

**ABA Section of Labor & Employment Law
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**Mock Negotiation of Executive Employment Agreement
Fact Pattern and Proposed Employment Agreement**

**By: Wayne N. Outten
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Fact Pattern:

Joan Johnson is VP of Marketing for Alpha Technology, Inc. ("Alpha"), a small publicly-traded company in New York City. She has worked for Alpha for ten years, since obtaining her MBA. Joan is married to John Henry, who was recently promoted to partner in a national accounting firm. They have children ages 8 and 3, and they own an apartment in the City.

Joan's salary is \$200,000, and her annual bonus has averaged \$50,000 for the past three years. She has 20,000 shares of Alpha restricted stock and 10,000 options at \$8 per share, with half of each vested and the rest vesting 25% each January over the next four years. The present fair market value of Alpha stock is \$10 per share.

The restricted stock and stock option agreements contain restrictions on disclosure of confidential information and on competition and solicitation of clients and employees during the vesting period. Joan's employment agreement contains a prohibition on disclosure of confidential information and requires Joan to give at least 90 days' notice of resignation, during which period Alpha can require her to work or not to work.

Joan has been solicited for a job as SVP of Marketing for Beta Tech Corp., a medium-size publicly-traded company with offices in Atlanta, Minneapolis, and Los Angeles. Beta has a reputation for providing high quality services. Joan believes that Beta's stock has substantial upside potential, especially if it is acquired by a larger company, which Joan believes is likely.

During the interview process, Joan is impressed by Beta's dynamic new CEO, Max Boss. He tells Joan that Beta could really use someone with her talent and experience, and he assures her that she can expect a long and prosperous career with the company. He tells her that Beta is not "in play" and will remain independent. And he tells her that she will report directly to him in the Minneapolis headquarters.

Mr. Boss offers Joan the job and urges her to start work as soon as possible. He offers her a salary of \$250,000, a target bonus of 25% of salary, and participation in Beta's equity program. Joan is interested, but is concerned about giving up her secure position with Alpha, about forfeiting her Alpha equity, and about relocating her family.

Beta's outside counsel, Barbara D'Aquila, emails to Joan what she characterized as Beta's standard employment agreement, with a few changes reflecting Joan's deal. Joan has forwarded that agreement to her employment attorney, Wayne Outten.

EMPLOYMENT AGREEMENT

AGREEMENT made this ___ day of November 2007 by and between Beta Tech Corporation, a Delaware corporation (the "**Company**"), and **Joan Johnson** (the "**Executive**").

WHEREAS, the Company wishes to employ the Executive and the Executive wishes to accept such employment, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Employment**

The Company agrees to employ the Executive during the Term specified in paragraph 2, and the Executive agrees to accept such employment, upon the terms and conditions hereinafter set forth.

2. **Term**

Subject to the provisions of paragraphs 6 and 7, the Executive's employment by the Company will commence on the date hereof and continue until terminated (i) by the Company on written notice or (ii) by the Executive on written notice of at least 90 days (each is referred to herein as a "**Notice of Termination**"). The period of the Executive's employment is referred to herein as the "**Term**". If the Executive gives Notice of Termination, the Company may, at any time during the notice period (i) relieve her of her offices, duties and responsibilities and place her on leave, during which she will receive her salary and other benefits under this Agreement or (ii) terminate her employment pursuant to paragraph 6(vii), in which event she will not receive any salary and benefits thereafter. The date on which the Executive ceases to be employed, regardless of the reason, is the "**Date of Termination**".

3. **Duties and Responsibilities**

(a) **Title**. The Executive shall have the title Senior Vice President.

(b) **Duties**. The Executive shall perform any duties and responsibilities assigned to her and shall report to the CEO (or his successor or designee).

(c) **Responsibilities**. The Executive (i) will use her best efforts to perform her duties and responsibilities in a manner consistent with the Company's policies and procedures as in effect from time to time and (ii) will not incur obligations or enter into any transactions on behalf of the Company other than in the ordinary course of business.

(d) **Scope of Employment**. The Executive's employment by the Company shall be full-time and exclusive. During the Term, the Executive will (i) devote all of her time and attention, her best efforts, and her skill and ability to promote the Company's interests; (ii)

carry out her duties in a competent manner and serve the Company faithfully and diligently; and (iii) work with other employees in a competent manner.

4. Compensation

(a) Base Salary. During the Term, the Company will pay the Executive, in accordance with its normal payroll practices, a base salary of \$250,000 per annum (“**Base Salary**”). The Company will review Executive’s performance annually and may change the Base Salary in accordance with the review in its sole and absolute discretion.

(b) Discretionary Annual Bonus. During the Term, the Executive will be eligible to receive an annual bonus of up to 25% of her Base Salary (the “**Target Amount**”), as determined by the CEO in his sole and absolute discretion, based upon the Executive’s performance, the Company’s performance, and other factors the CEO deems appropriate (the “**Annual Discretionary Bonus**”). The Executive will receive such bonus only if, on the payment date, she is employed by the Company and a Notice of Termination has not been delivered.

The Annual Discretionary Bonus will be made in two parts, as determined by the CEO in his sole and absolute discretion: part will be paid in a lump sum (subject to deductions and withholdings) on about April 15th of the next year; the remainder will consist of an award of restricted shares under and subject to the Company’s Equity Accumulation Program (the “**EAP**”). One third of any share award will vest on each anniversary of the award date; provided, however, that shares will vest only if, on each vesting date, the Executive is employed by the Company and a Notice of Termination has not been delivered; unvested shares will be forfeited.

(c) Equity-Based Incentive Compensation. The Executive is eligible to participate in the Company’s Equity-Based Incentive Plan (the “**Equity Plan**”), subject to her execution of the Company’s Equity-Based Incentive Award Agreement (“the **Equity Agreement**”). In recognition of equity that the Executive will forfeit from her prior employer, the Company will grant her an initial award of stock options under the Equity Plan with a discounted value of \$200,000, effective on the date the Executive signs the Equity Agreement; the option price will be 75% of the stock’s closing price on that date. Vesting will occur equally over three years. Any future grant awards will be made in the Company discretion based on performance. All grants are subject to the terms and conditions of the Equity Plan, including the provision that options will vest only if, on each vesting date, the Executive is employed by the Company and a Notice of Termination has not been delivered; unvested shares will be forfeited.

5. Expenses; Fringe Benefits

(a) Expenses. The Company will pay or reimburse the Executive for reasonable, ordinary, necessary and documented business or entertainment expenses incurred during the Term in the performance of her services in accordance with the policies of the Company as from time to time in effect. The Executive, as a condition precedent to obtaining such payment or reimbursement, must provide all statements, bills or receipts evidencing the expenses, plus any other information or materials that the Company may require.

(b) Benefit Plans. During the Term, the Executive and, to the extent eligible, her dependents, shall be eligible to participate in and receive benefits under welfare benefit plans and programs provided by the Company to its employees generally, subject, however, to the applicable eligibility and other provisions of the plans and programs in effect from time to time.

(c) Retirement Plans. During the Term, the Executive shall be entitled to participate in retirement plans and programs provided by the Company to its employees generally, subject, however, to the applicable eligibility and other provisions of the plans and programs in effect from time to time.

(d) Vacation. The Executive shall be entitled to four (4) weeks paid vacation annually, with no right of carryover (except as otherwise required by law), to be taken at such times as shall not, in the reasonable judgment of the CEO, materially interfere with the Executive's fulfillment of her duties hereunder, and shall be entitled to holidays, sick days and personal days in accordance with the Company's policies in effect generally for its employees.

6. Termination

(a) Termination for Cause. The Company may terminate the Executive's employment for Cause (as defined below) at any time effective upon the giving of written notice. The term "**Cause**" shall include the following grounds:

(i) the Executive's failure or refusal to perform her duties and responsibilities as set forth in paragraph 3 hereof to the satisfaction of the Company or to abide by directives of the Board or the CEO, or the Executive's failure to devote all of her time and attention exclusively to the business and affairs of the Company in accordance with the terms hereof;

(ii) the Executive's misappropriation of the Company's funds or property;

(iii) the Executive's use of illegal drugs or abuse of alcohol;

(iv) the Executive's commission of any act that constitutes a felony or any crime involving moral turpitude, dishonesty or theft;

(v) the Executive's failure to comply with the Company's business practices and policies, including without limitation, policies against racial or sexual discrimination or harassment;

(vi) the Executive's commission of any act that materially injures, or could reasonably be expected to materially injure, the reputation, business, or business relationships of the Company;

(vii) the Executive's delivery of a Notice of Termination under paragraph 2 above, or the Executive's resignation on her own initiative;

(viii) any misconduct or negligence by the Executive in the performance of her duties; and

(ix) any breach (not covered by any of the clauses (i) through (viii) above) by the Executive of any material provision of this Agreement.

(b) Termination without Cause. Notwithstanding anything to the contrary herein, the Company may terminate the Executive's employment without Cause during the Term by giving written notice to the Executive setting forth a Date of Termination.

(c) Termination for Death or Disability. In the event of the Executive's death, the Date of Termination shall be the date of the Executive's death. In the event the Executive shall be unable to perform her duties hereunder by virtue of any illness, incapacity or disability from any cause(s) whatsoever (all such causes being herein referred to as "**disability**"), in substantially the manner and to the extent performed before such disability, for periods aggregating 45 days (whether or not continuous) in any period of 360 days, the Company may terminate the Executive's employment at the end of any month upon prior written notice to her.

7. Effect of Termination of Employment

(a) Termination by the Company for Cause or by the Executive for any Reason. In the event of the termination of the employment of the Executive by the Company for Cause or by the Executive for any reason, the Executive shall be entitled to the following payments and benefits, subject to any appropriate offsets, as permitted by applicable law, for debts or money due to the Company or an affiliate thereof (collectively, "**Offsets**"):

(i) unpaid Base Salary through, and any unpaid reimbursable expenses outstanding as of, the Date of Termination; and

(ii) any benefits accrued to the Executive through the Date of Termination under the plans and programs described in paragraphs 5(b) and (c), provided that any rights the Executive may have to severance payments shall be based solely on this Agreement and not on any severance policy then in effect.

(b) Termination by the Company without Cause or by Notice of Termination Delivered by the Company pursuant to paragraph 2. In the event of a termination by the Company without Cause or by Notice of Termination under paragraph 2, the Executive shall be entitled to the following payments and benefits, subject to any Offsets:

(i) as severance, her Base Salary when otherwise payable through six months following the Date of Termination (the "**Payment Period**"), provided that any employment or consulting income earned by the Executive during the Payment Period shall reduce the Company's obligations under this clause (i);

(ii) any unpaid reimbursable expenses outstanding as of the Date of

Termination; and

(iii) any benefits accrued to the Executive through the Date of Termination under the plans and programs described in paragraphs 5(b) and (c), provided that any rights the Executive may have to severance payments shall be based solely on this Agreement and not on any severance policy then in effect.

The Executive shall have an affirmative duty to mitigate damages hereunder. If she obtains any employment or consulting arrangement, she must immediately notify the Company. Any compensation and benefits earned by the Executive shall reduce the Company's obligations under this paragraph 7(b). Upon the Company's written request during the Payment Period, the Executive shall provide written verification (such as wage stubs, tax returns and employer verification) of compensation earned from such employment or consulting arrangements, as well as coverage under benefit plans of any new employer. If the Executive fails to supply such information, the Company's obligations under this paragraph 7(b) shall terminate.

The severance payments and benefits under this paragraph 7(b) are conditioned on the Executive signing and not revoking a separation agreement that includes a general release of the Company and its affiliates, and their respective successors and assigns, officers, managers, employees, agents, attorneys and representatives, of any claims relating to the Executive's employment or the termination thereof (the "**Separation Agreement**").

If the Executive breaches any material provision of the Separation Agreement or of paragraphs 8 or 9 of this Agreement, in addition to any other remedies at law or in equity, the Company may cease making any payments and providing benefits under this paragraph 7(b), without affecting its rights under this Agreement or the Separation Agreement, and may seek to recoup from the Executive any payments made to the Executive under this paragraph 7(b).

8. Non-Solicitation/Non-Servicing Agreement and Protection of Confidential Information

(a) Non-Solicitation/Non-Servicing. The Executive acknowledges that: (i) that the business in which the Company competes is highly competitive; (ii) as a key executive, she will participate in servicing current clients and vendors and/or soliciting prospective clients and vendors, through which the Executive will obtain knowledge of the "know-how" and business practices of the Company, in which matters the Company has a substantial proprietary interest; (iii) her employment requires the performance of services that are special, unique, and extraordinary, and her position with the Company places her in a position of confidence and trust with the Company's clients, vendors and employees; and (iv) her rendering of services to the Company's clients and vendors necessarily will require the disclosure to the Executive of confidential information (as defined in paragraph 8(b) hereof) of the Company. In the course of her employment, the Executive will develop personal relationships with the Company's clients and vendors and knowledge of those clients' and vendors' affairs and requirements, and the Company's relationship with its clients and vendors will therefore be placed in the Executive's hands in confidence and trust. Thus, the Executive agrees that it is a legitimate interest of the Company, and reasonable and necessary for the protection of the Company's confidential

information, goodwill and business, that the Executive make the covenants contained herein and that the Company would not have entered into this Agreement unless it contained the covenants in this paragraph 8. The Executive therefore agrees that she will not, as an employee, consultant, contractor, partner, shareholder, or in association with, any other person, business or enterprise, except on behalf of the Company, directly or indirectly, and regardless of the reason for her ceasing to be employed by the Company:

(i) during the period that she is employed by the Company and for a period of two (2) years after the Date of Termination, render any services to, engage in, guaranty any obligations of, or have any ownership interests or other affiliation in, any aspect of any business that is a competitor of the Company.

(ii) during the period that she is employed by the Company and for a period of two (2) years after the Date of Termination, attempt in any manner to solicit, persuade, induce, or encourage any customer, vendor, supplier, consultant or other person or entity that has (or had within twelve months before the Date of Termination) a contractual or other business relationship with the Company to cease to do business or to reduce the amount of business that any such person or entity has customarily done or is reasonably expected to do with the Company; or

(iii) during the period that she is employed by the Company and for a period of two (2) years after the Date of Termination, employ as an employee or retain as a consultant any person who is then (or during the twelve months before the Date of Termination was) an employee or consultant of the Company or persuade or attempt to persuade any such employee or consultant to leave the employ of the Company or to become employed as an employee or retained as a consultant by anyone other than the Company; or

(iv) during the period that she is employed by the Company and for a period of two (2) years after the Date of Termination, otherwise interfere with the relationship between the Company and any person described in this paragraph 8.

(b) Confidential Information. During the Executive's employment with the Company, she will acquire and have access to confidential or proprietary information about the Company and/or its clients, including but not limited to, trade secrets, service models, passwords, technology platforms, text messaging and transport modules, patents, trademarks, access to computer files, mobile marketing strategies, marketing campaigns, financial information and records, computer software programs, agreements and/or contracts between the Company and clients, client contacts, creative policies and ideas, and information about or received from clients and other companies with which the Company does business. The foregoing shall be collectively referred to as "**Confidential Information**". The Executive is aware that the Confidential Information is not readily available to the public; accordingly, she also agrees that she will not at any time (whether during or after the Term), disclose to anyone (other than her counsel in the course of a dispute arising from the alleged disclosure of Confidential Information or as required by law) any Confidential Information, or utilize such Confidential Information for the benefit of herself or any third party. The Executive agrees that

these restrictions shall apply whether or not any such information is marked "confidential" and regardless of the form of the information. If the Executive becomes legally required to disclose any Confidential Information, she will provide the Company with prompt notice thereof so the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this paragraph 8(b) to permit a particular disclosure. If such protective order or other remedy is not obtained or if the Company waives compliance with the provisions of this paragraph 8(b) to permit a particular disclosure, the Executive will furnish only that portion of the Confidential Information that she is legally required to disclose and, at the Company's expense, will cooperate with the Company to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. The Executive further agrees that all memoranda, disks, files, notes, records or other documents, whether in electronic form or hard copy (collectively, the "**Material**") compiled by her or made available to her during her employment with the Company and/or its predecessor (whether or not the Material constitutes or contains Confidential Information), and in connection with the performance of her duties hereunder, shall be the property of the Company and shall be delivered to the Company on the termination of the Executive's employment with the Company or at any other time upon request. Except in connection with the Executive's employment with the Company, the Executive agrees that she will not make or retain copies or excerpts of the Material.

(c) Remedies. If the Executive commits a breach, or is about to commit a breach, of any of the provisions of paragraphs 8(a) or (b), the Company shall have the right to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction without being required to post bond or other security and without having to prove the inadequacy of the available remedies at law, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Company and that money damages will not provide an adequate remedy to the Company. In addition, the Company may take all such other actions and remedies available to it under law or in equity and shall be entitled to such damages as it can show it has sustained by reason of such breach.

(d) Acknowledgements. The parties acknowledge that (i) the restrictions imposed in paragraphs 8(a) and (b) are fair and reasonable and are reasonably required to protect the Company's proprietary interests and other legitimate business interests, and the goodwill associated with the Company's business; (ii) the time, scope, geographic, and other provisions of this paragraph 8 have been specifically negotiated by sophisticated parties represented by legal counsel; and (iii) given the nature of the Company's business and given that clients can be and are serviced by the Company wherever they are located, it is impractical and unreasonable to place geographic limitations on the agreements made by the Executive herein. If any covenant contained in paragraphs 8(a) and (b) is held to be unenforceable by reason of its duration or geographic scope or its being too extensive in any other respect, the parties agree (x) such covenant shall be interpreted to extend over the maximum duration or geographic areas for which it may be enforceable and over the maximum extent in all other respects as to which it may be enforceable, all as determined by the court making such determination and (y) in its reduced form, such covenant shall be enforceable; but such reduced form shall apply only with respect to the operation of such covenant in the particular jurisdiction in or for which such adjudication is made. Each of the covenants and agreements contained in this paragraph 8 (collectively, the "**Protective Covenants**") is separate, distinct and severable. All rights,

remedies and benefits expressly provided for in this Agreement are cumulative and are not exclusive of any rights, remedies or benefits provided for by law or in this Agreement, and the exercise of any remedy by a party shall not be deemed an election to the exclusion of any other remedy (any such claim by the other party being hereby waived). The existence of any claim, demand, or cause of action of the Executive against the Company, whether based on this Agreement or otherwise, shall not constitute a defense to the Company's enforcement of any Protective Covenant. The unenforceability of any Protective Covenant shall not affect the validity or enforceability of any other Protective Covenant or other provisions of this Agreement.

(e) Notification of Restrictive Covenants. Before accepting employment or consulting work with any person, corporation or other entity during the Term or any period thereafter that the Executive is subject to the restrictions set forth in paragraph 8(a) above, the Executive shall notify the prospective employer in writing of her obligations under such provisions and shall simultaneously provide a copy of such written notice to the Company.

(f) Tolling. The duration of the non-solicitation/non-servicing covenants set forth in this Agreement shall not expire, and shall be tolled, during any period in which the Executive is in violation of any of those covenants, and all restrictions shall automatically be extended by the period of the Executive's violation of any such covenants.

(g) Scope. As used in this paragraph 8, the term "Company" shall include all subsidiaries and affiliates of the Company.

9. Intellectual Property

The Executive agrees that all materials created or modified by her during the Term, including, without limitation, all works of authorship, inventions, processes, ideas, methods, concepts and other tangible and intangible materials (collectively, "**Work Product**"), shall be "work for hire" and that the Company shall be the exclusive owner of the Work Product and all intellectual property rights associated with the Work Product, including all trademarks, patents or copyrights contained therein. To the extent any Work Product does not qualify as "work for hire," the Executive hereby assigns ownership of all such Work Product to the Company and agrees to take all reasonable measures, at the Company's expense, to perfect such rights in the Company. The Executive hereby appoints the Company as her attorney-in-fact with the limited power to execute assignments of such Work Product.

9. Enforceability

The failure of any party to require performance by another party of any provision shall not affect the right of that party thereafter to enforce the same, nor shall it affect any other party's right to enforce the same or to enforce any other provisions in this Agreement; nor shall the waiver by any party of the breach of any provision hereof be held to be a waiver of any subsequent breach of such provision or as a waiver of the provision itself.

10. Assignment

The Company shall have the right to assign this Agreement. This Agreement shall inure to the benefit of, and may be enforced by, any and all successors and assigns of the Company, including, without limitation, by asset assignment, stock sale, merger, consolidation or other reorganization. The Executive's rights and obligations under this Agreement are personal to the Executive; she may not assign or otherwise transfer her rights or obligations under this Agreement, and any purported assignment or transfer shall be void and ineffective.

11. Modification

This Agreement may not be orally canceled, changed, modified or amended; and no cancellation, change, modification or amendment shall be effective or binding, unless in writing and signed by the parties to this Agreement, and approved in writing by the CEO.

12. Severability and Survival

If any provision of this Agreement is determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the invalid or unenforceable part had been severed or reformed to be enforceable. The parties' respective rights and obligations hereunder shall survive the termination of the Executive's employment to the extent necessary to the intended preservation of such rights and obligations.

13. Life Insurance

The Executive agrees that the Company shall have the right to obtain life insurance on the Executive's life, at the sole expense of the Company, and with the Company as the sole beneficiary thereof. The Executive shall (a) cooperate fully in obtaining such life insurance, (b) sign any necessary consents, applications and other related forms or documents, and (c) at the Company's expense, take any reasonably required medical examinations.

14. Notice

Any notice, request, instruction or other document to be given hereunder by any party hereto to another party shall be in writing and shall be deemed effective (a) upon personal delivery, if delivered by hand, (b) three days after the date of deposit in the mails, postage prepaid, if mailed by certified or registered mail, or (c) on the next business day, if sent by prepaid overnight courier service or facsimile transmission (if electronically confirmed), and in each case, addressed as follows:

If to the Executive:

If to the Company:
Beta Tech Corporation

with a copy to:

Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice.

15. Applicable Law and Legal Proceedings

(a) The Company's principal offices are located in Minneapolis, Minnesota. Therefore, all questions concerning the construction, interpretation and validity of this Agreement, and all matters relating hereto, shall be governed by and construed and enforced under the laws of Minnesota, without giving effect to any choice-of-law provision or rule (whether in Minnesota or elsewhere) that would cause the application of the laws of any jurisdiction other than Minnesota.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any Minnesota state court or federal court sitting in Minnesota, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or for recognition or enforcement of any judgment. Each of the parties hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such Minnesota court or federal court and that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) If a court determines that Executive has violated any material provision of this Agreement (including but not limited to paragraphs 8 or 9), the Court shall award to the Company against the Executive its costs and legal fees, in addition to any other remedies allowed by law.

16. Representations by Executive

The Executive represents that she is not subject to any agreement, instrument, order, judgment or decree, or any other agreement, that would prevent her from entering into this Agreement or that would be breached upon performance of her duties under this Agreement. Executive will defend and indemnify the Company if this representative is not true.

17. Entire Agreement

This Agreement represents the entire agreement between the Company and the Executive with respect to the employment of the Executive by the Company, and all prior discussions, negotiations, agreements, plans and arrangements relating to the employment of the Executive by the Company are nullified and superseded hereby.

18. Advice of Counsel

The Executive represents that she has been fully and competently advised by independent counsel of her own choosing in connection with the preparation, negotiation and execution of this Agreement and has relied solely on such advice for all matters relating hereto.

19. Headings

The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

20. Withholdings

The Company may withhold from any amounts payable under this Agreement such federal, state or local taxes as may be required under any applicable law or regulation.

21. Counterparts

This Agreement may be executed by facsimile transmission and in counterparts, each of which shall be deemed an original and all of which shall constitute one instrument.

22. No Strict Construction

The language used in this Agreement will be deemed to be chosen by the Company and the Executive to express their mutual intent. No rule of law or contract interpretation that provides that in the case of ambiguity or uncertainty a provision should be construed against the draftsman will be applied against any party hereto.

24. Conditions

This Agreement is expressly conditioned upon the Company's completion to its satisfaction of its pre-employment investigation, including Executive's educational and employment references, and credit, criminal, and background reports, plus Executive's satisfactory completion of a drug screening test. The Company reserves the right to declare this Agreement null and void and/or to terminate this Agreement and to terminate Executive's employment without notice, if it determines that any condition has not been satisfied.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year first above written.

Beta Tech Corporation

By: _____
Bruce Thompson, Assistant Vice President of Human Resources

Joan Johnson