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REV 16 March 2017



**Startup Forms: Employee Offer Letter**

**General Guidelines for Forms**

As a general matter, you should not make substantive changes to any of the forms included in the Startup Forms Library without checking with your legal counsel. We are constantly improving and updating our forms to keep up with developments in the law and in what's "standard" in the market. As such, you should check here periodically to determine whether you have the latest forms available.

**Employee Offer Letter**

This form is designed to be used by the Company for rank-and-file employees. Generally a full-blown Employment Agreement would only be appropriate for the CEO and certain key executive officers of the Company. Everyone else would typically sign this much shorter and simpler form of Offer Letter. Make sure you get advice from counsel before using this form for the first time so that your counsel can warn you about the usual pitfalls for start-ups such as failing to pay attention to minimum wage requirements.

These forms are generally designed for use by companies with employees and consultants in California. You should consult with counsel for use in other jurisdictions.

**Using these Forms**

The document below includes footnotes with additional information. The footnotes must be deleted by you or your counsel before execution.

# **[Company Name]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

[Date]

[Employee Name]
[Employee Address 1]
[Employee Address 2]

Dear \_\_\_\_\_\_\_\_\_\_:

[Company Name], a Delaware corporation (the “Company”), is pleased to offer you employment with the Company on the terms described below.[[1]](#footnote-1)[[2]](#footnote-2)

1. **Position.** You will start in a full-time position as [Employee’s Title] and you will initially report to the Company’s [Supervisor’s Title]. Your primary duties will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. By signing this letter, you confirm with the Company that you are under no contractual or other legal obligations that would prohibit you from performing your duties with the Company.
2. **Compensation and Employee Benefits.** You will be paid a starting [wage/salary][[3]](#footnote-3)at the rate of $\_\_\_\_\_\_\_\_\_\_ per [hour/month/year], payable on the Company’s regular payroll dates. [As a regular employee of the Company you will be eligible to participate in a number of Company-sponsored benefits, which are described in the employee benefit summary that I have enclosed with this letter.]
3. [**Equity Grant.**[[4]](#footnote-4) Subject to the approval of the Company’s Board of Directors, you will be granted [an option] **OR** [a right] to purchase \_\_\_\_\_\_\_\_\_\_ shares of the Company’s common stock. The [option] **OR** [purchase right] will be subject to the terms and conditions applicable to [options] **OR** [restricted stock purchase awards] granted under the Company’s [Stock Plan Name], as described in that plan and the applicable [stock option] **OR** [restricted stock purchase] agreement, which you will be required to sign. You will vest in [25]% of the shares on the [12]-month anniversary of your vesting commencement date and [1/48th] of the total shares will vest in monthly installments thereafter during continuous service, as described in the applicable [stock option] **OR** [restricted stock purchase] agreement. The [exercise] **OR** [purchase] price per share will be equal to the fair market value per share on the date the [option] **OR** [restricted stock purchase award] is granted, as determined by the Company’s Board of Directors in good faith [compliance with applicable guidance in order to avoid having the option be treated as deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended]. There is no guarantee that the Internal Revenue Service will agree with this value. You should consult with your own tax advisor concerning the tax risks associated with accepting [an option] **OR** [a right] to purchase the Company’s common stock. Although management of the Company will recommend to the Company’s Board of Directors that you be granted the [option] **OR** [restricted stock purchase award]on the terms set forth herein, by execution of this letter, you acknowledge that you have no right to receive the [option] **OR** [restricted stock purchase award], or any right to have the [option] **OR** [restricted stock purchase award]subject to the specific terms set forth herein, unless the grant is approved by the Company’s Board of Directors.]
4. **Confidential Information and Invention Assignment Agreement.** Like all Company employees, you will be required, as a condition of your employment with the Company, to sign the Company’s enclosed standard Confidential Information and Invention Assignment Agreement.[[5]](#footnote-5)
5. **Employment Relationship.** Employment with the Company is for no specific period of time. Your employment with the Company will be “at will,” meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company’s personnel policies and procedures, may change from time to time, the “at will” nature of your employment may only be changed in an express written agreement signed by you and the Company’s Chief Executive Officer.
6. **Outside Activities.** While you render services to the Company, you agree that you will not engage in any other employment, consulting or other business activity without the written consent of the Company.
7. **Taxes, Withholding and Required Deductions.** All forms of compensation referred to in this letter are subject to all applicable taxes, withholding and any other deductions required by applicable law.
8. **Miscellaneous.**
	1. **Governing Law.** The validity, interpretation, construction and performance of this letter, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of California, without giving effect to principles of conflicts of law.
	2. **Entire Agreement.** This letter sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof.
	3. **Counterparts.** This letter may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.
	4. **Electronic Delivery.** The Company may, in its sole discretion, decide to deliver any documents or notices related to this Agreement, securities of the Company or any of its affiliates or any other matter, including documents and/or notices required to be delivered to you by applicable securities law or any other law or the Company’s Certificate of Incorporation or Bylaws by email or any other electronic means. You hereby consent to (i) conduct business electronically (ii) receive such documents and notices by such electronic delivery and (iii) sign documents electronically and agree to participate through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

*[Signature Page Follows]*

If you wish to accept this offer, please sign and date both the enclosed duplicate original of this letter and the enclosed Confidential Information and Invention Assignment Agreement and return them to me. As required, by law, your employment with the Company is also contingent upon your providing legal proof of your identity and authorization to work in the United States. This offer, if not accepted, will expire at the close of business on \_\_\_\_\_\_\_\_\_\_.

We look forward to having you join us no later than \_\_\_\_\_\_\_\_\_\_.

Very truly yours,

[Company Name]

By:

 (Signature)

Name:

Title:

ACCEPTED AND AGREED:

(Print Employee Name)

(Signature)

Date

Anticipated Start Date:

Attachment A: Confidential Information and Invention Assignment Agreement

ATTACHMENT A

CONFIDENTIAL INFORMATION AND
INVENTION ASSIGNMENT AGREEMENT

*(See Attached)*

1. This document contains annotations that should be deleted before adoption or execution. [↑](#footnote-ref-1)
2. This document is intended for use with employees in the U.S. and legal counsel in state of employment should be consulted. [↑](#footnote-ref-2)
3. The question as to whether an employee is eligible for overtime pay or exempt as a salaried employee is complex. Counsel should be consulted. More information can be found at: <http://webapps.dol.gov/elaws/whd/flsa/screen75.asp> [↑](#footnote-ref-3)
4. Stock or options to purchase stock are usually issued to employees, advisors and consultants under a stock option plan. The Company’s Board of Directors must act to approve the establishment of a stock plan and the grant of restricted stock or stock options under the plan. These approvals can happen at a meeting in which a majority of the Directors are present and vote to approve, or by a unanimous written consent by all of the Directors. Stock plans must also be approved by a company’s stockholders – usually by written consent. [↑](#footnote-ref-4)
5. The purpose of the referenced agreement is to ensure that the Company owns the technology and intellectual property developed by its employees. Best practice is that such agreements are signed when employment begins as some states may question the enforceability of agreements entered into later for lack of contractual consideration. [↑](#footnote-ref-5)