

**Orrick's Technology Companies Group**

**Start-Up Forms Library**

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**Rev 07/22**

**[NOTE THAT FOOTNOTES AND BRACKETS SHOULD BE REMOVED WHEN CUSTOMIZING FOR USE WITH A PARTICULAR EMPLOYEE]**

[Company Name]

[OR LETTERHEAD]

[Insert Date]
[Insert Name]
[Insert Address]
[City, State Zip]

Dear [Name]:

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

1. **Position**.You will start in a [full-time / part-time] position as [Insert Title] and you will initially report to the Company’s [Insert Title].
2. **Base Compensation**.You will be paid a starting salary at the rate of $[DOLLAR AMOUNT] per year, which will be paid in accordance with the Company’s standard payroll policies and subject to applicable withholdings and other required deductions.[[1]](#footnote-1)

/OR/

The Company will pay you a starting hourly rate of $[DOLLAR AMOUNT], payable in accordance with the Company’s standard payroll policies and subject to applicable withholdings and other required deductions. Additionally, if and when you work overtime, you will be eligible to receive overtime pay in accordance with applicable laws.[[2]](#footnote-2)

1. [**Equity Award**.Subject to the approval of the Company’s Board of Directors (the “Board”), you will be granted an option or restricted stock award to purchase [\_\_\_\_\_\_\_\_] shares of the Company’s Common Stock (the “Equity Award”). The Equity Award will vest [and become exercisable (as applicable)] over 4 years at the rate of [25% of the total number of Equity Award shares on the 1 year anniversary of your start date of employment with the Company and 1/48th of the total number of Equity Award shares on each monthly anniversary thereafter], subject to your continuous service with the Company through each vesting date. The exercise price or purchase price per share of the Equity Award will be equal to the fair market value per share of the Company’s Common Stock on the date the Equity Award is granted, as determined by the Board in good faith. 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 consequences associated with accepting the Equity Award. The Equity Award will be subject to the terms and conditions set forth in the Company’s [Plan Name] and the Company’s standard form of stock option agreement or restricted stock purchase agreement, as applicable, which you will be required to sign.]
2. **Employee Benefits**. As a regular employee of the Company, you will be eligible to participate in the employee benefit plans and programs, if any, currently and hereafter maintained by the Company and generally available to similarly situated employees of the Company, subject in each case to the terms and conditions of the plan in question, including any eligibility requirements set forth therein, and the determination of any person or committee administering the plan. Notwithstanding the foregoing, the Company reserves the right to modify job titles and salaries and to modify or terminate benefits from time to time as it deems necessary or appropriate in its sole discretion.
3. **At-Will 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 or notice. 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.[[3]](#footnote-3)
4. **Confidential Information and Invention Assignment Agreement**.Like all employees of the Company, you will be required, as a condition of your employment with the Company, to sign the Company’s standard Confidential Information and Invention Assignment Agreement, a copy of which is attached hereto as Attachment A (the “CIIAA”).
5. **Company Policies**.As a condition of your employment, you must become familiar with all policies of the Company that are applicable to you, as such policies are changed from time to time, and must comply with all such policies, and in each case you agree that you will do so.
6. **No Conflicts**.You represent and warrant to the Company that you are under no obligations or commitments, whether contractual or otherwise, that would prohibit or otherwise restrict you from performing your duties for the Company. Without limiting any terms of the CIIAA, you may not use or disclose in connection with your performance of your duties for the Company any trade secrets or other proprietary information or intellectual property in which you or any other person (including but not limited to any former employer or company for whom you consulted) has an interest and you confirm that your employment with the Company will not infringe or otherwise violate any other person’s rights. Further, you must abide by any contractual obligations to which you are subject that require you to refrain from soliciting any person employed by or otherwise associated with any former or current employer or company for whom you consulted. You represent and warrant to the Company that you have returned all property and confidential information belonging to any prior employer.
7. **Outside Activities**.While employed by the Company, you must devote your full business efforts and time to the Company. Without limiting the generality of the foregoing,[[4]](#footnote-4) to the fullest extent permitted under applicable laws, while you render services to the Company, you may not engage in any other employment, consulting or other business activity (whether on a full- or part-time basis) that would create a conflict of interest with the Company or that would, directly or indirectly, constitute your engagement in or participation in any business that is competitive in any manner with the Company’s business.
8. **Arbitration Agreement**. You and the Company agree that to the fullest extent permitted by law, any and all claims relating to, arising from or regarding your employment, including claims by the Company, claims against the Company and claims against any current or former officer, director, agent, or employee of the Company, shall be resolved by final and binding arbitration before a single arbitrator. This includes, but is not limited to, claims of discrimination, harassment, retaliation, breach of contract and wrongful termination, wage and hour claims, tort claims, and claims based upon any federal, state or local ordinance, statute, regulation or constitutional provision.

You and the Company agree to bring any claim in arbitration before JAMS, pursuant to the JAMS Employment Rules & Procedures (*see* http://www.jamsadr.com/rules-employment-arbitration/). You can initiate an arbitration via the JAMS website or by calling JAMS. The Company will bear all JAMS arbitration fees and administrative costs in excess of the amount of administrative fees and costs that you otherwise would have been required to pay if the claims were litigated in court. Claims will be governed by their applicable statute of limitations. The arbitrator shall determine arbitrability (except as to the Class Waiver) and shall apply the applicable substantive law in deciding the claims at issue.

You and the Company agree that claims shall be resolved on an individual basis only, and not on a class, collective, or representative basis on behalf of other employees to the fullest extent permitted by applicable law (“Class Waiver”). Any claim that all or part of the Class Waiver is invalid, unenforceable, unconscionable, or void may be determined only by a court. In no case may class, collective or representative claims proceed in arbitration on behalf of others.

**You and the Company waive any rights to a jury trial or a bench trial in connection with the resolution of any claim under this arbitration agreement** (although either party may seek interim emergency relief from a court to prevent irreparable harm to their confidential information or trade secrets pending the conclusion of any arbitration). This arbitration agreement does not apply to claims for workers’ compensation benefits, unemployment insurance benefits, or state or federal disability insurance, or to any other dispute or claim that has been expressly excluded from arbitration by a governing federal statute. Moreover, nothing in this arbitration agreement prohibits you from communicating with, filing an administrative claim or charge with, or providing testimony to any governmental entity about any actual or potential violation of law. This arbitration agreement is enforceable under and governed by the Federal Arbitration Act. In the event that any portion of this arbitration agreement is deemed illegal or unenforceable, such provision shall be severed and the remainder of the arbitration agreement shall be given full force and effect.

[OPTIONAL - Arbitration is not a mandatory condition of your employment and you may choose to opt out of arbitration. To do so, you must send an email to [\_\_\_\_\_\_\_] stating your intent to opt out within 30 days of signing your offer letter.]

1. **Miscellaneous**.
	1. **Governing Law**. Except for the arbitration agreement, 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 state of [STATE], without giving effect to principles of conflicts of law.
	2. **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when: (i) personally delivered or (ii) when mailed by U.S. registered or certified mail or recognized overnight courier, return receipt requested and postage prepaid. The Company may also provide you notice via email at the email address that you most recently communicated to the Company in writing, which such notice shall be deemed to have been duly given when sent. In your case, mailed notices shall be addressed to you at the home address that you most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary, with an email copy to [EMAIL].
	3. **Entire Agreement**. This letter, together with the CIIAA, 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.
	4. **Modifications and Waivers**. No provision of this letter shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by you and by an authorized officer of the Company (other than you). No waiver by either party of any breach of, or of compliance with, any condition or provision of this letter by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.
	5. **Severability**.If any provision of this letter becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to applicable law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this letter shall continue in full force and effect. If any provision of this Agreement is rendered illegal by any present or future statute, law, ordinance or regulation then that provision shall be curtailed or limited only to the minimum extent necessary to bring the provision into compliance with applicable laws. All the other terms and provisions of this letter shall continue in full force and effect without impairment or limitation.
	6. **No Assignment**. This letter and all of your rights and obligations hereunder are personal to you and may not be transferred or assigned by you at any time. The Company may assign its rights under this letter freely without restriction, including to any entity that assumes the Company’s obligations hereunder in connection with any sale or transfer of all or a substantial portion of the Company’s assets to such entity.
	7. **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 via an electronic signature platform, facsimile copy or scanned image will have the same force and effect as execution of an original, and an electronic signature, facsimile or scanned image signature will be deemed an original and valid signature.
	8. **Electronic Delivery**. The Company may, in its sole discretion, decide to deliver any documents or notices related to this letter, 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 this letter and the enclosed CIIAA 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. In addition, the Company reserves the right to conduct background investigations and/or reference checks on all of its potential employees. Your job offer, therefore, may be contingent upon a clearance of such a background investigation and/or reference check, if any. This offer, if not accepted, will expire at the close of business on [Insert Date].

We look forward to your favorable reply and to working with you at [Company Name]!

|  |  |
| --- | --- |
|  | Very truly yours, |
|  | [Company Name] |
|  |   |
|  | [Name], [Title] |
|  |  |
| ACCEPTED AND AGREED: |  |
| [INSERT NAME] |  |
|   |  |
| (Signature) |  |
|   |  |
| Date |  |

Anticipated Start Date: [Insert Date]

Enclosure:

Attachment A: Confidential Information and Invention Assignment Agreement

ATTACHMENT A
CONFIDENTIAL INFORMATION AND
INVENTION ASSIGNMENT AGREEMENT

(See Attached)

1. **NTD**: Use for exempt employees. [↑](#footnote-ref-1)
2. **NTD**: Use for non-exempt employees. [↑](#footnote-ref-2)
3. **NTD**: If a term contract is contemplated, stop here and use a different form with all relevant terms (e.g., term, termination, etc.). [↑](#footnote-ref-3)
4. **NTD**: Remove for part-time employees. Only applies to full-time employees. If making this change, capitalize the first “t” at the beginning of “to the fullest extent . . .”. [↑](#footnote-ref-4)