Appendix 9A

MODEL COMPANY EMPLOYEE AGREEMENT

This Model Company Employee Agreement (the “Agreement”) is an agreement between Model Company Inc. (“ModelCo,” “Company,” “we,” “our,” “us”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Employee,” “you,” “your”) that is effective as of the date of last signature below.

This Agreement sets forth the understanding between you and ModelCo relative to your employment. It supersedes any previous agreement or understanding you may have had with ModelCo and is the sole basis for your employment.

1. TERMS OF EMPLOYMENT

Employment at will. You are an employee at will. This means that you may leave your position at any time, for any reason, and likewise ModelCo may end your employment at any time, for any reason, with or without cause. However, some of your obligations to ModelCo under this Agreement continue after the end of your employment with ModelCo.

2. CONFIDENTIALITY

As an employee, you will have access to sensitive Confidential Information belonging to the Company. The Company agrees to employ you and to provide you with access to the Confidential Information, as necessary for your role at the Company. You have a duty to keep the Confidential Information confidential. This duty continues after the end of your employment with ModelCo.

2.1 Definitions

2.1.1 “Confidential Information” is defined as any information that is unpublished, any information that ModelCo treats as confidential or proprietary, or any information that is not generally known to the public, but that a reasonable person in your job role should understand is confidential, based on the nature of the information or the circumstances of its disclosure. It includes, but is not limited to, ModelCo’s Business Information, ModelCo’s Technical Information, and any Third-Party Confidential Information provided to you in the course of your employment.

2.1.2 “Business Information” means access information; methods of operation; costs; contract terms; pricing methods or information; profits; markets and market strategies; marketing plans and activities; sales; buyer lists, contacts and preferences; vendor lists, contacts and preferences; contractor and subcontractor lists, contacts and preferences; employee lists and identities; employee compensation; employee work locations; personnel information and systems; finances; business ideas; plans for future development; internal policies, procedures, communications and reports, and all proprietary communications related to Employer whether in person, by cell or traditional phone line, email (including internal and external email), text messaging, or chat; and any material non-public information subject to federal securities laws or regulations.

2.1.3 “Technical Information” means technical data, software, developments, inventions, processes, formulas, improvements, discoveries, technologies, designs, drawings, engineering, hardware configurations, and all research and development activities, and the function, implementation, or details of any Company system that has not been previously published by the Company.

2.1.4 “Third-Party Confidential Information” means all Business Information or Technical Information provided by a third party under an obligation of confidentiality, including information of customers in the Company’s possession.

2.2 Proper Use of Confidential Information. You will use the Confidential Information provided to you by the Company for the sole purpose of performing your job at the Company. You must use appropriate means to store, transfer and otherwise manage the Company’s Confidential Information. You will further use reasonable care to prevent any unintended disclosure of this Confidential Information outside of the Company.

2.3 Third-Party Confidential Information. You will not use the Confidential Information or IP of any person as part of your employment in a way that violates the terms of any agreement you have with that person, or infringes that person’s legal rights. Specifically, but without limitation, you will not use Confidential Information or IP belonging to any prior employer as part of your work, unless the prior employer has authorized you in writing to use the Confidential Information or IP. If you are subject to any restrictions on the type of work you may perform due to an agreement with your prior employer or any other person, you will immediately disclose those restrictions to ModelCo’s legal counsel.

2.4 Non-disclosure of Confidential Information. You will not under any circumstances use or disclose any Confidential Information belonging to the Company or any third party without prior written authorization. You agree that injunctive relief is appropriate in such cases, in addition to all other available remedies.

3. INTELLECTUAL PROPERTY

3.1 Definitions

3.1.1 “Intellectual Property” (or “IP”) collectively refers to all (1) ModelCo Confidential Information, (2) all ModelCo Technical Information, (3) any other material registrable or protectable under the patent, copyright, trademark, or trade secret laws of the United States that is created, authored, conceived, discovered, developed or reduced to practice, by you alone or in collaboration with others, and (4) the right to register any of the above as well as any patents, copyrights, or trademarks resulting from any such registrations, including all provisional, continuation, reissue, or divisional patents, the right to license, and the rights to receive past damages.

3.1.2 “Company Resources” include any actions taken or items produced (1) under ModelCo’s direction, (2) in connection with your employment by ModelCo, (3) for use by ModelCo, (4) during your working hours as a ModelCo employee, (5) to be used in conjunction with ModelCo products or services, or (6) using ModelCo equipment or services.

3.2 Ownership of Intellectual Property created before your employment with ModelCo. IP that you created, owned, or had an interest in before you were hired by ModelCo remains yours (“Prior Intellectual Property” or “Prior IP”). Subject to the limitations in this Agreement, you have a continuing right to develop and exploit Prior IP using non-Company Resources and non-Confidential Information.

To avoid any future confusion or dispute, you should provide a list of Prior IP to the Company’s Human Resources department within ten (10) business days of signing this Agreement. Any Prior IP should be described in such a way that it can be easily identified or distinguished. If there is any dispute about IP ownership, ModelCo will be deemed the rightful owner unless you can provide conclusive written evidence that the IP in dispute was Prior IP. Such notice as is described in this Section or other verifiable records such as government registration, a distribution to a third party, or repository commit dates may serve as evidence of ownership.

3.3 Ownership of Intellectual Property created as an employee. Any IP created by you while you are an employee that either uses Company Resources or is related to the present or anticipated future commercial interests of ModelCo belongs to ModelCo (“Company Intellectual Property” or “Company IP”), whether or not the IP is related to your specific job duties. You agree to promptly and completely disclose all Company IP, or other intellectual property that could possibly be Company IP, to ModelCo’s legal counsel.

To the extent permitted by applicable law, Company IP is a work made for hire. If the work is not a “work made for hire,” then by signing this Agreement, you hereby assign and promise to assign all right, interest, and title to all Company IP to ModelCo to the fullest extent allowed by the intellectual property laws of the United States and the laws of any other country in which the work is made, used, performed, imported, exported, or sold. In addition, you promise to cooperate with ModelCo in securing and protecting our rights in Company IP that is created by you, whether or not you continue to be employed by ModelCo, and you hereby appoint ModelCo as your limited agent and attorney-in-fact for that purpose.

3.4 Ownership of Intellectual Property created outside of ModelCo employment. Subject to the limitations in this Agreement, new IP that you create while you are a ModelCo employee 1) using only non-Company Resources, and 2) that is outside the scope of ModelCo’s present or anticipated future commercial interests is also yours, and you have a right to develop and exploit it using non-Company Resources. ModelCo’s present and anticipated future interests include anything related to a current or planned Company product, service, technology, or offering, including knowledge of perceived gaps or opportunities for add-ons, extensions, improvements, complementary technologies, or value-added services.

3.5 Shop Rights. If you use, embed, or otherwise bring IP that you have created or in which you have any right, title, or interest into the Company in such a way that the Company or any of the Company’s customers may be liable for infringement of that IP, you hereby grant a worldwide, fully-paid-up irrevocable license to the Company and the Company’s customers for such use.

3.6 Compliance with State Law. Certain states have laws related to the assignment of inventions and require that employees be given notice of those laws. You acknowledge you have reviewed the list is attached as Exhibit A and have read those terms applicable to you. You further agree that by attaching Exhibit A to this Agreement, the Company has provided you with adequate and proper notice of such laws. If any provision of this section is found to be inconsistent with applicable law, we agree it is our intention that this Agreement should be deemed modified to be consistent with applicable law and then enforced as so modified.

4. CONDUCT AS AN EMPLOYEE

As an employee, your conduct has an effect on ModelCo, its other employees, its customers, and its reputation. Your continued employment is conditioned on full compliance with applicable laws, ModelCo policies, and common standards of ethical behavior. As an employee, you have a responsibility to avoid any situations that put you in an adverse relationship with ModelCo. In all cases, you have a duty to exercise good judgment and act consistent with the Company’s core values.

4.1 Standard policies. ModelCo has standard policies covering many aspects of its work, which may be updated occasionally as required. These policies have been provided to you with this Agreement and are available at any time from ModelCo’s legal counsel or human resources representatives. By signing this Agreement, you acknowledge that a copy of ModelCo’s standard policies has been made available to you and you agree to comply with ModelCo’s standard policies during the term of your employment.

4.2 Compliance with laws and policies. Failure to comply with applicable laws and policies, failure to act ethically or failure to exercise good judgment, may, at ModelCo’s discretion, result in disciplinary actions including the docking of pay, reassignment, administrative leave (paid or unpaid), and termination of employment. ModelCo’s choice to impose (or not impose) any disciplinary action does not constitute a waiver of any claim or cause of action.

4.3 No Conflicts of Interest. As a condition of employment with ModelCo, you agree that during the term of your employment and for at least six months afterward, you will not solicit, enter into, or accept any contract or agreement with ModelCo, its vendors, suppliers, customers, or prospective customers, or any of their respective agents for the provision of services or for the purchase, license, or paid use of any property, including intellectual property, in which you have any right, title, or interest. In the event that an authorized agent of ModelCo approaches you about a possible contract, your conflict of interest must be disclosed and waived, in writing, by ModelCo’s legal counsel. This condition of employment is in addition to compliance with any other ModelCo policies concerning conflicts of interest.

4.4 Non-competition. As a condition of employment with ModelCo, you agree that during the term of your employment and for at least six months afterward, you will not directly or indirectly have any ownership interest in, work for, advise, or have any business connection or business relationship (other than as an ordinary customer or non-privileged shareholder) with any person or entity that competes with or that is planning to compete with ModelCo. In addition, you agree that you will not solicit, enter into, or accept any contract or agreement with a ModelCo competitor or any of its agents for the purchase, license, or paid use of any property that you have created or in which you have any right, title, or interest. These conditions of employment are in addition to compliance with any other ModelCo policies concerning non-competition.

5. TERMINATION

The following duties and conditions of employment take effect upon the termination of employment, regardless of whether that termination is voluntary or involuntary:

5.1 Survival. Your duties under this Agreement in Section 2 (Confidentiality), 3.3 (Ownership of Intellectual Property created as an employee), 4.3 (Conflicts of Interest), 4.4 (Non-competition), 6 (Dispute Resolution) as well as the duties under this Section 5 (Termination), will all continue indefinitely unless there is a specific end date associated with the particular provision. In addition, any licenses to intellectual property granted by you to the Company, including those granted under Section 3.5 (Shop Rights), will continue indefinitely unless a written agreement signed by ModelCo’s legal counsel indicates a different end date.

5.2 Return of Company property and Confidential Information. At the conclusion of your employment with the Company, or at any other time upon the request of the Company, you will return to the Company all property in your possession, custody or control that you created, developed or obtained during and as a result of your employment with the Company. This obligation includes, without limitation, all documents, whether in paper or electronic form, and whether or not such documents contain Confidential Information, other than documents relating to your personal compensation, such as pay stubs and benefit plan booklets.

5.3 Non-disparagement. Anytime during or after your employment, you will not take any action to disparage or denigrate ModelCo, its reputation, products, services, management or employees. The prohibition on disparaging or denigrating ModelCo does not prohibit you from making any truthful statements required by law.

5.4 Non-solicitation and maintenance of company relationships. For a period of at least six months following the end of your employment with ModelCo (the “Restricted Period”), regardless of the reason for the end of your employment, you will not directly or indirectly:

5.4.1 Solicit, influence, attempt to influence, hire, or recruit any other employee, contractor, or consultant of ModelCo to separate from ModelCo (including, but not limited to, any employee, contractor or consultant);

5.4.2 Solicit, influence, or attempt to influence any customer or client of ModelCo to withdraw from, reduce, or cease its business with ModelCo; or

5.4.3 Disclose the identities of any customers, clients, vendors, or employees of ModelCo for the preceding 12 months.

5.5 Disputed ownership of intellectual property. If, after your employment ends, there is a dispute regarding whether any Intellectual Property was made during your employment, we agree that if: (1) you license software that, if created during the term of your employment, would embody Company IP; or (2) you are named as an inventor on a patent application that is filed within the Restricted Period, and the patent application covers technologies that you worked on while you were an employee, then you must provide proof that the Intellectual Property in dispute was not created or conceived during the term of your employment. If you are unable to provide proof, then the invention or discovery described in the patent application is Company IP.

5.6 Tolling of the Restricted Period. The Restricted Period shall be tolled and shall not run during any such time that you are in breach of this Agreement or in violation of any of the covenants contained herein, or there is a good faith active dispute that such breach or violation has occurred. The Restricted Period, once tolled, shall not begin to run again until such time as all violations have ceased and you are not in breach of any portion of this Agreement.

5.7 Provisions to be given maximum effect. You recognize that the restrictions in this section may substantially limit your future flexibility in many ways. You acknowledge that you have received adequate consideration for the covenants as set forth in this Agreement. You agree to waive any objection to the validity of these covenants and acknowledge that these limited prohibitions are reasonable as to time, geographical area and scope of activities to be restrained and that these limited prohibitions do not impose a greater restraint than is necessary to protect ModelCo’s goodwill, proprietary information and other business interests. You further agree that any breach of these covenants will result in irreparable damage and injury to ModelCo and that ModelCo will be entitled to injunctive relief in any court of competent jurisdiction without the necessity of posting any bond.

If a court determines that any portion of Sections 4 (Conduct as an Employee) or 5 (Termination) is unenforceable, then you and the Company agree that the unenforceable provision should be given its maximum lawful effect, and that remainder of the provisions shall remain valid and enforceable.

6. DISPUTE RESOLUTION

6.1 Use of mediation and arbitration. In consideration for and as a condition of your employment, you and ModelCo jointly agree that it is in both parties’ best interest to have an efficient method of resolving any disputes that may arise under this Agreement. Accordingly, both you and ModelCo agree to submit any disputes arising from this Agreement and concerning your employment for mediation and, if necessary, binding arbitration, except as explicitly otherwise provided.

6.2 Mediation and Arbitration Procedure. Any Covered Claim arising out of or relating to your employment relationship with ModelCo or the termination of your employment must be submitted for non-binding mediation by a neutral third party, and, if necessary, submitted for final and binding resolution by a private and impartial arbitrator, to be jointly selected by you and ModelCo, as follows:

6.2.1 Notice of a dispute. As a prerequisite to any action under this Agreement, a party wishing to raise a Covered Claim must provide a written notice of the dispute and a disclosure of the basic facts and circumstances necessary to understand the dispute to the other party.

6.2.2 Two-party discussion. Before submitting any Covered Claim for mediation or arbitration, both you and ModelCo agree to make good faith efforts to resolve any dispute internally on an informal basis through discussion with ModelCo representatives.

6.2.3 Nonbinding Mediation. If the parties fail to resolve the dispute through good faith two-party discussion, any dispute arising under this Agreement must first be submitted for nonbinding mediation before a neutral third party, to be chosen jointly by the parties. The mediation shall be conducted and administered by the American Arbitration Association (AAA) under its Employment Mediation Rules.

6.2.4 Binding Arbitration. If a Covered Claim remains unresolved at the conclusion of the mediation process, either party may submit the dispute for resolution by final, binding, confidential arbitration. The arbitration will be conducted under the Employment Dispute Resolution Rules of the AAA on a confidential basis, including the rules for the joint selection of an impartial arbitrator and the hearing of evidence before the arbitrator. The arbitrator shall have the authority to allow for appropriate discovery and exchange of information before a hearing, including, but not limited to, production of documents, information requests, depositions and subpoenas. The burden of proof at an arbitration shall at all times be on the party seeking relief, and any conflict between the rules and procedures set forth in the AAA rules and those set forth in this Agreement shall be resolved in favor of those in this Agreement.

6.2.5 Result of arbitration. In reaching a decision, the arbitrator shall apply the governing substantive law applicable to the claims, causes of action and defenses asserted by the parties. The arbitrator shall have the power to award all remedies that could be awarded by a court or administrative agency in accordance with the governing and applicable substantive law. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement or to enforce or vacate an arbitration award.

6.2.6 Claims on an individual basis only. Both parties waive any right to a trial by jury, so that disputes will be resolved through arbitration. Both parties further agree that, by entering into this Agreement, we are each waiving the right to participate in a class or collective action. We agree that each party may bring claims against the other only in its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding.

6.3 Covered Claims. The term “Covered Claims” includes: (1) any claim that could be asserted in court or before an administrative agency or claims for which the employee has an alleged cause of action, including without limitation claims for breach of any contract or covenant (express or implied); tort claims; claims for discrimination (including, but not limited to, discrimination based on sex, pregnancy, race, national or ethnic origin, age, religion, creed, marital status, sexual orientation, mental or physical disability or medical condition or other characteristics protected by statute); claims for wrongful discharge; violations of the Family and Medical Leave Act (FMLA); violations of confidentiality or breaches of trade secrets; and/or claims for violation of any federal, state or other governmental law, statute, regulation or ordinance, whether based on statute or common law; (2) any dispute concerning the arbitrability of any such controversy or claim; and (3) any claims made against ModelCo, any of its subsidiary or affiliated entities, or its individual officers or directors (in an official or personal capacity).

6.4 Claims not covered. The term “Covered Claims” does not include: (1) claims for workers’ compensation benefits; (2) claims for unemployment compensation benefits; (3) claims under the National Labor Relations Act (NLRA); (4) claims by ModelCo for injunctive or other equitable relief, including without limitation claims for unfair competition and the use or unauthorized disclosure of trade secrets or confidential information; (5) claims based upon ModelCo’s employee benefit plans where the benefit plan includes its own dispute resolution procedure; and (6) any claim by ModelCo for the infringement of its intellectual property or disclosure of trade secrets or Confidential Information.

6.5 Modification of claims covered. If a court determines that a particular claim or type of claim is not eligible for resolution through the dispute resolution procedure laid out in this Agreement, then that claim will be considered to be included in the list of claims not covered and all other covered claims will continue to be enforced under this dispute resolution procedure.

6.6 Costs, fees, and indemnification. In the event of a Covered Claim, ModelCo will pay for one half day of an mediator’s time, and will pay the arbitrator and your filing fee to the extent that it is more than a court filing fee. If ModelCo is successful in proving your violation of this Agreement, you agree to pay ModelCo’s fees and costs in addition to any judgment. If there is a dispute, either between you and ModelCo or by a third party based on your alleged conduct, which, if true, would violate any portion of Sections 2 (Confidentiality) or 3 (Intellectual Property) of this Agreement, you will pay the cost of defending the claim, including legal fees and any damages award.

7. GENERAL

7.1 Scope of agreement. If you have signed another agreement with ModelCo that contains additional or more stringent requirements on you, those requirements shall govern over any inconsistent term of this Agreement. Otherwise, this is the entire agreement between ModelCo and you regarding its subject matter and supersedes and replaces any prior or contemporaneous agreement, written or oral.

7.2 Assignment. Employee may not assign this Agreement, nor delegate any duty identified herein. Any purported assignment will be void from the initial date of the purported assignment.

ModelCo may assign this Agreement to any subsidiary, corporate affiliate, or to any successor or assign, whether directly or indirectly, by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the employer. This Agreement shall continue and inure to the benefit of the employer and permitted successors and assigns.

7.3 Modification and waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing, initialed by ModelCo’s legal counsel, and prominently signed by both the Employee and an officer of the Employer (other than the Employee). A delay in enforcing any element of this Agreement does not constitute of waiver of that element, and any explicit waiver of a particular condition or provision does not constitute a waiver of any other condition or provision.

7.4 Survival. All the terms of this Agreement survive to the end of your employment at ModelCo, regardless of the reason for termination. If any provision of this Agreement is found to be unenforceable or inconsistent with applicable law, it shall be modified to the limited extent necessary to be consistent with applicable law and enforced as so modified.

7.5 Choice of Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware.

Intending to be legally bound, we have signed this Agreement as of the date stated below.

|  |  |
| --- | --- |
| NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | For MODELCO:  |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| City, State, Zip:\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |