



## シリコンバレー進出企業に向けた カリフォルニア法律ガイドブック

本書では、カリフォルニア州でビジネスを展開しようとする日本の中堅・中小企業およびベンチャー企業等を対象に、新しく会社を設立し、維持・運営し、解散をする際の法的な手続きを解説しています。また、米国で会社を運営するに当たって必要な税務、雇用に関する法的な手続きについても、なるべくわかりやすく解説しています。本書が皆様の米国でのビジネス展開の一助となることを期待しています。

なお、本書の内容は一般情報として提供されており、特定の案件に対する個々の状況に適した法的アドバイスではありませんので御了承ください。個々の状況に適した法的アドバイスが必要である場合は、専門の弁護士に御相談ください。

本書の作成に当たりましては、カリフォルニア州弁護士である山本弁護士事務所の山本与志人弁護士に執筆、助言をいただきました。この場を借りて感謝申し上げます。

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ジェトロ サンフランシスコ事務所

### <免責事項>

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## シリコンバレー進出企業に向けたカリフォルニア法律ガイドブック

### 1. シリコンバレー事業所の設立事業所の設立に当たり考慮すべきこと

#### 1.1.1. カリフォルニア州での訴訟リスク・司法所轄

米国に限らず、他国へ進出して事業を行うにはその土地柄による様々なリスクを考慮しなければなりません。シリコンバレーへの進出は決めたものの、そこでどのような形態・方法で事業展開をするのか、どういう組織体制でどういう運営をするのかも、まずどのようなリスクがあるのかを念頭に検討する必要があります。

カリフォルニア州法では、カリフォルニア州以外の州や国で設立された法人がカリフォルニア州内に事業所を設立して事業活動を行う、つまり州内に不動産(賃貸を含め)を有したり、従業員を雇用(employment)したりする場合には、カリフォルニア州に州外法人登録(Foreign Entity Registration: 米国外という意味ではなく、カリフォルニア州外という意味での"Foreign")。それぞれの州で具体的な登録申請書類の名称は異なり、カリフォルニア州では”州外会社申請(Statement and Designation by a Foreign Corporation)”の届出をし、カリフォルニア州内での事業活動の許可証(“Certificate of Qualification to Conduct Intrastate Business in California” or “Certificate of Qualification”)を取得しなければなりません<sup>1</sup>。この州外法人登録(Foreign Entity Registration)をすることは、カリフォルニア州の政府機関の司法所轄(jurisdiction)に合意するものであり、従ってカリフォルニア州への申告納税義務も発生します。また、州外法人登録(Foreign Entity Registration)では、カリフォルニア州内に代理人(Agent for Service of Process : その法人に対しての訴状の送達を受ける代理人)を定める必要があります。第三者が外国法人を訴えようという場合でも、カリフォルニア州内で訴状送達すればカリフォルニア州の裁判所において訴訟を開始できることとなります<sup>2</sup>。

また米国連邦税法(Internal Revenue Code: IRC)では、米国内での事業(“trade or business in the U.S.”)に従事することに関連した所得(Effectively Connected Income: ”ECI”)は米国連邦政府に対して申告・納税義務が発生します<sup>3</sup>。従ってカリフォルニア州に設立した事業所が得る所得は通常米国連邦政府に対しても申告納税義務が発生します。(注: カリフォルニア州の conducting intrastate business の定義は連邦の事業活動(conduct of trade or business)よりも包括的で広く、厳密には、カリフォルニア州の登録は必要でも、事業所の活動が連邦の課税所得の対象にならない場合もあります。)

カリフォルニア州に事業所を開くにあたっては、これらの訴訟リスク・税務リスクを鑑みた上で、事業活動の規模と範囲、例えばカリフォルニア州内で事業活

<sup>1</sup> California General Corporation Law (“CGCL”) § 2101.

<sup>2</sup> CGCL § 2105(a)(5).

<sup>3</sup> Internal Revenue Code (“I.R.C.”) § 872.

動に従事するという事に該当する、つまり州外法人登録(Foreign entity registration)を要する活動を行うのか、あるいは州外法人登録(Foreign entity registration)は不要な範囲に限定した活動のみをおこなうのか、により、日本法人のままで事業を行うのか、現地法人を設立するのか、を決定し、現地法人を設立すると決定したならば、どのような組織形態を現地法人として設立するのか、さらにはカリフォルニア州法人を設立するのか、米国の他州、例えばデラウェア州での法人設立をするのか、等を決定する必要があります。

### 1.1.2. カリフォルニア州以外での訴訟リスク・司法所轄

訴訟の少ない日本に比較して訴訟が日常茶飯事である米国で事業を行うとなると、カリフォルニア州だけでなく、思いもかけなかった場所で訴訟をされるリスクも考慮すべきです。

個人や法人が米国のある州で訴訟されるとか、税務調査を受ける(=米国の州政府機関の権力を行使される)、つまりその州がその訴訟や調査の対象となる個人や法人に対する司法所轄(Jurisdiction)を得るには、その個人や法人が何らかの条件を満たす必要があります。<sup>4</sup>

日米租税条約ではこの司法所轄(Jurisdiction)の発生する根拠を「恒久施設(Permanent Establishment)」と定義しており、移転価格税制に詳しい方ならお馴染みだと思いますが、非居住者がその州に不動産を有しているとか、人を雇用しているとか、その州に州外法人登録(Foreign Entity Registration)をしているとかです<sup>5</sup>。資産も雇用も州外法人登録(Foreign Entity Registration)もない場合でも、その非居住者の州内における活動がいわゆる”最小限の接点(Minimum Contacts)”を形成すると司法所轄(jurisdiction)が発生します<sup>6</sup>。日米租税条約上の恒久施設(Permanent Establishment)もほぼ同じ概念です。この最小限の接点(Minimum Contacts)には、その非居住者の州内での活動が「一定期間内に計画的・継続的にかなりの量のビジネスをおこなっている(systematic and continuous for a substantial period of time)」であるとか、非居住者が州内の活動についてその州の福祉の恩恵を享受しているとか、その州の司法所轄を受けることが「公平で十分な正義(fair and substantial justice)」であること等々、様々な場合がありますが、単にその州で販売活動(placed in stream of commerce)をただだけで最小限の接点(Minimum Contacts)を形成するかどうかという基本的な問題については、残念ながら米国最高裁判所の判例でも不明瞭というのが現実です<sup>7</sup>。ですから、米国内のどこで訴訟を受けるか、受けないかということを実前に明確に知ることは困難ですし、訴訟の司法所轄だけでなく、突然州外法人登録(Foreign Entity

<sup>4</sup> Article IV, Section 1, U.S. Constitution; *Pennoy v. Neff*, 95 U.S. 714 (1877).

<sup>5</sup> Japan-US Income Tax Treaty, article 5.

<sup>6</sup> *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

<sup>7</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987).



Registration)をしていない州から申告納税命令が来たりすることもあります。それらのリスクを低く抑えるには、やたらと多くの州に事務所を開いたり人を雇用したりしない、不要な多州展開をしない、という心がけが重要です。

## 1.2. 事業所の法人形態

### 1.2.1. 日本法人の出先・事業活動なし

事業所の規模が1人から数人で、売上に直結する営業活動をせずに市場調査・技術調査、あるいは外部業者との折衝だけを行う場合、米国連邦法上は米国内での事業(trade or business in the U.S.)の従事に該当せず、カリフォルニア州法上も(州内での事業活動(intrastate business)の従事に該当しない、というような場合があります。この状態を意図的に維持しているのがいわゆる「駐在員事務所」です。ただし、これはあくまでも米国内で事業を行っていない、という前提ですので、この事業所には就労ビザは発行されませんし、駐在員は米国に長期間滞在できず、商用ビザ(B Visa)やビザ免除プログラム(ESTA)を使って米国に入国し、日本企業の仕事を長期出張して行うこととなります。もちろん米国内で事業を行っていないという建前なので、駐在員事務所としての法人名義の銀行口座も駐在員の個人名義の銀行口座も開設しにくく(非居住者口座として開けなくはありませんが、非常に煩雑な手続と膨大な提出書類を要求されます)、駐在員が家やアパートを借りるのも困難で、法人名義で事務所スペースを借りることもほぼ不可能です。就労ビザがありませんから社会保障番号(Social Security Number)を発行してもらえず、従って社会保障番号(Social Security Number)がないと発行されないカリフォルニア州の運転免許証も取得できません。

とはいえ、どこまでが調査活動でどこからが営業活動(つまり事業活動)かということは明確ではありませんから、ちょっと深入りして駐在員が日本からの出張者のお客さん回りの営業活動にアテンドしたり、そのアポイントメントを事前にとったり、ということが定例化すると、米国移民局や税務当局・裁判所に駐在員の活動は事業行為であるという判断をされてしまう危険も多々あります。そうになると、単に州内事業許可証(Certificate of Qualification)を取得せねばならなくなるだけでなく、ビザを持たない不法就労として国外追放処分や、米国源泉の勤労所得の申告漏れとして脱税訴追を受けるという最悪の事態も考えられなくはありません。駐在員事務所が最小限の接点(Minimum Contacts)を形成したと判断されれば、駐在員事務所、つまりは日本の法人がカリフォルニア州内で訴訟を受ければ、当然日本の法人が直接の訴訟当事者となるわけで、敗訴すれば日本の法人が賠償責任を負う等、日本法人に対する判決となります。また、駐在員事務所が事業(trade or business)に従事したと判断されれば、日本の法人が米国での法人税申告の義務を負い、親会社全体の経



理が連邦の内国歳入庁(Internal Revenue Service: IRS)やカリフォルニア州税務当局 (Franchise Tax Board: FTB)の調査に対応する義務を負う、という判断をされることになります。従ってこの選択は危険が高く、避けるべきです。

### 1.2.2. 日本法人の出先・事業活動あり

次に考えられるのは、カリフォルニア州内の事業所は日本法人の組織の一部であるとして、日本の本社(日本法人)がカリフォルニア州に州外法人登録(Foreign Entity Registration)を行い、州内事業許可証 (Certificate of Qualification)を取得するという選択肢です。これがいわゆる「支店(Branch)」形態です。これであれば、就労ビザも申請できますし、支店としての法人名義の銀行口座も開け、法人名義で事務所スペースを借りることも可能、事業活動に従事しても何ら問題ありません。

しかしながら、支店(Branch)形態の場合、カリフォルニア州内で活動する支店の法人格はあくまでも日本法人ですので、支店がカリフォルニア州内で訴訟を受ければ、当然日本の法人が直接の訴訟当事者となるわけで、敗訴すれば日本の法人が賠償責任を負う等、日本法人に対する判決となります。また、支店は単独の法人ではありませんから、日本の法人(親会社)が米国での法人税申告の義務を負い、従って、支店部分だけでなく、親会社全体の経理が連邦の内国歳入庁(IRS)やカリフォルニア州の税務当局(FTB)の調査に対応する義務を負います。米国で訴訟されたら日本の親会社まで訴えられた、とか、米国の税務調査で日本の経理資料まで調査された、とかいう話を聞かれたことがあると思いますが、その多くはこの支店(Branch)形態の場合です。

つまり支店(Branch)形態では、支店と日本法人との間に障壁を作れない状態で、全ての支店のリスクは日本法人に及び、裁判所をはじめ、カリフォルニア州と連邦の司法所轄に入ってしまう、日本法人のリスクが非常に大きなものになってしまいます。ですから、基本的に可能な限り支店(Branch)形態も避けるべきです。この選択が有意義になるのは、カリフォルニア州内の事業所の規模が比較的小さく、あまり事業活動に直接従事しておらず、訴訟を受ける可能性は低い、とか、米国内での活動は日本の法人の持つ事業免許や外交特権等に基づくので日本の法人の法人格を維持しなければならない、といった場合に限られます。

### 1.2.3. 現地法人設立

カリフォルニア州の事業所のリスクは日本の法人にはできるだけ及ばないようにするには、カリフォルニア州の事業所は日本の法人とは別の法人、つまり現地法人として設立するのが有効、ということになります。

現地法人であれば、就労ビザも申請できますし、現地法人名義の銀行口座も開け、現地法人名義で事務所スペースを借りることも可能、事業活動に従事しても

何ら問題ありません。しかも、カリフォルニア州内で活動するのはあくまでも現地法人ですので、現地法人がカリフォルニア州内で訴訟を受けても、親会社の日本法人自身も訴えられない限り、親会社は直接の訴訟当事者とはなりません。現地法人が敗訴しても、日本法人に対する判決ではありませんから日本法人は賠償責任を負いません。また、現地法人は独立した一法人ですから、日本の法人(親会社)は米国での法人税申告の義務を負わず、従って親会社の経理が内国歳入庁(IRS)や税務当局(FTB)の調査に対応する必要はありません。

つまり現地法人を設立すれば、基本概念としては現地法人と日本法人との間に障壁を設けたようなことになり、現地法人のリスクは日本法人に直接には及ばず、親会社の日本法人は、裁判所をはじめ、カリフォルニア州と連邦の司法所轄には入りません。ですから基本的にはこの現地法人を設立するという形態でカリフォルニア州内の事業所を設立することが一番のお勧め、ということになります。

しかしながら、現地法人として独立した組織であれば、単に現地法人を設立するコストだけでなく、それなりの管理コスト・維持コストがかかります。そのコストには、州への法人所得税(Franchise Tax)支払・税務申告書(Tax Returns)作成費・州への年次報告書(Statement of Information)の登記(filing)、等に加え、法人組織運営に必要な決議書作成の弁護士費用等が含まれますが、会社の規模によっては、些少なものと無視できない場合も多々あると思います。

#### **1.2.4. 駐在員事務所・支店の代替策**

リスクの高い駐在員事務所や支店形態の代替策として、例えばビジネスそのものは日本から十分行えるが、米国のお客様のサポートには米国にもコンタクト先があった方がいい、とか、米国のお客様に対応するのは米国人がいい、ということで米国でカスタマーサポートやマーケティング・パブリックリレーションズの組織を置いて活動したい、という場合、自社の組織の従業員(駐在員)を置くのではなく、米国の業者を代理人(agent)として雇用して活動させる、という方法があります。その場合はカリフォルニア州内で活動するのはあくまでも独立した代理人(agent)であり、日本法人は自前の事業所も置く必要もありませんから、恒久施設(Permanent Establishment)も形成されず、時折日本から出張してきて代理人(agent)とミーティングするレベルの活動であれば最小限の接点(Minimum Contacts)も形成しないレベルの活動で、日本法人がカリフォルニア州に申告納税義務も持たず、司法所轄も発生しません。実際の事業活動は、カスタマーサポートやマーケティング・パブリックリレーションズ等の分野の専門家を雇用して行うので数人の従業員を採用する必要もなく、したがってビザを申請する必要もありません。カリフォルニア州に事業所を開く決断をする前に、この代替策も一つの選択肢としてご検討されることをお勧めいたします。

### 1.3. 現地法人の組織形態

#### 1.3.1. 法人の組織形態

現地法人を設立すると決定したら次はどのような形態の法人にすべきかを決定する必要があります。米国の法人形態には、その法人の出資者/構成員/株主の法人に対する貢献、法人の事業活動の成果の分配方法、及び法人の負う債務に関して負う基く法の観点からは、大まかには、組合(Partnership)、有限責任会社(Limited Liability Company: LLC)、株式会社(Corporation)の3種類があります。

##### (a) 組合(Partnership)

日本ではあまり一般的ではなく馴染みがないかもしれませんが、英米の組織論では、人間社会に最も古くからある組織形態、とされています。組織の構成員(Partner)各人がそれぞれ出資や役務提供といった役割分担をし、構成員全員の活動により得た利益を構成員が合意した分配基準に従ってそれぞれの構成員に配分する、というのが原則で、各構成員が組合(Partnership)の負債の弁済について無限責任(Unlimited Liability: 構成員個人が法人の負債の弁済義務を無制限に負う)を負うか、出資金を限度とする有限責任(Limited Liability)を負うか、により、無限責任組合 (General Partnership)、有限責任組合(Limited Partnership: LP)、有限責任事業組合(Limited Liability Partnership: LLP)等の区別があります。無限責任組合 (General Partnership)は全組合員(Partners)が無制限責任を負いますが、その他は、各州法に定められた規定の制限の範囲で、基本的には最低一人の無限責任を負う無限責任組合員(General Partner)と有限責任しか負わない有限責任組合員(Limited Partners)とで構成されます。

##### (b) 有限責任会社(Limited Liability Company: LLC)

有限責任会社(Limited Liability Company: LLC)は、歴史的に古い組合(Partnership)と異なり、1990年代に入ってから各州の法律で作られた形態で、組合(Partnership)と株式会社(Corporation)の混合版とも言え、組合(Partnership)同様に構成員(LLC members: 出資者)がそれぞれの役割分担をする場合もありますし、株式会社(Corporation)のように各出資者は経営に参画せずに経営陣を雇用する場合もあります。また、組合(Partnership)の組合員(Partner)のように経営に参画する出資者と、株式会社(Corporation)の株主のように経営に直接参画しない出資者とが混在する場合もあり、それぞれの有限責任会社(LLC)の個別の事情にしたがって柔軟な運営ができます。有限責任会社(LLC)の活動により得た利益は、組合(Partnership)のよう

に出資者全員が合意した分配基準に従ってそれぞれの構成員に配分しますが、有限責任会社(LLC)の負う債務については、株式会社(Corporation)のように、全出資者が有限責任しか負いません。

### (c) 株式会社(Corporation)

出資者(Shareholders: 株主)が経営陣(Board of directors/officers: 取締役/執行役員)を雇用・任命して組織運営を委任する組織形態で、会社の賠償責任は株主には及ばず、会社が株主の出資金を債務弁済に使い果たした段階で株主の賠償責任はおしまい、という有限責任だけです。ただし、株主から取締役・取締役から執行役員への委任・権限委譲が適切に行われたこと、事業運営が委任・権限委譲の範囲内で適切に行われたこと、等を確認する文書・手続(株主総会・決議/取締役会議事録・決議: “Corporate Formalities”)が煩雑です。規模の小さな株式会社(Corporation)ではそのような煩雑な文書・手続を省略できるように、という考えから、各州の会社法で「小規模株式会社(Small Corporations)」を特別に定義し、小規模株式会社(Small Corporation)では株主が取締役会(Board of Directors)と執行役員(Officer)を兼任して重複決議を避けることができるような規定(Statutory Close Corporations)を設けてありますが、判例が非常に少ないために当該規定(Statutory Close Corporation)と通常の株式会社(Corporations)の規定との食い違いがあるときの処置等の法理が発達しておらず、あまり一般的には使われていません。

### 1.3.2. 法人組織の課税体系

組織の設立形態としては基本的に組合(Partnership)、有限責任会社(LLC)、株式会社(Corporation)の3つですが、その組織の活動により得られた所得の課税体系は少し複雑です。

#### i) 組合(Partnership)

組合(Partnership)の課税はいわゆるパススルー課税(pass-through taxation)です<sup>8</sup>。パススルー(Pass-through)というのは、法人レベルでは所得税を課されず、法人の課税所得は一定のルールに基づいて各組合員(Partner)へ配分され、各組合員(Partner)がそれぞれの税務申告に含めて申告納税します。課税所得の配分ルールは各組合員(Partner)の出資金の比率に関わらず、組合員(Partners)の合意によって柔軟に決められます。問題は、この組合(Partnership)から分配された課税所得は組合員(Partner)にとっては組合員(Partnership)の従事する事業(Trade or Business)に関連した所得、つまり実質

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<sup>8</sup> I.R.C. § 701.



関連所得(Effectively Connected Income: ECI)とみなされてしまうことで、従って組合(Partnership)だけでなく、組合員(Partner)にとっても米国源泉所得とみなされ、米国での課税対象となります。しかも組合(Partner)が日本法人のような税務上の非居住者であれば、その非居住者組合員(Partner)への課税所得の配分時点で組合(Partnership)が源泉徴収をする義務が生じ、非居住者組合員(Partner)にとっては実質パススルー(pass-through)でなくなってしまうだけでなく、現地法人の組合(Partnership)だけでなく、組合員(Partner)である日本法人が米国での司法所轄に入ってしまう、現地法人の設立の意味がなくなってしまう。

ii) 出資者一人の有限責任会社(Single-Member LLC)

有限責任会社(LLC)のうち、出資者が一者(個人又は法人)しかいないものは「単独出資有限責任会社(Single-Member LLC)」と呼ばれ、連邦税法上は有限責任会社(LLC)単独では税務申告せず、出資者の税務申告に含まれる「所有者と一体の事業体(Disregarded Entity)」となります。従って、日本法人が現地法人を有限責任会社(LLC)として設立して日本法人が100%出資すると、連邦税法上は日本の法人が米国で直接事業活動をしていることになり、現地法人の設立の意味がなくなります。

iii) 複数の出資者の有限責任会社(Multi-Member LLC)

有限責任会社(LLC)のうち、出資者が二者(個人又は法人)以上いる複数出資有限責任会社(Multi-member LLC)は税務上は組合(Partnership)としてパススルー(pass-through entity)扱いされます。非居住者課税や実質関連所得(ECI)扱いも組合(Partnership)と同じですから、組合(Partnership)同様、現地法人の設立の意味がありません。

iv) C 株式会社(C Corporation)

株式会社(Corporation)は、通常会社の課税所得に関わる所得税を会社が申告納税します。これは後述のS 株式会社(S Corporation)と区別するためにC 株式会社(C Corporation)と特称されますが、これがごく普通の株式会社(Corporation)の課税です。会社レベルで課税された利益は税金を支払った残りが会社に内部留保として蓄積されますが、それを株主に配分する際には、株主への配当となり、株主の課税所得になります。つまり株式会社(Corporation)の課税所得は会社レベルで会社に課税され、会社が税引き後利益を株主に配分すれば株主に受取配当として課税され、会社レベルと株主レベルとで二重に課税されることとなります。しかしながら、株式会社(Corporation)の株主は有限責任会社(LLC)や組合(Partnership)と異なり、出

資したことが米国での事業(trade or business)に従事されているとみなされることもなく、株の売買による損益も米国の税法で株主の居住国での課税、日本法人が米国法人の株主であれば日本での課税で米国では非課税、と定められていますので米国の税務当局の所轄を受けることもありません<sup>9</sup>。(但し配当所得は非居住者の場合、支払い時に源泉徴収税の対象となります<sup>10</sup>。)有限責任会社(LLC)や組合(Partnership)は、内国歳入庁(IRS)に届出をして株式会社(Corporation)として課税されることを選択することもできますが、それをするなら最初から有限責任会社(LLC)や組合(Partnership)でなく株式会社(Corporation)を設立することになります。

#### v) S 株式会社(S Corporation)

株式会社(Corporation)でも、一定条件を満たせば米国連邦税法(Internal Revenue Code: I.R.C.)の S 節(Subchapter S)の適用を選択をして S 株式会社(S Corporation)と呼ばれるパススルー法人(pass-through entity)とすることができます<sup>11</sup>。但し、課税所得は各株主の出資金の比率に基づいて各構成員へ配分され、組合(Partnership)のように柔軟なルールは設定できません<sup>12</sup>。株主が法人であったり米国非居住者であったりすると S 節(Subchapter S)の選択はできませんので日本法人の現地法人としては S 株式会社(S Corporation)は使えません。

結論として、組合(Partnership)、有限責任会社(LLC)の組織形態では源泉徴収税の為にパススルー(pass-through)の利点がなくなってしまう、出資者である日本法人が米国で事業(trade or business)に従事しているとみなされるので連邦や州の司法所轄から守ることもできません。S 株式会社(S Corporation)の選択も日本法人が株主ではできません。結果として、日本企業の現地法人とするに適する組織形態は、通常の C 株式会社(C Corporation)しかないことになります。

## 1.4. 会社の設立州

### 1.4.1. 会社設立州と内部統制原則

米国では会社設立は州法に規定があり。従って会社を設立する際には、どの州の会社法に基づいて会社を設立するのかを決める必要があります。そしてその設立州は実際に事業を行う州でなくても何ら構いません。設立州と違う州で事業を行

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<sup>9</sup> I.R.C. § 861(a)(2).

<sup>10</sup> I.R.C. § 865(a).

<sup>11</sup> I.R.C. § 1361.

<sup>12</sup> I.R.C. § 1366(a)(1).

う場合には前述の州外法人登録(Foreign Entity Registration)をする必要があるだけです。でもなぜ設立州を議論する必要があるのかというと、たとえどこの州で事業活動をしていようが、会社の内部統制、つまり株主・会社・取締役・執行役員間の権利・義務・責任分担及びその範囲は設立州の会社法に基づくというルール(Internal Affairs Doctrine)があるからです。ですからどこの州に事業所があろうと、カリフォルニア州法に基づいて会社が設立されれば、株主・会社・取締役・執行役員間の権利・義務・責任分担及びその範囲のルールはカリフォルニア州の会社法の規定に従うのが原則で、同様にデラウェア州法に基づいて会社が設立されれば、会社の事業所の所在州に関わらず、株主・会社・取締役・執行役員間の権利・義務・責任分担及びその範囲のルールはデラウェア州の会社法の規定に従うのが原則です。

#### **1.4.2. 機関投資家からの投資を受ける予定ならデラウェア**

なぜデラウェア州かと言いますと、もともとはデラウェア州は19世紀終わり(1899年)に、それまでは州議会の認可が必要だった会社の設立を、州に会社を登録するだけで、出資者を募って資金を集めてビジネスを容易にはじめることを許可する会社法を制定し、多くの会社がデラウェア州法にもとづいて設立されてきたという長い歴史を有しているからです。しかも会社法関連をほぼ専門に扱う衡平法裁判所(Chancery Court)を組織したため、多くの会社の会社経営管理(Corporate Governance)に関する司法判断をする機会が多く、成文法・判例法が雪ダルマ式に豊富に積み重ねられ、会社法の争いに対するルールが明確で詳細な判断基準が形成されており、デラウェア州会社法のもとでは、問題が発生した時に司法判断の予測がつきやすい、ということがまずあります。それに加えて、カリフォルニア会社法は少数株主の保護が基本思想にみられるのとは対照的に、デラウェア会社法の様々な規定は比較的大株主に有利で少数株主の保護は低く、過半数株の保有=経営支配という思想がみられることから、ベンチャーキャピタル等の機関投資家は、デラウェア法人を好みます。さらに機関投資家は、長年のデラウェア法人の運営経験からそれぞれ豊富な投資ノウハウを有していますから、投資対象がデラウェア法人であることに非常にこだわります。ですから、近い将来に機関投資家の投資を受けることが事業計画にあるなら、カリフォルニア法人でなく、デラウェア法人を設立しておく方が得策です。

ご参考までに、デラウェアとカリフォルニアの主要な規定をいくつか比較しました。これは、両州の会社法の立法思想の違いを理解していただくためのものであり、両州の会社法条項の差異の全てを示すものではありませんし、細かな例外規定も省略してありますことをご理解ください。



	デラウェア州法	カリフォルニア州法
M&A 等の重要な意思決定に必要な株主の合意	基本的に全株主の過半数があれば OK <sup>13</sup>	多くの場合、全株主の過半数に加え、種類株式ごとの過半数が必要 <sup>14</sup>
累積投票(少数株主の権利保護)	定款(Charter)に定めないと無効 <sup>15</sup>	基本的に有効 <sup>16</sup>
内部留保利益を超える配当	債務超過にならない限り OK <sup>17</sup>	内部留保利益を超える配当はできない <sup>18</sup>
取締役の人数	最低 1 人 <sup>19</sup>	株主が 1 人なら 1 名でも OK 株主が 2 名なら 2 名でも OK 株主が 3 名以上なら最低 3 名 <sup>20</sup>
取締役・執行役員の免責(Indemnification)	株主の決議を受ければ広範囲の免責可 <sup>21</sup>	会社に損害を与えた分は免責不可 <sup>22</sup>

#### 1.4.3. 子会社として継続するならカリフォルニア

では、デラウェア会社法がそんなにいいのなら、日本法人が 100%子会社の現地法人を設立する際にもデラウェア会社を設立し、実際の事業所はカリフォルニア州に州外法人登録(Foreign Entity Registration)して事業展開すればいいではないか、というと実はそうでもありません。

デラウェア法人の主要拠点をカリフォルニアに置いて事業活動する場合、

- i) デラウェア州での会社の設立手続を完了した後に、カリフォルニア州での州外法人登録(Foreign Entity Registration)を行う必要があります。時間も費用も重複します。
- ii) デラウェア州の法定代理人(Registered Agent)とカリフォルニア州の送達代理人(Agent for Service of Process)との重複、特に事業

<sup>13</sup> Delaware General Corporations Law (“DGCL”) § 271.

<sup>14</sup> CGCL §§ 903, 1001, 1101.

<sup>15</sup> DGCL § 214.

<sup>16</sup> CGCL § 708.

<sup>17</sup> DGCL §§ 154, 160, 171, 244.

<sup>18</sup> CGCL § 500.

<sup>19</sup> DGCL § 141(b).

<sup>20</sup> CGCL § 212(a).

<sup>21</sup> DGCL § 145.

<sup>22</sup> CGCL § 317.

所のないデラウェアの代理人(agent)は外部の専門業者と契約し、毎年の代理人費用(agent fee)を支払う必要があります。

- iii) 毎年のデラウェア州の法人事業税申告書(Franchise Tax Report: 取締役・執行役員・所在地その他の企業情報の年次登記)の提出とカリフォルニア州の取締役・執行役員・所在地その他の企業情報の年次登記(Statement of Information)の両方を行う必要があります、手間も費用も重複します。特にデラウェアの法人事業税(Franchise Tax)は計算方法にいくつかの選択があり、複雑で公認会計士(Certified Public Accountant: CPA)や弁護士等、外部の専門家を使うことになりがちで、コストもかかります。

等々、要は州と関わる手続きはほぼ全てが二重になってしまいます。

シリコンバレー、あるいはカリフォルニア州に本拠をおく予定なのに、わざわざデラウェア法人を設立するには、そのコストと手間に見合う効用が無ければ意味がありません。カリフォルニア州裁判所がデラウェア会社法の判例を準用してきた例も多くあり、成文法もデラウェア法を模倣して網羅しており、少数株主保護の根底思想の差はあるものの、デラウェア法と比較して司法判断の予測のつきやすさに大きな差があるとは言えません。まして100%子会社であれば株主間の争いが生じる可能性も低く、司法判断が必要になることも稀ですから、運営のコストと効率を重視すべきです。

ですから近い将来に機関投資家からの投資を受ける予定がなく、現地法人を100%子会社として事業運営してゆくなら、シンプルにカリフォルニア法人を設立されることをお勧め致します。

#### 1.4.4. 「準カリフォルニア法人」

現地法人を100%子会社として事業運営していくなら、シンプルにカリフォルニア法人を設立する方がいいというのにはもう一つ理由があります。

カリフォルニアでデラウェア法人を運営する際にデラウェア法人であればカリフォルニア州法はまったく無視していいかということ実はそうではありません。準カリフォルニア会社(Quasi-California Corporation)条項と呼ばれますが、カリフォルニア州会社法(California Corporations Code)の2115条(Section 2115)は、会社の資産・賃金・売上の50%以上がカリフォルニア州で、50%以上の株主がカリフォルニア居住者であれば、会社の設立州にかかわらず、カリフォルニア州会社法の特定の条項を適用する、と定めています<sup>23</sup>。この条項自体、デラウェアの衡平法裁判所(Chancery

<sup>23</sup> CGCL § 2115

Court)がよりどころとする設立州の会社法に基づくというルール(Internal Affairs Doctrine)に反するため、株主対取締役とか役員会对執行役員とかの会社内部の訴訟をデラウェアで起こせばデラウェアの衡平法裁判所(Chancery Court)はカリフォルニア州法である 2115 条(Section 2115)の準カリフォルニア会社(Quasi-California Corporation)条項など全く無視し<sup>24</sup>、同じ訴因の訴訟をカリフォルニアで起こせば、カリフォルニア州の裁判所はこの条項の効力を認め、同じ訴訟を 2 つの州の裁判所でどちらの州が司法所轄を有するのかをまず争うというとなんでもない混乱のもとになります。さらに、この準カリフォルニア会社(Quasi-California Corporation)条項は全ての内部統制ルールについて、カリフォルニア州法にもとづいて設立された会社とみなされるわけではなく、適用されるのはそのうちの特定の条項についてのみであるため、カリフォルニア法人として運営すれば済むわけでもなく、条項ごとに適用されるかどうか判断が必要です。それに加え、2012 年 5 月にカリフォルニア州の控訴裁判所が 2115 条(Section 2115)は無効だというような裁定をしましたが、カリフォルニア州最高裁ではまだそれについて争われたことがないので、最高裁の裁定が予測できず、宙ぶらりんの状態です<sup>25</sup>。ですから、余計な混乱を避けるためにも、現地法人が 100%子会社の状態で継続する事業計画なら、シンプルにカリフォルニア法人とすべきです。

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<sup>24</sup> *VantagePoint Venture Partners 1996 v. Examen*, 871 A.2d 1108 (Del. 2005).

<sup>25</sup> *Lidow v. Superior Court*, 141 Cal. Rptr. 3d 729 (Cal. Ct. App. 2012).

## 2. 事業所の設立

### 2.1. 現地法人を設立する場合

#### 2.1.1. 法人設立の手続

##### 2.1.1.1. **社名の予約(Name Reservation)**

シリコンバレーに株式会社(Corporation)を現地法人として設立して事業所を開いて運営することを決定したら、まず最初にやらねばならないことは、当然のことながらその法人を選択した州法に従って設立することです。

会社を設立するには、まず社名を決めなければなりません。社名は会社の同一性(Identity)を示すものですから、他に同名の会社があったり、類似した社名の会社があるとその社名では設立できない場合があります。デラウェアは比較的寛容ですが、カリフォルニアは非常に厳しく、類似した社名が既に存在すると使わせてくれません。

予定している社名が使えるかどうかは設立を担当する弁護士/法律事務所が州に問い合わせさせてくれ、使えるようであればその社名を予約(Name Reservation)できます。

デラウェアでは使用可能な社名をカリフォルニアで州外法人登録(Foreign Entity Registration)しようとしたら、類似又は同じ社名が既に使われていて、州から使用を許可されず、州外法人登録(Foreign Entity Registration)ができない、ということも多々あります。その場合には、カリフォルニアでの通称を選択して州外法人登録(Foreign Entity Registration)をしなければなりません。例えば ABC, Inc. という社名でデラウェア州で会社を設立したけれどカリフォルニア州ではすでに ABC, Inc. という同名の別の会社が存在していて使えない場合、ABC DEF, Inc. というような通称(これも州に使用可能かどうかを確認する必要はあります)をつけて「ABC, Inc. doing business in California as ABC DEF, Inc.」という長い社名で州外法人登録(Foreign Entity Registration)をすることになります。実際の事業活動は ABC DEF, Inc. で行う、というのが建前ですが、ABC, Inc. で行っている例は多々あります。

##### 2.1.1.2. **法定代理人(Registered Agent/Agent For Service of Process)**

ところで、デラウェアもカリフォルニアも、定款(Charter)には法定代理人(Registered Agent/Agent for Service of Process)の名前と住所を記入しなければなりません。通常、カリフォルニアの代理人(agent)には設立に使った弁護士を(今後も継続して使う予定なら)か、あるいは会社の現地責任者が既にカ

リフォルニアの居住者ならその方を指名しておけばすみませんが、事業所のないデラウェアの場合、デラウェア在住の代理人(Agent)業者を選択して法定代理人(Registered Agent)になることを依頼しなければなりません。会社設立を担当する弁護士/法律事務所に依頼すれば代理人(Agent)業者を紹介してくれます。代理人(Agent)の費用(fee)は年間\$99 から\$250 くらいで少し幅がありますが、実際の業務はほとんど皆無ですから安いところで十分です。

### 2.1.1.3. 定款(Charter)の登記(Filing)

社名が決まったら次はその社名で会社を設立します。米国の会社設立の手続きそのものは日本と異なり至って簡単です。州の担当部門、デラウェア州の場合は会社部(Division of Corporations)、カリフォルニア州の場合は州務長官(Secretary of State)に会社の定款(Charter)を届出/登記(file)すれば、会社部(Division of Corporations)又は州務長官(Secretary of State)が登記(filing)を受け付けた日が会社の設立日(Date of Incorporation)となり、中身はまだ空っぽですが、この時点で会社が設立されます。

定款(Charter)は日本の定款にあたるものの総称で、州により少しずつタイトルや細かな内容は異なり、デラウェア州法では”Certificate of Incorporation”、カリフォルニア州法では”Articles of Incorporation”というタイトルです。日本の定款に比較して、最低必要な項目は少なく、会社の名称・会社の目的・会社の主たる事業所の所在地・発行を許可された株式の種類と総数、各種類株式の権利の詳細(通常、設立時点では普通株式だけです)、会社の法定代理人(デラウェアでは Registered Agent、カリフォルニアでは Agent for Service of Process)の名前と住所、が記載されていれば会社は設立できます。

ちなみに、後日機関投資家等が投資をする場合には、この定款(Charter)に投資する対象の株式の種類・配当権・分配権・議決権を定めなければならないので、その際には定款(Charter)を変更/改訂(amend)してこれらを記述し、数十ページにわたる長くて複雑な文書になりますが、会社設立時は株式は普通株だけなので通常は 1~2 ページの簡単なものです。

会社を最初に設立する場合は、この定款(Charter)にサインをして州に登記(File)するのは発起人(Incorporator)で、これは会社の役員になる者でなくても構いませんので、多くの場合、設立を依頼された弁護士か法律事務所の担当者が便宜的に発起人(Incorporator)となって手続をする事になります。社名を予約(Name Reservation)していれば、その様式(Form)も添付して登記(file)する必要があります。



登記手続が州で完了したら、定款(Charter)に「登記済(FILED)」と法人(Entity)番号をスタンプした真正証明済複写(Certified Copy)が送られてきますので、大切に保管してください。これは今後会社が正当に設立されていることを証明する書類として、様々な状況で必要になります。

#### 2.1.1.4. 会社記録保管(Corporate Record Binder)

定款(Charter)を登記(file)する際、またはこれと同時に会社記録保管キット(Corporate Record Binder kit)を手配します。この保管キット(Binder Kit)には、会社の記録をハードコピーで保存しておくための会社記録(Corporate Record)の保管バインダーと、会社の社印(Corporate Seal: 日本の社印とちょっと異なり、インクを付けて押すスタンプではなく、印(Seal)を押すと紙に凸凹がついてオリジナルであることがわかるようになっています)、それに株券の印刷用紙(Stock Certificate Forms)がセットで含まれます。通常は会社設立を担当する弁護士/法律事務所が手配してくれます。

#### 2.1.1.5. 連邦納税者番号(FTIN)の取得申請

会社が州に登録されたら、次は連邦納税者番号(Federal Tax Identification Number :FTIN)を取得します。

米国の納税者は個人も法人もすべて納税者番号を保有しなくてはなりません。銀行口座を開くにもこの納税者番号が必要です。通常個人は社会保障番号(Social Security Number)がこれにあたりますが、法人は設立後に内国歳入庁(IRS)に申請して発行してもらわなければなりません。様式 SS-4(Form SS-4)に記入して内国歳入庁(IRS)へ郵送で申請することもできますが、オンライン申請で即時に取得することも可能です。

一つ問題なのは、連邦納税者番号(FTIN)の申請には、「責任者(Responsible Party: IRS は詳細な定義をしていますが要は会社の責任者))の社会保障番号(Social Security Number: SSN)あるいは個人納税者番号(Individual Tax Identification Number: ITIN)が必要なことです。日本法人がシリコンバレーに現地法人を設立する段階では、まだ関係者は誰も社会保障番号(SSN)を持っていませんから、本来は会社の責任者か最初の取締役(Initial Director)が内国歳入庁(IRS)に様式 W-7(Form W-7)を提出して個人納税者番号(ITIN)を発行してもらってから様式 SS-4 に記入して連邦納税者番号(FTIN)の取得申請にとりかかることになるのですが、それでは内国歳入庁(IRS)から個人納税者番号(ITIN)を受けるまで数週間、会社は連邦納税者番号(FTIN)を取得できず、銀行口座もそれまで開けないことになります。それを合法的に回避する方法として、発起人(Incorporator)が辞任(Resign)する前、つまりまだ会社の代表権を有

しているうちに、発起人(Incorporator)を会社の責任者(Responsible Party)として連邦納税者番号(FTIN)の取得を申請することをお勧め致します。

連邦納税者番号(FTIN)が取得できたら数日後に通知 CP575A(Notice CP575A)という内国歳入庁(IRS)から連邦納税者番号(FTIN)を通知する文書が郵送されてきますので、保管しておいてください。

#### **2.1.1.6. 発起人による書面決議(Written Action by Incorporator)**

発起人(Incorporator)によって定款(Charter)が登記(file)され、無事に会社が設立されたら、次は発起人(Incorporator)が会社の最初の取締役(Initial Director)を選任し、発起人(Incorporator)が有する会社に関する権限を取締役(Director)に委譲しなければなりません。これをするのが発起人による書面決議(Written Action by Incorporator)で、会社の責任者を発起人(Incorporator)が最初の取締役(Initial Director)に指名・選任します。また発起人 Incorporator 自身は辞表(Resignation)を出して会社の代表権が残らないようにします。ここで大事なことは、登記(File)された定款(Charter)にサインした発起人(Incorporator)と権限移譲する書面決議(Written Action)にサインした発起人(Incorporator)が同一人物であることです。そうでないとこの書面決議(Written Action)で最初の取締役(Initial Director)を選任する権限がありません。

#### **2.1.1.7. 取締役による組織形成決議(Organizational Resolutions of Initial Director)**

発起人(Incorporator)から会社の代表権を受け継いだ最初の取締役(Initial Director)が、会社を始める上で決めなければならない様々な事項を一つ一つ決議して記録に残すもので、社名及び会社設立行為そのものも追認しておくのが普通です。それに加え、会社の所在地・決算期・執行役員(officers)の指名・銀行口座開設の承認・親会社となる日本法人への株式発行の承認等々、様々な事項について定めます。多くの場合、会社の運営規定(Bylaws)の承認もここでしておきます。もし会社がデラウェア州等のカリフォルニア以外の州法にもとづいて設立されていれば、カリフォルニア州に州外法人登録(Foreign Entity Registration)することもここで承認決議しておいてください。

#### **2.1.1.8. 執行役員(Officers)の選任**

組織形成決議(Organizational Resolutions)のうちの大事なもののひとつに、執行役員(Officers)の指名があります。執行役員(Officers)というのは、従業員のうち、会社を代表して契約を締結する権限を有する重要な役職で、代表(President)・会計(Treasurer)・書記(Secretary)の3役は必須で、これに副代表(Vice President)を加えた4つが一般的な構成です。非営利団体(Non-Profit



Organization)でない通常の営利企業(For-Profit Corporation)であれば、執行役員(Officers)のうち代表(President)・会計(Treasurer)・書記(Secretary)の三職を一人で兼任しても問題ありません。組織形成決議(Organizational Resolutions)では、誰がどういう役職で最初の執行役員(Officer)となるかを指名します。

#### **2.1.1.9. 運営規定(Bylaws)の承認**

会社法や会社の定款に記載されていない事項に関する規定は会社運営規定(Bylaws)に定めます。運営規定(Bylaws)は株式総会の開催手順や決議の方法・株主の権利とその範囲、取締役会(Board of Directors)の定員・選任方法・権限及び責任の範囲・取締役会(Board Meeting)の開催手順・決議方法、執行役員(Officers)の指名方法・権限及び責任の範囲、等々、会社の様々な運用規定のうち、州法で定款(Charter)に規定しなければならないと定められている条項以外の事項で定款(Charter)に規定されていないものを規定します。

#### **2.1.2. 州外法人登録(Foreign Entity Registration)**

設立した法人がデラウェア等、カリフォルニア法人でない場合、カリフォルニア州内に事業所を置くなら州外法人登録(Foreign Entity Registration)を申請する必要があります。

まず会社の設立州の担当部署、デラウェア州の場合は会社部(Division of Corporations)に、会社存在証明書(Certificate of Good Standing)を発行してもらいます。この会社存在証明書(Certificate of Good Standing)を添付して州外会社申請(Statement and Designation by Foreign Corporation)と発行手数料(filing fee)の小切手(Check)を同封してカリフォルニア州の州務長官(Secretary of State)へ送れば、数日で州内事業許可証(Certificate of Qualification)が送られてきます。これにはこの会社のカリフォルニア州での会社番号(Corporation Number, 7桁)が記載されていますので、この番号を控えておいて、州内事業許可証(Certificate of Qualification)は大事に保管しておいてください。この手続は通常弁護士/法律事務所の会社設立パッケージの範囲に含まれず、追加料金となることが多いです。

#### **2.1.3. 銀行口座の開設**

定款(Charter)の真正証明済複写(Certified Copy)・発起人による権限移譲の書面決議(Written Action of Incorporator)・組織形成決議(Organizational Resolutions)・州内事業許可証(Certificate of Qualification) (該当する場合のみ)と、内国歳入庁(IRS)から届いた通知 CP-575A(Notice CP-575A; 連邦納税者番号(FTIN)の通知書)のコピーがあれば、それらの書類で権限を授与された個人が銀行へ行って会社名義の口座を開設す

ることができます。開設する口座のサイナーになる人ご本人が銀行へ行かないと開設できませんのでご注意ください。

銀行によっては残高\$0 で開設してくれることもありますが、多くの場合は \$100 程度の開設預金(initial deposit)を要求されますので、現金か個人のチェックで預け入れ(deposit)において、後日資本金の払込が行われたら引き出して返済できます。

#### **2.1.4. 株式の発行**

##### **2.1.4.1. 新株発行承認決議**

会社が株式を新規発行するには、通常既存の株主の承認決議が必要ですが、現時点ではまだ株主はいませんから、取締役会(Board of Directors)の承認決議だけとなりますが、これは組織形成決議(Organizational Resolutions)に親会社となる日本法人への株式発行の承認決議が通常は含まれています。その決議がされていなければ、改めて親会社となる日本法人への株式発行を承認決議する必要があります。この決議には、購入者名・購入株数・一株当たりの価額・対価の支払い方法等の詳細を開示します。

##### **2.1.4.1. 連邦と州の証券法・証券取引法**

米国では、基本的に非公開株を含む未登録証券(Unregistered Security)の売買は、その取引が何らかの例外(exemption)に該当しない限り禁じられています。この証券取引に関わる議論は複雑で長くなりますので割愛し、関連する要点のみを述べますが、株式を売買する際には、この未登録証券取引禁止の例外規定の対象になることを必ず確認する必要があります。

連邦の例外(exemptions)のひとつに、私募の例外(Private Offering Exemption)というのがあり、不特定多数の一般社会が購入できない、限られた者だけを対象にした売買に関しては、一定の条件を満たせば売買禁止規定の例外となり、証券取引委員会(Securities Exchange Commission: SEC)の管轄の Reg. D というルールに従えば、例外(exemption)の要件を満たしたとみなされます。Reg. D には 3 つのレベルがあり、該当証券の 1 年間の投資金額合計が \$1,000,000 未満の場合は、Reg. D のうち Rule 504 が適用され、\$1~5,000,000 対象の Rule 505 や \$5,000,000 超の Rule 506 と異なり、証券取引委員会(SEC)に詳細な報告をする義務を免除されます。日本法人が現地法人を設立する際に \$1,000,000 以上の初期投資をすることは希ですので、ほとんどの場合はこの Reg. D Rule 504 の例外(exemption)が適用されます。

連邦だけでなく、州の証券取引法に遵ずることも必要です。カリフォルニア州の証券取引法(Corporate Securities Law of 1968)でも連邦同様、基本的に

非公開株を含む未登録証券 (Unregistered Security)の売買は、その取引が何らかの例外(exemption)に該当しない限り禁じられています。カリフォルニア証券取引法の 25102 条(f)項に、既存関係者(preexisting relationship)の例外(exemption)という規定があり、親会社が新規に設立した子会社の株を購入するという取引は、この例外(exemption)を適用できますので、合法取引となります。

例外(Exemption)の判断は専門知識を要しますので、弁護士/法律事務所にご相談されることをお勧め致します。

#### **2.1.4.2. 株式売買契約書**

取締役会(Board)の承認した日本法人の投資と現地法人が日本法人に株を新規発行するという取引をする株式売買契約書を作成し、その中にこの取引が上記の証券取引のどの例外(exemption)に該当するかを、背景事実も含めて記述しておきます。

#### **2.1.4.3. 資本金の払込**

日本法人から、株式売買契約書・取締役会(Board)議決に合致した金額の資本金/株式投資金を新規開設した現地法人の銀行口座に振込入金し、子会社の開始資本金となります。

#### **2.1.4.4. 株券の発行**

日本法人からの株式購入代金/資本金の入金を確認できましたら、会社記録保管キット(Corporate Binder Kit)に入っている様式(form)と同梱されているソフトウェアを使って株券(Stock Certificate)を印刷します。最初のトライでうまく行かないことが多いので、様式(form)を無駄にしないよう、ご注意ください。

それぞれの株券に、株式売買契約書に記載されている例外(exemption)の制限付き表示(restrictive legend, exemption の対象であり、取引に制限のある株券である旨の特記)を印刷します。表示(Legend)の文言は株式売買契約書に記載してあります。

印刷が完了したら、所定の箇所に書記(Secretary)と代表(President)のサインをし、株主に送付します。万が一郵送事故があった時のため、受領確認書をもらうことと、送ったもののコピーを保管しておくことをお勧めします。

#### **2.1.4.5. 例外の届出(Exemption Notice)**

、例外(exemption)の対象取引であったことを証券取引委員会(SEC)やカリフォルニア州の会社部(Department of Corporations)に届け出る義務がありますが、通常は設立を担当する弁護士/法律事務所がその手続をしてくれます。

これでようやく株式の発行関連業務が完了できました。

## **2.2. 現地法人を設立せずに支店形態の事業所とする場合**

### **2.2.1. 州外法人登録(Foreign Entity Registration)**

日本法人が、支店という組織形態でカリフォルニア州内に事業所を置くなら州外法人登録(Foreign Entity Registration)が必要です。

まず日本から会社の登記事項全部証明書を取り寄せ、公文書の翻訳をする翻訳者(certified translator)に英訳してもらいます。

英訳ができましたら、上記 2.1.2 に準じて、登記全部事項証明書・その英訳・翻訳者の翻訳証明書(Certificate of Accuracy)と、州外会社申請(Statement and Designation by Foreign Corporation, 巻末文書サンプル参照)・発行手数料(filing fee)の小切手を同封して、指定された宛先へ送れば、数日でカリフォルニア州内事業許可証(Certificate of Qualification)が送られてきます。これにはこの会社のカリフォルニア州での会社番号(Corporation Number, 7桁)が記載されていますので、この番号を控えておいて、許可証(Certificate)は大事に保管しておいてください。

### **2.2.2. 連邦納税者番号(FTIN)の取得**

現地法人同様、会社が州に登録されたら、次は連邦納税者番号(Federal Tax Identification Number: FTIN)を取得します。(2.1.1.5 をご参考ください。)

日本法人の支店の場合、責任者(Responsible Party)の社会保障番号(SSN)がなければ、会社の責任者が内国歳入庁(IRS)から個人納税者番号(Individual Tax Identification Number: ITIN)を発行してもらってからでないと連邦納税者番号(FTIN)の取得申請ができませんので、内国歳入庁(IRS)から個人納税者番号(ITIN)を受けるまで数週間、会社は連邦納税者番号(FTIN)を取得できず、銀行口座もそれまで開けないこととなります。

### **2.2.3. 銀行口座の開設**

日本法人の定款の登記全部事項証明書とその認定された翻訳(Certified translation)と州外事業許可証(Certificate of Qualification)と CP-575A (連邦納税者番号(FTIN)の通知書)のコピーがあれば、日本法人の役員が銀行に行って会社名義の口座を開設することができます。これは開設する口座のサイナーになる人ご本人が銀行へ行かないと開設できませんのでご注意ください。銀行によっては残高\$0 で開設してくれることもあります。多くの場合は\$100 位の最初の預金(initial deposit)を要求されますので、現金か個人の小切手で預金(deposit)しておいて、後日返済できます。

## **2.3. 現地法人・支店に共通の手続**

### **2.3.1. 売上税納付許可(Seller's Permit)**

カリフォルニア州では有形資産(tangible personal property)の最終消費者への販売には売上税(sales tax)が課せられます。カリフォルニアで事業を営む者で、売上税(sales tax)の対象となるものを販売またはリースする者は、カリフォルニア州の州税務当局(Board of Equalization: BOE)から売上税納付許可(Seller's Permit, sales tax を徴収・納付する ID 番号)を取得し、課税対象売上の規模により、毎四半期または毎年売上税納付申告(Sales Tax Return)を提出(file)する義務があります。

売上税納付許可(Seller's Permit)は、オンライン申請や電話で即座に発行してもらえますが、それには会社の責任者の社会保障番号(Social Security Number)が必要ですのでご注意ください。社会保障番号(SSN)がない場合、連邦納税者番号(FTIN)の申請同様、個人納税者番号(ITIN)の取得まで待たねばなりません。

### **2.3.2. 事業用動産税(Business Personal Property Tax)**

カリフォルニア州では事業の用に供した有形固定資産は資産税(Property Tax)の対象となり、毎年1月1日時点の資産価値を4月15日までに郡(County)に様式571-L(Form 571-L)という書類かそのオンライン版を使って自己申告し、郡(County)がその価値に対して事業所の郡(county)・市(city)により決められた税率で税額を決定して計算書を送ってきますので、8月31日までに納付します。様式571-L(Form 571-L)は既存の納税者にしか送付されないため、新規に事業所を設立したら、郡(County)に連絡して様式571-L(Form 571-L)を発行してもらう必要があります。

### **2.3.3. カリフォルニア雇用開発局番号(CA EDD Account Number)**

カリフォルニア州で従業員を雇用した場合、カリフォルニア州の所得税の源泉徴収義務が生じます。同時に、カリフォルニア州の雇用者税(給与支給にかかる会



社負担の税金)の対象にもなりますので、カリフォルニア州の雇用者(会社/使用者)としての番号が必要になります。この番号は雇用開発局番号(EDD Account Number)と呼ばれ、雇用開発局(Employment Development Department)に申請して発行してもらいます。

#### **2.3.4. 給与(Payroll)処理業者の選択**

米国の給与(Payroll)に関わる税務は連邦も州も、複雑でしかも法の変更が多くて非専門家には処理が煩雑で困難なため、ほとんどの会社は外部の給与(payroll)処理業者を使っています。Google で Payroll Processing Service で検索すると沢山出てきます。著名なものでは ADP・Paychex 等ですが、いくつかの見積をとって競争させると驚く程値引きしてきます。

#### **2.3.5. 市町村事業税(Municipal Business License)**

事業所の存在する市町村(municipality)により、金額や計算方法は異なりますが、ほぼ全ての市(city)では、市内の全ての事業所が市(city)に登録し、毎年 \$100~\$500 程度の事業税(Business License)を支払うことを義務付けています。詳細は市によって異なりますので、事業所を設立次第、在住の市の事業税局(Business License Department)にご連絡ください。

#### **2.3.6. その他**

業種によってどのようなライセンスや許可証(permit)が必要かは、下記 URL でご確認ください。

<http://www.calgold.ca.gov/>

### **2.4. 会社設立に関わる費用と時間**

#### **2.4.1. 会社設立に関わる費用**

会社の設立に関わる費用は、シリコンバレーの最大手クラスの弁護士事務所の新会社設立パッケージ料金として弁護士費用約\$4,500~\$5,500、それに加え、州への登録料(filing fee)や代理人(agent)の一年目の費用・州への優先処理料金(expedited fee: 後述)・会社の定款(Charter)、決議書を保存する Corporate Binder 等の諸経費が約 \$800~\$1,000 かかり、合計\$5,300~\$6,500 くらいが設立にかかる弁護士費用(Legal Fee)の目安となります。

新会社設立パッケージには、通常下記のものが含まれますが、FTIN の取得は含まれない場合が多いようです。

- i) 定款(Charter)の作成(drafting)と提出(filing)
- ii) 運営規定(Bylaws)の作成(drafting)
- iii) 発起人(Incorporator)/初期取締役(Initial Board)の辞任書類(resolutions)の作成(drafting)
- iv) 株式購入契約(Stock Purchase Agreement)の作成(drafting)

デラウェア法人を設立する場合には、会社設立に加え、カリフォルニアに州外法人登録(Foreign Entity Registration)が必要ですから、さらに弁護士料として\$1,000~\$2,000、会社存在証明書(Certificate of Good Standing)の発行手数料を含む諸経費約\$1,000 の計 2,000~\$3,000 が追加でかかることになります。

## 2.4.2. 会社設立に要する時間

### 2.4.2.1. 法人設立に要する時間

通常、デラウェア州もカリフォルニア州も、通常会社設立書類を受け取ってから 1 週間くらい経たないと処理してくれず、お役所仕事は日本もアメリカも同じだと思われるかもしれませんが、驚くことに、自由経済の国アメリカでは、お役所でもお金を多く払えば急いで仕事をやってくれます。カリフォルニア州では、\$350~\$500 の優先処理料金(Expedited Fee)を登録料(Filing Fee)に追加で払えば 24 時間以内から 4 時間以内の優先処理サービス(Priority Processing Service)がありますし、デラウェア州でも\$200~\$1,000 の追加料金で 1 時間から 24 時間の優先処理サービス(Priority Service)が可能です。

ということで、会社を設立するのにかかる時間は、定款(Charter)を州に登記(file)するだけで優先処理サービスを要求しなければ、往復の郵送期間を含め約 2 週間となります。デラウェア法人を設立してカリフォルニアに州外法人登録(Foreign Entity Registration)する場合にはこれが二倍になるとご理解ください。

### 2.4.2.2. その他の書類に要する時間

これは会社設立を依頼した弁護士/法律事務所が会社設立のパッケージサービスの一環として一般的な内容の組織の決議(organizational resolutions)や運営規定 (Bylaws)等、必要書類一式を作成してくれるはずで、州に定款(Charter)を登記(file)して登記のコピー(Filed copy)が返ってくるまでには全部ドラフトはできていますから、自社内で必要な事項を決定し、サインを得るのに必要な時間がこれらの書類作成に要する時間ということになります。



## 2.5. 事業所設立は法律事務所に依頼を

ところで、デラウェア法人であれ、カリフォルニア法人であれ、現地法人を設立される場合も、現地法人でなく、支店として事業所を設立される場合も、基本的には弁護士/法律事務所に依頼されることをお勧め致します。

法律事務所でないリロケーションの斡旋業者や米国進出の援助をビジネスとしている会社、あるいはベンチャーのインキュベーションをしている会社が会社設立の代行をしていることが多くあり、その多くは州内外の弁護士の名前を掲げて、いかにも弁護士が監督しているようには表面上は見えますが、私の経験では、これら弁護士でない業者の作成した会社設立に関する様々な書類は、定款(Charter)のように州に登記(file)するものは不備があれば拒絶されますから結果として正しいものになっていても、それに付随する他の書類は様々な不備があちこちに見られる例が多く、後日ベンチャーキャピタル等の機関投資家が投資検討の一環として、会社設立に関する書類に不備がないか、これまでに行われた会社の法的行為を行った個人が正当な権限を付与されていたか、等を検証するデューデリジェンス(Due Diligence, 資産調査)を行った段階で不備が多く発見されて投資を控えられた例は沢山あります。

現地法人を100%子会社として継続運営し、外部の機関投資家のデューデリジェンス(Due Diligence, 資産調査)を考慮する必要がない場合でも、会社設立に関する書類に不備があると、銀行口座を開設できなかつたり、銀行から不備を指摘されて借入ができなかつたりとかいう例もあります。日本法人の支店でありながら、間違っ  
て現地法人であるかのように連邦納税者番号(FTIN)を申請してしまい、数年にわたって間違っ  
た納税申告書(Tax Returns)を提出(file)し続けていた実例もあります。このガイドブックにありますように、カリフォルニア州に事業所を設立するには非常に細かくて複雑な手続が絡んできますので、弁護士でない業者が全くカバーしてくれないものもあり、後日突然罰金つきの延滞通知を受けることになりかねません。

ですから、弁護士/法律事務所は費用が高いという理由で弁護士でない業者に依頼した結果、取り返しのつかない損失につながったり、弁護士費用の金額をはるかに超える損失をこうむったりする可能性は十分ありますので、会社設立の手続きは弁護士/法律事務所にご依頼されることをお勧め致します。

### **3. 事業所組織の維持・運営**

#### **3.1. 州への年次登記**

##### **3.1.1. カリフォルニア年次報告書(Statement of Information)**

カリフォルニア法人及びカリフォルニアに州外法人登録(Foreign Entity Registration)してある法人は全て毎年年次報告書(Statement of Information)を州務長官(Secretary of State)に提出しなければなりません。これは、法人の所在地・カリフォルニア州内の本拠の住所、執行役員(officers)の名前と住所、取締役(directors)の名前と住所、法定代理人(Agent for Service of Process)の名前と住所、を州に届出をするもので、\$25 の提出費用(filing fee)が必要です。

この年次報告書(Statement of Information)の提出を怠ると、州務長官(Secretary of State)が会社を一時停止(suspend)し、会社が州内で経済行為をする権利を差し止められ、社名も同じ社名を他社が登録できるようになってしまいますのでご注意ください。

##### **3.1.2. デラウェア 法人事業税申告書(Annual Franchise Tax Report)**

デラウェア法人の場合は、カリフォルニアの年次報告書(Statement of Information)と同様の手続きをデラウェアでも行う必要があります。デラウェアの場合は法人事業税申告書(Franchise Tax Report)と呼ばれ、取締役(directors)・執行役員(officers)・法定代理人(registered agent)の情報に加え、発行済株式数も報告し、株数と純資産額に応じて算出する法人事業税(Franchise Tax)を同時に支払います。

#### **3.2. 株主総会・決議**

##### **3.2.1. 株主総会の開催**

株式会社(Corporation)は毎年最低一回は株主総会を開いて取締役会(Board of Directors)の改選、取締役会(Board of Directors)が報告する会社の年次決算と税務申告書(Tax Returns)を承認及びその他の重要な事項の決議をする必要があります。運営規定(Bylaws)に株主総会の開催日を規定しなければなりません。一年のうちの特定の月日か、あるいは祭日や週末を避ける為に特定の月の特定の曜日を特定することもできます。

また、運営規定(Bylaws)に定められた日取りから 60 日以内に総会が開催されない場合、あるいは最後に開催された総会の日取りから、15 ヶ月間総会が開催され

ていない場合は、株主が裁判所に申請し、株主総会を開催する裁判所命令を取締役会に出してもらうことができます。

年次株主総会(株主決議)の他にも、法律・定款(Charter)・運営規定(Bylaws)や株主契約(shareholders agreement)・投資契約等で株主の承認が必要と定めている重要な意思決定、例えば役員報酬、定款(Charter)や運営規定(Bylaws)の変更、利益配当、株式発行、取締役と会社との利害相反となる取引等を取締役会(Board of Directors)が行った場合、その承認決議をする必要があり、通常運営規定(Bylaws)に会議招集手続に関する規定を定めてあります。

### **3.2.2. 株主総会の議事録**

取締役の改選等、株主総会のすべての決議事項を議事録に残しておく必要があります。この議事録は社内に保管しておくべきもので、州へ届け出る必要はありません。株主総会を開催するのは大変だ、という場合は、全株主が、決議書にサインすることで書面決議(Written Action)とすることもできます。

### **3.2.3. 株主総会の開催場所**

株主総会は、運営規定(Bylaws)に特別の規定がない限り、カリフォルニア州内とか会社の所在地等の特定の場所で開催する必要はなく、すべての参加者同士が支障なく会話ができる設備が整っていれば、電話会議、ビデオ会議等の方法で開催することも可能です。

## **3.3. 取締役会議(Board of Directors Meeting)**

### **3.3.1. 取締役会議の開催**

#### **3.3.1.1. 年次決議**

最初に州に定款(Charter)を登記(file)して会社が設立された直後に、発起人(Incorporator)に指名選任された最初の取締役(Initial Board of Directors)が、定款(Charter)の追認、取締役の選任、執行役員(officers)の指名、等の会社の組織づくりをするための様々な事項の組織形成決議(Organizational Resolutions)を行います。通常は、その後毎年株主によって取締役会が改選された直後に執行役員(officers)を指名する決議を行うことが運営規定(Bylaws)に規定されています。年次決算と納税申告書(Tax Returns)も株主の承認を得ることを条件として承認することも、通常この年次取締役会議の決議事項です。

### **3.3.1.2. その他の決議**

この年次取締役会の他にも、定期的に取り締役会を開催、あるいは随時に特別会議・非定期会議(Special Meeting)を開催し、定款(Charter)・運営規定(Bylaws)に取り締役会の承認を要すると規定されている事項や、規定には明記されていなくても一般的に会社にとって重要とみなされる事項に関して決議をし、その事項に関する行為・決定が正当な手続きで承認を受けた会社の真正な行為・決定であることを記録に残しておくことが必要です。

### **3.3.1.3. 書面決議(Written Action)**

実際に取り締役会を開催し、議事録を作成する代わりに、決議書に取り締役全員が署名をする書面決議 (Written Action)をする事も可能です。

### **3.3.2. 取締役会議の開催場所**

取締役会は、特にカリフォルニア州で開催する必要はなく、すべての参加者同士が支障なく会話ができる設備が整っていれば、電話会議、ビデオ会議等の方法で開催することも可能ですが、会社によっては運営規定(Bylaws)で開催場所を限定している場合もあります。

## **3.4. 公式会社手続き (Corporate Formality)**

株主総会の開催・決議や取締役会議の開催・決議の記録は社内に保管しておくべきもので州へ届け出る必要はありませんが、これらの手続きは公式会社手続き (Corporate Formality)と呼ばれ、株式会社(Corporation)が株主とは個別の法人格を有するものと認められる条件の一つとされています。従ってこれらの公式手続き (Corporate Formality)を守らず、株式会社(Corporation)としての義務を怠ると、会社が何らかの損害賠償責任を負った場合、株式会社(Corporation)は株主の仮装(alter-ego)であるとして、株主の有限責任を否定され、会社の損害賠償責任を株主が無限責任として負わされる場合があるとされています。

## **3.5. 州の税務申告書(State Tax Returns)**

毎年、連邦の税務申告書(Tax Return)とともに、カリフォルニア州の税務申告書(Tax Return)も期日内に提出(file)する必要があります。

この州の税務申告書(State Tax Return)の提出を怠ると、法人税務当局 (Franchise Tax Board)が会社を一時停止(suspend)し、会社が州内で経済行為をする権利を差し止められ、社名も同じ社名を他社が登録できるようになってしまいますのでご注意ください。

## **4. 事業所組織の解散・清算**

### **4.1. 取締役(Board of Directors)と株主(Shareholders)の決議**

会社を清算する際には、取締役会が清算を決定し、株主がその決定を承認する決議をする必要があります。

### **4.2. 法人の清算登記**

#### **4.2.1. カリフォルニア法人**

取締役会と株主の決議にもとづき、州務長官(Secretary of State)に法人解散申請書(Certificate of Dissolution)を提出(file)します。

#### **4.2.2. デラウェア法人**

##### **4.2.2.1. デラウェア州への清算登記**

取締役会と株主の決議にもとづき、デラウェア州会社部(Delaware Division of Corporations)に法人解散申請書(Certificate of Dissolution)を提出します。

##### **4.2.2.2. 法人税申告書(Franchise Tax Report)の提出と支払い**

デラウェア州会社部(Delaware Division of Corporations)に法人解散申請書(Certificate of Dissolution)を提出(file)する際には、最終年度までの法人事業税申告書(Franchise Tax Report)を全て提出し、未払いの法人事業税(Franchise Tax)があれば全て支払わねばなりません。

##### **4.2.2.3. カリフォルニア州への解散登記**

州務長官(Secretary of State)に事業取り消し申請(Certificate of Surrender)を提出(file)します。

### **4.3. 残余資産の分配**

まず全ての債権者に弁済できる資産があれば弁済、不足するようであればそれぞれの債権者に平等に一定比率で債務弁済します。その上で残余資産があれば、定款(Charter)に従って株主に分配します。

#### **4.4. 最終税務申告**

最終税務申告書(Final Tax Returns)を作成し、内国歳入庁(IRS)と州税務当局(FTB)に提出(file)して一件落着です。

#### **4.5. 会社の解散・清算に関わる費用と時間**

##### **4.5.1. 会社の解散・清算に関わる費用**

会社の清算に関わる費用は、解散・清算ということが設立よりもずっと少なくて弁護士/法律事務所の経験に差があるのか、会社設立のようにパッケージ料金を出している弁護士/法律事務所は皆無です。ですから通常の依頼事項のように弁護士費用は費やした時間×時間あたりの費用ということになり、一概に何ドルくらい、とは言えませんが、州への登録料(filing fee)や法定代理人(agent)最終年度の費用(fee)の未払い分・最終年度の法人税(Franchise Tax, デラウェア会社の場合)に加え、取締役会の清算決議書の作成の弁護士費用等の合計で\$3,000~\$6,000 くらいが弁護士費用(Legal Fee)の目安だと思います。もちろん、清算の決断をする前に、清算について弁護士/法律事務所に相談する費用は別で、これは清算そのものにかかる費用です。

##### **4.5.2. 会社清算に要する時間**

###### **4.5.2.1. 法人登記抹消に要する時間**

通常、会社を清算する場合には、課税年度末が迫っていて翌年の税務申告を避けたい場合を除けば、通常は設立時のように急ぐこともないので州や登記業者に優先処理料を払うことは稀ですが、優先処理をしなくても、書類を州に送ってから処理してくれるまで約2週間から1ヶ月くらいです。ただしこれは時期によっては州の担当部署が非常に多忙なこともありますから、事前に弁護士/法律事務所にご相談されることをお勧めいたします。



## 5. カリフォルニアの税務

### 5.1. 概観

カリフォルニア州の税務は、所得税(Income Tax)は法人税務当局(Franchise Tax Board: FTB)、資産税(Property Tax)は各郡(County)、売上税(Sales Tax)は公正税務当局(Board of Equalization)、給与源泉所得税(Payroll Tax)は雇用開発局(Employment Development Department: EDD)と別々の組織が担当していて、しかもそれぞれの担当組織がそれぞれ独自の納税者番号(Identification Number)を使うので、よく考えて対処しないと混乱してしまいます。

### 5.2. 会社の法人所得税(Corporate Income Tax)

#### 5.2.1. 申告書・追加納税の期限

会社の法人所得税(Corporate Income Tax)は連邦と州それぞれに納税申告書(Tax Return)を提出しなければなりません。期限は、連邦は期末日から2ヶ月半、決算期が暦年であれば3月15日ですが、延期申請(Extension)を出せば期限は6ヶ月期限延長されて9月15日までになります。ただし追加納税がある場合には、その納付期限は延期申請(Extension)でも延長されず、3月15日のままです。州は、追加納税の納付期限は期末日から3ヶ月半、決算期が暦年であれば4月15日で、Returnの提出期限は期末日から9ヶ月半、10月15日です。でも納税申告書(Tax return)が作成できなければ追加納税があるかどうかもわかりませんから、申告書を追加納税の期限までに作成するか、概算で多めの金額をとりあえず納付するのが通常です。ちなみに、3.1.2で述べたデラウェア州の法人事業税(Franchise Tax)と紛らわしいのですが、カリフォルニア州の法人所得税は Franchise Tax と呼ばれます。

2014年の税率は、連邦は課税所得が\$50,000までは15%、\$50,001から\$75,000までは25%と低いですが、それを超えると\$100,000までが34%、\$335,000までが39%と上がり、州税は通常のC Corporationは一律8.84%ですから、合わせると世界中で一番法人所得税が高いと言われています。この税率は2014年の中間選挙で共和党が米国議会の両院の過半数を得たので、2015年以降は下がる可能性があります。

州税は、設立2年目からの各年度の最低税額が\$800と定められており、赤字法人であってもこれは毎年4月15日(12月決算の場合)または決算期末から3ヶ月半以内に支払う必要があります。

ここで「追加」納税額と呼んでいるのはなぜかと言いますと、連邦も州も、予定納税(Estimate Tax)の納付を義務付けられており、決算期が暦年の場合、連邦に

は4月15日、6月15日、9月15日、12月15日までにそれぞれ累計で最終税額の25%・50%・75%・100%、州には4月15日、6月15日、12月15日までにそれぞれ累計で最終税額の30%・70%・100%、を納付しておかなければなりません。ですから12月15日には予定納税で最終税額以上を納付しているはずで、納税申告書(Tax Return)を作成してみて、それが不足していれば追加納税となります。

### **5.2.2. ユニタリータックス(California Unitary Tax)**

連邦税法では米国法人・個人は全世界所得の申告が義務付けられていますが、通常、州の税法ではその州内の所得だけの申告・課税ですが、カリフォルニア州はユニタリータックス(Unitary Tax)と呼ばれ、カリフォルニア州の会社はその全世界所得を申告するか、カリフォルニア州内所得課税(Water's Edge)を選択するという方法があります。当然のことながら、日本企業の支店形態であれば州内所得課税(Water's Edge)を選択するのですが、現地法人で別会社であっても、その親会社や株主が同じ分野の事業に従事している場合には、その事業体を課税単位組織とみなされますので、念の為に州内所得課税(Water's Edge)を選択をする場合が多いです。実際にこの選択をするかどうかは、それぞれの会社の事情によりますので、会計事務所または税法を担当する弁護士/法律事務所にご相談されることをお勧め致します。

### **5.3. 不動産税(Real Property Tax)**

不動産税(Real Property Tax)は、毎年1月1日時点の対象不動産の時価評価額をもとにした納税基準額を各郡(county)が決め、固定資産の所有者に通知されます。この納税基準額は、最初にその所有者が取得した時点の価額から毎年3%上昇したものであるとして計算した値と時価評価額のいずれか低い方となります。つまりカリフォルニアでは、いくら不動産の市場価値が上昇しても、現在のように市場が高騰している場合には、ずっと以前に取得した人の納税基準額は購入時から毎年3%しか上昇しませんが、新たに購入した場合はその取得価額(=市場価額)が納税基準額となるため、同じ時価の不動産を所有していても納税基準額が大きく異なる場合があります。

この納税基準額にもとづいて計算した税額の50%を11月1日、残り50%を4月1日までに納付します。

#### **5.4. 動産税(Personal Property Tax)**

動産(Personal Property)については、それぞれの事業者が毎年1月1日時点の自己の保有する事業の用に供する動産の価値を3月1日までに郡(county)に申告し、それをもとに郡(county)が独自に評価して納税基準額を決めて税額を通知します。その税額の納付期限は8月31日です。

#### **5.5. 売上税(Sales Tax)**

カリフォルニアの売上税(Sales Tax)は、課税年度は7月1日から翌年6月30日までで、州内一律の税率ではなく、郡(County)・市(City)がそれぞれ独自の税率を上乗せしますので非常に複雑です。ただし、課税対象は最終消費者への有形動産(Tangible Property)の売上だけなので、カリフォルニア州内で動産を販売する事業者は売上税納付許可(Seller's Permit)を取得して売上税(Sales Tax)の申告をしなければなりません。販売先が最終消費者でなければ、課税対象外売上として控除して申告するため、ゼロばかりの簡単な申告書になります。

最終消費者への売上があれば、販売先から徴収した売上税を毎月州税務当局(Board of Equalization: BOE)に納付し、毎四半期に申告書(return)を提出する必要がありますが、そうでなければ申告は年に一度です。

売上税(Sales Tax)で注意すべきは、使用税(Use Tax)です。カリフォルニア州外でカリフォルニアの売上税を払わずに取得し、カリフォルニアに持ち込んで事業の用に供した資産は、売上税(Sales Tax)の税率にもとづいて税額を計算し、申告書(Return)に使用税(Use Tax)として自己申告しなければなりません。州税務当局(BOE)の売上税(Sales Tax)の調査で一番先に調べられるのはこの使用税(Use Tax)で、きちんと申告しておかないと後日調査で見つけられてペナルティを払う羽目になります。

#### **5.6. 給与税(Payroll Tax)**

カリフォルニアの雇用者(会社/使用者)は、従業員に支払う給与に対し、連邦の給与税(Payroll Tax)と州の給与税(Payroll Tax)を源泉徴収し、それぞれ内国歳入庁(IRS)と雇用開発局(EDD)に納付しなければなりません、

連邦には社会保障拠出金法(Federal Insurance Contributions Act: FICA)と失業保険税法(Federal Unemployment Tax Act: FUTA)に係る税金を納付します。社会保障拠出金税法(FICA Tax)は、6.2%の社会保障税(Social Security Tax)と1.45%の医療保険税(Medicare Tax)を会社と従業員がそれぞれ負担します。ですから会社負担は7.65%で、

7.65%を従業員の給与から控除して会社が会社負担と合算して納付します。失業保険税(FUTA Tax)は、0.6%の税率で、会社だけが負担し、給与のうち年間\$7,000 までの分にしか課せられませんので、従業員一人当たり年\$42 が上限です。

州には失業保険(Unemployment Insurance: SUI)・雇用開発税(Employment Training Tax: ETT)・障害者保険(State Disability Insurance: SDI)を納付します。失業保険(SUI)は通常 3.4%の税率(事業者が 3 年以上継続して事業を営み、その事業者の過去の従業員が失業保険を申請しなければ税率は下がります)で年間従業員一人当たり \$434 を上限として給与支給額に課され、会社が負担します。雇用開発税(ETT)は 0.1%の税率で年間従業員一人当たり \$7 を上限として給与支給額に課され、これも会社が負担します。障害者保険(SDI)は 0.9%の税率(2015)で年間従業員一人当たり \$939.40 を上限として従業員が負担し、会社が従業員へ給与支給額から控除して納付します。に課されます。

これらの他に、連邦所得税(Federal Income Tax: FIT)・州所得税 (State Income Tax: SIT)の源泉徴収も会社に義務つけられており、連邦・州の他の給与税(Payroll Tax)とともに毎月源泉徴収した従業員分と会社負担分を連邦・州それぞれに納付し、毎四半期に申告書(return)を提出する必要があります。

このようにカリフォルニア・米国の給与税(Payroll Tax)は複雑なので、通常給与処理は外部の専門業者を使うのが一般的です。

## 6. カリフォルニアの雇用法概要

### 6.1. 随意雇用(At-Will Employment)

#### 6.1.1. 随意雇用(At-Will Employment)

継続雇用が大原則の日本と異なり、カリフォルニアを含め、米国の雇用の一般原則は、「随意雇用(At-Will Employment)」です<sup>26</sup>。この随意雇用(At-Will Employment)というのは、「雇用関係(employment)は当事者の自由意志(At-Will)で成立し、個別に明言した(Explicit/Express)な雇用契約がない限り、会社も従業員も、何時でも、いかなる理由でも、雇用関係を解消する権利を有する、というものです。つまり、会社は従業員をいついかなる理由で解雇してもいいし、逆に従業員も、いついかなる理由で辞職してもいい、ということです。

もっとも、「いかなる理由でも」といっても、法の許す範囲での「いかなる理由」であり、解雇理由が法に反するものであれば、それを根拠に解雇することは不当解雇となり、損害賠償責任が生じます。違法な解雇理由の例としては、

- 人種・性別・出身国・宗教・性志向<sup>27</sup>
- 高年齢<sup>28</sup>
- 障害(Disability) (身体障害: アルコール中毒・麻薬中毒も含まれますのでご注意ください)<sup>29</sup>

等があります。

#### 6.1.2. 違法な解雇理由

##### 6.1.2.1. 人種・性別・出身国・宗教・性志向

連邦の1964年公民権法(Civil Rights Act of 1964)のタイトルセブン(Title VII)は、人種・性別・出身国・宗教による職業差別を禁じています<sup>30</sup>。セクシャルハラスメント(Sexual Harassment)、いわゆるセクハラは性別による職業差別の一つの形態とされており、このタイトルセブン(Title VII)の違反の一つです<sup>31</sup>。職業差別は解雇だけでなく、賃金・雇用環境・職務内容等までかなり広い範囲を含む雇用に関する不利な行為(Adverse Employment Action)を対象に

<sup>26</sup> Cal. Labor Code (“Labor Code”) § 2922.

<sup>27</sup> Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) as amended (“Title VII”), 42 U.S.C. § 2000e, *et seq.*

<sup>28</sup> The Age Discrimination in Employment Act of 1967 (Pub. L. 90-202) as amended, (“ADEA”) 29 U.S.C § 621 *et seq.*

<sup>29</sup> Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327) as amended (“ADA”), 42 U.S.C. Chapter 126, § 12101 *et seq.*

<sup>30</sup> Title VII.

<sup>31</sup> *Burlington Industries v. Ellerth*, 524 US 742 (1998); *Faragher v. Boca Raton*, 524 U.S. 775 (1998).

しており、人種・性別・出身国・宗教を理由にして賃金を減らしたり、僻地へ転勤させたり、肩書(title)を下げたり、といった行為もタイトルセブン(Title VII)は禁止しています。

カリフォルニア州の公正雇用住居法 (Fair Employment and Housing Act: FEHA) の条項では人種・性別・出身国・宗教に加え、性志向 (同性愛)も含め、タイトルセブン(Title VII)同様に職業差別や報復措置を禁じています<sup>32</sup>。

また、従業員が 50 人以上いる会社は管理職従業員に対して採用後 6 ヶ月以内にセクハラに関するセミナーを行うことが義務付けられています<sup>33</sup>。

さらに、従業員が職業差別の訴えをしたことに対する報復処置 (retaliation: 解雇・減給・低いタイトルへの変更・別の事業所への転勤等)を取することは厳しく禁じられており、違反した場合には損害賠償責任が生じます<sup>34</sup>。

#### 6.1.2.2. 年齢差別

連邦の 1987 年の雇用における年齢差別禁止法(Age Discrimination in Employment Act of 1987: ADEA)とカリフォルニアの公正雇用住居法 (Fair Employment and Housing Act: FEHA)では年齢による職業差別を禁じており、いかなる雇用に関する不利な行為(Adverse Employment Action)も、年齢を理由にして行うことは違法であり、損害賠償責任が生じます<sup>35</sup>。数年前に、カリフォルニアではありませんが、日本の定年退職制度をそのまま子会社である現地法人に適用しようとした会社があり、連邦の雇用機会均等監督機関 (Equal Employment Opportunity Commission: EEOC) が大騒ぎをしたケースがありますように、米国では定年退職制度は違法となります。

満 40 歳を超える従業員を解雇し、その従業員がこの年齢差別による違法解雇であるというクレームをカリフォルニア州の職業差別監督機関 (Department of Fair Employment and Housing: DFEH) に出した場合、年齢が解雇理由ではないことを会社が証明する責任を負いますのでご注意ください。

#### 6.1.2.3. 身体障害(Disability)

連邦の障害を持つアメリカ人法(American with Disabilities Act of 1990: ADA)やカリフォルニアの障害者法(Disabled Persons Act)では身体障害を理由

<sup>32</sup> California Fair Employment and Housing Act (“FEHA”), California Government Code (“Gov. Code”) §§ 12900-12996.

<sup>33</sup> Gov. Code § 12950.1.

<sup>34</sup> 42 U.S.C. § 2000e-3(a); 29 U.S.C. § 623(d); 42 U.S.C. § 12203(a)-(b); Gov. Code § 12940(h).

<sup>35</sup> 29 U.S.C § 623; Gov. Code § 12940(a).



とする職業差別を禁じており、いかなる雇用に関する不利な行為(Adverse Employment Action)も、「合理的な配慮(Reasonable Accommodation)」を提供せずに、単に身体障害を理由にして行うことは違法であり、損害賠償責任が生じます。日本の方は思いもかけないかもしれませんが、妊娠も身体障害(Disability)の一つであり、妊娠を理由にした職業差別(不採用・解雇・減給等)は違法です<sup>36</sup>。

身体障害があれば仕事ができないのだから解雇したり、雇用しないとかいうのは当然、というのが日本の雇用法に慣れた方はおっしゃるでしょうが、米国では、身体障害があっても、「合理的な配慮(Reasonable Accommodation)」を受ければ普通の人と同じように仕事ができるのならば、身体障害は職業差別する理由にはできません。「合理的な配慮(Reasonable Accommodation)」を受けても、「基本的な職務の機能(essential job function)」を果たせない場合を除き、その障害(disability)を理由に解雇したり、採用を見送ったり、といった雇用に関する不利な行為(Adverse Employment Action)は違法となります<sup>37</sup>。

## 6.2. 競合禁止規定(Non-Competition Clause)は無効

退職・解雇した従業員が競合他社に就職したり、競合するビジネスに従事することを禁止する契約規定は、日本でも米国の他の州でもよくある話ですが、カリフォルニア州法では職業選択の自由を制限する契約は無効で強制力はありません<sup>38</sup>。でも、転職した者が前職で入手した営業秘密(Trade Secret)を流用することを禁止することはできます。ですから、社内規定(Employee Manual)・解雇通知(Termination Notice)・雇用契約書で、どういう行為が営業秘密(Trade Secret)及びその流用に該当するかをきちんと定めておく必要があります。結果として、優秀な人材を確保・維持するには、単に採用通知(offer letter)を出して随意雇用(At-Will Employment)とするのではなく、十分にそれぞれの背景事情を検討した個別の雇用契約の締結が不可欠ということになります。

## 6.3. 従業員の採用

### 6.3.1. 職務分析と職務記述書(Job Description)

日本の就職は実は「会社」に採用されて勤務するもので、特定の「職務(job)」に限定されませんが、米国では従業員の採用には、まずこの「職務(job)」を定義することから始まり、採用はこの「職務(job)」に限定されます。ですから、まずどの

<sup>36</sup> The Pregnancy Discrimination Act of 1978 (Pub. L. 95-555, 92 Stat. 2076, S. 995), 42 U.S.C. § 701.

<sup>37</sup> 42 U.S. Code § 12182; Gov. Code § 12945.

<sup>38</sup> California Business and Professions Code. (“Bus. & Prof. Code”) § 16600.

ような仕事をこの「職務(job)」が担当するのかを決め、どのような権限を持ち、誰の指示を受けて誰を指示して何を遂行するのか、部下の採用・解雇権限はあるのか、という「職務記述書(job description)」を作ることが必要です。

### **6.3.2. 採用広告**

#### **6.3.2.1. 求人広告**

職務記述書(Job description)ができれば求人広告を出します。色々な求人ウェブサイトや日系週刊新聞の求人欄等の方法がありますが、筆者の経験では、人材派遣会社を使うと応募者を早く多く見つけてきてくれます。

#### **6.3.2.2. 人材派遣会社**

慢性的人材不足のシリコンバレーには日系・非日系の様々な人材派遣会社が乱立しています。特に全米でも比較的日本人の多いこともあり、日系だけでも10社近くあると思います。これらの人材派遣会社には、紹介した候補者が採用された場合にその年俸の25~30%を紹介報酬として採用した会社が支払います。人材派遣会社はシリコンバレーのポジションであっても全米に求人広告を出すとか、それぞれが求職者のリストを持っていたり、それなりに価値のあるノウハウを有しています。また人材派遣会社は、基準を示しておけば面接前のスクリーニングも行ってくれるので、会社の採用担当者の負担は大きく軽減されます。

気をつけなければいけないのは、会社の出す求人広告とは別に、紹介依頼を受けた人材派遣会社はそれぞれが独自に求人広告をだすので、同じ応募者が複数の人材派遣会社から紹介されるとか、直接応募してきた人が人材派遣会社からも紹介される場合が多々あるということです。その場合、どのルートで紹介・応募してきたのかを明確に記録しておかないと人材派遣会社間や会社と人材派遣会社との間でもめることになります。ですから、やたらと多くの人材派遣会社に依頼するよりも、いくつかの人材派遣会社を事前にインタビューし、気に入った1社か2社の人材派遣会社だけを選択して求人オーダーを出すにとどめることをお勧めします。また、人材派遣会社を使うなら、自社の求人広告を出さない方が混乱を招かず得策です。

### **6.3.3. 面接前の書類スクリーニング**

応募者の履歴書をもとに、その職務(job)に必要なと考える学歴・資格・経験年数等の客観的基準で面接する候補者を選びます。もちろん性別・人種・出生地・出身国・性志向・身体障害等をもとに候補者を選択してはいけません。また、全応募

者の履歴書等の応募書類を保存しておき、何を基準として面接候補者を選択したかの記録を残しておくことをお勧めいたします。

#### 6.3.4. 面接

##### 6.3.4.1. してはいけないこと(“Don’t’s”)

- 年齢を尋ねる
- 人種・出生地・出身国・宗教について尋ねる
- 妊娠しているかどうか尋ねる
- 性志向(同性愛かどうか)を尋ねる
- 身体障害があるかどうか、或いは身体障害があることが明白であれば、その詳細を根掘り葉掘り尋ねる。

##### 6.3.4.2. すべきこと(“Do’s”)

- 肩書き(Title)を言うだけでなく、仕事の内容を詳しく説明する。勤務時間・勤務地・報酬額・祝祭日・休暇(vacation)・病気休暇(sick day)等の勤務条件も詳しく説明する。できれば従業員ハンドブック(Employee Handbook)を見せるのも一案。
- 仕事の内容で、どうしても欠けてはならない職能を述べ、それを遂行できるかどうか、あるいは遂行するには何らかの援助(accommodation)が必要かどうかを尋ねる。
- 過去の職で何を達成したか、そのことを証明・裏付けしてくれる人がいればその連絡先も尋ね、事実かどうかを確認する。
- 過去の職での肩書き(title)・報酬・勤務期間を尋ね、そのことを証明・裏付けしてくれる人がいればその連絡先も尋ね、事実かどうかを確認する。
- 可能ならば、何らかのテストを行い、客観的な数値で候補者の優劣を示せる記録をとる。
- 面接は二人以上の人が行い、それぞれの面接者が意見交換せず、独自の評価結果を記録しておく。

### 6.3.5. 最終選択

面接が一通り終わったら、面接者の評価結果を鑑みてどの候補者を採用したかを決定することになります。この過程では、それぞれの面接者の評価記録をもとに、どういう点を決定要因としたかを記録しておくことをお勧めします。もちろん、その決定要因が性別・人種・出生地・出身国・性志向・身体障害等の違法な理由であってははいけません。

採用されなかった候補者が、「自分が選ばれなかったのは違法な理由によるものだ」という訴えを起こすことは頻繁にあります。その時に、客観的なテスト結果を示せたり、面接者の主観であっても、なぜ選ばれなかったか、合法的な理由を提示できることが非常に重要です。

### 6.3.6. 採用通知書(Offer Letter)

採用したい人が確定したら、採用通知書(Offer Letter)を出します。採用通知書(Offer Letter)は基本的に合意したその従業員の勤務条件と勤務環境をお互いに確認するものです。注意点としては、

- 随意雇用(At-Will Employment)であるなら、そのことを明確に書いておく。
- 給与の記載は、支給日ごとの給与支給額とし、年収は参考としておく。(年収の記載は一年間の継続雇用を保証した雇用契約と主張されたり、一年未満で解雇する際に一年分の給与を要求されたりする根拠を作ってしまう)
- 「上司(Report To)」を明確に: その従業員の直接の上司は誰であるか、誰がその従業員の管理監督権限を有するかを明確にしないと従業員が混乱します。
- 「職務記述書(Job Description)」もできるだけ明確に記述します。「そんなこと言わなくてもわかるでしょ?!」は通用しません。職務記述書(Job Description)には、何(顧客への売価・値引・納期等)を決める権限があるのかないのか、等の権限の範囲を明記しておかねばなりません。バイスプレジデント(Vice President)等の執行役員(officer)とみなされる肩書き(title)を与えると、特に制限しない限り、会社を代表して契約を締結する権限を与えたとみなされるので注意が必要です。

## 6.4. 給与(Payroll)の注意点

カリフォルニア州の給与(payroll)支給処理のうち、日本との差異があり、注意を要するものについて述べます。

### 6.4.1. 労働基準法対象外(Exempt)と対象(Non-Exempt)

#### 6.4.1.1. 労働基準法対象外 (Exempt)

米国の従業員の重要な区別の一つとして労働基準法対象外(Exempt)/対象(Non-exempt)があります<sup>39</sup>。対象外(Exempt)というのは、労働基準法(Fair Labor Standard Act: FLSA)の保護の対象外 (exempt)となる従業員のことで、経営陣(Executive)・専門職(Professional)・管理職(Administrative)が該当します。

対象外従業員(Exempt Employee)は一般的に「俸給(salary)」従業員とも言われ、残業や休日出勤しても何の追加報酬はなく、労働基準法(FLSA)の保護もない代わりに、一日のうち少しでも仕事をすれば一日分の給与を受け取る権利を得ます<sup>40</sup>。

#### 6.4.1.2. 労働基準法対象(Non-Exempt)

対象従業員(Non-Exempt Employee)は一般的に「時給(hourly)」従業員とも言われ、実際に働いた時間分しか給与は支払う必要はありませんが、勤務が一定時間数を超過した場合は割増支給が必要で、製造業の工員や技能職だけでなく、ほとんどの一般事務職が該当します。

対象従業員(Non-exempt)には、労働基準法(Fair Labor Standard Act)に定められている基準で、1日8時間を超える勤務及び週累計40時間を超える勤務は、通常時給の5割増(通常の時給の1.5倍)の支給、1日12時間を超える勤務・休日出勤勤務は通常時給の100%増(通常の時給の2倍)の割増支給が必要となります。

対象外(Exempt)/対象(Non-Exempt)の区分は労働基準法(Fair Labor Standard Act)に基づいて事実判断されますので、独断で従業員を対象外(exempt)扱いしても、労働基準法(FLSA)の規定に従っていなければ、退職時に残業代未払(unpaid overtime)のクレームを受ける羽目になりますので注意が必要です。

<sup>39</sup> Fair Labor Standards Act of 1938 (Pub. L. 113-296) as amended (“FLSA”) § 23(a)(1), 29 U.S.C. § 213(a)(1).

<sup>40</sup> 29 CFR 541.600.

## 6.4.2. 給与支給日程

### 6.4.2.1. 月次給与支給

日本では、給与は毎月一回の支給というのはごく当たり前で、月に2回以上給料を分けて支給、などということは夢にも思わないでしょうが、カリフォルニアでは、労働基準法対象(non-exempt)の給与支払いは、必ず月2回以上の支給をしなければなりません。また、給与計算対象期間の締め後10日以内に支払しなければならず、日本では一般的な、15日締めの25日払いならいいですが、26日払いとか月末払いとかですと違法になります。ですから、一般的な毎月15日と末日を給与支給日とするなら、前月26日から当月10日まで勤務した給与を15日に支給、11日から25日まで勤務した給与を末日に支給、ということになります<sup>41</sup>。

対象外従業員(Exempt employees)はこのルールは適用されず、月1回の支給でも問題ありません<sup>42</sup>。

### 6.4.2.2. 退職・解雇時の未払い給与支給

従業員を解雇した場合は、その時点にその日までの給与支払をしなければなりません<sup>43</sup>。それが困難だからといって、1週間とか2週間、あるいは未使用の有給休暇(vacation days)を使ったことにするとかで「先日付解雇」しようとするケースが多々ありますが、それは無効で、あくまでも仕事の職務から開放した時点が解雇(discharge)となり、その時点で、未使用の有給休暇(vacation)残高の買取を含め、未払い給与を全て支払わねばなりません<sup>44</sup>。さらには、従業員が自己都合退職した場合でも、その通知を受けてから72時間以内に未払い給与全額を支払わねばなりません<sup>45</sup>。

この支払いが\$1でも遅れた場合は、全額が支払われるまで1日当たりの給与相当をペナルティとして加算支払(最高30日分)する義務が生じます<sup>46</sup>。それに加え、カリフォルニア州の職業差別監督機関(Department of Fair Employment and Housing: DFEH)からの罰金もありますから、30日分払う覚悟をすれば違反してもOK、というわけではありませんからご注意ください<sup>47</sup>。

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<sup>41</sup> Labor Code § 204.

<sup>42</sup> Labor Code § 204c.

<sup>43</sup> Labor Code § 201(a).

<sup>44</sup> *Smith vs. L'Oreal USA, Inc.*, 39 Cal.4th 77 (2006).

<sup>45</sup> Labor Code § 202(a).

<sup>46</sup> Labor Code § 203(a).

<sup>47</sup> Labor Code § 210.



## 6.5. 福利厚生(Benefits)の注意点

### 6.5.1. 有給休暇(Paid Vacation)

カリフォルニアでは、有給休暇(vacation)を一旦付与(accrue)したら、未使用であっても没収できません<sup>48</sup>。日本の会社でよくある、「毎年度 20 日の有給休暇(vacation)を支給、未使用分は 5 日を限度として翌年度へ繰越可能」という有給休暇(vacation)の規定はカリフォルニア州では違法で、5 日を超える未使用分も翌年度へ繰越したものとみなされます。

ですから解雇・退職時には、全支給累計日数から全休暇使用累計日数を差し引き、退職時の給与で金額換算し、解雇時か退職後 24 時間以内に支払が必要となります。10 年以上の長期勤務者の場合には有給休暇(vacation)残高が 100 日以上ある計算になってしまうことが多々あり、それを退職時の給与ベースで支払うと非常に大きな金額になります。

それを防ぐには、毎年未使用分の買取をすとか、有給休暇(vacation)未使用分が一定残高に達したらそれ以上の付与を停止する規定にするとかの工夫が必要となります。詳しくは弁護士/法律事務所にご相談ください。

### 6.5.2. 有給病気休暇(Paid Sick Leave)

有給病気休暇(Paid Sick Leave)というのは、本人・家族の病気治療・予防・見舞いの為に仕事を休んだ場合に欠勤により失う給与を補うものですが、2015 年 7 月 1 日より、カリフォルニアの雇用者(会社/使用者)は全従業員に対し、30 時間の勤務につき 1 時間の有給病気休暇(Paid Sick Leave)を付与しなければならなくなりました<sup>49</sup>。この有給病気休暇(Paid Sick Leave)の未使用分は翌年以降へ持ち越しされますが、残高が 6 日に達するとそれ以上の付与はしなくても構いません。また、1 年間に 3 日を超える行使は許可しなくても違法にはなりません。退職時に未使用分の買取義務もありません。

ですからこのルールを守りながら、30 時間ごとに 1 時間という煩雑な計算記録義務を免除されるには、毎年初めに 3 日分の有給病気休暇(Paid Sick Leave)を付与するが、未使用分の翌年以降への持ち越しはしない、という方法があります。また、他に毎年 3 日以上の有給休暇(Paid Leave)を与えていればそれを有給病気休暇(Paid Sick Leave) とすることでルールを満たすこともできます。

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<sup>48</sup> Labor Code § 227.3.

<sup>49</sup> The Healthy Workplaces, Healthy Families Act of 2014, AB1522 approved by Governor on September 10, 2014.

### **6.5.3. 健康保険(Health Insurance)**

米国の健康保険は日本に比較して非常に高額で、自己負担率・免責額(deductible)にもよりますが、一人あたりの保険料月額は\$300 - \$1,000、場合によっては毎月\$1,000以上の保険料となることもあります。ですから、健康保険を会社が提供して保険料を負担してくれるかどうかというのは従業員にとっては非常に大きな問題です。

でも会社が保険料を100%支払うケースは稀で、従業員の保険料の50%とか75%、家族分は同等かそれ以下を会社負担とするケースが多いようです。また、米国では医療保険・処方箋薬保険・歯科保険・眼科保険と分かれていることに注意が必要です。最低でも医療保険と処方箋薬保険は提供しないと採用は困難だと思います。

医療保険制度改革(Affordable Care Act; Obama Care)で、連結ベースで50人以上の従業員を雇用する会社は一定の健康保険を福利厚生(benefits)として供与しなければ一人当たり\$2,000のペナルティ(Employer Mandate)を払わねばならなくなりました<sup>50</sup>。この保険給付内容は法で定められ、会社の福利厚生コストに大きな影響をあたえます。ただし、2014年中間選挙で共和党が米国議会両院で過半数議席数を獲得しましたので、医療保険制度改革(Affordable Care Act)は修正・撤廃の可能性もあり、流動的です。

### **6.5.4. 健康保険料会社負担**

会社が負担する健康保険料が従業員の課税所得とならないためには、その保険は、会社の提供する福利厚生(Benefits)に含まれるグループ健康保険プラン(Group Health Insurance Plan)<sup>51</sup>でなければならず、かつその福利厚生(benefits)の受益者は特定の高給従業員(Highly-Compensated Employee)・10+%株主・取締役(Directors)・執行役員(Officers)等に偏ってはいけません。小規模の現地法人の場合、取締役(Directors)・執行役員(Officers)の他にはアシスタントが一人、ということも多々あり、このルールを満たせないこともありますのでご注意ください。

## **6.6. 退職制度(Retirement Plans)**

米国では日本の退職給与控除のような税制上の考慮はなく、「退職金」という制度・概念そのものがありません。退職時に会社の特別考慮により、退職手当

<sup>50</sup> I.R.C. § 6056.

<sup>51</sup> Employee Retirement Income Security Act of 1974 (ERISA) § 3(1), 29 U.S.C. § 1002(1).

(Severance Pay)を支払うことはありますが、これは和解支払・手切金・口止料という方が正確で、退職金とは概念が異なります。

自動車業界・歴史の長い企業・公務員等の例外はありますが、過去には広く提供されていた厚生年金制度(Pension)も、今では会社が提供することはほぼありません。これは、厚生年金の積立運用益が計画を下回ると会社に補填義務が生じ、経済的負担が非常に重く、将来もずっと継続するからです。アメリカのあちこちの州の市(City)が破産宣告をしたというニュースを聞かれたことがあると思いますが、それらのほとんど全ての場合、市が過去・現在の市職員に提供する年金(Pension)の積立運用益が不足しているのに、その補填をする経済能力が無くなったことが原因です。

ですから現在では、年金(Pension)のような将来の経済的負担を会社が負わない401(k)プランがもっとも一般的となっています。401(k)プランというのは、従業員が自主的に給与の一部を課税前に給与から天引貯金し、将来その貯金を引出す時にようやく課税所得とみなす、というもので、支給された給与を引退するまで課税繰延する制度で、そのメリットは、税率の高い現在の所得の課税を所得が下がって税率が低くなる引退時まで繰延されること、投資利益もそれまで非課税なので増えやすいこと、です<sup>52</sup>。

従業員は自分の都合に合わせて天引貯金額を決め、貯金した分を投資するのも自分で投資先を選択できて便利なのですが、会社がプランを設立しないとダメで、従業員だけではできません。この設立には数千ドルかかりますが、ほとんどすべての会社が401(k)を提供していますので、この401(k)がないと他社と競合した場合、従業員の採用は困難となりますので、設立を強くお勧めいたします。

## **6.7. ストックオプション(Stock Option)**

### **6.7.1. 概観**

ストックオプション(Stock Option)というのは、「現時点で決めた株価で会社の株を将来に購入する権利」で、従業員の長期インセンティブとして米国ではストックオプション(Stock Option)制度はほぼ全ての会社にあります。退職金制度のない米国では、このストックオプション(Stock Option)が従業員の退職資金の源泉となることが多く、場合によっては数百万ドルの収入につながることもあります。従業員のインセンティブと会社の成功への貢献の報酬としてのストックオプション(Stock Option)制度がない場合、他の報酬でよほど補わないと、ストックオプション(Stock

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<sup>52</sup> I.R.C. § 401(k).

Option)のある会社と比較して生涯報酬の期待値が低くなり、優秀な人材を確保しにくくなります。ストックオプション(Stock Option)の議論は非常に複雑で奥深いので、それは別の機会にとっておいて、ここではストックオプション(Stock Option)制度の概略だけ触れます。

### **6.7.2. 適格ストックオプション(Qualified Employee Incentive Stock Option: “ISO” or “ESO”)**

ストックオプション(Stock Option)には、いわゆる「適格(Qualified Option)」と「適格外(Non-qualified Option)」という区分があります。適格(Qualified)というのは、米国税法(Internal Revenue Code: IRC)の422条に定められた条件を満たすストックオプション(Stock Option)です<sup>53</sup>。従業員だけにしか発行できず、取引先やコンサルタント等の非従業員には付与できないとか、行使価格は時価の10%以上でなければいけないとか、オプション(option)を付与してから行使まで1年以上待たなければいけないとか、オプション(option)を行使して買った株は最低2年間保有しなければいけないとか、様々な条件がありますが、それらの条件をクリアすれば、オプション(option)を行使して株を買った時点では課税されず、その株を売却した時にキャピタルゲイン(capital gain)として課税される、という税務上の利点があります<sup>54</sup>。しかしながら条件が厳しいことから、適格ストックオプション(ISO)プランの一環として付与されたオプションでも、結果として行使して株を売買する際には適格(Qualified)から外れてしまうことが多々あります。

### **6.7.3. 適格外ストックオプション(Non-Qualified Stock Option)**

適格外ストックオプション(Non-Qualified Stock Option)というのは、米国税法(Internal Revenue Code: IRC)422条の条件を満たさないストックオプション(Stock Option)のことで、「適格外(Non-Qualified)」という否定的な用語の響きではありますが、この適格外(Non-Qualified Option)の方が広く使われています。

適格外(Non-qualified)であれば、従業員以外の取引先(Vendors)・アドバイザー(Advisors)等にも発行できますが、税務上の特典はなく、オプション(option)を行使して株を購入した時点で、その時の株の時価と行使価格との差が会社から支給された給与所得として課税され、社会保障拠出金法(Federal Insurance Contributions Act: FICA)等の給与税(Payroll tax)の対象になり、売却時も行使時点の時価と売価の差しかキャピタルゲイン扱いされず、税負担が大きくなります<sup>55</sup>。

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<sup>53</sup> I.R.C. § 422.

<sup>54</sup> I.R.C. § 422(b).

<sup>55</sup> I.R.C. § 421(b).

#### 6.7.4. 注意事項

適格(Qualified)・適格外(Non-Qualified)とも、オプション(option)を行使して購入した株が受給権(vesting)の対象だと後年の受給時(Vest)時に株の価値の上昇分が課税所得となります。ストックオプション(Stock Option)の諸条件(Terms & Conditions)を工夫しないと、従業員も会社側も煩雑な税務処理の対象となってしまうことにご注意ください。

#### 6.7.5. その他の株式関連インセンティブ

ストックオプション(Stock Option)以外のインセンティブプランとしては、

- 従業員株式購入(Employee Stock Purchase Plans): 従業員が税引後収入(After-Tax income)の源泉徴収で自社株を最高 15%の discount で購入できる Plan
- 条件付き株式付与(Restricted Stock Grants): 購入できる権利(Option)ではなく、勤続条件付(vesting)で株を無償付与する。

等がありますが、ストックオプション(Stock Option)同様、税務上の影響を十分考慮してプランを設計することが重要です。

### 6.8. 解雇時の注意点

随意雇用(At-Will Employment)が原則ではありますが、実際に従業員を解雇する際に、「随意雇用(At-Will Employment)だから解雇」というだけでは不十分です。そもそも解雇するからには何らかの理由があるはずで、その理由を言わないのは何らかの違法な理由で解雇することを隠していると疑われるのは必至です。

また、解雇するときにきちんとした合法的な理由がないと、従業員が違法理由による不当解雇を訴えた場合、従業員の主張する違法理由ではなかったということを証明する挙証責任(Burden of Proof)を会社が負ってしまいます。逆に、会社側が解雇時に、これこれこういう理由で解雇します、とキチンと合法的な理由をつけて解雇すれば、会社の主張する理由は本当の理由ではなく、実は違法な理由であった、ということを証明する挙証責任は従業員が負うこととなります。ですから解雇の際には、「何らかの理由による解雇(For Cause)」なのか、「人員削減(Layoffまたは Reduction in Force)」なのかを明確にし、何らかの理由による解雇(For Cause)であればその理由とそれを証明する事実、たとえば欠勤が多いことを理由にするなら、勤務実績と欠勤実績を示す書類等、を添付して解雇通知をだすべきです。



要注意なのは、「見せかけの理由(Pretext)」は直ぐに見破られてしまう、ということ。私の経験から申し上げるのですが、日本の方は往々にして、「本当の理由なんてわからないじゃないか」と、違法な理由で解雇する際に適当な合法的理由をつけて、違法性を逃れようとする傾向が強いようです。でも、連邦の雇用機会均等監督機関(Equal Employment Opportunity Commission: EEOC)やカリフォルニア州の職業差別監督機関(Department of Fair Employment and Housing: DFEH)が不当解雇の訴えを受けて調査する際には、会社の主張する理由はまったく無視し、過去の解雇記録や同時に解雇された人の年齢・性別・人種等々から、雇用に関する不利な行為(Adverse Employment Action)の傾向を調べます。そうすると、これまで解雇したのはすべて白人以外だったとか、50歳以上ばかりだったとか、何らかの傾向が如実に見えることが多々あります。如実というほどでなくても、会社の言う理由が実は口実であり、本当の理由は別の違法なものであった、と判断するのは会社ではなく、調査をする際には連邦の雇用機会均等監督機関(EEOC)やカリフォルニア州の職業差別監督機関(DFEH)であり、究極的には裁判で陪審員が判断するのであり、会社側が「本当の理由なんてわからないじゃないか」という態度だと、これら当局や陪審員に逆に本当は違法な理由だったと思われやすくなってしまいます。

ですから、解雇時には裏付け資料の揃った正当な解雇理由を通告することが非常に大切です。解雇でも、また円満な退職の場合でも、雇用最終日から24時間以内に給与・未行使の有給休暇残高や約束したボーナスなどの支払いをしなければなりませんので、お忘れなく。



## 7. サンプル文書

ご参考までに、いくつかの文書のサンプルを添付致します。法律は日に日に更新されますので、該当しなかったり、内容がすでに法律や政令に合わない可能性もありますし、会社によっては必要でないものも含んでおります。これらはあくまでもサンプルであり、このまま雛形として使われることは想定いたしておりません。

実際にこれらの文書が必要と思われる際には、弁護士/法律事務所にご相談されることを強くお勧め致します。

## 7.1. California Foreign Entity Registration (Statement and Designation by Foreign Corporation)

<b>S&amp;DC-S/N</b>	<b>Statement and Designation by Foreign Corporation</b>
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To qualify a corporation from another state or country to transact intrastate business in California, fill out this form, and submit for filing along with:

- A **\$100** filing fee (for a foreign stock corporation) or **\$30** filing fee (for a foreign nonprofit corporation), and
- A certificate of good standing, issued within the last six (6) months by the agency where the corporation was formed. **Note:** If the corporation is a nonprofit, the certificate of good standing also must indicate the corporation is a nonprofit or nonstock corporation.
- A separate, non-refundable **\$15** service fee also must be included, if you **drop off** the completed form.

**Important!** Corporations in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

This Space For Office Use Only

For questions about this form, go to [www.sos.ca.gov/business/be/filing-tips.htm](http://www.sos.ca.gov/business/be/filing-tips.htm).

**Corporate Name** (List the exact name of the corporation, as shown in the certificate of good standing. If the name of the corporation is not available for use in the State of California, the corporation must qualify under an assumed name. E.g., "[list the exact name] which will do business in California as [list the proposed assumed name]." For general corporate name requirements and restrictions in California, go to [www.sos.ca.gov/business/be/name-availability.htm](http://www.sos.ca.gov/business/be/name-availability.htm).)

① \_\_\_\_\_  
 \_\_\_\_\_

**Corporate History**

② State or foreign country where this corporation was formed: \_\_\_\_\_

**Service of Process** (List a California resident or a California registered corporate agent that agrees to be your agent to accept service of process in case your corporation is sued. You may list any adult who lives in California. You may **not** list your own corporation as the agent. **Do not** list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

③ a. \_\_\_\_\_  
*Agent's Name*

b. \_\_\_\_\_  
*Agent's Street Address (if agent is not a corporation) - Do not list a P.O. Box      City (no abbreviations)      State      Zip*

The corporation named in Item 1 above irrevocably consents to service of process directed to it upon the agent designated above, and to service of process on the California Secretary of State if that agent or that agent's successor is no longer authorized to act or cannot be found at the address given.

**Corporate Addresses**

④ a. \_\_\_\_\_  
*Street Address of Principal Executive Office - Do not list a P.O. Box      City (no abbreviations)      State      Zip*

b. \_\_\_\_\_  
*Street Address of Principal Office in California, if any - Do not list a P.O. Box      City (no abbreviations)      State      Zip*

c. \_\_\_\_\_  
*Mailing Address of Principal Executive Office, if different from 4a or 4b      City (no abbreviations)      State      Zip*

**Read and sign below:** This form must be signed by an officer of the foreign corporation.

▶ _____	_____	_____
Sign here	Print your name here	Your officer title

Make check/money order payable to: <b>Secretary of State</b> Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.	<b>By Mail</b> Secretary of State Business Entities, P.O. Box 944260 Sacramento, CA 94244-2600	<b>Drop-Off</b> Secretary of State 1500 11th Street, 3rd Floor Sacramento, CA 95814
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Corporations Code §§ 2105, 2106, Revenue and Taxation Code § 23153  
 S&DC-STK/NP (REV 04/2014)

2014 California Secretary of State  
[www.sos.ca.gov/business/be](http://www.sos.ca.gov/business/be)

7.2. California Certificate of Qualification

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**State of California**  
Secretary of State

**CERTIFICATE OF QUALIFICATION**

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify that on the 24TH day of JULY 2014, \_\_\_\_\_, a corporation organized and existing under the laws of DELAWARE, complied with the requirements of California law in effect on that date for the purpose of qualifying to transact intrastate business in the State of California, and that as of said date said corporation became and now is qualified and authorized to transact intrastate business in the State of California, subject however, to any licensing requirements otherwise imposed by the laws of this State.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of July 24, 2014.



*Debra Bowen*

DEBRA BOWEN  
Secretary of State

NDG

NP-25 (REV 1/2007)

**7.3. Charter - Delaware**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:02 AM 02/18/2015  
FILED 10:02 AM 02/18/2015  
SRV : - FILE

CERTIFICATE OF INCORPORATION  
OF  
[REDACTED] INC.

Article I.

The name of this corporation is [REDACTED] INC. (the "Company").

Article II.

The registered address of the Company in the State of Delaware is to be located at [REDACTED] in the City of Wilmington, County of New Castle, Zip Code [REDACTED]. The name of the registered agent of the Company at such address is Corporate Agents, Inc.

Article III.

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law, as the same exists or as may hereafter be amended from time to time.

Article IV.

The Company is authorized to issue one class of shares to be designated as Common Stock. The total number of shares of Common Stock the Company is authorized to issue is 20,000,000 shares with a par value of \$0.0001 per share.

Article V.

The name and mailing address of the incorporator are as follows:

Article VI.

In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Company (the "Board") is expressly and explicitly authorized to make, alter, modify, amend or repeal the bylaws of the Company.

Article VII.

Elections of directors need not be by written ballot unless otherwise specifically provided by the bylaws of the Company.

Article VIII.

To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as

Certificate of Incorporation of [REDACTED] a Delaware corporation

may hereafter be amended from time to time, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim accruing or arising or that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

#### Article IX.

Subject to any provisions in the bylaws of the Company related to indemnification of directors or officers of the Company, the Company shall indemnify, to the fullest extent permitted by applicable law, any director or officer of the Company who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she is or was a director, officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. The Company shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board.

The Company shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any employee or agent of the Company who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. A right to indemnification or to advancement of expenses arising under a provision of this Certificate of Incorporation or a bylaw of the Company shall not be eliminated or impaired by an amendment to this Certificate of Incorporation or the bylaws of the Company after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

#### Article X.

Except as provided in Article VIII and Article IX above, the Company reserves the right to amend, alter, modify, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all right conferred upon stockholders herein are granted subject to this reservation.

Certificate of Incorporation of \_\_\_\_\_, a Delaware corporation

I, the undersigned, as the sole incorporator of the Company, have signed this Certificate of Incorporation for the purpose of forming a corporation under the laws of the State of Delaware on February 14, 2015.

\_\_\_\_\_

Certificate of Incorporation of \_\_\_\_\_ a Delaware corporation



**7.4. Charter - California**

**ARTICLES OF INCORPORATION  
OF**

The undersigned person, acting as the incorporator for the purpose of forming a general stock corporation under the laws of the State of California, adopts the following Articles of Incorporation:

**Article I.**

The name of this corporation is:

\_\_\_\_\_, INC.

**Article II.**

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

**Article III.**

The name and address in the State of California of the corporation's initial agent for service of process is:

**Article III.**

The corporation's initial mailing address is:

**Article IV.**

This corporation is authorized to issue only one class of shares of stock. The total number of shares which this corporation is authorized to issue is 5,000,000.

**Article V.**

The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

I hereby certify under the penalty of perjury that all of the facts stated in these Articles of Incorporation are true and correct and are made for the purpose of forming a general stock corporation under the laws of the State of California.

Dated: February 18, 2015

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## 7.5. Organizational Resolutions

**ACTION BY WRITTEN CONSENT  
OF  
THE SOLE DIRECTOR ACTING AS BOARD OF DIRECTORS  
OF  
[REDACTED] INC.**

Pursuant to Sections 108(c) and 141(f) of the Delaware General Corporation Law and the bylaws of [REDACTED] INC., a Delaware corporation (the "Company"), the undersigned, the sole director elected and appointed by the Incorporator of the Company to act as the board of directors of the Company (the "Board"), hereby adopts the following resolutions on this February 19, 2015:

**1. RATIFICATION OF ACTIONS OF SOLE INCORPORATOR**

**RESOLVED:** That all the actions of any kind heretofore taken by the Incorporator or any of the officers of the Company in connection with the establishing the Company and its business operations shall be, and they hereby are, ratified, confirmed, approved, and adopted by the Company in all respects, including:

- the filing of the Certificate of Incorporation with the Division of Corporations of the State of Delaware on February 18, 2015, a copy of which is attached hereto as Exhibit A; and
- Written Action by Incorporator on February 19, 2015, electing the sole director to act as the board of directors of the Corporation, a copy of which is attached hereto as Exhibit B.

**2. MINUTE BOOK**

**RESOLVED:** That the Company shall maintain as part of its corporate records a book entitled "minute book" or "corporate records", which shall include certified copies of its certificate of incorporation and bylaws and any amendments thereto, minutes and notices of all meetings, and actions by written consent, of the Board, committees of the Board and stockholders, and any other records which the Secretary of the Company deems advisable to be maintained in such book.

**3. SIZE OF BOARD**

**RESOLVED:** That the Board shall consist of three (3) members; however, as of today, it shall be in the best interest of the Company to have the sole director, [REDACTED] to act as the Board of Directors and other two (2) seats shall remain vacant.

**4. ADOPTION OF BYLAWS**

**RESOLVED,** that the bylaws attached as Exhibit C shall be, and hereby they are, ratified and adopted as the Company's Bylaws.

**5. APPOINTMENT OF OFFICERS**

**RESOLVED:** That the following persons are elected as officers of the Company to the offices set forth opposite their respective names, to serve until their respective successors are duly elected and qualified or until any such officer's earlier resignation or removal:

President and Chief Executive Officer:	<input type="text"/>
Chief Financial Officer:	<input type="text"/>
Secretary:	<input type="text"/>

**6. AUTHORITY OF OFFICERS**

**RESOLVED:** That, in accordance with the powers of the officers specified in the Bylaws of the Company, the officers of the Company are authorized to execute and deliver any agreement in the name of the Company and to otherwise obligate the Company with respect to the business of the Company, within general guidelines and budgets approved by the Board; provided, however, that the Board may adopt from time to time specific limitations on the authority of such officers.

**7. BANKING**

**RESOLVED,** that any of the officers of the Company are hereby authorized as an agent of the Company to do the following acts:

- a. To designate one or more banks, trust companies, or other similar institutions as depositories of the funds, including without limitation, cash and cash equivalents of the Company;
- b. To open, keep and close general and special bank accounts, including general deposit accounts, payroll accounts and working fund accounts with any such depository;
- c. To cause to be deposited in such accounts with any such depository, from time to time, such funds, including without limitations, cash and cash equivalents of the Company as such officers deem necessary or advisable, and to designate or change the designation of the officer or officers and agent or agents of the Company who would be authorized to make such deposits and to endorse checks, drafts or other instruments for such deposits;
- d. From time to time, to designate or change the designation of the officer or officers and agent or agents of the Company who will be authorized to sign or countersign checks, drafts or other orders for the payment of money issued in the name of the Company against any funds deposited in any of such accounts, and to revoke any such designation;
- e. To authorize the use of facsimile signatures for the signing or countersigning of checks, drafts or other orders for the payment of money, and to enter into such

agreements as banks and trust companies customarily require as a condition for permitting the use of facsimile signatures;

- f. To make such general and special rules and regulations with respect to such accounts as either of them may deem necessary or advisable; and
- g. To complete and execute printed blank signature card forms in order to conveniently exercise the authority granted by this resolution, and any resolutions printed thereon shall be deemed adopted as a part hereof; and,

**RESOLVED FURTHER**, that any such depository to which a copy of these resolutions, certified by the Secretary of the Company shall have been delivered, shall be entitled to rely thereon for all purposes until it shall have received written notice of the revocation or amendment of these resolutions by the Shareholders of the Company.

**8. ISSUANCE OF COMMON STOCK**

**RESOLVED:** That the Company is authorized to sell and issue to the following persons and entities the number of shares of common stock listed opposite such purchasers' names at a purchase price per share of \$0.02 on the terms and conditions and for the form of consideration set forth in the proposed Restricted Stock Purchase Agreement, substantially in the format attached hereto as Exhibit D (the "Restricted Stock Purchase Agreement"), which shall be entered into in substantially the forms provided to and reviewed by the Board with such changes as may be approved by the officers of the Company, acting on behalf of the Company, with the advice of counsel:

Purchaser	Number of Shares	Purchase Price
Inc.	1,750,000	\$35,000
Inc.	750,000	\$15,000
Total	2,500,000	\$50,000

**RESOLVED FURTHER:** That the Board determines that the purchase price per share of \$0.02 in consideration for the common stock issued pursuant to the terms and conditions of the above listed agreements constitutes full and adequate consideration for the common stock, and that such shares, when issued in accordance with the terms of such agreements, shall be fully-paid and nonassessable outstanding shares of common stock of the Company;

**RESOLVED FURTHER:** That the officers of the Company in consultation with legal counsel are authorized and directed to execute, verify and file all documents, and to take whatever actions, that are necessary or advisable to comply with all state and federal securities laws; and



**RESOLVED FURTHER:** That the responsible attorneys, paralegals and corporate assistants of Law Offices of Yoshito J. Yamamoto, counsel for the Company, are authorized and directed to execute and submit on behalf of the Company, an electronic exemption notice with the California Department of Corporations in connection with the current offering of the Company's securities, and are further authorized and directed to irrevocably appoint the California Commissioner of Corporations as agent for service of process for the Company in connection with the issuance of the Company's securities in the current offering.

**9. ORGANIZATIONAL EXPENSES**

**RESOLVED:** That the Company is authorized to pay and reimburse the expenses incurred for incorporation and organization of the Company, including without limitation expenses incurred prior to the incorporation of the Company; and

**RESOLVED FURTHER:** That the officers of the Company are authorized to determine whether to elect to apply Section 248(a) of the Internal Revenue Code with respect to any organizational expenditures.

**10. WITHHOLDING TAXES**

**RESOLVED:** That the Company is authorized to consult with its bookkeepers, auditors and attorneys in order to be fully informed as to, and to collect and pay promptly when due, all withholding taxes for which the Company may now be (or hereafter become) liable.

**11. ACCOUNTING YEAR**

**RESOLVED:** That the accounting year of the Company shall end on December 31st of each year.

**12. PRINCIPAL EXECUTIVE OFFICE**

**RESOLVED:** That the initial principal executive office of the Company be established and maintained at:

 , CA 9

**RESOLVED FURTHER:** That the Board is authorized to relocate the principal executive office of the Company to any place where it sees fit.

**13. QUALIFICATIONS TO DO BUSINESS**

**RESOLVED:** That the officers of the Company are authorized to take any and all actions that they deem necessary or appropriate to qualify the Company to do business as a foreign corporation in each state that the officers determine such qualification to be necessary or appropriate.



**14. FEDERAL TAX IDENTIFICATION NUMBER**

**RESOLVED:** That the officers of the Company are authorized to apply for a federal employer identification number with Form SS-4 or equivalent; and

**RESOLVED FURTHER:** That the officers of the Company are authorized to direct Law Offices of Yoshito J. Yamamoto, counsel for the Company, to submit on behalf of the Company, an online application for a federal employer identification number.

**15. EDD ACCOUNT NUMBER**

**RESOLVED:** That the officers of the Company are authorized to apply to the California Employment Development Department for an EDD identification number, as it becomes necessary.

**16. ADOPTION OF 2015 STOCK PLAN**

**WHEREAS,** the Board deems it advisable for the Company to adopt and implement an equity based incentive compensation plan (the “Stock Plan” or “2015 Stock Plan”) for eligible individuals in the service of the Company or of another corporation or other entity that is now or hereafter a parent, subsidiary or other affiliate of the Company (each an “Affiliate”) so that such individuals may have an opportunity to acquire a proprietary interest, or increase their proprietary interest, in the Company and thereby be encouraged to remain in the employ or service of the Company or an Affiliate; and

**WHEREAS,** the Board further deems it advisable to retain flexibility under such plan to (i) grant “incentive stock options” that satisfy the requirements of Section 422 of the Internal Revenue Code and thereby allow the holders to exercise their options without current income tax consequences (other than alternative minimum tax consequences, in certain circumstances), (ii) grant options that are nonstatutory and that may therefore entitle the Company to an income tax deduction upon exercise, or (iii) directly sell shares of common stock of the Company to eligible individuals at its fair market value.

**NOW, THEREFORE, BE IT RESOLVED:** That the 2015 Stock Plan (the “Stock Plan”) in substantially the form attached hereto as Exhibit E shall be adopted and approved;

**RESOLVED FURTHER:** That the Board shall reserve 2,500,000 shares of common stock out of 20,000,000 shares that are authorized to issue for issuance under the Stock Plan;

**RESOLVED FURTHER:** That the form of stock option agreement in substantially the form attached hereto as Exhibit F shall be approved;

**RESOLVED FURTHER:** That the form of stock purchase agreement in substantially the form attached hereto as Exhibit G shall be approved; and

**RESOLVED FURTHER:** That the officers of the Company are authorized and directed to solicit the consent of the stockholders to the adoption of the Stock Plan and to file the appropriate notices with the applicable state and federal securities authorities in connection with the issuance of options, at such time as such actions may be necessary or advisable in order to comply with applicable law.

**17. OMNIBUS RESOLUTIONS**

**RESOLVED:** That the officers of the Company be, and each of them hereby is, authorized and empowered to take any and all such further action, to execute and deliver any and all such further agreements, instruments, documents and certificates and to pay such expenses, in the name and on behalf of the Company or such officer, as any such officer may deem necessary or advisable to effectuate the purposes and intent of the resolutions hereby adopted, the taking of such actions, the execution and delivery of such agreements, instruments, documents and certificates and the payment of such expenses by any such officer to be conclusive evidence of his or her authorization hereunder and the approval thereof; and

**RESOLVED FURTHER:** That any and all actions taken by any the officers of the Company to carry out the purposes and intent of the foregoing resolutions prior to their adoption are approved, ratified and confirmed.

*(Signature page to follow)*

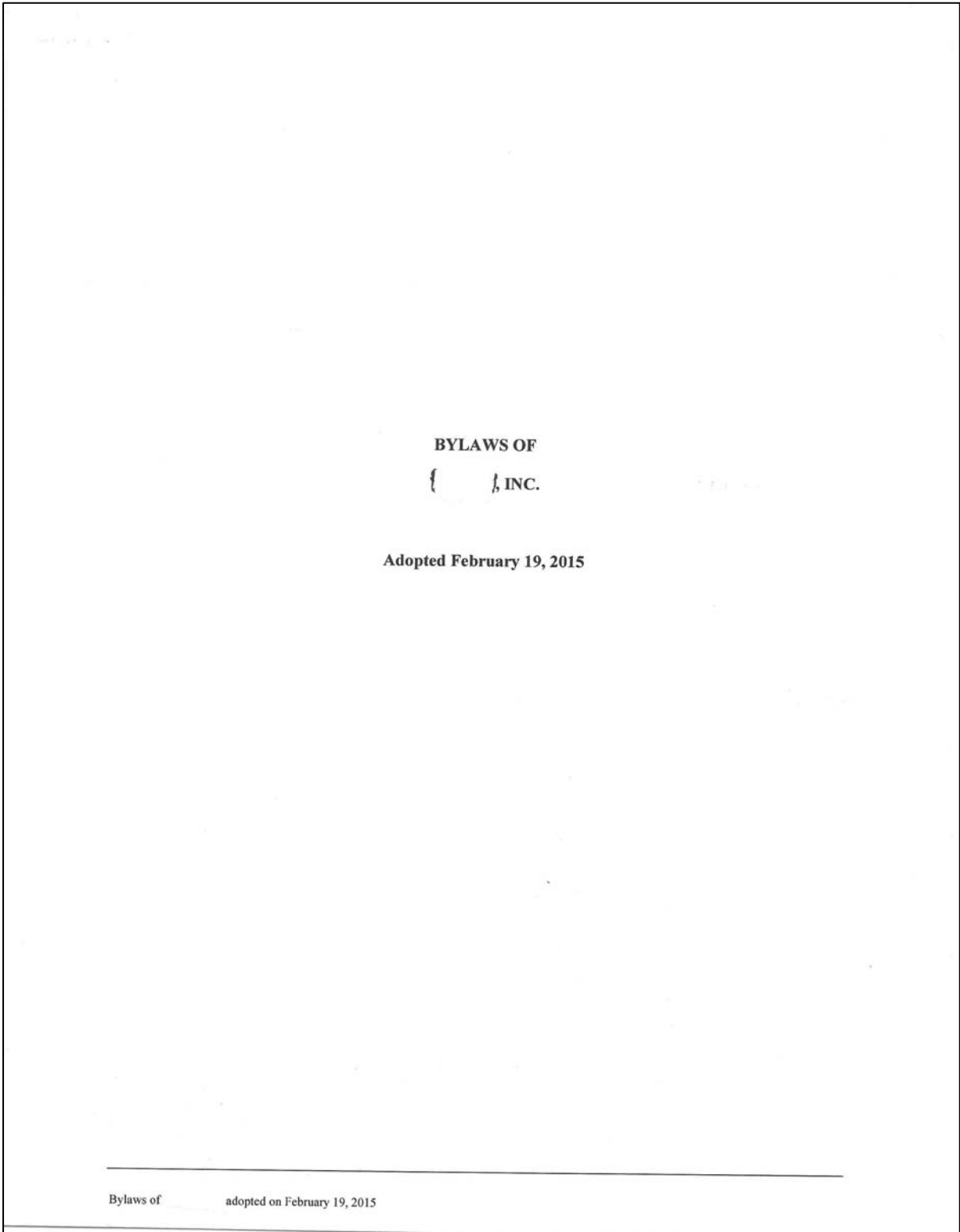
This action by written consent shall be effective as of the date the Company receives the consent of the Company's sole director. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used.

This action by written consent shall be filed with the minutes of the proceedings of the Board of Directors of the Company.

**IN WITNESS WHEREOF**, the sole director of the Company has caused this action by written consent to be duly executed, thereunto duly authorized, approved and ratified as of the date first above written.

By: \_\_\_\_\_  
Director

**7.6. Bylaws**



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## BYLAWS

### ARTICLE I — MEETINGS OF STOCKHOLDERS

1.1 *Place of Meetings.* Meetings of stockholders of [REDACTED] Inc. (the “Company”) shall be held at any place, within or outside the State of Delaware, determined by the Company’s board of directors (the “Board”). The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the “DGCL”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the Company’s principal executive office.

1.2 *Annual Meeting.* An annual meeting of stockholders shall be held for the election of directors at such date and time as may be designated by resolution of the Board from time to time. Any other proper business may be transacted at the annual meeting. The Company shall not be required to hold an annual meeting of stockholders, *provided* that (i) the stockholders are permitted to act by written consent under the Company’s certificate of incorporation and these bylaws, (ii) the stockholders take action by written consent to elect directors and (iii) the stockholders unanimously consent to such action or, if such consent is less than unanimous, all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

1.3 *Special Meeting.* A special meeting of the stockholders may be called at any time by the Board, Chairperson of the Board, Chief Executive Officer or President (in the absence of a Chief Executive Officer) or by one or more stockholders holding shares in the aggregate entitled to cast not less than 10% of the votes at that meeting.

If any person(s) other than the Board calls a special meeting, the request shall:

- (i) be in writing;
- (ii) specify the time of such meeting and the general nature of the business proposed to be transacted; and
- (iii) be delivered personally or sent by registered mail or by facsimile transmission to the Chairperson of the Board, the Chief Executive Officer, the President (in the absence of a Chief Executive Officer) or the Secretary of the Company.

The officer(s) receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting. No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this **Section 1.3** shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.

1.4 *Notice of Stockholders’ Meetings.* Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for

determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

1.5 **Quorum.** Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, in the manner provided in **Section 1.6**, until a quorum is present or represented.

1.6 **Adjourned Meeting; Notice.** Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and **Section 1.10** of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

1.7 **Conduct of Business.** Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by the Chief Executive Officer, or in the absence of the foregoing persons by the President, or in the absence of the foregoing persons by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting. The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

1.8 **Voting.** The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of **Section 1.10** of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of capital stock held by such stockholder which has voting power upon the matter in question. Voting at meetings of stockholders need not be by written ballot and, unless otherwise required by law, need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. If authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission (as defined in **Section 7.2** of these bylaws), *provided* that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Except as otherwise required by law, the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation or these bylaws.

1.9 ***Stockholder Action by Written Consent Without a Meeting.*** Unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

An electronic transmission (as defined in **Section 7.2**) consenting to an action to be taken and transmitted by a stockholder or proxy holder, or by a person or persons authorized to act for a stockholder or proxy holder, shall be deemed to be written, signed and dated for purposes of this section, *provided* that any such electronic transmission sets forth or is delivered with information from which the Company can determine (i) that the electronic transmission was transmitted by the stockholder or proxy holder or by a person or persons authorized to act for the stockholder or proxy holder and (ii) the date on which such stockholder or proxy holder or authorized person or persons transmitted such electronic transmission.

In the event that the Board shall have instructed the officers of the Company to solicit the vote or written consent of the stockholders of the Company, an electronic transmission of a stockholder written consent given pursuant to such solicitation may be delivered to the Secretary or the President of the Company or to a person designated by the Secretary or the President. The Secretary or the President of the Company or a designee of the Secretary or the President shall cause any such written consent by electronic transmission to be reproduced in paper form and inserted into the corporate records.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date



for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Company as provided in Section 228 of the DGCL. In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the DGCL, if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

1.10 **Record Dates.** In order that the Company may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 1.10 at the adjourned meeting.

In order that the Company may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company in accordance with applicable law. If no record date has been fixed by the Board and prior action by the Board is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

1.11 **Proxies.** Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or

persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

1.12 **List of Stockholders Entitled to Vote.** The officer who has charge of the stock ledger of the Company shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided, however*, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Company's principal place of business. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

## ARTICLE II — DIRECTORS

2.1 **Powers.** The business and affairs of the Company shall be managed by or under the direction of the Board, except as may be otherwise provided in the DGCL or the certificate of incorporation.

2.2 **Number of Directors.** The Board shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

2.3 **Election, Qualification and Term of Office of Directors.** Except as provided in Section 2.4 of these bylaws, and subject to Sections 1.2 and 1.9 of these bylaws, directors shall be elected at each annual meeting of stockholders. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

2.4 **Resignation and Vacancies.** Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a



specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Company should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and until such director's successor is elected and qualified, or until such director's earlier death, resignation or removal.

**2.5 Place of Meetings; Meetings by Telephone.** The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**2.6 Conduct of Business.** Meetings of the Board shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting,



but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

2.7 **Regular Meetings.** Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

2.8 **Special Meetings; Notice.** Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or any two directors.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile; or
- (iv) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Company's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting.

2.9 **Quorum; Voting.** At all meetings of the Board, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

2.10 **Board Action by Written Consent Without a Meeting.** Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings

of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.11 **Fees and Compensation of Directors.** Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

2.12 **Removal of Directors.** Unless otherwise restricted by statute, the certificate of incorporation or these bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

### ARTICLE III — COMMITTEES

3.1 **Committees of Directors.** The Board may designate one or more committees, each committee to consist of one or more of the directors of the Company. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Company.

3.2 **Committee Minutes.** Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

3.3 **Meetings and Actions of Committees.** Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) **Section 2.5** (Place of Meetings; Meetings by Telephone);
- (ii) **Section 2.7** (Regular Meetings);
- (iii) **Section 2.8** (Special Meetings; Notice);
- (iv) **Section 2.9** (Quorum; Voting);
- (v) **Section 2.10** (Board Action by Written Consent Without a Meeting); and
- (vi) **Section 7.5** (Waiver of Notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However:*

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board;  
and

(iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

3.4 **Subcommittees.** Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

#### ARTICLE IV — OFFICERS

4.1 **Officers.** The officers of the Company shall be a President and a Secretary. The Company may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Chief Executive Officer, one or more Vice Presidents, a Chief Financial Officer, a Treasurer, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

4.2 **Appointment of Officers.** The Board shall appoint the officers of the Company, except such officers as may be appointed in accordance with the provisions of **Section 4.3** of these bylaws.

4.3 **Subordinate Officers.** The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Company may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

4.4 **Removal and Resignation of Officers.** Any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to



make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

4.5 *Vacancies in Offices.* Any vacancy occurring in any office of the Company shall be filled by the Board or as provided in **Section 4.3**.

4.6 *Representation of Shares of Other Corporations.* Unless otherwise directed by the Board, the President or any other person authorized by the Board or the President is authorized to vote, represent and exercise on behalf of the Company all rights incident to any and all shares of any other corporation or corporations standing in the name of the Company. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

4.7 *Authority and Duties of Officers.* Except as otherwise provided in these bylaws, the officers of the Company shall have such powers and duties in the management of the Company as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

#### ARTICLE V — INDEMNIFICATION

5.1 *Indemnification of Directors and Officers in Third Party Proceedings.* Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") (other than an action by or in the right of the Company) by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

5.2 *Indemnification of Directors and Officers in Actions by or in the Right of the Company.* Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to

which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

5.3 **Successful Defense.** To the extent that a present or former director or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in **Section 5.1** or **Section 5.2**, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

5.4 **Indemnification of Others.** Subject to the other provisions of this **Article V**, the Company shall have power to indemnify its employees and agents to the extent not prohibited by the DGCL or other applicable law. The Board shall have the power to delegate to such person or persons the determination of whether employees or agents shall be indemnified.

5.5 **Advanced Payment of Expenses.** Expenses (including attorneys' fees) incurred by an officer or director of the Company in defending any Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this **Article V** or the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the Company or by persons serving at the request of the Company as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Company deems appropriate. The right to advancement of expenses shall not apply to any Proceeding for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding referenced in **Section 5.6(ii)** or **Section 5.6(iii)** prior to a determination that the person is not entitled to be indemnified by the Company.

Notwithstanding the foregoing, unless otherwise determined pursuant to **Section 5.8**, no advance shall be made by the Company to an officer of the Company (except by reason of the fact that such officer is or was a director of the Company, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (i) by a majority vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

5.6 **Limitation on Indemnification.** Subject to the requirements in **Section 5.3** and the DGCL, the Company shall not be obligated to indemnify any person pursuant to this **Article V** in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;



(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the Company by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), or the payment to the Company of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Company or its directors, officers, employees, agents or other indemnitees, unless (a) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (c) otherwise required to be made under Section 5.7 or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law.

**5.7 Determination; Claim.** If a claim for indemnification or advancement of expenses under this Article V is not paid by the Company or on its behalf within 90 days after receipt by the Company of a written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. To the extent not prohibited by law, the Company shall indemnify such person against all expenses actually and reasonably incurred by such person in connection with any action for indemnification or advancement of expenses from the Company under this Article V, to the extent such person is successful in such action, and, if requested by such person, shall advance such expenses to such person, subject to the provisions of Section 5.5. In any such suit, the Company shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

**5.8 Non-Exclusivity of Rights.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

**5.9 Insurance.** The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person’s status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of the DGCL.



5.10 *Survival.* The rights to indemnification and advancement of expenses conferred by this **Article V** shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5.11 *Effect of Repeal or Modification.* A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

5.12 *Certain Definitions.* For purposes of this **Article V**, references to the “**Company**” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this **Article V** with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this **Article V**, references to “**other enterprises**” shall include employee benefit plans; references to “**finances**” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**servicing at the request of the Company**” shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the Company**” as referred to in this **Article V**.

#### ARTICLE VI — STOCK

6.1 *Stock Certificates; Partly Paid Shares.* The shares of the Company shall be represented by certificates, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Company by the Chairperson of the Board or Vice-Chairperson of the Board, or the President or a Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Company shall not have power to issue a certificate in bearer form.

The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Company in the case

of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Company shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 **Special Designation on Certificates.** If the Company is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; *provided* that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock, a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Company shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this **Section 6.2** or Sections 156, 202(a) or 218(a) of the DGCL or with respect to this **Section 6.2** a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 **Lost Certificates.** Except as provided in this **Section 6.3**, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 **Dividends.** The Board, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock, subject to the provisions of the certificate of incorporation.

The Board may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

6.5 **Stock Transfer Agreements.** The Company shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.6 **Registered Stockholders.** The Company:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

6.7 **Transfers.** Transfers of record of shares of stock of the Company shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer.

#### ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

7.1 **Notice of Stockholder Meetings.** Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Company's records. An affidavit of the Secretary or an Assistant Secretary of the Company or of the transfer agent or other agent of the Company that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

7.2 **Notice by Electronic Transmission.** Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any such consent shall be deemed revoked if:

(i) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and

(ii) such inability becomes known to the Secretary or an Assistant Secretary of the Company or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;



(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

An “**electronic transmission**” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

7.3 **Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

7.4 **Notice to Person with Whom Communication is Unlawful.** Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.5 **Waiver of Notice.** Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

## ARTICLE VIII — GENERAL MATTERS

8.1 *Fiscal Year.* The fiscal year of the Company shall be fixed by resolution of the Board and may be changed by the Board.

8.2 *Seal.* The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

8.3 *Annual Report.* The Company shall cause an annual report to be sent to the stockholders of the Company to the extent required by applicable law. If and so long as there are fewer than 100 holders of record of the Company's shares, the requirement of sending an annual report to the stockholders of the Company is expressly waived (to the extent permitted under applicable law).

8.4 *Construction; Definitions.* Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

## ARTICLE IX — AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote. However, the Company may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

## ARTICLE X — RIGHT OF FIRST REFUSAL

### 10.1 *Right of First Refusal.*

No stockholder shall sell, assign, pledge or in any manner transfer any of the shares of common stock of the Company (other than shares of common stock issued upon conversion of shares of preferred stock of the Company), or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer that meets the requirements set forth in this ARTICLE X.

### 10.2 *Notice of Proposed Transfer.*

If a stockholder desires to transfer any shares of common stock of the Company (other than shares of common stock issued upon conversion of shares of preferred stock of the Company), then the stockholder shall deliver a written notice to the Company stating (i) the stockholder's bona fide intention to transfer the shares, (ii) the name of each proposed transferee, (iii) the number of shares to be transferred to each proposed transferee, (iv) the bona fide cash price or other bona fide consideration for which the stockholder proposes to transfer the shares and (v) the other terms and conditions of the proposed transfer.

### 10.3 *Exercise of Right of First Refusal.*

At any time within 30 days after receipt of the stockholder's notice, the Company and/or its assignee(s) may, by giving written notice to the transferring stockholder, elect to purchase all, but not less

than all, of the shares proposed to be transferred to any one or more of the proposed transferees, at the purchase price determined in accordance with **Section 10.4**; provided, however, that with the consent of the stockholder, the Company and/or its assignee(s) shall have the right to purchase a lesser portion of the shares proposed to be transferred.

**10.4 Purchase Price.**

The purchase price for the shares to be purchased by the Company and/or its assignee(s) under this ARTICLE X shall be the price listed in the stockholder's notice; provided, however, that for a gift, property settlement or other transfer in which the proposed transferee is not paying the full value of the shares, and that is not otherwise exempted from the provisions of this ARTICLE X, the price shall be deemed to be the fair market value of the stock at the time as determined in good faith by the Board. If the price listed in the stockholder's notice includes consideration other than cash, the cash-equivalent value of the non cash consideration shall be determined by the Board in good faith.

**10.5 Payment.**

Payment of the purchase price shall be made, at the option of the Company and/or its assignee(s), in cash (by check), by wire transfer, by cancellation of all or a portion of any outstanding indebtedness of the stockholder to the Company (or, in the case of a purchase by an assignee, to the assignee), or by any combination thereof, within 30 days after receipt by the Company of the stockholder's notice or in the manner and at the times set forth in the stockholder's notice.

**10.6 Right to Transfer.**

If all of the shares proposed in the stockholder's notice to be transferred to a given proposed transferee are not purchased by the Company and/or its assignee(s), then the stockholder may sell or otherwise transfer the remaining shares to the proposed transferee at the price listed in the notice or any higher price, in accordance with the terms of the notice (subject to any other rights of first refusal, co-sale rights or other restrictions on transfer that may be applicable to the shares); provided that (i) the transfer is consummated within 60 days after the expiration of the option rights granted to the Company and/or its assignee(s); and (ii) the transfer is effected in accordance with any applicable securities laws and, if reasonably requested by the Company, the stockholder shall have delivered an opinion of counsel reasonably acceptable to the Company to that effect. All shares so sold or transferred by the transferring stockholder shall continue to be subject to the provisions of this ARTICLE X in the same manner as before the transfer. If any shares described in a notice are not transferred to the proposed transferee within the period provided above, then before any of those shares may be transferred, a new notice shall be given to the Company and the Company and/or its assignee(s) shall again be offered a right of first refusal in accordance with this ARTICLE X.

**10.7 Exceptions.**

Anything to the contrary contained in this ARTICLE X notwithstanding, each of the following transactions shall be exempt from the provisions of this ARTICLE X.

- a) The transfer of any shares during the stockholder's lifetime, or on the stockholder's death by will or intestacy, to the stockholder's immediate family or a trust for the benefit of the stockholder or the stockholder's immediate family. "Immediate family" means spouse, lineal descendant or antecedent, father, mother, brother or sister.



- b) A *bona fide* pledge or mortgage of any shares to a commercial lending institution.
- c) A transfer of any shares to the Company or to any other stockholder of the Company.
- d) A transfer of any shares to a person who, at the time of the transfer, is an officer or director of the Company.
- e) A transfer of any shares by a corporate stockholder pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of the corporate stockholder, or pursuant to a sale of all or substantially all of the stock or assets of the corporate stockholder.
- f) A transfer of any shares by a corporate stockholder to any or all of its stockholders.
- g) A transfer by a stockholder that is a limited or general partnership or limited liability company to any or all of its partners, members or former partners or members.
- h) A transfer of any shares that is subject to and made in accordance with that certain Right of First Refusal and Co-Sale Agreement dated August 7, 2013, by and among the Company, the Investors (as defined therein), and the Key Holders (as defined therein), as amended, supplemented, restated, amended and restated, or otherwise modified from time to time.

In any such case, the transferee, assignee or other recipient shall receive and hold the stock subject to the provisions of this ARTICLE X, and there shall be no further transfer of the stock except in accordance with this ARTICLE X.

**10.8 Waiver.**

The provisions of this ARTICLE X may be waived for any transfer either by the Company, upon duly authorized action of the Board, or by the stockholders, upon the written consent of the holders of a majority of the voting power of the Company (excluding the votes representing those shares to be transferred by the transferring stockholder).

**10.9 Transfers Prohibited.**

Any transfer, or purported transfer, subject to the right of first refusal in this ARTICLE X shall be null and void unless made in accordance with this ARTICLE X.

**10.10 Termination.**

The right of first refusal contained in this ARTICLE X shall terminate upon the first sale of common stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended.

10.11 *Legend.*

The certificates representing shares of common stock of the Company (other than shares of common stock issued upon conversion of shares of preferred stock of the Company), shall bear a legend substantially to the following effect so long as the right of first refusal in this ARTICLE X remains in effect:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION.

**CERTIFICATE OF SECRETARY  
OF  
ADOPTION OF BYLAWS  
OF  
██████████, INC.  
BY  
BOARD OF DIRECTORS**

I, ██████████, DO HEREBY CERTIFY that I am duly appointed and qualified Secretary of the above named corporation, that the foregoing amended and restated bylaws were adopted as the Bylaws of said corporation on the date set forth above by the board of directors of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal on February 19, 2015.

██████████ secretary

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Bylaws of ██████████ c. adopted on February 19, 2015

## 7.7. Stock Purchase Agreement

### RESTRICTED STOCK PURCHASE AGREEMENT

This Restricted Stock Purchase Agreement (the "Agreement") is entered into by and between [REDACTED] Inc. (the "Company" or the "Seller"), a Delaware corporation, and [REDACTED] Inc. (the "Purchaser"), a Delaware corporation, effective February 20, 2015 (the "Effective Date").

#### **1. Sale of Shares.**

For the valuable and sufficient consideration in accordance with the terms and conditions set forth herein, the Seller hereby sell 750,000 shares (the "Shares") of newly-issued common stock of the Company to the Purchaser.

#### **2. Price.**

In exchange for the Shares, the Purchaser shall pay the Seller a sum of \$15,000, which shall be paid in cash via wire transfer to the account designated by the Seller, in no more than Five (5) business days from the Effective Date.

#### **3. Representations and Warranties by the Purchaser.**

The Purchaser hereby represents and warrants to, and agrees with, the Company, as follows:

- (a) The Purchaser has full power and authority to enter into the Transaction Agreements to which it is a party. The Transaction Agreements to which such Purchaser is a party, when executed and delivered by the Purchaser, will constitute valid and legally binding obligations of the Purchaser, enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, or (b) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.;
- (b) This Agreement is made with the Purchaser in reliance upon the Purchaser's representation to the Company, which by the Purchaser's execution of this Agreement, the Purchaser hereby confirms, that the Shares to be acquired by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any entity or individual ("Person") to sell, transfer or grant participations to such Person or to any third Person, with respect to any of the Shares. The Purchaser has not been formed for the specific purpose of acquiring the Shares;

- (c) The Purchaser has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Shares with the Company's management. Nothing in this Section 3, including the foregoing sentence, limits or modifies the representations and warranties of the Company in Section 2 of this Agreement or the right of the Purchasers to rely thereon;
- (d) The Purchaser understands that the Shares have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Shares are "restricted securities" under applicable United States federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify the Shares or the Conversion Shares for resale. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Shares, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy;
- (e) The Purchaser understands that no public market now exists for the Shares, and that the Company has made no assurances that a public market will ever exist for the Shares;
- (f) The Purchaser understands that the Shares and any securities issued in respect of or exchange for the Shares, may bear any one or more of the following legends:
  - (i) any legend set forth in, or required by, the other Transaction Agreements;
  - (ii) any legend required by the securities laws of any state to the extent such laws are applicable to the Shares represented by the certificate with such legend; and
  - (iii) the following legend:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED."



- (g) The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act;
- (h) At no time (i) has the Purchaser or any of its officers, directors, employees or other agents, been presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general advertising or solicitation in connection with the offer, sale or purchase of the Shares, whether or not such advertising or solicitation was received directly from the Company or indirectly from a broker, finder or other person or entity, nor (ii) has the Purchaser or any of its officers, directors, employees or other agents attended any public meeting or seminar concerning an investment in the Shares;
- (i) The Purchaser acknowledges that it is not relying upon any Person, other than the Company and its officers and directors, in making its investment or decision to invest in the Company. The Purchaser agrees that neither any Purchaser nor the respective controlling Persons, officers, directors, partners, agents, or employees of any Purchaser shall be liable to any other Purchaser for any action heretofore taken or omitted to be taken by any of them in connection with the purchase of the Shares;
- (j) If the Purchaser is an individual, then the Purchaser resides in the state or province identified in the address of the Purchaser set forth above; if the Purchaser is a partnership, corporation, limited liability company or other entity, then the office or offices of the Purchaser in which its principal place of business is identified in the address or addresses of the Purchaser set forth above.

#### **4. Indemnification.**

The Purchaser shall indemnify, defend and hold harmless the Company, and any officers, employees, shareholders, partners, agents, directors or controlling persons of the Company (collectively the "Indemnified Parties" and individually an "Indemnified Party") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, against losses, liabilities and expenses of each Indemnified Party (including attorneys' fees, judgments, fines and amounts paid in settlement, payable as incurred) incurred by such person or entity in connection with such action, arbitration, suit or proceeding, by reason of or arising from (i) any misrepresentation or misstatement of facts or omission to represent or state facts made by the Purchaser, including, without limitation, the information in this Agreement, or (ii) litigation or other proceeding brought by the Purchaser against one or more Indemnified Party wherein the Indemnified Party is the prevailing party.

#### **5. Revocation.**

The sale of the Shares contemplated herein shall not be canceled, rescinded or revoked by either Party unless otherwise provided by law. This Agreement shall survive the death or disability of the Parties shall be binding upon the Parties' heirs, executors, administrators, beneficiaries, successors and assigns.



**6. Certain Securities Law Matters.**

- (a) The sale of the Shares that are subject of this Agreement has not been qualified with the Commissioner of Corporations of the State of California and the issuance of the Shares or the payment or receipt of any part of the consideration therefore prior to the qualification is unlawful, unless the sale of the Shares is exempt from the qualification by Section 25100, 25102, or 25105 of the California Corporations Code.
- (b) The Shares shall not be sold, assigned, transferred or pledged except upon satisfaction of the conditions specified in this Agreement and in compliance with the provisions of the Act and the CGCL. The Purchaser will cause any proposed purchaser, assignee, transferee or pledge of the Shares held by the Purchaser to agree to take and hold the Shares subject to the provisions and conditions of this Agreement.
- (c) Each certificate representing (i) the Shares and (ii) any other securities issued in respect of the Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of Section 5(c) below) be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any legend required under applicable state securities laws):

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY ACCEPTABLE TO IT STATING THAT SUCH SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE CORPORATION AT THE PRINCIPAL EXECUTIVE OFFICES OF THE CORPORATION.

- (d) The Purchaser consents to the Company making a notation on its records and giving instructions to any transfer agent of the Shares in order to implement the restrictions on transfer established in this Agreement).
- (e) The Purchaser agrees to comply in all respects with the provisions of this Agreement. Prior to any proposed sale, assignment, transfer or pledge of any Shares, unless there is in effect a registration statement under the Act or the CGCL covering the proposed transfer, the Purchaser thereof shall provide written notice to

**6. Certain Securities Law Matters.**

- (a) The sale of the Shares that are subject of this Agreement has not been qualified with the Commissioner of Corporations of the State of California and the issuance of the Shares or the payment or receipt of any part of the consideration therefore prior to the qualification is unlawful, unless the sale of the Shares is exempt from the qualification by Section 25100, 25102, or 25105 of the California Corporations Code.
- (b) The Shares shall not be sold, assigned, transferred or pledged except upon satisfaction of the conditions specified in this Agreement and in compliance with the provisions of the Act and the CGCL. The Purchaser will cause any proposed purchaser, assignee, transferee or pledge of the Shares held by the Purchaser to agree to take and hold the Shares subject to the provisions and conditions of this Agreement.
- (c) Each certificate representing (i) the Shares and (ii) any other securities issued in respect of the Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of Section 5(c) below) be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any legend required under applicable state securities laws):

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY ACCEPTABLE TO IT STATING THAT SUCH SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE CORPORATION AT THE PRINCIPAL EXECUTIVE OFFICES OF THE CORPORATION.

- (d) The Purchaser consents to the Company making a notation on its records and giving instructions to any transfer agent of the Shares in order to implement the restrictions on transfer established in this Agreement).
- (e) The Purchaser agrees to comply in all respects with the provisions of this Agreement. Prior to any proposed sale, assignment, transfer or pledge of any Shares, unless there is in effect a registration statement under the Act or the CGCL covering the proposed transfer, the Purchaser thereof shall provide written notice to

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Company/Seller:  
[REDACTED] Inc.

By: \_\_\_\_\_  
Name: [REDACTED] President

Purchaser  
[REDACTED], Inc.

By \_\_\_\_\_, Inc.,

By [REDACTED]

# 7.8. Federal Corporate Tax Return

Form <b>1120</b> Department of the Treasury Internal Revenue Service	<b>U.S. Corporation Income Tax Return</b> For calendar year 2014 or tax year beginning _____, 2014, ending _____, 20____	OMB No. 1545-0123  <div style="font-size: 2em; font-weight: bold; text-align: center;">2014</div>
▶ Information about Form 1120 and its separate instructions is at <a href="http://www.irs.gov/form1120">www.irs.gov/form1120</a> .		
<b>A Check if:</b> 1a Consolidated return (attach Form 851) <input type="checkbox"/> b Life/nonlife consolidated return <input type="checkbox"/> 2 Personal holding co. (attach Sch. PH) <input type="checkbox"/> 3 Personal service corp. (see instructions) <input type="checkbox"/> 4 Schedule M-3 attached <input type="checkbox"/>	<b>TYPE OR PRINT</b> Name _____ Number, street, and room or suite no. If a P.O. box, see instructions. _____ City or town, state, or province, country and ZIP or foreign postal code _____	<b>B Employer identification number</b> _____  <b>C Date incorporated</b> _____  <b>D Total assets (see instructions)</b> \$ _____
<b>E Check if:</b> (1) <input type="checkbox"/> Initial return (2) <input type="checkbox"/> Final return (3) <input type="checkbox"/> Name change (4) <input type="checkbox"/> Address change		
<b>Income</b>	1a Gross receipts or sales b Returns and allowances c Balance. Subtract line 1b from line 1a 2 Cost of goods sold (attach Form 1125-A) 3 Gross profit. Subtract line 2 from line 1c 4 Dividends (Schedule C, line 19) 5 Interest 6 Gross rents 7 Gross royalties 8 Capital gain net income (attach Schedule D (Form 1120)) 9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797) 10 Other income (see instructions—attach statement) 11 <b>Total income.</b> Add lines 3 through 10.	1a 1b 1c 2 3 4 5 6 7 8 9 10 11
<b>Deductions (See instructions for limitations on deductions.)</b>	12 Compensation of officers (see instructions—attach Form 1125-E) 13 Salaries and wages (less employment credits) 14 Repairs and maintenance 15 Bad debts 16 Rents 17 Taxes and licenses 18 Interest 19 Charitable contributions 20 Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562) 21 Depletion 22 Advertising 23 Pension, profit-sharing, etc., plans 24 Employee benefit programs 25 Domestic production activities deduction (attach Form 8903) 26 Other deductions (attach statement) 27 <b>Total deductions.</b> Add lines 12 through 26. 28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11. 29a Net operating loss deduction (see instructions) b Special deductions (Schedule C, line 20) c Add lines 29a and 29b	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29a 29b 29c
<b>Tax, Refundable Credits, and Payments</b>	30 <b>Taxable income.</b> Subtract line 29c from line 28 (see instructions) 31 Total tax (Schedule J, Part I, line 11) 32 Total payments and refundable credits (Schedule J, Part II, line 21) 33 Estimated tax penalty (see instructions). Check if Form 2220 is attached <input type="checkbox"/> 34 <b>Amount owed.</b> If line 32 is smaller than the total of lines 31 and 33, enter amount owed 35 <b>Overpayment.</b> If line 32 is larger than the total of lines 31 and 33, enter amount overpaid 36 Enter amount from line 35 you want: <b>Credited to 2015 estimated tax</b> ▶ <b>Refunded</b> ▶	30 31 32 33 34 35 36
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
<b>Sign Here</b>	Signature of officer _____ Date _____ Title _____	May the IRS discuss this return with the preparer shown below (see instructions)? <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Paid Preparer Use Only</b>	Print/Type preparer's name _____ Preparer's signature _____ Date _____ Firm's name ▶ _____ Firm's EIN ▶ _____ Firm's address ▶ _____ Phone no. _____	Check <input type="checkbox"/> if self-employed PTIN _____
For Paperwork Reduction Act Notice, see separate instructions.		

<b>Schedule C Dividends and Special Deductions</b> (see instructions)		(a) Dividends received	(b) %	(c) Special deductions (a) × (b)
<b>1</b>	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)			
<b>2</b>	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)			
<b>3</b>	Dividends on debt-financed stock of domestic and foreign corporations			
<b>4</b>	Dividends on certain preferred stock of less-than-20%-owned public utilities			
<b>5</b>	Dividends on certain preferred stock of 20%-or-more-owned public utilities			
<b>6</b>	Dividends from less-than-20%-owned foreign corporations and certain FSCs			
<b>7</b>	Dividends from 20%-or-more-owned foreign corporations and certain FSCs			
<b>8</b>	Dividends from wholly owned foreign subsidiaries			
<b>9</b>	<b>Total.</b> Add lines 1 through 8. See instructions for limitation			
<b>10</b>	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958			
<b>11</b>	Dividends from affiliated group members			
<b>12</b>	Dividends from certain FSCs			
<b>13</b>	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
<b>14</b>	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
<b>15</b>	Foreign dividend gross-up			
<b>16</b>	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
<b>17</b>	Other dividends			
<b>18</b>	Deduction for dividends paid on certain preferred stock of public utilities			
<b>19</b>	<b>Total dividends.</b> Add lines 1 through 17. Enter here and on page 1, line 4			
<b>20</b>	<b>Total special deductions.</b> Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b			



**Schedule J Tax Computation and Payment** (see instructions)

**Part I—Tax Computation**

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120)) . . . . .	<input type="checkbox"/>		
2	Income tax. Check if a qualified personal service corporation (see instructions) . . . . .	<input type="checkbox"/>	2	
3	Alternative minimum tax (attach Form 4626) . . . . .		3	
4	Add lines 2 and 3 . . . . .		4	
5a	Foreign tax credit (attach Form 1118) . . . . .		5a	
b	Credit from Form 8834 (see instructions) . . . . .		5b	
c	General business credit (attach Form 3800) . . . . .		5c	
d	Credit for prior year minimum tax (attach Form 8827) . . . . .		5d	
e	Bond credits from Form 8912 . . . . .		5e	
6	<b>Total credits.</b> Add lines 5a through 5e . . . . .		6	
7	Subtract line 6 from line 4 . . . . .		7	
8	Personal holding company tax (attach Schedule PH (Form 1120)) . . . . .		8	
9a	Recapture of investment credit (attach Form 4255) . . . . .		9a	
b	Recapture of low-income housing credit (attach Form 8611) . . . . .		9b	
c	Interest due under the look-back method—completed long-term contracts (attach Form 8697) . . . . .		9c	
d	Interest due under the look-back method—income forecast method (attach Form 8866) . . . . .		9d	
e	Alternative tax on qualifying shipping activities (attach Form 8902) . . . . .		9e	
f	Other (see instructions—attach statement) . . . . .		9f	
10	<b>Total.</b> Add lines 9a through 9f . . . . .		10	
11	<b>Total tax.</b> Add lines 7, 8, and 10. Enter here and on page 1, line 31 . . . . .		11	

**Part II—Payments and Refundable Credits**

12	2013 overpayment credited to 2014 . . . . .		12	
13	2014 estimated tax payments . . . . .		13	
14	2014 refund applied for on Form 4466 . . . . .		14	( )
15	Combine lines 12, 13, and 14 . . . . .		15	
16	Tax deposited with Form 7004 . . . . .		16	
17	Withholding (see instructions) . . . . .		17	
18	<b>Total payments.</b> Add lines 15, 16, and 17 . . . . .		18	
19	Refundable credits from:			
a	Form 2439 . . . . .		19a	
b	Form 4136 . . . . .		19b	
c	Form 8827, line 8c . . . . .		19c	
d	Other (attach statement—see instructions). . . . .		19d	
20	<b>Total credits.</b> Add lines 19a through 19d . . . . .		20	
21	<b>Total payments and credits.</b> Add lines 18 and 20. Enter here and on page 1, line 32 . . . . .		21	

**Schedule K Other Information** (see instructions)

1	Check accounting method: a <input type="checkbox"/> Cash b <input type="checkbox"/> Accrual c <input type="checkbox"/> Other (specify) ▶	Yes	No
2	See the instructions and enter the:		
a	Business activity code no. ▶		
b	Business activity ▶		
c	Product or service ▶		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsi- dary controlled group? . . . . . If "Yes," enter name and EIN of the parent corporation ▶		
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part I of Schedule G (Form 1120) (attach Schedule G) . . . . .		
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part II of Schedule G (Form 1120) (attach Schedule G) . . . . .		

**Schedule K** Other Information *continued* (see instructions)

				Yes	No
<b>5</b> At the end of the tax year, did the corporation:					
<b>a</b> Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on <b>Form 851</b> , Affiliations Schedule? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below.					

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

<b>b</b> Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below.					
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(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

<b>6</b> During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file <b>Form 5452</b> , Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851 for each subsidiary.		
<b>7</b> At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of <b>(a)</b> the total voting power of all classes of the corporation's stock entitled to vote or <b>(b)</b> the total value of all classes of the corporation's stock? For rules of attribution, see section 318. If "Yes," enter: <b>(i)</b> Percentage owned ▶ _____ and <b>(ii)</b> Owner's country ▶ _____ <b>(c)</b> The corporation may have to file <b>Form 5472</b> , Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 5472 attached ▶ _____		
<b>8</b> Check this box if the corporation issued publicly offered debt instruments with original issue discount . . . . . <input type="checkbox"/> If checked, the corporation may have to file <b>Form 8281</b> , Information Return for Publicly Offered Original Issue Discount Instruments.		
<b>9</b> Enter the amount of tax-exempt interest received or accrued during the tax year ▶ \$ _____		
<b>10</b> Enter the number of shareholders at the end of the tax year (if 100 or fewer) ▶ _____		
<b>11</b> If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here . . . . . <input type="checkbox"/> If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.		
<b>12</b> Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 29a.) ▶ \$ _____		
<b>13</b> Are the corporation's total receipts (page 1, line 1a, plus lines 4 through 10) for the tax year <b>and</b> its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year ▶ \$ _____		
<b>14</b> Is the corporation required to file Schedule UTP (Form 1120), Uncertain Tax Position Statement (see instructions)? If "Yes," complete and attach Schedule UTP.		
<b>15a</b> Did the corporation make any payments in 2014 that would require it to file Form(s) 1099? . . . . .		
<b>b</b> If "Yes," did or will the corporation file required Forms 1099? . . . . .		
<b>16</b> During this tax year, did the corporation have an 80% or more change in ownership, including a change due to redemption of its own stock? . . . . .		
<b>17</b> During or subsequent to this tax year, but before the filing of this return, did the corporation dispose of more than 65% (by value) of its assets in a taxable, non-taxable, or tax deferred transaction? . . . . .		
<b>18</b> Did the corporation receive assets in a section 351 transfer in which any of the transferred assets had a fair market basis or fair market value of more than \$1 million? . . . . .		

Schedule L	Balance Sheets per Books	Beginning of tax year		End of tax year	
		(a)	(b)	(c)	(d)
<b>Assets</b>					
1	Cash . . . . .				
2a	Trade notes and accounts receivable . . . . .				
b	Less allowance for bad debts . . . . .	( )		( )	
3	Inventories . . . . .				
4	U.S. government obligations . . . . .				
5	Tax-exempt securities (see instructions) . . . . .				
6	Other current assets (attach statement) . . . . .				
7	Loans to shareholders . . . . .				
8	Mortgage and real estate loans . . . . .				
9	Other investments (attach statement) . . . . .				
10a	Buildings and other depreciable assets . . . . .				
b	Less accumulated depreciation . . . . .	( )		( )	
11a	Depletable assets . . . . .				
b	Less accumulated depletion . . . . .	( )		( )	
12	Land (net of any amortization) . . . . .				
13a	Intangible assets (amortizable only) . . . . .				
b	Less accumulated amortization . . . . .	( )		( )	
14	Other assets (attach statement) . . . . .				
15	<b>Total assets</b> . . . . .				
<b>Liabilities and Shareholders' Equity</b>					
16	Accounts payable . . . . .				
17	Mortgages, notes, bonds payable in less than 1 year . . . . .				
18	Other current liabilities (attach statement) . . . . .				
19	Loans from shareholders . . . . .				
20	Mortgages, notes, bonds payable in 1 year or more . . . . .				
21	Other liabilities (attach statement) . . . . .				
22	Capital stock: <b>a</b> Preferred stock . . . . .				
	<b>b</b> Common stock . . . . .				
23	Additional paid-in capital . . . . .				
24	Retained earnings—Appropriated (attach statement) . . . . .				
25	Retained earnings—Unappropriated . . . . .				
26	Adjustments to shareholders' equity (attach statement) . . . . .				
27	Less cost of treasury stock . . . . .	( )		( )	
28	<b>Total liabilities and shareholders' equity</b> . . . . .				

**Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return**

Note: The corporation may be required to file Schedule M-3 (see instructions).

1	Net income (loss) per books . . . . .		7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax per books . . . . .			Tax-exempt interest \$ _____	
3	Excess of capital losses over capital gains . . . . .			_____	
4	Income subject to tax not recorded on books this year (itemize): _____			_____	
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
a	Depreciation . . . . . \$ _____		a	Depreciation . . . . . \$ _____	
b	Charitable contributions . . . . . \$ _____		b	Charitable contributions \$ _____	
c	Travel and entertainment . . . . . \$ _____			_____	
6	Add lines 1 through 5 . . . . .		9	Add lines 7 and 8 . . . . .	
			10	Income (page 1, line 28)—line 6 less line 9	

**Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)**

1	Balance at beginning of year . . . . .		5	Distributions: <b>a</b> Cash . . . . .	
2	Net income (loss) per books . . . . .			<b>b</b> Stock . . . . .	
3	Other increases (itemize): _____			<b>c</b> Property . . . . .	
	_____		6	Other decreases (itemize): _____	
	_____		7	Add lines 5 and 6 . . . . .	
4	Add lines 1, 2, and 3 . . . . .		8	Balance at end of year (line 4 less line 7)	

7.9. California Corporate Tax Return

TAXABLE YEAR **2011** **California Corporation** FORM **100**  
**Franchise or Income Tax Return**

For calendar year 2011 or fiscal year beginning month \_\_\_\_\_ day \_\_\_\_\_ year \_\_\_\_\_, and ending month \_\_\_\_\_ day \_\_\_\_\_ year \_\_\_\_\_.

Corporation name		California corporation number
Address (suite, room, or PMB no.)		FEIN
City	State	ZIP Code

**Schedule Q Questions (continued on Side 2)**

**A 1. FINAL RETURN?**  Dissolved  Surrendered (withdrawn)  
 Merged/Reorganized  IRC Section 338 sale  QSub election  
 Enter date ● \_\_\_\_\_

**2. DEFERRED INCOME.** Did this corporation elect to defer income from the discharge of indebtedness as described in IRC Section 108(i) for federal purposes?  Yes  No  
 If "Yes," enter the federal deferred income from discharge of indebtedness: ● \$ \_\_\_\_\_

**B 1.** Is income included in a combined report of a unitary group?  Yes  No  
**2.** If "Yes," indicate:  wholly within CA (R&TC 25101.15)  
 within and outside of CA  
**3.** Is there a change in the members listed in Schedule R-7 from the prior year?  Yes  No  
**4.** Enter the number of members (including parent or key corporation) listed in the Schedule R-7, Part I, Section A, subject to income or franchise tax. ● \_\_\_\_\_  
**5.** Is form FTB 3544 and/or 3544A attached to the return?  Yes  No

State Adjustments	1	Net income (loss) before state adjustments. See instructions	● 1	00
	2	Amount deducted for foreign or domestic tax based on income or profits from Schedule A	● 2	00
	3	Amount deducted for tax under the provisions of the Corporation Tax Law from Schedule A	● 3	00
	4	Interest on government obligations	● 4	00
	5	Net California capital gain from Side 5, Schedule D, line 11	● 5	00
	6	Depreciation and amortization in excess of amount allowed under California law. Attach form FTB 3885	● 6	00
	7	Net income from corporations not included in federal consolidated return. See instructions.	● 7	00
	8	Other additions. Attach schedule(s)	● 8	00
	9	Total. Add line 1 through line 8.	● 9	00
	10	Intercompany dividend deduction. Attach Schedule H (100)	● 10	00
	11	Dividends received deduction. Attach Schedule H (100)	● 11	00
	12	Additional depreciation allowed under CA law. Attach form FTB 3885	● 12	00
	13	Capital gain from federal Form 1120, line 8	● 13	00
	14	Contributions	● 14	00
	15	EZ, LAMBRA, or TTA business expense and EZ net interest deduction.	● 15	00
	16	Other deductions. Attach schedule(s)	● 16	00
	17	Total. Add line 10 through line 16.	● 17	00
	18	Net income (loss) after state adjustments. Subtract line 17 from line 9.	● 18	00
CA Net Income	19	Net income (loss) for state purposes. Complete Schedule R if apportioning income. See instructions	● 19	00
	20	Net operating loss (NOL) carryover deduction. See instructions	● 20	00
	21	Pierce's disease, EZ, LARZ, TTA, or LAMBRA NOL carryover deduction. See instructions	● 21	00
	22	Disaster loss carryover deduction. See instructions.	● 22	00
23	Net income for tax purposes. Combine line 20 through line 22. Then, subtract from line 19.	● 23	00	
Taxes	24	Tax. _____ % x line 23 (not less than minimum franchise tax, if applicable)	● 24	00
	25	New jobs credit. a) amount generated ● b) amount claimed	● 25a	00
	26a	Credit name _____ code no. _____ amount ▶	● 26a	00
	26b	Credit name _____ code no. _____ amount ▶	● 26b	00
	27	To claim more than two credits, see instructions	● 27	00
	28	Add line 25b through line 27	● 28	00
	29	Balance. Subtract line 28 from line 24 (not less than minimum franchise tax, if applicable)	● 29	00
	30	Alternative minimum tax. Attach Schedule P (100). See instructions.	● 30	00
	31	Total tax. Add line 29 and line 30.	● 31	00
	Payments	32	Overpayment from prior year allowed as a credit.	● 32
33		2011 Estimated tax payments. See instructions.	● 33	00
34		2011 Withholding (Form 592-B and/or 593). See instructions	● 34	00
35		Amount paid with extension of time to file tax return	● 35	00
36		Total payments. Add line 32 through line 35	● 36	00

Refund or Amount Due	<b>37 Franchise or income tax due.</b> If line 31 is more than line 36, subtract line 36 from line 31. Go to line 40	<b>37</b>	00
	<b>38 Overpayment.</b> If line 36 is more than line 31, subtract line 31 from line 36.	<b>38</b>	00
	<b>39</b> Amount of line 38 to be credited to 2012 estimated tax	<b>39</b>	00
	<b>40 Use tax. This is not a total line.</b> See instructions	<b>40</b>	00
	<b>41 Refund.</b> If the sum of line 39 and line 40 is less than line 38, then subtract the result from line 38. See instructions to have the refund directly deposited.	<b>41</b>	00
	<b>a</b> Routing number	<b>41a</b>	
	<b>b</b> Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings <b>c</b> Account number	<b>41c</b>	
<b>42 a</b> Penalties and interest.	<b>42a</b>	00	
<b>b</b> <input type="checkbox"/> Check if estimate penalty computed using Exception B or C. See instructions.			
<b>43 Total amount due.</b> Add line 37, line 39, line 40, and line 42a. Then, subtract line 38 from the result.	<b>43</b>	00	

**Schedule Q Questions (continued from Side 1)**

- C** If the corporation filed on a water's-edge basis pursuant to R&TC Sections 25110 and 25113 in previous years, enter the date the water's-edge election ended  /  /
- D** Was the corporation's income included in a consolidated federal return?  Yes  No
- E** Principal business activity code. (Do not leave blank):  \_\_\_\_\_  
Business activity \_\_\_\_\_  
Product or service \_\_\_\_\_
- F** Date incorporated:  /  /   
Where:  State  Country \_\_\_\_\_
- G** Date business began in California or date income was first derived from California sources  /  /
- H** First return?  Yes  No If "Yes" and this corporation is a successor to a previously existing business, check the appropriate box.  
 (1) sole proprietorship  (2) partnership  (3) joint venture  (4) corporation  (5) other  
(attach statement showing name, address, and FEIN/SSN/ITIN of previous business)
- I** "Doing business as" name. See instructions:  \_\_\_\_\_
- J** 1. For this taxable year, was there a change in control or majority ownership for this corporation or any of its subsidiaries that owned or (under certain circumstances) leased real property in California?  Yes  No  
2. For this taxable year, did this corporation or any of its subsidiaries acquire control or majority ownership of any other legal entity that owned or (under certain circumstances) leased real property in California?  Yes  No  
3. If this corporation or any of its subsidiaries owned or (under certain circumstances) leased real property in California, has more than 50% of the voting stock of any one of them cumulatively transferred in one or more transactions since March 1, 1975, which was not reported on a previous year's tax return?  Yes  No  
(Penalties may apply - see instructions.)
- K** At any time during the taxable year, was more than 50% of the voting stock:  
1. Of the corporation owned by any single interest?  Yes  No  
2. Of another corporation owned by this corporation?  Yes  No  
3. Of this and one or more other corporations owned or controlled, directly or indirectly, by the same interests?  Yes  No
- If 1 or 3 is "Yes," enter the country of the ultimate parent  \_\_\_\_\_
- If 1, 2, or 3 is "Yes," furnish a statement of ownership indicating pertinent names, addresses, and percentages of stock owned. If the owner(s) is an individual, provide the SSN/ITIN.
- L** Has the corporation included a reportable transaction or listed transaction within this return? (See instructions for definitions)  Yes  No  
If "Yes," complete and attach federal Form 8886 for each transaction.
- M** Is this corporation apportioning income to California using Schedule R?  Yes  No
- N** How many affiliates in the combined report are claiming immunity from taxation in California under Public Law 86-272?  \_\_\_\_\_
- O** Corporation headquarters are:  (1) Within California  (2) Outside of California, within the U.S.  (3) Outside of the U.S.
- P** Location of principal accounting records \_\_\_\_\_
- Q** Accounting method:  (1) Cash  (2) Accrual  (3) Other
- R** Does this corporation or any of its subsidiaries have a Deferred Intercompany Stock Account (DISA)?  Yes  No  
If "Yes," enter the total balance of all DISAs  \$ \_\_\_\_\_
- S** Is this corporation or any of its subsidiaries a RIC?  Yes  No
- T** Is this corporation treated as a REMIC for California purposes?  Yes  No
- U** Is this corporation a REIT for California purposes?  Yes  No
- V** Is this corporation an LLC or limited partnership electing to be taxed as a corporation for federal purposes?  Yes  No
- W** Is this corporation to be treated as a credit union?  Yes  No
- X** Is the corporation under audit by the IRS or has it been audited by the IRS in a prior year?  Yes  No
- Y** Have all required information returns (e.g. federal Forms 1099, 5471, 5472, 8300, 8865, etc.) been filed with the Franchise Tax Board?  N/A  Yes  No
- Z** Does the taxpayer (or any corporation of the taxpayer's combined group, if applicable) own 80% or more of the stock of an insurance company?  Yes  No
- AA** Did the corporation file the federal Schedule UTP (Form 1120)?  Yes  No
- BB** Does any member of the combined report own an SMLLC or generate/claim credits that are attributable to an SMLLC?  Yes  No

<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			<input type="checkbox"/> Telephone ( )
	Signature of officer <input type="checkbox"/>	Title	Date	
<b>Paid Preparer's Use Only</b>	Officer's email address (optional)			<input type="checkbox"/> PTIN <input type="checkbox"/> FEIN <input type="checkbox"/> Telephone ( )
	Preparer's signature <input type="checkbox"/>	Date	Check if self-employed <input type="checkbox"/>	
	Firm's name (or yours, if self-employed) and address <input type="checkbox"/>			
	May the FTB discuss this return with the preparer shown above? See instructions			



**Schedule A Taxes Deducted.** Use additional sheet(s) if necessary.

(a) Nature of tax	(b) Taxing authority	(c) Total amount	(d) Nondeductible amount
			00
			00
<b>Total.</b> Enter total of column (c) on Schedule F, line 17, and total of column (d) on Side 1, line 2 or line 3. If the corporation uses California computation method to compute the net income, see instructions.			00

**Schedule F Computation of Net Income.** See instructions.

Income	1 a) Gross receipts or gross sales					
	b) Less returns and allowance		c) Balance	●	1c	00
	2 Cost of goods sold. Attach federal Form 1125-A (California Schedule V)			●	2	00
	3 Gross profit. Subtract line 2 from line 1c			●	3	00
	4 Total dividends. Attach federal Schedule C, California Schedule H (100)			●	4	00
	5 a) Interest on obligations of the United States and U.S. instrumentalities			●	5a	00
	b) Other interest. Attach schedule			●	5b	00
	6 Gross rents			●	6	00
	7 Gross royalties			●	7	00
	8 Capital gain net income. Attach federal Schedule D (California Schedule D)			●	8	00
	9 Ordinary gain (loss). Attach federal Form 4797 (California Schedule D-1)			●	9	00
10 Other income (loss). Attach schedule			●	10	00	
11 <b>Total income.</b> Add line 3 through line 10			●	11	00	
Deductions	12 Compensation of officers. Attach federal Form 1125-E or equivalent schedule	●	12		00	
	13 Salaries and wages (not deducted elsewhere)	●	13		00	
	14 Repairs	●	14		00	
	15 Bad debts	●	15		00	
	16 Rents	●	16		00	
	17 Taxes (California Schedule A). See instructions	●	17		00	
	18 Interest. Attach schedule	●	18		00	
	19 Contributions. Attach schedule	●	19		00	
	20 Depreciation. Attach federal Form 4562 and FTB 3885	20				
	21 Less depreciation claimed elsewhere on return	21a	●	21b		00
	22 Depletion. Attach schedule	●	22		00	
	23 Advertising	●	23		00	
	24 Pension, profit-sharing plans, etc.	●	24		00	
	25 Employee benefit plans	●	25		00	
	26 a) Total travel and entertainment					
	b) Deductible amounts	●	26b		00	
	27 Other deductions. Attach schedule	●	27		00	
	28 Specific deduction for organizations under R&TC Section 23701r or 23701t. See instructions	●	28		00	
	29 <b>Total deductions.</b> Add line 12 through line 28	●	29		00	
30 <b>Net income before state adjustments.</b> Subtract line 29 from line 11. Enter here and on Side 1, line 1	●	30		00		

**Schedule J Add-On Taxes and Recapture of Tax Credits.** See instructions.

1 LIFO recapture due to S corporation election, IRC Sec. 1363(d) deferral: \$	●	1		00
2 Interest computed under the look-back method for completed long-term contracts (Attach form FTB 3834)	●	2		00
3 Interest on tax attributable to installment: a) Sales of certain timeshares and residential lots	●	3a		00
b) Method for nondealer installment obligations	●	3b		00
4 IRC Section 197(f)(9)(B)(ii) election	●	4		00
5 Credit recapture name:	●	5		00
6 Combine line 1 through line 5, revise Side 2, line 37 or line 38, whichever applies, by this amount. Write "Schedule J" to the left of line 37 or line 38	●	6		00

**Schedule V Cost of Goods Sold**

1	Inventory at beginning of year	1	00
2	Purchases	2	00
3	Cost of labor	3	00
4 a	Additional IRC Section 263A costs. Attach schedule	4a	00
b	Other costs. Attach schedule	4b	00
5	Total. Add line 1 through line 4b	5	00
6	Inventory at end of year	6	00
7	Cost of goods sold. Subtract line 6 from line 5. Enter here and on Side 3, Schedule F, line 2	7	00

Method of inventory valuation ▶ \_\_\_\_\_

Was there any change in determining quantities, costs of valuations between opening and closing inventory?  Yes  No  
If "Yes," attach an explanation.

Enter California seller's permit number, if any ▶ \_\_\_\_\_

Check if the LIFO inventory method was adopted this taxable year for any goods. If checked, attach federal Form 970

If the LIFO inventory method was used for this taxable year, enter the amount of closing inventory under LIFO \_\_\_\_\_

Do the rules of IRC Section 263A (with respect to property produced or acquired for resale) apply to the corporation?  Yes  No

**The corporation may not be required to complete Schedules L, M-1, and M-2. See Schedule M-1 instructions for reporting requirements.**

**Schedule L Balance Sheet**

	Beginning of taxable year		End of taxable year	
	(a)	(b)	(c)	(d)
<b>Assets</b>				
1 Cash			●	
2 a Trade notes and accounts receivable			●	
b Less allowance for bad debts	( )		● ( )	●
3 Inventories				●
4 Federal and state government obligations				●
5 Other current assets. Attach schedule(s)				●
6 Loans to stockholders/officers. Attach schedule				●
7 Mortgage and real estate loans				●
8 Other investments. Attach schedule(s)				●
9 a Buildings and other fixed depreciable assets			●	
b Less accumulated depreciation	( )		● ( )	●
10 a Depletable assets				
b Less accumulated depletion	( )		( )	
11 Land (net of any amortization)				●
12 a Intangible assets (amortizable only)			●	
b Less accumulated amortization	( )		( )	
13 Other assets. Attach schedule(s)				●
14 <b>Total assets</b>				●
<b>Liabilities and Stockholders' Equity</b>				
15 Accounts payable				●
16 Mortgages, notes, bonds payable in less than 1 year				●
17 Other current liabilities. Attach schedule(s)				●
18 Loans from stockholders. Attach schedule(s)				●
19 Mortgages, notes, bonds payable in 1 year or more				●
20 Other liabilities. Attach schedule(s)				●
21 Capital stock: a Preferred stock			●	
b Common stock			●	●
22 Paid-in or capital surplus. Attach reconciliation				●
23 Retained earnings – Appropriated. Attach schedule				
24 Retained earnings – Unappropriated				
25 Adjustments to shareholders' equity. Attach schedule				
26 Less cost of treasury stock		( )		( )
27 <b>Total liabilities and stockholders' equity</b>				

**Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return.**

If the corporation completed federal Schedule M-3 (Form 1120/1120-F), see instructions.

<b>1</b> Net income per books	●		<b>7</b> Income recorded on books this year not included in this return (itemize)	
<b>2</b> Federal income tax	●		<b>a</b> Tax-exempt interest	\$. _____
<b>3</b> Excess of capital losses over capital gains	●		<b>b</b> Other	\$. _____
<b>4</b> Taxable income not recorded on books this year (itemize)	●		<b>c</b> Total. Add line 7a and line 7b	●
<b>5</b> Expenses recorded on books this year not deducted in this return (itemize)	●		<b>8</b> Deductions in this return not charged against book income this year (itemize)	
<b>a</b> Depreciation		\$. _____	<b>a</b> Depreciation	\$. _____
<b>b</b> State taxes		\$. _____	<b>b</b> State tax refunds	\$. _____
<b>c</b> Travel and entertainment		\$. _____	<b>c</b> Other	\$. _____
<b>d</b> Other		\$. _____	<b>d</b> Total. Add line 8a through line 8c	●
<b>e</b> Total. Add line 5a through line 5d	●		<b>9</b> Total. Add line 7c and line 8d	
<b>6</b> Total. Add line 1 through line 5e	●		<b>10</b> Net income per return. Subtract line 9 from line 6	

**Schedule M-2 Analysis of Unappropriated Retained Earnings per Books** (Side 4, Schedule L, line 24)

<b>1</b> Balance at beginning of year	●		<b>5</b> Distributions:	
<b>2</b> Net income per books	●		<b>a</b> Cash	●
<b>3</b> Other increases (itemize)	●		<b>b</b> Stock	●
			<b>c</b> Property	●
			<b>6</b> Other decreases (itemize)	●
<b>4</b> Total. Add line 1 through line 3	●		<b>7</b> Total. Add line 5 and line 6	●
			<b>8</b> Balance at end of year. Subtract line 7 from line 4	

**Schedule D California Capital Gains and Losses**

**Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less.** Use additional sheet(s) if necessary.

(a) Kind of property and description (Example, 100 shares of Z Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Cost or other basis plus expense of sale	(f) Gain (loss) (d) less (e)
<b>1</b>					00
					00
					00
					00
					00
<b>2</b> Short-term capital gain from installment sales from form FTB 3805E, line 26 or line 37				<b>2</b>	00
<b>3</b> Unused capital loss carryover from 2010				<b>3</b>	00
<b>4</b> Net short-term capital gain (loss). Combine line 1 through line 3				● <b>4</b>	00

**Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year.** Use additional sheet(s) if necessary.

<b>5</b>					00
					00
					00
					00
					00
<b>6</b> Enter gain from Schedule D-1, line 9 and/or any capital gain distributions				<b>6</b>	00
<b>7</b> Long-term capital gain from installment sales from form FTB 3805E, line 26 or line 37				<b>7</b>	00
<b>8</b> Net long-term capital gain (loss). Combine line 5 through line 7				● <b>8</b>	00
<b>9</b> Enter excess of net short-term capital gain (line 4) over net long-term capital loss (line 8)				<b>9</b>	00
<b>10</b> Net capital gain. Enter excess of net long-term capital gain (line 8) over net short-term capital loss (line 4)				<b>10</b>	00
<b>11</b> Total lines 9 and 10. Enter here and on Form 100, Side 1, line 5.					00
If losses exceed gains, carry forward losses to 2012				<b>11</b>	00

**7.10. California Corporate Tax Return (Water's Edge)**

For calendar year 2013 or fiscal year beginning (mm/dd/yyyy) and ending (mm/dd/yyyy) RP

Corporation name California corporation number FEIN  
 Additional information. See instructions. California Secretary of State file number  
 Street address (suite/room no.) PMB no.  
 City (If the corporation has a foreign address, see instructions.) State ZIP code  
 Foreign country name Foreign province/state/country Foreign postal code

**Schedule Q Questions (continued on Side 2)**

- A FINAL RETURN?**  Dissolved  Surrendered (withdrawn)  Merged/Reorganized  IRC Section 338 sale  QSub election  
 Enter date (mm/dd/yyyy) ●   
**B 1.** Is income included in a combined report of a unitary group? ●  Yes  No  
**2.** If "Yes," indicate:  wholly within CA (R&TC 25101.15)  
 within and outside of CA  
**3.** Is there a change in the members listed in Schedule R-7 from the prior year? ●  Yes  No  
**4.** Enter the number of members (including parent or key corporation) listed in the Schedule R-7, Part I, Section A, subject to income or franchise tax ●   
**5.** Is form FTB 3544 and/or 3544A attached to the return? ●  Yes  No

State Adjustments	1	Net income (loss) before state adjustments. See instructions	●	1	00
	2	Amount deducted for foreign or domestic tax based on income or profits from Schedule A	●	2	00
	3	Amount deducted for tax under the provisions of the Corporation Tax Law from Schedule A	●	3	00
	4	Interest on government obligations	●	4	00
	5	Net California capital gain from Side 6, Schedule D, line 11	●	5	00
	6	Depreciation and amortization in excess of amount allowed under California law. Attach form FTB 3885	●	6	00
	7	a Net income from included CFCs from form FTB 2416, column (i). See instructions	●	7a	00
		b Net income from corporations not included in federal consolidated return. See instructions	●	7b	00
	8	Other additions. Attach schedule(s)	●	8	00
	9	Total. Add line 1 through line 8.	●	9	00
	10	Intercompany dividend deduction. Attach Schedule H (100W)	●	10	00
	11	a Foreign dividend deduction. Attach Schedule H (100W)	●	11a	00
		b Dividends received deduction. Attach Schedule H (100W)	●	11b	00
	12	Additional depreciation allowed under CA law. Attach form FTB 3885	●	12	00
	13	Capital gain from federal Form 1120, line 8	●	13	00
	14	Contributions	●	14	00
	15	EZ or LAMBRA business expense and EZ net interest deduction	●	15	00
	16	Other deductions. Attach schedule(s)	●	16	00
17	Total. Add line 10 through line 16.	●	17	00	
18	Net income (loss) after state adjustments. Subtract line 17 from line 9.	●	18	00	

CA Net Income	19	Net income (loss) for state purposes. Complete Schedule R if apportioning or allocating income. See instructions.	19	00
	20	Net operating loss (NOL) deduction. See instructions	20	00
	21	Pierce's disease, EZ, LARZ, TTA, or LAMBRA NOL deduction	21	00
Taxes	22	Disaster loss carryover deduction. See instructions.	22	00
	23	Net income for tax purposes. Combine line 20 through line 22. Then, subtract from line 19	23	00
	24	Tax. _____% x line 23 (not less than minimum franchise tax, if applicable). See instructions.	24	00
	25	New jobs credit a) amount generated b) amount claimed	25b	00
	26a	Credit name _____ code _____ amount _____	26a	00
	26b	Credit name _____ code _____ amount _____	26b	00
	27	To claim more than two credits, see instructions	27	00
	28	Add line 25b through line 27	28	00
	29	Balance. Subtract line 28 from line 24 (not less than minimum franchise tax, if applicable)	29	00
	30	Alternative minimum tax. Attach Schedule P (100W). See instructions	30	00
Payments	31	Total tax. Add line 29 and line 30	31	00
	32	Overpayment from prior year allowed as a credit	32	00
	33	2013 Estimated tax payments. See instructions	33	00
	34	2013 Withholding (Form 592-B and/or 593). See instructions	34	00
	35	Amount paid with extension of time to file tax return	35	00
	36	Total payments. Add line 32 through line 35	36	00
	Refund or Amount Due	37	Tax due. If line 31 is more than line 36, subtract line 36 from line 31. Go to line 41	37
38		Overpayment. If line 36 is more than line 31, subtract line 31 from line 36	38	00
39		Amount of line 38 to be credited to 2014 estimated tax.	39	00
40		Refund. Amount of line 38 to be refunded. Line 38 less line 39. See instructions to have the refund directly deposited.	40	00
		<input type="checkbox"/> Checking <input type="checkbox"/> Savings		
40a.		Routing number	40b.	Type
41	a Penalties and interest	41a	00	
	b <input type="checkbox"/> Check if estimate penalty computed using Exception B or C. See instructions			
42	Total amount due. Add line 37 and line 41a. Pay this amount	42	00	

**Schedule Q Questions (continued from Side 1)**

- C** This return is being filed pursuant to a water's-edge election under R&TC Section 25113, commencing on \_\_\_\_\_ Enter date (mm/dd/yyyy)
- D** Was the corporation's income included in a consolidated federal return?  Yes  No
- E** Principal business activity code. (Do not leave blank): \_\_\_\_\_  
Business activity \_\_\_\_\_  
Product or service \_\_\_\_\_
- F** Date incorporated (mm/dd/yyyy): \_\_\_\_\_  
Where:  State  Country \_\_\_\_\_
- G** Date business began in California or date income was first derived from California sources \_\_\_\_\_ (mm/dd/yyyy)
- H** First return?  Yes  No If "Yes" and this corporation is a successor to a previously existing business, check the appropriate box.  
 (1)  sole proprietorship (2)  partnership (3)  joint venture (4)  corporation (5)  other  
(Attach statement showing name, address, and FEIN/SSN/ITIN of previous business.)
- I** "Doing business as" name. See instructions:  
 \_\_\_\_\_

Schedule Q Questions (continued on Side 3)



**Schedule Q Questions** (continued from Side 2)

- J** 1. During this taxable year, did another person or legal entity acquire control or majority ownership (more than a 50% interest) of this corporation or any of its subsidiaries that owned California real property (i.e., land, buildings), leased such property for a term of 35 years or more, or leased such property from a government agency for any term?  Yes  No
2. During this taxable year, did this corporation or any of its subsidiaries acquire control or majority ownership (more than a 50% interest) in another legal entity that owned California real property (i.e., land, buildings), leased such property for a term of 35 years or more, or leased such property from a government agency for any term?  Yes  No
3. During this taxable year, has more than 50% of the voting stock of this corporation cumulatively transferred in one or more transactions after an interest in California real property (i.e., land, buildings) was transferred to it that was excluded from property tax reassessment under R&TC Section 62(a)(2) and it was not reported on a previous year's tax return?  Yes  No
- (Yes requires filing of statement, penalties may apply— see instructions.)
- K** At any time during the taxable year, was more than 50% of the voting stock:
1. Of the corporation owned by any single interest?  Yes  No
2. Of another corporation owned by this corporation?  Yes  No
3. Of this and one or more other corporations owned or controlled, directly or indirectly, by the same interests?  Yes  No
- If 1 or 3 is "Yes," enter the country of the ultimate parent \_\_\_\_\_
- If 1, 2, or 3 is "Yes," furnish a statement of ownership indicating pertinent names, addresses, and percentages of stock owned. If the owner(s) is an individual, provide the SSN/ITIN.
- L** Has the corporation included a reportable transaction or listed transaction within this return? (See instructions for definitions)  Yes  No
- If "Yes," complete and attach federal Form 8886 for each transaction.
- M** Is this corporation apportioning or allocating income to California using Schedule R?  Yes  No
- N** How many affiliates in the combined report are claiming immunity from taxation in California under Public Law 86-272?  \_\_\_\_\_
- O** Corporation headquarters are:  (1) Within California  (2) Outside of California, within the U.S.  (3) Outside of the U.S.
- P** Location of principal accounting records \_\_\_\_\_
- Q** Accounting method:  (1) Cash  (2) Accrual  (3) Other
- R** Does this corporation or any of its subsidiaries have a Deferred Intercompany Stock Account (DISA)?  Yes  No
- If "Yes," enter the total balance of all DISAs  \$ \_\_\_\_\_
- S** Is this corporation or any of its subsidiaries a RIC?  Yes  No
- T** Is this corporation treated as a REMIC for California purposes?  Yes  No
- U** Is this corporation a REIT for California purposes?  Yes  No
- V** Is this corporation an LLC or limited partnership electing to be taxed as a corporation for federal purposes?  Yes  No
- W** Is this corporation to be treated as a credit union?  Yes  No
- X** Is the corporation under audit by the IRS or has it been audited by the IRS in a prior year?  Yes  No
- Y** Have all required information returns (e.g. federal Forms 1099, 5471, 5472, 8300, 8865, etc.) been filed with the Franchise Tax Board?  N/A  Yes  No
- Z** Does the taxpayer (or any corporation of the taxpayer's combined group, if applicable) own 80% or more of the stock of an insurance company?  Yes  No
- AA** Did the corporation file the federal Schedule UTP (Form 1120)?  Yes  No
- BB** Does any member of the combined report own an SMLLC or generate/claim credits that are attributable to an SMLLC?  Yes  No

<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			<input checked="" type="radio"/> Telephone ( )
	Signature of officer ▶	Title	Date	
<b>Paid Preparer's Use Only</b>	Officer's email address (optional)			<input checked="" type="radio"/> PTIN
	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	<input checked="" type="radio"/> FEIN
	Firm's name (or yours, if self-employed) and address ▶			<input checked="" type="radio"/> Telephone ( )
	May the FTB discuss this return with the preparer shown above? See instructions			<input checked="" type="radio"/> Yes <input type="radio"/> No

<b>Schedule A Taxes Deducted.</b> Use additional sheet(s) if necessary.			
(a) Nature of tax	(b) Taxing authority	(c) Total amount	(d) Nondeductible amount
			00
			00
<b>Total.</b> Enter total of column (c) on Schedule F, line 17, and total of column (d) on Side 1, line 2 or line 3. If the corporation uses California computation method to compute the net income, see instructions.....			00

**Schedule F Computation of Net Income.** See instructions.

<b>Income</b>	<b>1 a</b> Gross receipts or gross sales				
	<b>b</b> Less returns and allowance			<b>c</b> Balance	00
	<b>2</b> Cost of goods sold. Attach federal Form 1125-A (California Schedule V)				00
	<b>3</b> Gross profit. Subtract line 2 from line 1c				00
	<b>4</b> Total dividends. Attach federal Schedule C, California Schedule H (100W)				00
	<b>5 a</b> Interest on obligations of the United States and U.S. instrumentalities				00
	<b>b</b> Other interest. Attach schedule				00
	<b>6</b> Gross rents				00
	<b>7</b> Gross royalties				00
	<b>8</b> Capital gain net income. Attach federal Schedule D (California Schedule D)				00
	<b>9</b> Ordinary gain (loss). Attach federal Form 4797 (California Schedule D-1)				00
<b>10</b> Other income (loss). Attach schedule				00	
<b>11 Total income.</b> Add line 3 through line 10				00	
<b>Deductions</b>	<b>12</b> Compensation of officers. Attach federal Form 1125-E or equivalent schedule				00
	<b>13</b> Salaries and wages (not deducted elsewhere)				00
	<b>14</b> Repairs				00
	<b>15</b> Bad debts				00
	<b>16</b> Rents				00
	<b>17</b> Taxes (California Schedule A). See instructions				00
	<b>18</b> Interest. Attach schedule				00
	<b>19</b> Contributions. Attach schedule				00
	<b>20</b> Depreciation. Attach federal Form 4562 and FTB 3885				00
	<b>21</b> Less depreciation claimed elsewhere on return				00
	<b>22</b> Depletion. Attach schedule				00
	<b>23</b> Advertising				00
	<b>24</b> Pension, profit-sharing plans, etc.				00
	<b>25</b> Employee benefit plans				00
	<b>26 a</b> Total travel and entertainment				00
	<b>b</b> Deductible amounts				00
	<b>27</b> Other deductions. Attach schedule				00
	<b>28 Total deductions.</b> Add line 12 through line 27				00
	<b>29</b> Net income before state adjustments. Subtract line 28 from line 11. Enter here and on Side 1, line 1				00

**Schedule J Add-On Taxes and Recapture of Tax Credits.** See instructions.

<b>1</b> LIFO recapture due to S corporation election, IRC Sec. 1363(d) deferral: \$				00
<b>2</b> Interest computed under the look-back method for completed long-term contracts (Attach form FTB 3834)				00
<b>3</b> Interest on tax attributable to installment: <b>a</b> Sales of certain timeshares and residential lots				00
<b>b</b> Method for nondealer installment obligations				00
<b>4</b> IRC Section 197(f)(9)(B)(ii) election				00
<b>5</b> Credit recapture name:				00
<b>6</b> Combine line 1 through line 5, revise Side 2, line 37 or line 38, whichever applies, by this amount. Write "Schedule J" to the left of line 37 or line 38				00

**Schedule V Cost of Goods Sold**

1	Inventory at beginning of year	<input checked="" type="radio"/>	1	00
2	Purchases	<input checked="" type="radio"/>	2	00
3	Cost of labor	<input checked="" type="radio"/>	3	00
4 a	Additional IRC Section 263A costs. Attach schedule	<input checked="" type="radio"/>	4a	00
4 b	Other costs. Attach schedule	<input checked="" type="radio"/>	4b	00
5	Total. Add line 1 through line 4b		5	00
6	Inventory at end of year		6	00
7	Cost of goods sold. Subtract line 6 from line 5. Enter here and on Side 4, Schedule F, line 2		7	00

Method of inventory valuation  LIFO  FIFO  Other

Was there any change in determining quantities, costs of valuations between opening and closing inventory?  Yes  No  
If "Yes," attach an explanation.

Enter California seller's permit number, if any \_\_\_\_\_

Check if the LIFO inventory method was adopted this taxable year for any goods. If checked, attach federal Form 970

If the LIFO inventory method was used for this taxable year, enter the amount of closing inventory under LIFO \_\_\_\_\_

Do the rules of IRC Section 263A (with respect to property produced or acquired for resale) apply to the corporation?  Yes  No

**The corporation may not be required to complete Schedules L, M-1, and M-2. See Schedule M-1 instructions for reporting requirements.**

**Schedule L Balance Sheet**

	Beginning of taxable year		End of taxable year	
	(a)	(b)	(c)	(d)
<b>Assets</b>				
1 Cash	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
2 a Trade notes and accounts receivable	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
b Less allowance for bad debts	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
3 Inventories	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
4 Federal and state government obligations	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
5 Other current assets. Attach schedule(s)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
6 Loans to stockholders/officers. Attach schedule	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
7 Mortgage and real estate loans	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
8 Other investments. Attach schedule(s)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
9 a Buildings and other fixed depreciable assets	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
b Less accumulated depreciation	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
10 a Depletable assets	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
b Less accumulated depletion	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
11 Land (net of any amortization)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
12 a Intangible assets (amortizable only)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
b Less accumulated amortization	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
13 Other assets. Attach schedule(s)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
14 <b>Total assets</b>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
<b>Liabilities and Stockholders' Equity</b>				
15 Accounts payable	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
16 Mortgages, notes, bonds payable in less than 1 year	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
17 Other current liabilities. Attach schedule(s)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
18 Loans from stockholders. Attach schedule(s)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
19 Mortgages, notes, bonds payable in 1 year or more	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
20 Other liabilities. Attach schedule(s)	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
21 Capital stock: a Preferred stock	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
b Common stock	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
22 Paid-in or capital surplus. Attach reconciliation	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
23 Retained earnings – Appropriated. Attach schedule	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
24 Retained earnings – Unappropriated	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
25 Adjustments to shareholders' equity. Attach schedule	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
26 Less cost of treasury stock	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
27 <b>Total liabilities and stockholders' equity</b>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>

**Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return.**

If the corporation completed federal Schedule M-3 (Form 1120/1120-F), see instructions.

1 Net income per books		7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		a Tax-exempt interest . \$	
3 Excess of capital losses over capital gains		b Other . . . . . \$	
4 Taxable income not recorded on books this year (itemize)		c Total. Add line 7a and line 7b.	
5 Expenses recorded on books this year not deducted in this return (itemize)		8 Deductions in this return not charged against book income this year (itemize)	
a Depreciation . . . \$		a Depreciation . . . . \$	
b State taxes . . . \$		b State tax refunds . \$	
c Travel and entertainment . \$		c Other . . . . . \$	
d Other . . . . . \$		d Total. Add line 8a through line 8c . . . .	
e Total. Add line 5a through line 5d . . . . .		9 Total. Add line 7c and line 8d . . . . .	
6 Total. Add line 1 through line 5e . . . . .		10 Net income per return.	
		Subtract line 9 from line 6 . . . . .	

**Schedule M-2 Analysis of Unappropriated Retained Earnings per Books** (Side 5, Schedule L, line 24)

1 Balance at beginning of year		5 Distributions:	
2 Net income per books		a Cash . . . . .	
3 Other increases (itemize)		b Stock . . . . .	
		c Property . . . . .	
		6 Other decreases (itemize)	
4 Total. Add line 1 through line 3 . . . . .		7 Total. Add line 5 and line 6 . . . . .	
		8 Balance at end of year.	
		Subtract line 7 from line 4 . . . . .	

**Schedule D California Capital Gains and Losses**

**Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less.** Use additional sheet(s) if necessary.

(a) Kind of property and description (Example, 100 shares of Z Co.)	(b) Date acquired (mm/dd/yyyy)	(c) Date sold (mm/dd/yyyy)	(d) Gross sales price	(e) Cost or other basis plus expense of sale	(f) Gain (loss) (d) less (e)
1					00
					00
					00
					00
					00
2 Short-term capital gain from installment sales from form FTB 3805E, line 26 or line 37 . . . . .				2	00
3 Unused capital loss carryover from 2012 . . . . .				3	00
4 Net short-term capital gain (loss). Combine line 1 through line 3 . . . . .				4	00

**Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year.** Use additional sheet(s) if necessary.

5					00
					00
					00
					00
					00
6 Enter gain from Schedule D-1, line 9 and/or any capital gain distributions . . . . .				6	00
7 Long-term capital gain from installment sales from form FTB 3805E, line 26 or line 37 . . . . .				7	00
8 Net long-term capital gain (loss). Combine line 5 through line 7 . . . . .				8	00
9 Enter excess of net short-term capital gain (line 4) over net long-term capital loss (line 8) . . . . .				9	00
10 Net capital gain. Enter excess of net long-term capital gain (line 8) over net short-term capital loss (line 4) . . . . .				10	00
11 Total lines 9 and 10. Enter here and on Form 100W, Side 1, line 5.					
If losses exceed gains, carry forward losses to 2014 . . . . .				11	00

## 7.11. Job Description

[Company Name]

<b>Job Title:</b>	Accounting Manager	<b>Department:</b>	Finance and Administration
<b>Location:</b>	Santa Clara, California	<b>Travel Required:</b>	Minimum
<b>Salary Range:</b>	\$60,000-80,000	<b>Position Type:</b>	Full-Time Exempt
<b>Report To:</b>	Chief Financial Officer	<b>Post-Hire Training</b>	Available
<b>Job Description</b>			
<b>ROLE AND RESPONSIBILITIES</b>			
<ul style="list-style-type: none"> <li>- Manage Accounting Department personnel for day-to-day financial operation, including but not limited to: <ul style="list-style-type: none"> <li>• Maintain Books of Accounting Records of the Company;</li> <li>• Reconcile Bank Accounts and others if necessary;</li> <li>• Manage cash flow and monitor cash requirements of the Company;</li> <li>• Analyze taxes and expenses for potential cost savings.</li> </ul> </li> <li>- Prepare Preliminary Quarterly and Annual Financial Statements of the Company to present to CFO.</li> <li>- Supervise and manage outside tax professionals to prepare tax returns for the Company.</li> <li>- Perform strategic financial analysis upon request from management.</li> </ul>			
<b>PREFERRED SKILLS</b>			
Bookkeeping; Financial Analysis; Tax Return Preparation			
<b>QUALIFICATIONS AND EDUCATIONAL REQUIREMENTS</b>			
Bachelor's Degree or higher in Accounting, Business Administration, Taxation or Finance, or job experience to supplement lack of degree or formal education.			
<b>ADDITIONAL NOTES</b>			
<ul style="list-style-type: none"> <li>- CPA LICENSE IS DESIRED, BUT NOT REQUIRED.</li> <li>- MS IN TAXATION IS A PLUS.</li> </ul>			

Job Description: Accounting Manager



## 7.12. Employment Offer Letter

[LETTER HEAD]

[Date]

[Addressee's Name]  
[Addressee's Address]  
[City, State ZIP]

**Re: Offer of Employment**

Dear [Addressee's Name]:

We are pleased to offer you the employment with [Name of the Company], a [State of Incorporation] corporation (the "Company") in the position of [Position/Title], directly reporting to [Supervisor's Name and Position], as a full-time exempt employee.

As [Position/Title], you will be responsible for:

[Job Description]

Your compensation package includes the following:

- i) Salary of \$[Amount] per [Pay Frequency] (annual equivalence of \$[Annual Amount]), paid [Payroll Schedule: Semi-monthly/Bi-weekly/Monthly] in accordance with the Company's regular payroll schedule, less applicable required withholdings and deductions;
- ii) Participation in a number of Company-sponsored benefits which are described in the employee benefit section of the Employee Handbook which will be provided to you. The eligibility criteria and amount and extent of benefits to which you may be entitled shall be governed by the then-current specific benefit plan as it may be amended from time to time by the Company; and
- iii) Subject to the approval by the Company's Board of Directors, and the provisions of the Company's equity incentive plan and stock option grant agreement, you will be entitled to receive stock options (the "Options") to purchase \_\_\_\_\_ shares of common stock of the Company [or, the Company's parent]. The Options will be subject to standard vesting schedule commencing on the effective date of your employment.

In addition, all reasonable and necessary business expenses that are documented by you and incurred in the ordinary course of business will be reimbursed in accordance with the Company's standard policies and procedures.

Unless otherwise agreed to in writing by the Company, you will not be entitled to any additional compensation or Company-sponsored benefits.

[LETTER HEAD]

You will be expected to abide by the Company's rules and policies which may be amended, modified, revised, or otherwise adopted by the Company during the term of your employment.

Please be reminded that this offer of your employment with the Company is an "At-Will" employment and for no specific period of time. Accordingly, either you or Company may terminate your employment at any time for any reason, with or without cause. Although your job duties, title, compensation and benefits, as well as the Company's policies and procedures, may change from time-to-time, the "At-Will" nature of your employment may only be changed in a document signed by you and the duly authorized representative of the Company.

Your employment pursuant to this offer is contingent upon your executing a Proprietary Information, Inventions and Non-Solicitation Agreement, the successful completion of reference checks, and your submission of proof of eligibility for employment in the United States.

This letter of offer of employment integrates and supersedes any prior or contemporaneous representations or agreements, whether written or oral, regarding the terms and conditions of your employment with the Company, and for your convenience, enclosed please find a copy of this offer.

[Name], if you agree with, and accept, the terms and conditions of this offer of employment, please sign and return your original signatures on this letter and the executed Proprietary Information, Inventions and Non-Solicitation Agreement to me. This offer, if not accepted, will expire on September 8, 2014.

We look forward to having us join us at [Name of the Company].

Sincerely,

\_\_\_\_\_  
[Name and Title]

**I have read and accept this employment offer.**

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

**7.13. Employee Handbook**

**[COMPANY NAME]  
EMPLOYEE HANDBOOK**

[Company Name]  
Employee Handbook  
January 19, 2015

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## **SECTION 1      INTRODUCTION**

### **1.1 Welcome to [Company Name]**

[Company Name] is committed to providing superior quality and unparalleled customer service in all aspects of our business. We believe each employee contributes to the success and growth of our company. At the same time, we value our employees more than any assets of the company. This employee handbook contains general information on our policies, practices, and benefits. Please read it carefully. If you have questions regarding the handbook, please discuss them with your supervisor or the Human Resources Manager. Welcome aboard. We look forward to working with you! Sincerely,

### **1.2 Employee Handbook**

This Employee Handbook ("Handbook") is designed to summarize certain personnel policies and benefits of [Company Name] (the "Company") and to acquaint employees with many of the rules concerning employment with the Company. This Handbook applies to all employees, and compliance with the Company's policies is a condition of employment. This Handbook supersedes all previous employment policies, written and oral, express and implied. The Company reserves the right to modify, rescind, delete, or add to the provisions of this Handbook from time to time in its sole and absolute discretion. This Employee Handbook is not a binding contract between the Company and its employees, nor is it intended to alter the at-will employment relationship between the Company and its employees. The Company reserves the right to interpret the policies in this Handbook and to deviate from them when, in its discretion, it determines it is appropriate.

### **1.3 Changes in Policy**

Since our business is constantly changing, the Company expressly reserves the right to revise, modify, delete, or add to any and all policies, procedures, work rules, or benefits stated in this handbook or in any other document, except for the policy of at-will employment as described below. No oral statements or representations can in any way alter the provisions of this Handbook. Nothing in this employee handbook or in any other document, including benefit plan descriptions, creates or is intended to create a promise or representation of continued employment for any employee. Any changes to your at-will employment status, described below, must be in writing and must be signed by the Company.

If you are uncertain about any policy or procedure, please check with your manager or Human Resources.

### **1.4 Employment-At-Will**

Employment with the Company is on an at-will basis, unless otherwise specified in a written employment agreement. You are free to resign at any time, for any reason, with or without notice. Similarly, the Company is free to conclude the employment relationship at any time for any lawful reason, with or without cause, and with or without notice.

Nothing in this Handbook will limit the right of either party to terminate an at-will employment. No section of this Handbook is meant to be construed, nor should be construed, as establishing anything other than an employment-at-will relationship. This Handbook does not limit management's discretion to make personnel decisions such as reassignment, change of wages and benefits, demotion, etc. No person other than the CEO, President, or CFO has the authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will terms. Only the CEO, President, or CFO of the Company has the authority to make any such agreement, which is only binding if it is in writing and signed by the President of the Company.

## **1.5 Arbitration Policy**

### **2.1.1. Arbitration**

In consideration of your employment with the company, its promise to arbitrate all employment-related disputes, and your receipt of the compensation, pay raises, and other benefits paid to you by the company, at present and in the future, you agree that any and all controversies, claims, or disputes with anyone (including the company and any employee, officer, director, or benefit plan of the company, in their capacity as such or otherwise), arising out of, relating to, or resulting from your employment with the company or the termination of your employment with the company, including any breach of this agreement, shall be subject to binding arbitration under the arbitration rules set forth in California Code of Civil Procedure § 1280 through 1294.2, including § 1281.8 (the "Act"), and pursuant to California law. The federal arbitration act shall continue to apply with full force and effect notwithstanding the application of procedural rules set forth in the act. Disputes that you agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California labor code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. You further understand that this agreement to arbitrate also applies to any disputes that the company may have with you.

Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class/representative/collective actions are not permitted. YOU AND EMPLOYER AGREE THAT A PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN EACH'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PUTATIVE CLASS, COLLECTIVE AND/ OR REPRESENTATIVE PROCEEDING, SUCH AS IN THE FORM OF A PRIVATE ATTORNEY GENERAL ACTION AGAINST THE OTHER. Further, unless both you and Employer agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

### **2.1.2. Procedure**

Any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("JAMS"), pursuant to its employment arbitration rules & procedures (the "JAMS rules"). The arbitrator shall have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. The arbitrator shall have the power to award any remedies available under applicable law, and the arbitrator shall award attorneys' fees and costs to the prevailing party, except as prohibited by law. The arbitration shall conform to the JAMS minimum standards for employment arbitration. The company will pay for any administrative or hearing fees charged by the arbitrator or JAMS except that you shall pay any filing fees associated with any arbitration that you initiate, but only so much of the filing fees as you would have instead paid had you filed a complaint in a court of law. You agree that the arbitrator shall administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure, and that the arbitrator shall apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS rules conflict with California law, California law shall take precedence. The decision of the arbitrator shall be in writing. Any arbitration under this agreement shall be conducted in San Francisco County, California.

### **2.1.3. Remedy**

**Except as provided by the act**, arbitration shall be the sole, exclusive, and final remedy for any dispute between you and [Company Name]. **Accordingly, except as provided for by the act**, neither you nor the company will be permitted to pursue court action regarding claims that are subject to arbitration.

### **2.1.4. Administrative Relief**

You are not prohibited from pursuing an administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers' Compensation Board. However, you may not pursue court action regarding any such claim, except as permitted by law.

## **SECTION 2 EMPLOYMENT POLICIES**

### **2.1 Employee Classifications**

The following terms are used to describe employees and their employment status:

#### **2.1.1. Exempt Employees**

Employees whose positions meet specific tests established by the Federal Labor Standards Act ("FLSA") and California state law. In general, exempt employees are those engaged in executive, managerial, high-level administrative and professional jobs who are paid a fixed salary and perform certain duties. In addition, certain commissioned sales employees and

highly paid computer professionals are exempt. Exempt employees are not subject to the minimum wage and overtime laws.

**2.1.2. Nonexempt Employees**

Employees whose positions do not meet specific tests established by the FLSA and California state law. All employees who are covered by the federal or state minimum wage and overtime laws are considered nonexempt. Employees working in nonexempt jobs are entitled to be paid at least the minimum wage per hour and a premium for overtime.

**2.1.3. Full-Time Employees**

Employees who are not temporary employees, independent contractors, or independent consultants and who are regularly scheduled to work a schedule of 30 hours per work week.

**2.1.4. Part-Time Employees**

Employees who are not temporary employees, independent contractors, or independent consultants and who are regularly scheduled to work less than 30 hours per work week.

**2.1.5. Temporary Employees**

Employees who are hired as interim replacements to temporarily supplement the workforce or to assist in the completion of a specific project. Employment assignments in this category are of limited duration and the temporary employee can be let go before the end of the defined period. Short term assignments generally are periods of three (3) months or less, however, such assignments may be extended. All Temporary employees are at-will regardless of the anticipated duration of the assignment (see Employment-at-Will Policy). Temporary employees retain that status unless and until notified in writing of a change.

**2.1.6. Independent Contractor or Consultant**

These individuals are not employees of the Company and are self-employed. An independent contractor or consultant is engaged to perform a task according to his/her own methods and is subject to control and direction only as to the results to be accomplished. Independent contractors or consultants are not entitled to benefits.

Each employee will be advised of his or her status at the time of hire and any change in status. Regardless of the employee's status, the employee is employed at-will and the employment relationship can be terminated by the Company or the employee at any time, with or without cause and with or without notice.

**2.2 Equal Employment Opportunity & Americans with Disabilities Act.**

It is the policy of the Company to provide equal employment opportunities to all employees and employment applicants without regard to unlawful considerations of race, religion, creed, color, national origin, sex, pregnancy, sexual orientation, gender identity, age, ancestry, physical or mental disability, genetic information, marital status or any other



classification protected by applicable local, state or federal laws. This policy prohibits unlawful discrimination based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics. This policy applies to all aspects of employment, including, but not limited to, hiring, job assignment, working conditions, compensation, promotion, benefits, scheduling, training, discipline and termination.

The Company expects all employees to support our equal employment opportunity policy, and to take all steps necessary to maintain a workplace free from unlawful discrimination and harassment and to accommodate others in line with this policy to the fullest extent required by law. For example, the Company will make reasonable accommodations for employees' observance of religious holidays and practices unless the accommodation would cause an undue hardship on the Company's operations. If you desire a religious accommodation, you are required to make the request in writing to your manager as far in advance as possible. You are expected to strive to find co-workers who can assist in the accommodation (e.g. trade shifts) and cooperate with the Company in seeking and evaluating alternatives.

Moreover, in compliance with the Americans with Disabilities Act (ADA), the Company provides reasonable accommodations to qualified individuals with disabilities to the fullest extent required by law. The Company may require medical certification of both the disability and the need for accommodation. Keep in mind that the Company can only seek to accommodate the known physical or mental limitations of an otherwise qualified individual. Therefore, it is your responsibility to come forward if you are in need of an accommodation. The Company will engage in an interactive process with the employee to identify possible accommodations, if any will help the applicant or employee perform the job.

### **2.3 Confidentiality.**

In the course of employment with the Company, employees may have access to "Confidential Information" regarding the Company, which may include its business strategy, future plans, financial information, contracts, suppliers, customers, personnel information or other information that the Company considers proprietary and confidential. Maintaining the confidentiality of this information is vital to the Company's competitive position in the industry and, ultimately, to its ability to achieve financial success and stability. Employees must protect this information by safeguarding it when in use, using it only for the business of the Company and disclosing it only when authorized to do so and to those who have a legitimate business need to know about it. This duty of confidentiality applies whether the employee is on or off the Company's premises, and during and even after the end of the employee's employment with the Company. This duty of confidentiality also applies to communications transmitted by the Company's electronic communications. See also Internet, Email and Computer Use policy, herein.

As a condition of employment with the Company, all employees must sign a Non-Disclosure Agreement.

#### **2.4 Employment of Minors.**

The FLSA's child labor provisions, which the Company strictly adheres to, are designed to protect the educational opportunities of youth and prohibit their employment in jobs that are detrimental to their health and safety. Generally speaking, the FLSA sets the minimum age for employment (14 years for non-agricultural jobs), restricts the hours youth under the age of 16 may work, and prohibits youth under the age of 18 from being employed in hazardous occupations. In addition, the FLSA establishes subminimum wage standards for certain employees who are less than 20 years of age, full-time students, student learners, apprentices, and workers with disabilities. Employers generally must have authorization from the U.S. Department of Labor's Wage and Hour Division (WHD) in order to pay sub-minimum wage rates.

#### **2.5 Employment of Relatives.**

The Company recognizes that the employment of relatives in certain circumstances, such as when they will work in the same department, supervise or manage the other, or have access to confidential or sensitive information regarding the other, can cause problems related to supervision, safety, security or morale, or create conflicts of interest that materially and substantially disrupt the Company's operations. When the Company determines any of these problems will be present, it will decline to hire an individual to work in the same department as a relative. Relatives subject to this policy include: father, mother, sister, brother, current spouse or domestic partner, child (natural, foster, or adopted), current mother-in-law, current father-in-law, grandparent, or grandchild.

If present employees become relatives during employment, the Company should be notified so that we may determine whether a problem involving supervision, safety, security or morale, or a conflict of interest that would materially and substantially disrupt the Company's operations exists. If the Company determines that such a problem exists, the Company will take appropriate steps to resolve the problem, which may include reassignment of one relative (if feasible) or asking for the resignation of one of the relatives.

#### **2.6 Introductory Period.**

The first 90 days of employment are considered an introductory period for all newly hired employees. During this time, you will learn your new responsibilities, get acquainted with fellow employees, and determine whether you are happy with the position. Also, during this time, your manager will monitor your performance. Upon completion of the introductory period, your manager will review your performance. If the Company finds your performance satisfactory and decides to continue your employment, you will be advised of any improvements expected. This is also an opportunity for you to make suggestions to improve the Company's efficiency and operations. Completion of the introductory period does not entitle you to remain employed by the Company for any definite period of time, but instead allows both you and the Company to evaluate whether or not you are right for the position. Your status as an at-will employee does not change-the employment relationship may be terminated with or without cause and with or without advance notice, at any time by you or the Company.

### **2.7 Personnel Records and Employee References.**

The Company maintains a personnel file and payroll records for each employee as required by law. Personnel files and payroll records are the property of the Company and may not be removed from Company premises without written authorization. Because personnel files and payroll records are confidential, access to the records is restricted. Generally, only those who have a legitimate reason to review information in an employee's file are allowed to do so. Disclosure of personnel information to outside sources will be limited. However, the Company will cooperate with requests from authorized law enforcement or local, state, or federal agencies conducting official investigations and as otherwise legally required.

Employees may contact a Human Resources representative to request a time to review their payroll records and/or personnel file. With reasonable advance notice, an employee may review his or her own records in the Company's offices during regular business hours and in the presence of an individual appointed by the Company to maintain the records. You also have the right to obtain a copy of your personnel files, but you may be required to pay for any such copies. You may add your comments to any disputed item in the file.

By policy, the Company will provide only the former or present employee's dates of employment and position(s) held with the Company. Compensation information may also be verified if written authorization is provided by the employee.

### **2.8 Privacy.**

The Company is respectful of employee privacy. All employee demographic and personal information will be shared only as required in the normal course of business. Healthcare enrollment information is kept in a separate folder from other human resources forms. Workers' Compensation information is not considered private healthcare information; however, this information will be released only on a need-to-know basis.

The Company does not make or receive any private healthcare information through the course of normal work. If any employee voluntarily shares private healthcare information with a member of management, this information will be kept confidential. If applicable, the Company will set up guidelines for employees and management to follow to ensure that company employees conform to the requirements of the Health Insurance Portability and Accountability Act (HIPAA).

### **2.9 Immigration Law Compliance.**

In compliance with the Immigration Reform and Control Act of 1986, each new employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 on the date of hire and present documentation establishing identity and employment eligibility within three business days of date of hire. Former employees who are rehired must also complete an I-9 form if they have not completed an I-9 form with the Company within the past three years, or if their previous I-9 form is no longer retained or valid. You may raise questions or complaints about immigration law compliance without fear of reprisal.

### **2.10 Political Neutrality.**

Maintenance of individual freedom and our political institutions necessitates broad scale participation by citizens concerning the selection, nomination and election of our public office holders. The Company will not discriminate against any employee because of identification with and support of any lawful political activity. Company employees are entitled to their own personal political position. The Company will not discriminate against employees based on their lawful political activity engaged in outside of work. If you are engaging in political activity, however, you should always make it clear that your actions and opinions are your own and not necessarily those of the Company, and that you are not representing the Company.

## **SECTION 3 HOURS OF WORK AND PAYROLL PRACTICES**

### **3.1 Pay Periods and Paydays.**

Employees are paid on a bi-monthly basis. All employees will be paid on the 15th and the last day of the month. All employees are paid by check or direct deposit on the above-mentioned payday. If the regular payday falls on a weekend or Company holiday, employees will be paid on the last business day before the holiday and/or weekend.

### **3.2 Overtime.**

Nonexempt employees will be paid in accordance with federal and California state law.

In California, with some exceptions, the standard work week for employees should not exceed 8 hours per day or 40 hours per week. Should the Company find it necessary to employ an employee in excess of these standards, overtime hours shall be compensated at the rate of one and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

All overtime work by non-exempt employees must be authorized in advance by their manager. Only hours actually worked will be used to calculate overtime pay.

### **3.3 Rest and Meal Periods.**

All rest and meal periods will be in accordance with California state law.

Nonexempt employees will be provided a 10-minute rest break for every four hour period of work. This time is counted and paid as time worked. Employees scheduled to work more than a five hour period will be provided a 30-minute unpaid meal period. Non-exempt employees who work six hours may waive their meal break. Non-exempt employees working more than ten hours are entitled to a second meal period, except that if the time worked does not exceed twelve hours, the second meal period may be waived by mutual consent between the employee and his/her manager. Reasonable break time will be provided to breast-feed an infant or to express

breast milk. Time is counted as paid if taken concurrent with other break time, otherwise, time is counted as unpaid.

### **3.4 Payroll Deductions.**

Various payroll deductions are made each payday to comply with federal and state laws pertaining to taxes and insurance. Deductions will be made for the following: Federal and State Income Tax Withholding, Social Security, Medicare, State Disability Insurance & Family Temporary Disability Insurance, and other items designated by you or required by law (including a valid court order). You can adjust your federal and state income tax withholding by completing the proper federal or state form and submitting it to Accounting or Human Resources. At the start of each calendar year, you will be supplied with your Wage and Tax Statement (W-2) form for the prior year. This statement summarizes your income and deductions for the year.

### **3.5 Wage Garnishment.**

A garnishment is a court order requiring an employer to remit part of an employee's wages to a third party to satisfy a just debt. Once the Company receives the legal papers ordering a garnishment, we are required by law to continue making deductions from your check until we have withheld the full amount or until we receive legal papers from the court to stop the garnishment. Even if you have already paid the debt, we still need the legal papers to stop the garnishment.

### **3.6 Direct Deposit.**

All employees are encouraged, but not required, to use direct deposit and have their paychecks deposited into a bank account of an accredited participating bank or credit union.

## **SECTION 4 STANDARDS OF CONDUCT AND EMPLOYEE PERFORMANCE**

### **4.1 Anti- Harassment and Discrimination.**

The Company is committed to providing a work environment free of sexual or any form of unlawful harassment or discrimination. Harassment or unlawful discrimination against individuals on the basis of race, religion, creed, color, national origin, sex, pregnancy, sexual orientation, gender identity, age, ancestry, physical or mental disability, genetic information, marital status or any other classification protected by local, state or federal laws is illegal and prohibited by Company policy. Such conduct by or towards any employee, contract worker, customer, vendor or anyone else who does business with the Company will not be tolerated. Any employee or contract worker who violates this policy will be subject to disciplinary action, up to and including termination of his or her employment or engagement. To the extent a customer, vendor or other person with whom the Company does business engages in unlawful harassment or discrimination, the Company will take appropriate corrective action.



**Prohibited Conduct:**

Prohibited harassment or discrimination includes any verbal, physical or visual conduct based on sex, race, age, national origin, disability or any other legally protected basis if:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or engagement;
- b. submission to or rejection of such conduct by an individual is used as a basis for decisions concerning that individual's employment or engagement; or
- c. it creates a hostile or offensive work environment.

Prohibited harassment includes (but is not limited to) unwelcome sexual advances, requests for sexual favors and lewd, vulgar or obscene remarks, jokes, posters or cartoons, and any unwelcome touching, pinching or other physical contact. Other forms of unlawful harassment or discrimination may include racial epithets, slurs and derogatory remarks, stereotypes, jokes, posters or cartoons based on race, national origin, age, disability, marital status or other legally protected categories. Prohibited harassment might also be transmitted using the Company's electronic communications system, or through other on-line conduct.

**Complaint Procedure:**

Employees or contract workers who feel that they have been harassed or discriminated against, or who witness any harassment or discrimination by an employee, contract worker, customer, vendor or anyone else who does business with the Company, should immediately report such conduct to their supervisor or any other member of management.

Do not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the situation. No employee, contract worker, customer, vendor or other person who does business with this organization is exempt from the prohibitions in this policy. In response to every complaint, the Company will conduct an investigation which may involve interviewing witnesses if warranted and, if improper conduct is found, take appropriate corrective action.

To the extent that an employee or contract worker is not satisfied with the Company's handling of a harassment or discrimination complaint, he or she may also contact the appropriate state or federal enforcement agency for legal relief.

**4.2 Attendance.**

Punctuality and regular attendance are essential to the successful operation of the Company's business. If an employee is unable to report to work (or to report to work on time) for any reason, the employee must notify his or her supervisor before his or her starting time. If an employee desires to leave work for any reason during the workday, the employee must obtain the approval of his or her supervisor prior to leaving. Excessive absenteeism or tardiness may subject the employee to disciplinary action, up to and including termination.

#### **4.3 Discipline and Standards of Conduct.**

As an at-will employer, the Company may impose discipline whenever it determines it is necessary or appropriate. Discipline may take various forms, including verbal counseling, written warnings, suspension, demotion, transfer, reassignment or termination. The discipline imposed will depend on the circumstances of each case; therefore, discipline will not necessarily be imposed in any particular sequence. Moreover, at any time the Company determines it is appropriate, an employee may be terminated immediately.

Every organization must have certain standards of conduct to guide the behavior of employees. Although there is no possible way to identify every rule of conduct, the following is an illustrative list (not intended to be comprehensive or to limit the Company's right to impose discipline for any other conduct it deems inappropriate). Keep in mind that these standards of conduct apply to all employees whenever they are on Company property and/or conducting Company business (on or off Company property). Engaging in any conduct the Company deems inappropriate may result in disciplinary action, up to and including termination.

- a. Dishonesty;
- b. Falsification of Company records;
- c. Unauthorized use or possession of property that belongs to the Company, a coworker, or of the public;
- d. Possession or control of illegal drugs, weapons, explosives, or other dangerous or unauthorized materials;
- e. Fighting, engaging in threats of violence or violence, use of vulgar or abusive language, horseplay, practical jokes or other disorderly conduct that may endanger others or damage property;
- f. Insubordination, failure to perform assigned duties or failure to comply with the Company's health, safety or other rules;
- g. Unauthorized or careless use of the Company's materials, equipment or property;
- h. Unauthorized and/or excessive absenteeism or tardiness;
- i. Lack of teamwork, poor communication, unsatisfactory performance, unprofessional conduct, or conduct improper for the workplace;
- j. Sexual or other illegal harassment or discrimination;
- k. Unauthorized use or disclosure of the Company's confidential information;
- l. Violation of any Company policy.

#### **4.4 Dress Code.**

What we wear to work is a reflection of the pride we have in our Company, in what we do, and in ourselves. Although dress code requirements will vary according to job responsibilities, we ask that your appearance at all times show discretion, good taste, and appropriateness for the safe performance of your job.

#### **4.5 Safety.**

The Company is committed to providing a safe workplace. Accordingly, the Company emphasizes "safety first." It is the employee's responsibility to take steps to promote safety in the workplace and work in a safe manner. By remaining safety conscious, employees can protect themselves and their coworkers. Employees are expected to promptly report all unsafe working conditions, accidents and injuries, regardless of how minor so that any potential hazards can be corrected.

#### **4.6 Substance and Abuse.**

The Company is committed to providing its employees with a safe and productive work environment. In keeping with this commitment, it maintains a strict policy against the use of alcohol and the unlawful use of drugs in the workplace. Consequently, no employee may consume or possess alcohol, or use, possess, sell, purchase or transfer illegal drugs at any time while on the Company's premises or while using the Company vehicles or equipment, or at any location during work time.

No employee may report to work with illegal drugs (or their metabolites) or alcohol in his or her bodily system. The only exception to this rule is that employees may engage in moderate consumption of alcohol that may be served and/or consumed as part of an authorized Company social or business event. "Illegal drug" means any drug that is not legally obtainable or that is legally obtainable but has not been legally obtained. It includes prescription drugs not being used for prescribed purposes or by the person to whom it is prescribed or in prescribed amounts. It also includes any substance a person holds out to another as an illegal drug.

Any violation of this policy will result in disciplinary action, up to and including termination.

Any employee who feels he or she has developed an addiction to, dependence upon, or problem with alcohol or drugs, legal or illegal, is strongly encouraged to seek assistance before a violation of this policy occurs. Any employee who requests time off to participate in a rehabilitation program will be reasonably accommodated. However, employees may not avoid disciplinary action, up to and including termination, by entering a rehabilitation program after a violation of this policy is suspected or discovered.

#### **4.7 Workplace Searches.**

All offices, desks, file drawers, cabinets, lockers, Company vehicles, and other Company equipment (including but not limited to computers, e-mail and voice mail) and facilities or any area on Company premises are the property of the Company ("Company Property"), and are

intended for business use. Employees should have no expectation of privacy with respect to Company property and/or items stored within Company Property or on Company premises. Inspection may be conducted at any time, without notice, at the discretion of the Company.

In addition, when the Company deems appropriate, employees may be required to submit to searches of their personal vehicles, parcels, purses, handbags, backpacks, brief cases, lunch boxes or any other possessions or articles brought on to the Company's premises.

Persons entering the premises who refuse to cooperate in an inspection conducted pursuant to this policy may not be permitted to enter the premises. All employees must cooperate in an inspection; failure to do so is insubordination and will result in disciplinary action, up to and including termination.

#### **4.8 Internet, Email and Computer Use Policy.**

The Company uses various forms of electronic communication including, but not limited to: computers, email, telephones, voicemail, instant message, text message, Internet, cell phones and smart phones (hereafter referred to as "electronic communications"). The electronic communications, including all software, databases, hardware, and digital files, remain the sole property of the Company and are to be used only for Company business and not for personal use.

The following rules apply to all forms of electronic communications and media that are: (1) accessed on or from Company premises; (2) accessed using the Company computer or telecommunications equipment, or via Company-paid access methods; and/or (3) used in a manner which identifies the Company. The following list is not exhaustive and the Company may implement additional rules from time to time.

a. Electronic communication and media may not be used in any manner that would be discriminatory, harassing, or obscene, or for any other purpose that is illegal, against Company policy, or not in the best interest of the Company. Employees who misuse electronic communications and engage in defamation, copyright or trademark infringement, misappropriation of trade secrets, discrimination, harassment, or related actions will be subject to discipline, up to and including termination. Employees may not install personal software on Company computer systems.

b. Employee's own electronic media may only be used during breaks. All other company policies, including the Company's no tolerance for discrimination, harassment, or retaliation in the workplace apply.

c. All electronic information created by any employee on Company premises or transmitted to Company property using any means of electronic communication is the property of the Company and remains the property of the Company. You should not assume that any electronic communications are private or confidential and should transmit personal sensitive information in other ways. Personal passwords may be used for purposes of security, but the use of a personal password does not affect the Company's ownership of the electronic information. The Company will override all personal passwords if necessary for any reason.

d. The Company reserves the right to access and review electronic files, messages, internet use, blogs, "tweets", instant messages, text messages, email, voice mail, and other digital archives, and to monitor the use of electronic communications as necessary to ensure that no misuse or violation of Company policy or any law occurs. All such information may be used and/or disclosed to others, in accordance with business needs and the law. The Company reserves the right to keep a record of all passwords and codes used and/or may be able to override any such password system

e. Employees are not permitted to access the electronic communications of other employees or third parties unless directed to do so by Company management. No employee may install or use anonymous e-mail transmission programs or encryption of e-mail communications.

f. Employees who use devices on which information may be received and/or stored, including but not limited to cell phones, cordless phones, portable computers, fax machines, and voice mail communications are required to use these methods in strict compliance with the Confidentiality section of this Handbook. These communications tools should not be used for communicating confidential or sensitive information or any trade secrets.

g. Access to the Internet, websites, and other types of Company-paid computer access are to be used for Company-related business only. Any information about **[Company Name]**, its products or services, or other types of information that will appear in the electronic media about the Company must be approved before the information is placed on any electronic information resource that is accessible to others.

#### **4.9 Cell Phone Policy.**

The use of personal cell phones at work is discouraged because it can interfere with work and be disruptive to others. Therefore, employees who bring personal cell phones to work are required to keep the ringer shut off or placed on vibrate mode when they are in the office, and to keep cell phone use confined to breaks and meal periods. Conversations should be had away from areas where other employees are working. When cell phone use interferes with the satisfactory performance of an employee's duties or disturbs others, the privilege of using a personal cell phone at work may be taken away and other disciplinary action, up to and including termination, may be imposed.

The Company may provide cell phone allowances to employees in certain positions in an effort to improve efficiency and effectiveness. When cell phones are used for Company business, employees must comply with all Company policies governing conduct, including our policies prohibiting discrimination, harassment, and violence in the workplace. When using the cell phone in a public place, please remember to maintain the confidentiality of any private or confidential business information. As a courtesy to others, please shut cell phones off or place on vibrate mode during meetings.



## **SECTION 5      EMPLOYEE BENEFITS AND SERVICES**

### **5.1 Generally.**

Aside from those benefits required by state and federal regulations, [Company Name] also offers additional benefits for its full-time employees. From time to time, benefits may be added or deleted from the benefits package. The Company reserves the right to make such changes.

This Handbook does not contain the complete terms and/or conditions of any of the Company's current benefit plans. It is intended only to provide general explanations. For information regarding employee benefits and services, employees should contact Director of Human Resources.

### **5.2 Group Health Insurance.**

[Company Name] offers a group health plan for eligible employees. The Company's group health insurance plan is offered through [Company Name] Healthcare Plan. For more information, refer to the Company's benefits booklet for complete details and benefits.

### **5.3 401(k) Plan.**

[Company Name]'s 401(k) Plan is a convenient payroll deductible method to help supplement employees' retirement benefits and provide a long term vehicle to accumulate savings. For information regarding employee benefits and services, employees should contact Director of Human Resources.

### **5.4 COBRA.**

Under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if you are covered under the Company's group health insurance plan(s) you are entitled to continue your coverage in the event that your employment with the Company ends. Under COBRA, the Company must offer each qualified beneficiary (the employee and any covered dependents) who would otherwise lose coverage under the plan as a result of a qualifying event an opportunity to continue their insurance coverage. A qualifying event is defined as termination of employment, a reduction in the number of hours of employment, death of covered employee, divorce or legal separation, a dependent child ceases to be dependent, eligibility of the covered employee for Medicare, or an employer's bankruptcy.

### **5.5 Worker's Compensation.**

All states have Workers' Compensation laws whose purpose is to promote the general welfare of people by providing compensation for accidental injuries or death suffered in the course of employment. These laws are designed to provide protection to workers suffering occupational disabilities through accidents arising out of, and in the course of employment. [Company Name] carries Workers' Compensation Insurance for all employees and pays the entire cost of the insurance program. An employee who suffers an injury or illness in connection with the job is usually eligible to receive payment through the insurance company for lost wages.

In addition to disability payments, necessary hospital, medical and surgical expenses are covered under Workers' Compensation, with payments being made directly to the hospital or physician. Workers' Compensation benefits to injured workers also include assistance to help qualified injured employees return to suitable employment.

**5.6 Social Security Benefits (FICA).**

During your employment, you and the Company both contribute funds to the Federal government to support the Social Security Program. This program is intended to provide you with retirement benefit payments and medical coverage once you reach retirement age.

**5.7 Unemployment Insurance.**

The company pays a state and federal tax to provide employees with unemployment insurance coverage in the event they become unemployed through no fault of their own or due to circumstances described by law. This insurance is administered by applicable state agencies, who determine eligibility for benefits, the amount of benefits (if any), and duration of benefits.

**SECTION 6 EMPLOYEE LEAVES OF ABSENCE AND TIME OFF**

**6.1 Generally.**

While regular attendance is crucial to maintain business operations, the Company recognizes that, for a variety of reasons, employees may need time off from work. The Company has available a number of types of leaves of absence. Some are governed by law and others are discretionary. For all planned leaves, however, employees must submit a request at least 3 days in advance; in case of emergencies, employees should submit the request as soon as they become aware of the need for leave. All leaves must have the approval of Company management. If, during a leave, an employee accepts another job, engages in other employment or consulting outside of the Company, or applies for unemployment insurance benefits, the employee may be considered to have voluntarily resigned from employment with the Company.

All requests for a leave of absence will be considered in light of their effect on the Company and its work requirements, as determined by Company management, which reserves the right to approve or deny such requests in its sole discretion, unless otherwise required by law. For disability-related leave requests, the Company will engage in an interactive process with the employee to determine if a leave is the most appropriate accommodation. The employee must provide a certification from his or her health care provider to the Company to support a leave for medical reasons. Failure to provide the required certification to the Company in a timely manner will result in delay or denial of leave. If an employee requires an extension of leave, the employee must request such extension and have it approved before the expiration of the currently approved leave.

While the Company will make a reasonable effort to return the employee to his or her former position or a comparable position following an approved leave of absence, there is no guarantee that the employee will be reinstated to his or her position, or any position, except as required by law.

**6.2 Sick Days.**

Eligible employees are entitled to 6 paid sick days per year. Sick days' pay for regular full-time employees will be calculated based on the employee's base pay rate times the number of hours the employee would otherwise have worked on that day. Regular part-time employees will be paid on a pro-rata basis. When employees eligible for paid sick days do not take the full amount of sick time they could have taken in a year, that amount will be forfeited at the end of the year.

**6.3 Vacation Days.**

Eligible employees are entitled to 12 paid vacation days per year. Vacation days' pay for regular full-time employees will be calculated based on the employee's base pay rate times the number of hours the employee would otherwise have worked on that day. Regular part-time employees will be paid on a pro-rata basis. When employees eligible for paid vacation days do not take the full amount of vacation time they could have taken in a year, that amount will be paid to the employee as wages in the final paycheck of the year. Upon termination, employees will be paid all accrued but unused vacation time as wages.

**6.4 Holidays.**

[Company Name] observes the following paid holidays:

- New Year's Day
- Martin Luther King Jr. Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Day After Thanksgiving
- Christmas Day
- New Year's Eve

The Company will grant paid holiday time off to all eligible employees. Holiday pay for regular full-time employees will be calculated based on the employee's base pay rate (as of the date of the holiday) times the number of hours the employee would otherwise have worked on that day. Regular part-time employees will be paid on a pro-rata basis.

If an eligible non-exempt employee works on a recognized holiday with Company approval, he or she will receive holiday pay plus wages at his or her straight-time rate for the hours worked on the holiday.

**6.5 Family and Medical Leave.**

Because of the Company's small size, we are not required to comply with the federal Family and Medical Leave Act ("FMLA"). However, we recognize that our employees may occasionally need to take unpaid leave to care for a new child, to care for a seriously ill family member, to handle an employee's own medical issues, or to handle issues relating to a family member's military service, possibly including caring for a family member who is injured while serving in the military.

If you anticipate that you might need time off to deal with family and medical issues, please speak with your supervisor. We will seriously consider every request on a case-by-case basis.

**6.6 Workers' Compensation Leave.**

Any employee who is unable to work due to a work related injury or illness and who is eligible for Workers' Compensation benefits will be provided an unpaid leave for the period required. The first 12 weeks will be treated concurrently as a family and medical leave under the federal Family Medical Leave Act ("FMLA") for employees eligible for FMLA leave.

**6.7 Jury Duty.**

U.S. citizens have a civic obligation to provide jury duty service when called.

By state law, employees can use vacation, personal leave, or comp time to cover time they are out for jury duty.

The employee must bring in the jury duty notice as soon as it is received so that appropriate arrangements can be made to cover his or her duties. Employees are required to call in or report for work on those days or parts of days when their presence in court is not required.

**6.8 Voting Time.**

Employees who are registered voters and who lack sufficient time outside of work to vote in any local, state, and national election may take up to two hours off work with pay at the beginning or end of the day for this purpose. Employees should provide at least two working days' notice when time off is required.

**AT-WILL EMPLOYMENT AGREEMENT AND ACKNOWLEDGEMENT  
OF RECEIPT OF EMPLOYEE HANDBOOK**

**Employee:** [Employee]

I acknowledge that I have been provided with a copy of the [Company Name] (the "Company") Employee Handbook, which contains important information on the Company's policies, procedures and benefits, including the policies on Anti-Harassment/Discrimination, Substance Use and Abuse and Confidentiality. I understand that I am responsible for familiarizing myself with the policies in this handbook and agree to comply with all rules applicable to me.

I understand and agree that the policies described in the handbook are intended as a guide only and do not constitute a contract of employment. I specifically understand and agree that the employment relationship between the Company and me is at-will and can be terminated by the Company or me at any time, with or without cause or notice. Furthermore, the Company has the right to modify or alter my position, or impose any form of discipline it deems appropriate at any time. Nothing in this handbook is intended to modify the Company's policy of at-will employment. The at-will employment relationship may not be modified except by a specific written agreement signed by me and an authorized representative of the Company. This is the entire agreement between the Company and me regarding this subject. All prior or contemporaneous inconsistent agreements are superseded.

I understand that the Company reserves the right to make changes to its policies, procedures or benefits at any time at its discretion. However, the at-will employment agreement can be modified only in the manner specified above. I further understand that the Company reserves the right to interpret its policies or to vary its procedures as it deems necessary or appropriate.

I have received the Company Employee Handbook. I have read (or will read) and agree to abide by the policies and procedures contained in the Handbook.

By: \_\_\_\_\_ Date: \_\_\_\_\_

[President's Name] , President

By: \_\_\_\_\_ Date: \_\_\_\_\_

[Employee]

(以上)

シリコンバレー進出企業に向けたカリフォルニア法律ガイドブック

2015年3月作成

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