



**CEO COMPENSATION AND CONTRACTS
AWPHD RETREAT FOR CEOs AND ADMINISTRATORS
THE RESORT AT LUDLOW BAY
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I. Unique Legal Requirements Applicable to Public Hospital Districts

A. Superintendent -- Appointment -- Removal – Compensation

RCW 70.44.062 provides as follows:

(1) The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. The superintendent shall receive such compensation as the commission shall fix by resolution.

(2) Where a public hospital district operates more than one hospital, the commission may in its discretion appoint up to one superintendent per hospital and assign among the superintendents the powers and duties set forth in RCW 70.44.080 and 70.44.090 as deemed appropriate by the commission.

B. Superintendent – Powers

RCW 70.44.080 provides as follows:

(1) The superintendent shall be the chief administrative officer of the public district hospital and shall have control of administrative functions of the district. The superintendent shall be responsible to the commission for the efficient administration of all affairs of the district. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the district, but shall have no vote.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the powers set forth in this section as deemed appropriate by the commission.

C. Superintendent – Duties

RCW 70.44.090 provides as follows:

(1) The public hospital district superintendent shall have the power, and duty:

(a) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of the district are duly enforced.

(b) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of the district, and to recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission a range of salaries to be paid to district employees.

(2) Where the commission has appointed more than one superintendent as provided in RCW70.44.070, the commission shall assign among the superintendents the duties set forth in this section as deemed appropriate by the commission.

II. Unique Legal Requirements Applicable to Section 501(c)(3) Organizations

A. Reasonable Compensation: A tax-exempt organization must continuously be aware of the laws relating to reasonable compensation, especially with respect to executives who could be deemed insiders under private inurement rules or disqualified persons under intermediate sanctions rules. Running afoul of the reasonable compensation laws as they relate to a tax-exempt organization may put the tax-exempt status of the organization at risk as well as affect the tax liability of the person compensated.

B. Basis for Tax Exemption: An exemption from federal income taxation is provided to organizations described in Section 501(c) of the Internal Revenue Code. I.R.C. § 501(a). One of the organizations described in § 501(c) is a corporation *organized and operated* exclusively for religious, charitable, scientific, literary, or educational purposes. I.R.C. § 501(c)(3). Thus, to obtain and maintain tax-exempt status under § 501(c)(3), an organization must satisfy both an “organizational” test and an “operational” test. For purposes of this discussion on executive compensation, we are only concerned with the operational test.

C. Operational Test: To maintain § 501(c)(3) status, an organization must be *operated* exclusively for an exempt purpose (the “operational test”). There are several components to the operational test, and the following three apply to executive compensation:

1. “Primary Purpose” Requirement: An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages “primarily” in activities that accomplish one or more exempt purposes. An organization will not be regarded as operated exclusively for an exempt purpose if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Treas. Reg. § 1.501(c)(3)-1(c)(1).

2. Private Inurement Prohibition: An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Treas. Reg. § 1.501(c)(3)-(I)(c)(2).

3. Excessive Private Benefit Prohibition: An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Therefore, an organization must be able to show that it is not organized or operated for the benefit of private interests such as designated individuals, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

D. Intermediate Sanctions: The violations of the private inurement and private benefit prohibitions can result in revocation of exempt status but do not, generally, affect the executive who has received the excessive compensation. The intermediate sanctions, however, will assess a fine directly against the executive who receives excessive compensation.

III. **Typical Elements of a Compensation Package**

A. **General**

- (1) Salary or base pay
- (2) Incentive compensation or bonus
 - (a) Annual incentives
 - (b) Long-term incentives
 - (c) Retention incentives
 - (d) Signing bonuses
- (3) Statutory benefits

- B. Health and welfare benefits (qualified)
 - (1) Health care/medical/dental/vision
 - (2) Sick leave/short-term disability
 - (3) Long-term disability
 - (4) Paid-time off
 - (a) Vacation
 - (b) Holidays
 - (c) Sick leave
 - (5) Life insurance/AD&D
 - (6) Retirement benefits
 - (7) Capital accumulation/savings plans
 - (8) Dependent tuition benefit

- C. Non-qualified benefits
 - (1) Post-retirement medical benefits
 - (2) Salary continuation for short-term disability
 - (3) Supplemental long-term disability
 - (4) Long-term care insurance
 - (5) Supplemental life insurance
 - (6) Spouse life insurance
 - (7) Supplemental retirement benefits
 - (a) Restoration of qualified benefits above statutory limits
 - (b) Supplemental executive retirement plans
 - (8) Deferred compensation
 - (a) Supplemental employee savings plans
 - (b) Employer-funded deferred compensation
 - (c) Tax gross-ups
 - (d) Deferral of incentive awards
 - (e) Accumulation values in split-dollar life insurance
 - (f) "Stock options"
 - (g) Executive vacation allowance

- D. Perquisites
 - (1) Auto/auto allowance
 - (2) Club memberships
 - (3) Professional memberships and dues
 - (4) Financial/tax planning allowance
 - (5) Spouse travel
 - (6) Executive physicals

- (7) Cellular phone
- (8) Home office/computer

E. Contracts

- (1) Job security
- (2) Notice
- (3) Special contractual benefits
 - (a) Signing bonus?
 - (b) Relocation allowance?
 - (c) Housing/housing allowance?
 - (d) Continuation of benefits/perks from previous employment?

F. Severance

- (1) Income security
 - (a) Salary
 - (i) Guaranteed period?
 - (ii) Offset by other earned income?
 - (iii) Ceases upon re-employment?
 - (iv) Lump-sum or spread over period?
- (2) Incentives?
- (3) Benefits?
- (4) Early vesting of deferred compensation?
- (5) Acceleration of retirement benefits?

IV. Special Issues for Executives

- A. Directors & officers liability insurance
- B. Providing competitive retirement income for relatively short career as CEO
- C. Severance for displacement by merger/reorganization
- D. Post-retirement consulting agreements
- E. Early retirement provisions
- F. Transitional income security arrangements

**FOSTER PEPPER & SHEFELMAN
SAMPLE EXECUTIVE EMPLOYMENT AGREEMENT (CEO)**

Important Note: This agreement contains sample provisions, not all of which will be appropriate for every situation. It should be used only after careful tailoring and legal review of your specific situation.

This agreement is dated and made effective the _____ day of [fill in], 2002, the “Effective Date”) between [fill in], a [fill in] corporation (“Employer”) and [fill in] (“Employee”).

V. **Employment.** Employer employs Employee and Employee accepts employment on the terms and conditions in this agreement.

VI. **Duties.** Employee is employed in the capacity of Superintendent and Chief Executive Officer. In this capacity Employee shall have primary responsibility for implementation of the business strategies of Employer. Employee shall report directly to, and take direction from, Employer’s Board of Commissioners (the “Board”) and to no other Employer employee. Employee shall perform the duties customarily performed by a chief executive officer, provided that Employee’s precise duties may be changed, extended or curtailed, from time to time, at the Board’s direction, and Employee shall assume and perform the further reasonable responsibilities and duties that the Board may assign from time to time.

VII. **Intensity of Effort; Other Business.** Employee shall devote Employee’s entire working time, attention and efforts to Employer’s business and affairs, shall faithfully and diligently serve Employer’s interests and shall not engage in any business or employment activity that is not on Employer’s behalf (whether or not pursued for gain or profit) except for (a) activities approved in writing in advance by the Board and (b) passive investments that do not involve Employee providing any advice or services to the businesses in which the investments are made.

VIII. **Term.** The term of this agreement starts on the Effective Date and expires [fill in] years later (the “Initial Term”). This agreement shall automatically be renewed for successive one-year terms (each referred to as an “Extended Term”) unless either party gives written notice of nonrenewal at least 90 days before the expiration of the term. Unless stated otherwise, the word “year” as used in this agreement refers to incremental periods of 365 days each (366 days in the case of a leap year), not calendar years. This agreement may terminate before the expiration of any term as provided below.

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IX. **Compensation.** Employee’s compensation shall be as follows:

A. Employee's salary initially shall be \$[fill in] per month (\$[fill in] per year on an annualized basis), which shall be computed and paid in equal installments consistent with Employer's normal payroll procedures. At the end of each calendar year, Employee's salary shall be reviewed by the Board and adjusted as determined by the Board in its sole discretion, provided that, absent cause or Employee's consent, it may not be adjusted downward and it shall be increased annually by a percentage at least equal to the annual percentage increase in the Consumer Price Index-All Urban Consumers (CPI-U), U.S. Cities Average, All Items.

B. Employee may receive annual incentive compensation based on the following methodology:_____.

X. Benefit Plans. Employee shall be eligible for all benefit plans (including retirement or pension plans) that are provided generally to Employer's executive employees. At a minimum, during the term of this agreement Employer shall provide the following benefits to Employee:

A. Term life insurance insuring Employee's life in an amount at least equal to [fill in] times Employee's annualized salary, provided that Employer shall not be required to pay premiums in excess of \$[fill in] per year. Employee shall be the owner of the policy and shall designate the beneficiary of the policy. Employee shall be entitled to continue the policy, at Employee's own expense and subject to the terms and conditions of the policy, after Employee's employment by Employer ends. Employee shall reasonably cooperate with Employer in obtaining, at Employer's expense, any other life insurance policy insuring the life of Employee and naming Employer as beneficiary.

B. Long-term disability insurance providing for a benefit of at least 60% of Employee's salary and an elimination period of no more than 180 days, provided that Employer shall not be required to pay premiums in excess of \$[fill in] per year.

C. Medical insurance providing coverage for Employee and Employee's dependents.

XI. Vacation and Sick Leave. Employee shall be entitled to four weeks of paid vacation and 10 days of paid sick leave per calendar year (prorated if this agreement begins and/or ends in the middle of a calendar year). Up to two weeks of vacation not used in any calendar year may be carried over into the next calendar year; otherwise unused vacation is forfeited at the end of the calendar year. Upon termination of employment for any reason Employee shall be paid for any available but unused vacation. Sick leave may be accumulated up to a maximum of 60 days. Unused sick leave is not paid upon termination of employment or expiration of this agreement.

XII. Disability. If Employee is unable to perform the essential functions of the job because of Employee's own mental or physical illness or disability that continues for a continuous period of three weeks or more, the following shall apply:

A. For the first 90 days of disability, Employee shall be provided paid disability leave, with full compensation and benefits.

B. For the second 90 days of disability, Employee shall be on unpaid leave but with paid benefits continued to the extent allowed by the applicable benefit plan(s).

C. After 180 days of continuous disability, Employer may terminate this agreement, provided that Employer shall grant additional unpaid leave to the extent required by law. During any additional unpaid leave, benefits will not be provided except as may be required by the applicable benefit plan(s) or COBRA.

D. The foregoing notwithstanding, paid disability leave is limited to 90 days in any 24-month period. If this allowance has been exhausted, unpaid leave, with paid benefits continued to the extent allowed by the applicable benefit plan(s), shall be substituted for paid leave.

E. Any available sick leave or disability benefits may be used to continue pay during any period of leave that otherwise would be unpaid.

XIII. Relocation Expenses. Employee shall be reimbursed, upon presentation of receipts, for the following relocation expenses:

A. Reasonable moving and travel expenses and home sale and purchase closing costs associated with moving Employee and Employee's family and household possessions to the greater _____ area, not to exceed a total of \$[fill in].

B. After the Effective Date and until the earlier of [fill in] or the date on which Employee has fully relocated Employee's family to the greater _____ area:

(1) Temporary housing costs for Employee, not to exceed \$[fill in] per month;

(2) Reasonable costs of an automobile, including maintenance, fuel and insurance costs, not to exceed \$[fill in] per month, unless an automobile is provided by Employer;

(3) Employee's reasonable travel expenses between - _____ and [fill in] to allow Employee to visit Employee's family. These trips shall be limited to approximately one trip per month and Employee shall use all efforts to obtain the lowest possible airfare and conduct business in [fill in] as part of these trips; and

(4) Reasonable travel expenses of Employee's spouse and children between [fill in] and _____ (up to three trips).

Employer's total obligation to Employee under this Section on Relocation Expenses shall not exceed \$[fill in].

XIV. Business Expenses. Employee is authorized to incur reasonable travel expenses to carry out Employer's business. Employer shall reimburse Employee for those expenses. Employee shall provide to Employer the itemized expense account information that Employer reasonably requests.

XV. Termination. Employee's employment may be terminated before the expiration of this agreement as follows, in which event Employee's compensation and benefits shall terminate except as otherwise provided below:

A. By Employer Without Cause. Employer may terminate Employee's employment at any time, with or without cause or advance notice. If Employer terminates Employee's employment when neither cause nor permanent disability exists, however, and provided that Employee releases Employer and its agents from any and all claims in a signed, written release satisfactory in form and substance to Employer, Employer shall pay to Employee termination payments equal to [fill in] months of Employee's salary. If Employer gives Executive at least a full month's advance notice of termination, however, the termination payments shall be reduced by one month's salary for each full month of advance notice given; provided that this reduction shall not exceed three months' salary. These termination payments shall be paid out at Employee's normal salary rate on regular payroll days subject to normal payroll deductions. Employee shall not be required to mitigate the amount of these termination payments by seeking other employment or otherwise, and no income to Employee of any kind shall reduce the termination payments.

B. By Employer for Cause. Employer may terminate Employee's employment for cause. If Employer wishes to terminate Employee's employment for cause it shall first give Employee 30 days' written notice of the circumstances constituting cause and an opportunity to cure, unless the circumstances are not subject to being cured. Following the notice and opportunity to cure (if cure is not made), or immediately if notice and opportunity to cure are not required, Employer may terminate Employee's employment for cause by giving written notice of termination. The notice may take effect immediately or at such later date as Employer may designate, provided that Employee may accelerate the termination date by giving five business days' written notice of the acceleration. Any termination of Employee's employment for cause must be approved by a majority of the Board other than Employee. Employee must be given reasonable advance notice of the meeting at which termination is to be considered, and a reasonable opportunity to address the Board.

For purposes of this agreement "cause" means and is limited to dishonesty, fraud, commission of a felony or of a crime involving moral turpitude, destruction or theft of Employer property, physical attack to a fellow employee, intoxication at work, use of narcotics or alcohol to an extent that materially impairs Employee's performance of his or her duties, willful malfeasance or gross negligence in the performance of Employee's duties, violation of law in the course of

employment that has a material adverse impact on Employer or its employees, Employee's failure or refusal to perform Employee's duties, Employee's failure or refusal to follow reasonable instructions or directions, misconduct materially injurious to Employer, neglect of duty, poor job performance, or any material breach of Employee's duties or obligations to Employer that results in material harm to Employer.

For purposes of this agreement, "neglect of duty" means and is limited to the following circumstances: (i) Employee has, in one or more material respects, failed or refused to perform Employee's job duties in a reasonable and appropriate manner (including failure to follow reasonable directives), (ii) a representative of the Board has counseled Employee in writing about the neglect of duty and given Employee a reasonable opportunity to improve (this written counseling and opportunity to improve shall satisfy the requirement of 30 days' written notice described above), and (iii) Employee's neglect of duty either has continued at a material level after a reasonable opportunity to improve or has reoccurred at a material level within one year after Employee was last counseled.

For purposes of this agreement, "poor job performance" means and is limited to the following circumstances: (i) Employee has, in one or more material respects, failed to perform Employee's job duties in a reasonable and appropriate manner, (ii) a representative of the Board has counseled Employee in writing about the performance problems and given Employee a reasonable opportunity to improve (this written counseling and opportunity to improve shall satisfy the requirement of 30 days' written notice described above), and (iii) Employee's performance problems either have continued at a material level after a reasonable opportunity to improve or the same or similar performance problems have reoccurred at a material level within one year after Employee was last counseled.

C. By Employee Without Good Reason. Employee may terminate Employee's employment at any time, with or without good reason, by giving ninety days' advance written notice of termination.

D. By Employee for Good Reason. Employee may terminate Employee's employment for good reason, in which event Employee shall be entitled to the same rights under this agreement as if Employer had terminated Employee's employment without cause. If Employee wishes to terminate employment for good reason Employee shall first give Employer 30 days' written notice of the circumstances constituting good reason and an opportunity to cure, unless the circumstances are not subject to being cured. Following the notice and opportunity to cure (if cure is not made), or immediately if notice and opportunity to cure are not required, Employee may terminate employment for good reason by giving written notice of termination. The notice may take effect immediately or at such later date as Employee may designate, provided that Employer may accelerate the termination date by giving five business days' written notice of the acceleration.

For purposes of this agreement, “good reason” means and is limited to the occurrence without cause and without Employee’s consent of a material reduction in the character of Employee’s duties, level of work responsibility or working conditions, a reduction in Employee’s salary below the level initially established at the commencement of this agreement, Employer’s failure to provide compensation or benefits owed to Employee, Employer requiring Employee to be based anywhere other than the greater _____ area, except for reasonable travel on Employer’s business, or any material breach by Employer of its duties or obligations to Employee that results in material harm to Employee.

E. Death. Employee’s employment shall terminate automatically upon Employee’s death.

F. Permanent Disability. Employer may terminate Employee’s employment immediately if Employee becomes permanently disabled. For purposes of this agreement Employee will be considered “permanently disabled” if, for a continuous period of 180 days or more, Employee has been unable to perform the essential functions of the job (even with reasonable accommodation) because of one or more mental or physical illnesses and/or disabilities, provided that Employer shall grant additional unpaid leave to the extent required by law.

XVI. Change in Control Provisions.

A. Change in Control. For purposes of this agreement, a “Change in Control” shall be deemed to have occurred when any of the following events takes place:

(1) Employer approves a consolidation or merger involving Employer in which Employer is not the continuing or surviving corporation.

(2) Employer approves a sale, lease, exchange or other transfer, in one transaction or in a series of related transactions, of all or substantially all of Employer’s assets, or adopt a plan or proposal for Employer’s liquidation or dissolution.

B. Continued Employment. Employee agrees that, subject to the terms and conditions of this agreement, in the event of a Change in Control Employee will remain employed by Employer for a period of one year after the Change in Control (the “One Year Period”). In the event of a Change in Control, Employer shall continue to employ Employee as Superintendent and Chief Executive Officer for the One Year Period. The agreements in this Section on Change in Control Provisions are in addition to, and are not a replacement for, the agreements elsewhere in this agreement relating to term and termination payments. During the One Year Period, Employer shall continue to pay Employee’s salary ratably monthly at a level not less than [fill in] % of that paid to Employee at the Control Change Date. During the One Year Period, Employee shall also be entitled to participate, on the basis of Employee’s position as provided in this agreement, in each of the following plans that are provided generally to

Employer's executive employees, officers or directors: any incentive compensation plan(s) and any employee benefit plans.

C. Termination of Employment by Employer or Successor. At any time during the One Year Period after a Change in Control the Board may terminate Employee's employment (the "Termination"), but if it does so, within five days of the Termination it shall pay to Employee a lump sum amount (the "Severance Payment") equal to [fill in] % of Employee's salary for the balance of the One Year Period. Employee's participation in employee benefit plans shall continue until the end of the One Year Period on the same terms as if Employee was still employed by Employer; provided that (i) if any benefit plan does not permit continued participation by Employee after Termination, then Employer otherwise will provide benefits to Employee equivalent to those that would be available if Employee was a continuing participant in the plan, and (ii) if Employee obtains new employment following Termination, then, following any waiting period applicable to participation in any plan of the new employer, Employee shall continue to be entitled to receive benefits pursuant to this Section only to the extent those benefits exceed those available to Employee under comparable plans of the Employee's new employer (provided that this shall not impair Employee's rights to future payment of vested benefits).

D. Resignation of Employment by Employee. At any time during the One Year Period after a Change in Control Employee may, on not less than 30 days' written notice to the Board and effective at the end of that notice period, resign his or her employment with Employer for good reason (the "Resignation"). In that event Employer shall provide Employee the same Severance Payment and benefits as it would have been obligated to provide in the case of a Termination under the prior subpart of this Section.

E. Limitation on Payments. No payments will be made by Employer to Employee pursuant to this Section on Change in Control Provisions in an amount such that the aggregate present value of all payments (whether payable pursuant to this agreement or any other agreement or arrangement) that are in the nature of compensation to (or for the benefit of) Employee and that are contingent on a change in the ownership or effective control of Employer, or on a change in the ownership of a substantial portion of the assets of Employer, equals or exceeds an amount equal to three (3) times the "base amount" for Employee as determined pursuant to Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"). It is the intention of the parties to this agreement that no payments will be made by Employer to Employee that will be treated as "excess parachute payments" under Section 280G of the Code and this Section on Change in Control Provisions should be interpreted consistent with that intention.

F. No Mitigation. Employee shall not be required to mitigate the amount of any payment provided for in this Section on Change in Control Provisions by seeking other employment or otherwise. Except as expressly set out in this Section no other income of any kind shall reduce any amounts or benefits to which Employee is entitled under this Section.

G. Successors in Interest. The rights and obligations of Employer under this agreement shall inure to the benefit of and be binding in each and every respect upon the direct and indirect successors and assigns of Employer, regardless of the manner in which the successors or assigns succeed to the interests or assets of Employer. This agreement shall not be terminated by the voluntary or involuntary dissolution of Employer, by any merger, consolidation or acquisition where Employer is not the surviving corporation, by any transfer of all or substantially all of Employer's assets, or by any other change in Employer's structure or the manner in which Employer's business or assets are held. In the event of any merger, consolidation or transfer of assets, this agreement shall be binding upon and shall inure to the benefit of the surviving corporation or the corporation to which the assets are transferred.

XVII. Indemnification. Employer shall defend and indemnify Employee from and against any and all claims that may be asserted against Employee by third parties (including derivative claims asserted by third parties on behalf of Employer) that are connected with Employee's employment by Employer, to the extent permitted by applicable law. The foregoing notwithstanding, Employer shall not be required to defend or indemnify Employee (a) in criminal proceedings, (b) in civil proceedings where Employee is the plaintiff or (c) to the extent it is finally adjudicated that Employee did not act in good faith and in the reasonable belief that Employee's actions were appropriate in the discharge of Employee's duties for Employer. Employer may fulfill its duty of defense by providing competent legal counsel of Employer's choosing. The foregoing rights are in addition to any other rights to which Employee may be entitled under any other agreement, policy, bylaw, insurance policy, ordinance, statute or other provision.

XVIII. Confidentiality. Employee agrees that information not generally known to the public to which Employee has been or will be exposed as a result of Employee's employment by Employer is confidential information that belongs to Employer. This includes information developed by Employee, alone or with others, or entrusted to Employer by its customers or others. Employer's confidential information includes, without limitation, information relating to Employer's trade secrets, know-how, procedures, purchasing, accounting, marketing, customers and employees. Employee will hold Employer's confidential information in strict confidence and will not disclose or use it except as authorized by Employer and for Employer's benefit.

XIX. Limitations on Publicity. Except for actions in the course of employment for the benefit of Employer or as may be authorized by Employer in writing, Employee will not be involved in the preparation of any book, article, story, video or film about Employer, its business or activities, and Employee will not give interviews about those subjects.

XX. Possession of Materials. Employee agrees that upon conclusion of employment or request by Employer, Employee shall turn over to Employer all documents, files, electronic media and other materials or work product in Employee's possession or control that were created pursuant to or derived from Employee's services for Employer.

XXI. Noncompetition. Employee agrees that Employer has many substantial, legitimate business interests that can be protected only by Employee agreeing not to compete with Employer under certain circumstances. These interests include, without limitation, Employer's contacts and relationships with its customers, Employer's reputation and goodwill in the industry, and Employer's rights in its confidential information. Employee therefore agrees that for 12 months after Employee's employment with Employer ends, regardless of the reason it ends, Employee shall

not, directly or indirectly (a) solicit, acquire or conduct any business competitive with Employer, from or with any of Employer's customers, or (b) be an employee, employer, consultant, officer, director, partner, trustee or shareholder of more than 5% of the outstanding common stock of any person or entity that solicits, acquires or conducts any such business from or with Employer's customers.

For purposes of this agreement, Employer's customers are defined as (a) all customers serviced by Employer at any time within 12 months before Employee's employment with Employer ended, (b) all customers and potential customers whom Employer actively solicited at any time within 12 months before Employee's employment with Employer ended, and (c) all successors, owners, directors, partners and management personnel of the customers just described in (a) and (b).

XXII. Nonraiding of Employees. Employee recognizes that Employer's workforce is a vital part of its business. Therefore, Employee agrees that for 12 months after Employee's employment with Employer ends, regardless of the reason it ends, Employee will not directly or indirectly solicit any employee to leave his or her employment with Employer. This includes that Employee will not (a) disclose to any third party the names, backgrounds or qualifications of any Employer employees or otherwise identify them as potential candidates for employment, or (b) personally or through any other person approach, recruit, interview or otherwise solicit employees of Employer to work for any other employer.

XXIII. Intellectual Property Agreement. Employee shall execute an Employee Intellectual Property Agreement in the form attached as Exhibit [fill in], which is a part of this agreement.

XXIV. Dispute Resolution. All disputes between Employee and Employer that otherwise would be resolved in court shall be resolved instead by the following alternate dispute resolution process (the "Process").

A. **Disputes Covered.** This Process applies to all disputes between Employee and Employer, including those arising out of or related to this agreement or Employee's employment at Employer. Disputes subject to this Process include but are not limited to pay disputes, contract disputes, wrongful termination disputes and discrimination, harassment or civil rights disputes. This Process applies to disputes Employee may have with Employer and also applies to disputes Employee may have with any of Employer's employees or agents so long as the employee or agent with whom Employee has the dispute is also bound by or consents to this Process. This Process applies regardless of when the dispute arises and will remain in effect after Employee's employment with Employer ends, regardless of the reason it ends. This Process does not apply, however, to workers' compensation or unemployment compensation claims.

B. **Mediation.** Before having an arbitration hearing, Employee and Employer agree to attempt to resolve all disputes by mediation using the Employment Mediation Rules of the American Arbitration Association. Mediation is a nonbinding process in which a neutral person helps the parties to try to reach an agreement to resolve their disputes. If the mediation is done after one party has started the arbitration process, the mediation shall not delay the arbitration hearing date. Temporary or interim relief may be sought without mediating first.

Any failure to mediate shall not affect the validity of an arbitration award or the obligation to arbitrate.

C. Arbitration. All disputes that are not resolved by agreement (in mediation or otherwise) shall be determined by binding arbitration. Arbitration is a process in which one or more neutral people decide the case after hearing evidence presented by both sides. The arbitration shall be governed by the Arbitration Procedures attached as Exhibit [fill in], which are a part of this Process. Employee and Employer agree that the disputes covered by this Process will not be decided in court by a judge or jury.

D. Injunctive Relief. Either party may request a court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after mediation or arbitration is commenced. The temporary or interim relief shall remain in effect pending the outcome of mediation or arbitration. No such request shall be a waiver of the right to submit any dispute to mediation or arbitration.

E. Attorneys' fees, Venue and Jurisdiction in Court. In any lawsuit arising out of or related to this agreement or Employee's employment at Employer, the prevailing party shall recover reasonable costs and attorneys' fees, including on appeal. Venue and jurisdiction of any such lawsuit shall exist exclusively in state and federal courts in King County, Washington, unless injunctive relief is sought by Employer and, in Employer's judgment, that relief might not be effective unless obtained in some other venue. These provisions do not give any party a right to proceed in court in violation of the agreement to arbitrate described above.

F. Employment Status. This Dispute Resolution Process does not guarantee continued employment, require discharge only for cause or require any particular corrective action or discharge procedures.

XXV. Governing Law. This agreement shall be governed by the internal laws of the state of Washington without giving effect to provisions thereof related to choice of laws or conflict of laws.

XXVI. Saving Provision. If any part of this agreement is held to be unenforceable, it shall not affect any other part. If any part of this agreement is held to be unenforceable as written, it shall be enforced to the maximum extent allowed by applicable law. The indemnification, confidentiality, limitations on publicity, possession of materials, noncompetition, nonraiding and dispute resolution provisions of this agreement shall survive after Employee's employment by Employer ends, regardless of the reason it ends, and shall be enforceable regardless of any claim Employee may have against Employer.

XXVII. Waiver. No waiver of any provision of this agreement shall be valid unless in writing, signed by the party against whom the waiver is sought to be enforced. The waiver of any breach of this agreement or failure to enforce any provision of this agreement shall not waive any later breach.

XXVIII. Assignment; Successors. Employer may assign its rights and delegate its duties under this agreement. Employee may not assign Employee's rights or delegate Employee's duties under this agreement.

XXIX. Binding Effect. This agreement is binding upon the parties and their personal representatives, heirs, successors and permitted assigns.

XXX. Counterparts. This agreement may be executed in any number of counterparts, each of which shall be an original and all of which, taken together, shall constitute a single agreement.

XXXI. Legal Representation. In connection with this agreement, the law firm of Foster Pepper & Shefelman PLLC has represented only Employer and has not represented Employee. Employee acknowledges that Employee has been advised to consult with independent legal counsel before signing this agreement and has had the opportunity to do so.

XXXII. Complete Agreement. This agreement [, together with the attached Exhibits,] is the final and complete expression of the parties' agreement relating to Employee's employment. This agreement may be amended only by a writing signed by both parties; it may not be amended orally or by course of dealing. The parties are not entering into this agreement relying on anything not set out in this agreement. This agreement shall control over any inconsistent policies or procedures of Employer, whether in effect now or adopted later, but Employer's policies and procedures that are consistent with this agreement, whether in effect now or adopted later, shall apply to Employee according to their terms.

DATED as of the date first written above.

EMPLOYEE: _____

EMPLOYER: [fill in]

By _____
Its _____

EXHIBIT [fill in]
ARBITRATION PROCEDURES

These arbitration procedures are a part of the Dispute Resolution Process (the “Process”) set out in the agreement to which this Exhibit is attached.

Commencement. Arbitration shall be commenced by serving a written demand for arbitration on the other party, either personally or by both regular first class mail and certified mail, return receipt requested. The arbitration need not be filed with any arbitration administrator, but a party may file the arbitration with the American Arbitration Association (“AAA”) if the party believes that administration by the AAA would be beneficial.

Arbitrators. There shall be a single neutral arbitrator, provided that if any party in good faith demands an award greater than \$250,000, excluding interest, attorneys’ fees, arbitration fees and costs, three neutral arbitrators shall hear the case and render the award while a single arbitrator shall hear and resolve all prehearing matters. The total award by a single arbitrator shall not exceed \$250,000, excluding interest, attorneys’ fees, arbitration fees and costs. If the parties cannot agree on the identity of the arbitrator(s) within 10 days of the arbitration demand, the arbitrator(s) shall be selected by the administrator of the AAA office nearest the arbitration site, in which case the arbitrator(s) shall be members of the AAA’s Large, Complex Case Panel or shall have similar professional credentials. However selected, each arbitrator shall be a lawyer with at least 15 years’ experience and shall reside in the metropolitan area in which the arbitration is to be conducted unless otherwise agreed.

Representation by Counsel. All parties shall have the right to representation by legal counsel at any stage of the proceedings.

Location. The arbitration shall be conducted in the city with a population of at least 100,000 that is closest to the location to which Employee reports to work, or at any other location to which Employee and Employer may agree.

Rules. The arbitration shall be conducted in accordance with the AAA Employment Dispute Resolution Rules to the extent not inconsistent with the other terms of this Dispute Resolution Process.

Prehearing Matters. There shall be no discovery or dispositive motion practice, except that the arbitrator shall authorize discovery that is appropriate to ensure a fair hearing. Discovery shall not extend the time limits set out below. The arbitrator may enter prehearing orders on any appropriate subject, including mediation, scheduling, discovery, witness disclosure, issues to be heard, preliminary injunctive relief, the joinder of parties (provided the party joined is bound by or consents to this Dispute Resolution Process) or consolidation of the arbitration with any other

involving common issues of law or fact or which may promote economy. The arbitrator may impose reasonable sanctions on a party for failure to comply with the arbitrator's orders.

Hearing. The arbitrator(s) shall hold a private hearing within 120 days of the initial demand for arbitration and shall conclude the hearing within three days. These time limits are included to expedite the proceeding, but the arbitrator(s) may for good cause allow reasonable extensions or delays, and any extensions or delays shall not affect the validity of the award. The arbitrator(s) shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs and may require both of us to submit some or all of our evidence through written declarations or using any other manner of presentation that the arbitrator(s) decide is appropriate. Live testimony and cross-examination shall be allowed, but only to the extent necessary to ensure a fair hearing on material issues.

Decision. The arbitrator(s)' written decision shall be made within 14 calendar days after the hearing, but a failure to meet this deadline shall not affect the validity of the award. The decision shall contain a brief statement of the claim(s) determined and the award made on each claim. The decision and award need not be unanimous; rather, the decision and award of two arbitrators shall be final. Absent fraud, collusion or willful misconduct by an arbitrator, the award shall be final and binding and judgment may be entered in any court having jurisdiction.

Law; Remedies. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. On issues of state law, the substantive law (not including choice of law rules) of the state in which Employee principally reports to work shall control. The arbitrator(s) may award injunctive relief or any other remedy that would have been available in court. If a court, applying applicable substantive law, would be authorized to award punitive or exemplary damages, the arbitrator(s) shall have the same power, but the arbitrator(s) otherwise shall not award punitive or exemplary damages. All statutes of limitations that would apply in court shall apply in the arbitration. Questions about whether a dispute must be arbitrated shall be determined by the arbitrator(s). The arbitrator(s) may award attorneys' fees, arbitration fees and costs to the prevailing party.

Arbitration Law. This Dispute Resolution Process is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA"). The provisions of the FAA (and to the extent not preempted by the FAA, the provisions of the law of the state in which Employee principally reports to work that generally apply to commercial arbitration agreements, such as provisions granting stays of court actions pending arbitration) are incorporated into this Dispute Resolution Process to the extent not inconsistent with the other terms of this Process.