall be consistent with the provisions of this Agreement. Any such arbitration must be commenced no later than one (1) year from the date such claim or controversy arose, or such claim shall be deemed to have been waived. The award of the arbitrators shall be final and binding and judgment may be entered thereon in any court of competent jurisdiction.

The arbitrators shall be specifically instructed to reduce the amount of money due a selling Shareholder pursuant to the terms of this Agreement by Thirty Three Percent (33%) in the event they determine that an Officer was discharged for cause, or was not working full-time and exclusively for the Corporation with the written consent of the other Officer as described in Article E of this Agreement, as well as award reasonable attorney fees and costs to the prevailing party.

Anything to the contrary herein contained notwithstanding, since the shares of the Corporation cannot be readily purchased or sold on the open market and the parties will be irreparably damaged in the event this Agreement is not specifically enforced, should any dispute concerning the sale or disposition of any of the shares of the Shareholders occur, or should any dispute arise to enforce the provisions of a restrictive covenant referred to in Article Q of this Agreement, a temporary restraining order or injunction may be obtained from a court of appropriate jurisdiction, restraining any sale or disposition of said shares, or restraining the seller from working for or being directly or indirectly involved with a competitor (or representing Principals previously solicited by the Corporation), pending the determination of such controversy, pursuant to the arbitration provision of this Agreement. In addition to the foregoing, any of the parties may apply to any court of appropriate jurisdiction for any of the provisional remedies to which such party may be entitled to under the laws of

the State of [specify state], including, but not limited to, injunction, attachment or replevin, pending the determination of any claim or controversy, pursuant to the arbitration provision of this Agreement. Service of process and notice of arbitration may be made by either Certified or Registered Mail, return receipt requested, addressed to any party at the address listed in this Agreement.

Q. Restrictive Covenant. Upon the termination of this Agreement, for any reason whatsoever, neither party shall, for a period of Three (3) years after the termination of this Agreement, work for, own an interest in, operate, join, control, participate in or be connected, either directly or indirectly, as an officer, employee, agent, independent contractor, shareholder or principal of any of the Principals of the Corporation represented by the Corporation during the preceding Two (2) years of this Agreement. Notwithstanding the foregoing, neither party shall, for a period of Three (3) years after termination of this Agreement, undertake, plan or organize with other employees or sales associates of the Corporation, or former employees or sales associates of the Corporation, any business which competes, either directly or indirectly, with the business of the Corporation, and neither party will induce or influence any person who is engaged by the Corporation as an employee or sales associate to terminate his or her employment or to engage or otherwise participate in any business or activity which directly or indirectly competes with the Corporation. In the event this Restrictive Covenant is found to be breached by the arbitrators, the parties further agree that the arbitrators may award the prevailing party reasonable attorney fees, costs, and the cessation of any future payments due the seller pursuant to Article I of this Agreement.

R. Survival. This Agreement shall bind the parties hereto and their respective heirs, administrators, executors, successors and assigns.

S. Notices. Any notice required to be given under this Agreement shall be sent by certified mail, return receipt requested to the respective addresses of the parties as contained in this Agreement or in the records of the Corporation.

T. Construction Of Terms. As used in this Agreement, wherever necessary or appropriate, the singular shall be deemed to include the plural and vice versa, and the masculine gender shall be deemed to include the feminine and versa, as the context may require.

This Agreement has been prepared by [specify attorney]. In the event of any ambiguity concerning the intentions of the parties or the language used thereto, the arbitrators shall seek the counsel of [specify attorney], the preparer of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day, month and year first above written.

By: DATE:

By: DATE:

Voting Trust Agreement

The Day Family Voting Trust Agreement regarding their shares of SRAM International:

http://info.froebegroup.com/aspengabaldonWDILL_Ch25-27/Voting%20Trust%20Agreement.pdf

Buy-Sell Agreement

Whiteglove House Call Health, Inc.:

http://info.froebegroup.com/aspengabaldonWDILL_Ch25-27/Buy-Sell%20Agreement-R.%20Fabbio-W.%20Rice.pdf

Stock Certificate with Legend

Sample 1:

http://info.froebegroup.com/aspengabaldonWDILL_Ch25-27/Specimen%20common%20stock%20certificate%20of%20the%20Registrant.pdf

Sample 2:

http://info.froebegroup.com/aspengabaldonWDILL_Ch25-27/EX-4%20SAMPLE%20STOCK%20CERTIFICATE.pdf

Chapter 26

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

Simple Employment Contract

Employment Agreement (Sample)

THIS AGREEMENT made as of the ____ day of _____, 20__ , between [name of employer] a corporation incorporated under the laws of _____, and having its principal place of business at _____ (the "Employer"); and [name of employee] (the "Employee").

WHEREAS the Employer desires to obtain the benefit of the services of the Employee, and the Employee desires to render such services on the terms and conditions set forth.

IN CONSIDERATION of the promises and other good and valuable consideration (the sufficiency and receipt of which are hereby acknowledged) the parties agree as follows:

1. Employment - The Employee agrees that he will at all times faithfully, industriously, and to the best of his skill, ability, experience and talents, perform all of the duties required of his position. In carrying out these duties and responsibilities, the Employee shall comply with all Employer policies, procedures, rules and regulations, both written and oral, as are announced by the Employer from time to time. It is also understood and agreed to by the Employee that his assignment, duties and responsibilities and reporting arrangements may be changed by the Employer in its sole discretion without causing termination of this agreement.

2. Position and Title - As a _____, the Employee is required to perform the following duties and undertake the following responsibilities in a professional manner.

(a)-

(b) -

(c) -

(d) -

(e) Other duties as may arise from time to time and as may be assigned to the employee.

3. Compensation -

(a) As full compensation for all services provided the employee shall be paid at the rate of _____. Such payments shall be subject to such normal statutory deductions by the Employer.

(b) (may wish to include bonus calculations or omit in order to exercise discretion).

(c) The salary mentioned in paragraph (1)(a) shall be review on an annual basis.

(d) All reasonable expenses arising out of employment shall be reimbursed assuming same have been authorized prior to being incurred and with the provision of appropriate receipts.

4. Vacation - The Employee shall be entitled to vacations in the amount of _____ weeks per annum.

5. Benefits - The Employer shall at its expense provide the Employee with the Health Plan that is currently in place or as may be in place from time to time.

6. Probation Period - It is understood and agreed that the first ninety days of employment shall constitute a probationary period during which period the Employer may, in its absolute discretion, terminate the Employee's employment, for any reason without notice or cause.

7. Performance Reviews - The Employee will be provided with a written performance appraisal at least once per year and said appraisal will be reviewed at which time all aspects of the assessment can be fully discussed.

8. Termination -

(a) The Employee may at any time terminate this agreement and his employment by giving not less than two weeks written notice to the Employer.

(b) The Employer may terminate this Agreement and the Employee's employment at any time, without notice or payment in lieu of notice, for sufficient cause.

(c) The Employer may terminate the employment of the Employee at any time without the requirement to show sufficient cause pursuant to (b) above, provided the Employer pays to the Employee an amount as required by the Employment Standards Act 2000 or other such legislation as may be in effect at the time of termination. This payment shall constitute the employees entire entitlement arising from said termination.

(d) The employee agrees to return any property of _____ at the time of termination.

9. Non- Competition -

(a) It is further acknowledged and agreed that following termination of the employee's employment with _____ for any reason the employee shall not hire or attempt to hire any current employees of _____.

(b) It is further acknowledged and agreed that following termination of the employee's employment with _____ for any reason the employee shall not solicit business from current clients or clients who have retained _____ in the 6 month period immediately preceding the employee's termination.

10. Laws - This agreement shall be governed by the laws of _____.

11. Independent Legal Advice - The Employee acknowledges that the Employer has provided the Employee with a reasonable opportunity to obtain independent legal advice with respect to this agreement, and that either:

(a) The Employee has had such independent legal advice prior to executing this agreement; or

(b) The Employee has willingly chosen not to obtain such advice and to execute this agreement without having obtained such advice.

12. Entire Agreement - This agreement contains the entire agreement between the parties, superseding in all respects any and all prior oral or written agreements or understandings pertaining to the employment of the Employee by the Employer and shall be amended or modified only by written instrument signed by both of the parties hereto.

13. Severability - The parties hereto agree that in the event any article or part thereof of this agreement is held to be unenforceable or invalid then said article or part shall be struck and all remaining provision shall remain in full force and effect.

IN WITNESS WHEREOF the Employer has caused this agreement to be executed by its duly authorized officers and the Employee has set his hand as of the date first above written. SIGNED, SEALED AND DELIVERED in the presence of:

_____ [Name of employee]

_____ [Signature of Employee]

_____ [Name of Employer Rep]

_____ [Signature of Employer Rep] [Title]

Employment Agreement including Terms on Proprietary Information

**EMPLOYMENT AGREEMENT INCLUDING TERMS ON PROPRIETARY
INFORMATION**

The following agreement (the “Agreement”) between [COMPANY], a Delaware corporation (the “Company”), and [FULL NAME OF PROSPECTIVE EMPLOYEE] (“Employee” or “I”) is effective as of [DATE], the first day of my employment by the Company. I acknowledge that this Agreement is a material part of the consideration for my employment and continued employment by the Company. In exchange for the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **No Conflicts.** I have not made, and agree not to make, any agreement, oral or written, that is in conflict with this Agreement or my employment with the Company. I will not violate any agreement with or the rights of any third party. When acting within the scope of my employment (or otherwise on behalf of the Company), I will not use or disclose my own or any third party’s confidential information or intellectual property (collectively, “Restricted Materials”), except as expressly authorized by the Company in writing. Further, I have not retained anything containing or reflecting any confidential information of a prior employer or other third party, whether or not created by me.

2. **Inventions.**

a. **Definitions.** “Intellectual Property Rights” means any and all patent rights, copyright rights, trademark rights, mask work rights, trade secret rights, *sui generis* database rights and all other intellectual and industrial property rights of any sort throughout the world (including any application therefore). “Invention” means any idea, concept, discovery, invention, development, research, technology, work of authorship, trade secret, software, firmware, content, audio-visual material, tool, process, technique, know-how, data, plan, device, apparatus, specification, design, prototype, circuit, layout, mask work, algorithm, program, code, documentation or other material or information, tangible or intangible, whether or not it may be patented, copyrighted, trademarked or otherwise protected (including all versions, modifications, enhancements and derivative works thereof).

b. **Assignment.** To the fullest extent under applicable law, the Company shall own all right, title and interest in and to all Inventions (including all Intellectual Property Rights therein or related thereto) that are created made, conceived or reduced to practice, in whole or in part, by me or under my direction during the term of my employment with the Company and which, in the sole judgment of the Company, reasonably exercised, arise out of any use of Company’s facilities or equipment or any research or other activity conducted by, for or under the direction of the Company (whether or not (i) conducted at the Company’s facilities, (ii) during working hours or (iii) using Company equipment), or which relate directly or indirectly to any “Company Interest” (meaning any product, service, other Invention or Intellectual Property Right that is sold, leased, used, proposed, under consideration or under development by the Company). I will promptly disclose and provide all of the foregoing Inventions (the “Assigned Inventions”) to the Company. I hereby make and agree to make all assignments to the Company necessary to effectuate and accomplish the foregoing ownership. Assigned Inventions shall not include any Invention that (x) is developed entirely on my own time, without use of any Company equipment, ideas or direction and (y) does not relate to any Company Interest.

c. **Assurances.** I will further assist the Company, at its expense, to evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce and defend any rights specified to be so owned or assigned. I hereby irrevocably designate and appoint the Company and its officers as my agents and attorneys-in-fact, coupled with an interest, to act

for and in my behalf to execute and file any document and to perform all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by me.

d. **Other Inventions.** If I wish to clarify that something created by me prior to my employment, which relates or may relate to the Company's actual or proposed business, is not within the scope of the assignment of Inventions under this Agreement, then I have listed it on Appendix A. If (i) I use or disclose any Restricted Materials (including anything listed in Appendix A) when acting within the scope of my employment (or otherwise on behalf of the Company), or (ii) any Assigned Invention cannot be fully made, used, reproduced or otherwise exploited without using or violating any Restricted Materials, I hereby grant and agree to grant to the Company a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, transferable, sublicensable, paid-up right and license to exploit and exercise all such Restricted Materials and Intellectual Property Rights therein. I will not use or disclose any Restricted Materials for which I am not fully authorized to grant the foregoing license and I will not use any Restricted Materials or prior inventions without the prior written consent of the Company.

e. **Moral Rights.** To the extent allowed by applicable law, the terms of this Section 2 include all rights of paternity, integrity, disclosure, withdrawal and any other rights that may be known as or referred to as moral rights, artist's rights, droit moral or the like (collectively, "Moral Rights"). To the extent I retain any such Moral Rights under applicable law, I hereby ratify and consent to any action that may be taken with respect to such Moral Rights by or authorized by the Company and agree not to assert any Moral Rights with respect thereto. I will confirm any such ratification, consent or agreement from time to time as requested by the Company. Furthermore, I agree that notwithstanding any rights of publicity, privacy or otherwise (whether or not statutory) anywhere in the world and without any further compensation, the Company may and is hereby authorized to use my name, likeness and voice in connection with promotion of its business, products and services and to allow others to do so.

3. **Proprietary Information.** I agree that all Assigned Inventions and all other financial, business, legal and technical information, whether or not in writing, including the identity of and any other information, relating to the Company's employees, Affiliates and Business Partners (as such terms are defined below), which I develop, learn or obtain during my employment or that are received by or for the Company in confidence, constitute "Proprietary Information." I will hold in strict confidence and not directly or indirectly disclose or, except within the scope of my employment, use any Proprietary Information. Proprietary Information shall not include information that, I can document, is or becomes readily available to the public without restriction through no fault of mine. Upon termination of my employment or earlier request by Company, I will promptly return to the Company all items containing or embodying Proprietary Information (including all copies).

4. **Restricted Activities.** For the purposes of this Section 4, the term Company includes the Company and all other persons or entities that control, are controlled by or are under common control with the Company ("Affiliates").

a. **Definitions.** "Any Capacity" includes, without limitation, to (i) be an owner, founder, shareholder, partner, member, advisor, director, consultant, contractor, agent, employee, affiliate or co-venturer, (ii) otherwise invest, engage or participate in, (iii) be compensated by or (iv) prepare to be or do any of the foregoing or assist any third party to do so; provided,

Any Capacity will not include being a holder of less than one percent (1%) of the outstanding equity of a public company. "Business Partner" means any past, present or prospective customer, vendor, supplier, distributor or other business partner of the Company. "Cause" means to recruit, employ, retain or otherwise solicit, induce or influence, or to attempt to do so. "Solicit" means to (1) service, take orders from or solicit the business or patronage of any Business Partner for myself or any other person or entity, (2) divert, entice or otherwise take away from the Company the business or patronage of any Business Partner, or to attempt to do so, or (3) solicit, induce or encourage any Business Partner to terminate or reduce its relationship with the Company.

b. Acknowledgments.

i. I acknowledge and agree that (1) the Company's business is highly competitive, secrecy of the Proprietary Information is of the utmost importance to the Company and I will learn and use Proprietary Information in performing my work for the Company and (2) my position may require me to establish goodwill with Business Partners and employees on behalf of the Company and such goodwill is extremely important to the Company's success and that Company has made substantial investments to develop its business interests and goodwill.

ii. I agree that the limitations as to time, geographical area and scope of activity to be restrained in this Section 4 are reasonable and are not greater than necessary to protect the goodwill or other business interests of Company. I further agree that such investments are worthy of protection and that Company's need for protection afforded by this Section 4 is greater than any hardship I may experience by complying with its terms.

iii. I acknowledge that my violation or attempted violation of the agreements in this Section 4 will cause irreparable damage to Company or its Affiliates, and I therefore agree that Company shall be entitled as a matter of right to an injunction, out of any court of competent jurisdiction, restraining any violation or further violation of such agreements by me or others acting on my behalf. Company's right to injunctive relief shall be cumulative and in addition to any other remedies provided by law or equity.

iv. Although the parties believe that the limitations as to time, geographical area and scope of activity contained herein are reasonable and do not impose a greater restraint than necessary to protect the goodwill or other business interests of Company, if it is judicially determined not to be the case, the limitations shall be reformed to the extent necessary to make them reasonable and not to impose a restraint that is greater than necessary to protect the goodwill or other business interests of Company.

v. The Company and I agree that the provisions of this Section 4, as so amended, shall be valid and binding as though any invalid or unenforceable provision had not been included.

c. As an Employee. During my employment with the Company, I will not directly or indirectly: (i) Cause any person to leave their employment with the Company (other than terminating subordinate employees in the course of my duties for the Company); (ii) Solicit any Business Partner; (iii) act in Any Capacity in or with respect to any commercial activity which competes, or is reasonably likely to compete, with any business that the Company conducts, proposes to conduct or demonstrably anticipates conducting, at any time during my employment (a "Competing Business"); (iv) enter into in an employment, consulting or other similar relationship with another person or entity that requires me to provide anything less than my full-time efforts to Company or that would cause me to engage in activities that

conflict with my duties to the Company; or (v) make, or cause to be made, any statements, observations, or opinions, or communicate any information (whether oral or written), that disparages or is likely in any way to harm the reputation of the Company, its customers, users and/or business partners except that nothing contained in this Agreement shall be deemed to prohibit me from testifying truthfully under oath pursuant to any lawful court order or subpoena or otherwise responding to or providing disclosures required by law.

d. After Termination. For the period of twelve (12) months immediately following termination of my employment with the Company (for any or no reason, whether voluntary or involuntary), I will not directly or indirectly: (i) Cause any person to leave their employment with the Company; (ii) Solicit any Business Partner; or (iii) act in Any Capacity in or with respect to any Competing Business located within the State of New York, the rest of the United States, or anywhere else in the world. The foregoing time frames shall be increased by the period of time from the commencement of any violation of the foregoing provisions until such time as I have ceased such violation.

5. Employment at Will. I agree that this Agreement is not an employment contract for any particular term. I have the right to resign and the Company has the right to terminate my employment at will, at any time, for any or no reason, with or without cause. This Agreement does not purport to set forth all of the terms and conditions of my employment, and as an employee of the Company, I have obligations to the Company which are not described in this Agreement. However, the terms of this Agreement govern over any such terms that are inconsistent with this Agreement, and supersede the terms of any similar form that I may have previously signed. This Agreement can only be changed by a subsequent written agreement signed by the Chief Executive Officer or President of the Company, or an authorized designee.

6. Survival. I agree that any change or changes in my employment title, duties, compensation or equity interest after the signing of this Agreement shall not affect the validity or scope of this Agreement. I agree that my obligations under Sections 2, 3 and 4 of this Agreement shall continue in effect after termination of my employment, regardless of the reason, and whether such termination is voluntary or involuntary, and that the Company is entitled to communicate my obligations under this Agreement to any of my potential or future employers. I will provide a copy of this Agreement to any potential or future employers of mine, so that they are aware of my obligations hereunder. My obligations under Sections 2, 3 and 4 also shall be binding upon my heirs, executors, assigns and administrators, and shall inure to the benefit of the Company, its Affiliates, successors and assigns. This Agreement may be freely assigned by the Company to any third party.

7. Miscellaneous. Any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of New York without regard to the conflict of laws provisions thereof. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in New York County, New York, and each party consents to the jurisdiction thereof. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. Unless expressly provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If one or more provisions of this Agreement are held to be illegal or unenforceable under applicable law, such illegal or unenforceable portion shall be limited or excluded from this Agreement to the minimum extent required so that this Agreement shall otherwise remain in full force and effect and

enforceable. I acknowledge and agree that any breach or threatened breach of this Agreement will cause irreparable harm to the Company for which damages would not be an adequate remedy, and, therefore, the Company is entitled to injunctive relief with respect thereto (without the necessity of posting any bond) in addition to any other remedies.

I have read this Agreement carefully and I understand and accept the obligations that it imposes upon me without reservation. No promises or representations have been made to me to induce me to sign this Agreement. I sign this Agreement voluntarily and freely, with the understanding that I either (1) have retained a copy of this Agreement or (2) may, at any time, request a copy of this Agreement from the Company.

Appendix A

Prior Matters

[DISCLOSURE BY EMPLOYEE]

Articles of Incorporation for a Delaware Statutory Close Corporation

[See next page]

STATE of DELAWARE
CERTIFICATE of INCORPORATION
A CLOSE CORPORATION
Of

(name of corporation)

- **First:** The name of this Corporation is

- **Second:** Its Registered Office in the State of Delaware is to be located at
Street, in the City of
County of Zip Code
The Registered Agent in charge thereof is

- **Third:** The nature of business and the objects and purposes proposed to be transacted, promoted and carried on, are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
- **Fourth:** The amount of the total stock of this corporation is authorized to issue is
s hares (number of authorized shares) with a par value
of per share.
- **Fifth:** The name and mailing address of the incorporator are as follows:
Name
Mailing Address
Zip Code
- **Sixth:** All of the Corporation's issued stock of all classes, exclusive of treasury shares, shall be represented by certificates and shall be held of record by not more than a specified number of persons, not exceeding 30.
- **Seventh:** All of the issued stock of all classes shall be subject to 1 or more of the restrictions on transfer permitted by Section 202 of the General Corporation Law of State of Delaware.
- **Eighth:** The Corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States Securities Act of 1933 as it may be amended from time to time.

- **I, The Undersigned,** for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this
day of , A.D.

BY: (Incorporator)

NAME: (type or print)

Chapter 27

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

Articles of Dissolution

Sample 1 – Delaware:

[See next page]

**STATE OF DELAWARE
CERTIFICATE OF DISSOLUTION**

The corporation organized and existing under the General Corporation Law of the State of Delaware.

DOES HEREBY CERTIFY AS FOLLOWS:

The dissolution of said _____

has been duly authorized by the Board of Directors and Stockholders in accordance with subsections (a) and (b) of Section 275 of the General Corporation Law of the State of Delaware.

The date the dissolution was authorized is _____.

The following is a list of the names and addresses of the directors of the said corporation:

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____

The following is a list of the names and addresses of the officers of the said corporation:

NAME	OFFICE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

By: _____
Authorized Officer

Name: _____
Print or Type

Title: _____

Sample 2 – New York:

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

(Insert Name of Corporation)

Under Section 1003 of the Business Corporation Law

FIRST: The name of the corporation is:

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed with the Department of State on:

THIRD: The name and address of each officer and director of the corporation is:

FOURTH: *(Check the statement that applies)*

- The dissolution was authorized at a meeting of shareholders by two-thirds of the votes of all outstanding shares entitled to vote.
- The dissolution was authorized at a meeting of shareholders by a majority of the votes of all outstanding shares entitled to vote.
- The dissolution was authorized by the unanimous written consent of the holders of all outstanding shares entitled to vote without a meeting.

FIFTH: The corporation elects to dissolve.

X _____
(Signature) (Print or Type Name of Signer)

(Print or Type Title of Signer)

**CERTIFICATE OF DISSOLUTION
OF**

(Insert Name of Corporation)

Under Section 1003 of the Business Corporation Law

Filer's Name: _____

Address: _____

City, State and Zip Code: _____

NOTES:

1. The name of the corporation and its date of incorporation must be exactly as they appear on the records of the Department of State. This information should be verified on the Department of State's web site at www.dos.ny.gov.
2. This certificate must be signed by an officer, director or duly authorized person.
3. Attach the consent of the NYS Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. The fee for filing this certificate is **\$60**, made payable to the Department of State.

For DOS Use Only