

Fully Annotated Version of Contract Extract Included in  
On "Wordsmithing," New York Law Journal, June 21, 2007

1. Term of Agreement. The term of this Agreement<sup>1</sup> shall<sup>2</sup> commence on the date hereof as first written above<sup>3</sup> and shall<sup>2</sup> continue in effect through December 31, 2007;<sup>4</sup> provided that<sup>5</sup> commencing on January 1, 2008 and each January 1 thereafter,<sup>6</sup> the term of this Agreement shall<sup>2</sup> automatically be extended for one additional year unless not later than twelve months<sup>7</sup> prior to<sup>8</sup> such<sup>9</sup> January 1, the Company shall have given notice<sup>10</sup> to Employee<sup>11</sup> that it does not wish to extend this Agreement (which notice may not, in any event, be given sooner than January 1, 2008 such that this Agreement may not terminate prior to December 31, 2008)<sup>12</sup>; and provided, further, that<sup>13</sup> notwithstanding<sup>14</sup> any such notice by the Company not to extend, this Agreement shall<sup>2</sup> automatically continue in effect for a period of 24 months<sup>15</sup> beyond the then current term if a Change in Control (as defined in Section<sup>16</sup> 3(i) hereof<sup>17</sup>)<sup>18</sup> shall have occurred<sup>19</sup> during such<sup>9</sup> term.<sup>20</sup>

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<sup>1</sup> Don't use a capital *A* in references to *this agreement*; ¶ 2.8. And don't use the defined term *Agreement*; ¶ 2.43.

<sup>2</sup> This is language of policy, not language of obligation, so *shall* is inappropriate; ¶ 3.80.

<sup>3</sup> You only need to refer to the effective date of a contract if the parties intend for it to become effective on a date other than the date stated in the introductory clause.

<sup>4</sup> This agreement bears a 2007 date, so it's misleading to say that the initial term ends on December 31, 2007: due to the proviso that follows, the agreement would inevitably renew for at least one year. It would be clearer to have the initial term run through December 31, 2008.

<sup>5</sup> *Provided that* is an imprecise way to signal the relationship between two adjoined contract provisions; ¶ 9.40. In this case, the provision that follows *provided that* can stand on its own; ¶ 9.39.

<sup>6</sup> The phrase *commencing on ... and each January 1 thereafter* is redundant.

<sup>7</sup> In this context, *one year* would be the simpler and therefore better choice.

<sup>8</sup> *Prior to* is a lawyerism; use instead *before*; see ¶ 13.21.

<sup>9</sup> Don't use *such* instead of the "pointing words" *the, this, that, there, or those*; ¶ 9.49.

<sup>10</sup> Using *shall* isn't appropriate, as no duty is being expressed; ¶ 3.90.

<sup>11</sup> Because this contract is intended to be used with a number of employees, it is appropriate to use the defined term *Employee*; ¶ 2.34. But using the definite article *the* when using the defined term would make the contract easier to read; ¶ 2.39.

<sup>12</sup> This parenthetical is redundant, because notice given sooner than January 1, 2008, would in any event be ineffective to prevent the contract from being extended for an additional year. See note 4.

<sup>13</sup> *Provided, further, that* suffers from the same shortcomings as *provided that*; see note 5. In this case, the provision that follows *provided, further, that* can stand on its own; ¶ 9.39

<sup>14</sup> There is always a clearer and more succinct alternative to *notwithstanding*.

<sup>15</sup> In this context, *two years* would be the simpler and therefore better choice

<sup>16</sup> Don't use a capital *S* in *section*.

<sup>17</sup> Don't use *hereof* after cross-references; ¶ 4.48.

<sup>18</sup> Such cross-reference parentheticals are inefficient.

<sup>19</sup> The clause beginning *if* is a conditional clause, so the present perfect tense (*has occurred*) would be appropriate, but the present tense (*occurs*) would perhaps be the simplest choice; ¶ 3.89. (Using *shall* isn't appropriate, as no duty is being expressed; ¶ 3.90.)

<sup>20</sup> It's not clear whether after a two-year extension the agreement would be subject to further one-year extensions.