

**[USE FOR EMPLOYEE UNDER AGE 40
BEFORE LITIGATION]**

**CONFIDENTIAL SEPARATION AGREEMENT AND
GENERAL RELEASE OF ALL CLAIMS**

1. This Confidential Separation Agreement and General Release of Claims (hereinafter "Agreement") is entered into between _____ (hereinafter "Employee") and by _____ (hereinafter "COMPANY").

2. **WHEREAS**, Employee has been employed by COMPANY; and

WHEREAS Employee and COMPANY desire to mutually, amicably and finally resolve and compromise all issues and claims surrounding Employee's employment by COMPANY and the termination thereof;

NOW THEREFORE, in consideration for the mutual promises and undertakings of the parties as set forth below, Employee and COMPANY hereby enter into this Agreement.

3. Acknowledgment of Payment of Wages. By signing below, Employee acknowledges that _____, 201_ (the "Separation Date"), was his/her last day worked, and on the Separation Date, the COMPANY provided him/her a final paycheck in the gross amount of \$ _____ for all wages, including but not limited to salary, bonuses, commissions, and/or accrued unused vacation owed him/her by the COMPANY as of the Separation Date. Employee also acknowledges that s/he has submitted all expenses. The COMPANY has or will reimburse all necessary and reasonable expenses in the normal course per its expense reimbursement policy. By signing below, Employee acknowledges that the COMPANY does not owe him/her any other amounts.

4. COMPANY's Consideration. As full, sufficient and complete consideration for Employee's promises and releases contained herein, COMPANY will provide the following.

(a) Severance. COMPANY will pay Employee severance in the gross amount of \$ _____, equivalent to [XX weeks/months] of base salary. Payment will be made [in a lump sum][in installments on regular payroll dates]. All appropriate payroll deductions will be taken in accordance with federal and state law.

(b) Health and Medical Benefits. Upon Employee's timely election to continue Employee's existing health benefits under COBRA, and consistent with the terms of COBRA and the plan, COMPANY will pay the insurance premiums to continue his/her existing health benefits until Employee finds employment providing comparable health benefits, or through [insert date], whichever occurs first. Employee must continue to pay the portion of premiums, co-payments, etc. that s/he would have paid had his/her employment continued.

(c) Job Search Assistance. COMPANY agrees to pay [insert name of job search consultant] a maximum of \$ _____ for job search assistance to assist Employee in his/her job search.

5. General Release of Claims.

(a) In further consideration for the payment and undertakings described above, to the fullest extent permitted by law, Employee, individually and on behalf of his/her attorneys, representatives, successors, and assigns, does hereby completely release and forever discharge COMPANY, its affiliated and subsidiary corporations, and its and their shareholders, officers and all other representatives, agents, directors, employees, successors and assigns, from all claims, rights, demands, actions, obligations, and causes of action of any and every kind, nature and character, known or unknown, which Employee may now have, or has ever had, against them including but not limited to claims arising from or in any way connected with the employment relationship between the parties, any actions during the relationship, or the termination thereof. This release covers all statutory, common law, constitutional and other claims, including but not limited to, all claims for wrongful discharge in violation of public policy, breach of contract, express or implied, breach of covenant of good faith and fair dealing, intentional or negligent infliction of emotional distress, intentional or negligent misrepresentation, employment discrimination, any tort, personal injury, or violation of statute including but not limited to Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act, which Employee may now have, or has ever had. The parties agree that any claims for money damages, loss of wages, earnings and benefits, stock options or other ownership interest in the COMPANY, medical expenses, attorneys' fees and costs, reinstatement and other equitable relief, are all released by this Agreement.

(b) Employee and COMPANY do not intend to release claims that Employee may not release as a matter of law, including but not limited to claims for indemnity under California Labor Code section 2802.

(c) To the fullest extent permitted by law, any dispute regarding the scope of this general release shall be determined by an arbitrator under the procedures set forth in the arbitration clause below.

6. Waiver of Unknown Claims. Employee has read or been advised of Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED

HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee understands that Section 1542 gives him/her the right not to release existing claims of which s/he is not now aware, unless s/he voluntarily chooses to waive this right. Having been so apprised, s/he nevertheless hereby voluntarily elects to and does waive the rights described in Section 1542, and elects to assume all risks for claims that now exist in his/her favor, known or unknown.

7. Non-Admission. It is understood and agreed that this is a compromise settlement of a disputed claim or claims and that neither this Agreement itself nor the furnishing of the consideration for this Agreement shall be deemed or construed as an admission of liability or wrongdoing of any kind by COMPANY.

8. Covenant Not to Sue.

(a) To the fullest extent permitted by law, at no time subsequent to the execution of this Agreement will Employee pursue, or cause or knowingly permit the prosecution, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, any charge, claim or action of any kind, nature and character whatsoever, known or unknown, which s/he may now have, has ever had, or may in the future have against COMPANY and/or any officer, director, employee or agent of COMPANY, which is based in whole or in part on any matter released by this Agreement.

(b) Nothing in this paragraph shall prohibit Employee from filing a charge or complaint with a government agency where as a matter of law the parties may not limit Employee's ability to file such an administrative complaint. However, Employee understands and agrees that, by entering into this Agreement, s/he is releasing any and all individual claims for relief, and that any and all subsequent disputes between the COMPANY and Employee shall be resolved in arbitration.

(c) Nothing in this Agreement shall prohibit or impair Employee or the COMPANY from complying with all applicable laws, nor shall this Agreement be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

9. Waiver of Right to Reemployment. Employee agrees that s/he will not be entitled to any further employment with COMPANY. S/he therefore waives any claim now or in the future to other employment or reemployment with COMPANY, or any of its related entities, and agrees that s/he will not apply for nor accept employment with COMPANY or any of its related entities in the future.

10. Confidentiality. Employee agrees that the terms and conditions of this Agreement are strictly confidential and shall not be disclosed to any other persons except his/her counsel, immediate family, taxing authorities in connection with his/her filing of federal or state tax returns, or to financial advisors in order to comply with income tax filing requirements, or as required by legal process or applicable law, provided however, that Employee shall notify

COMPANY if such disclosure is sought, allowing COMPANY the opportunity to object to such disclosure.

11. Nondisparagement. Employee agrees that s/he will refrain from making any adverse, derogatory or disparaging statements about the COMPANY, its board of directors, officers, management, practices or procedures, or business operations to any person or entity. Nothing in this paragraph shall prohibit Employee from providing truthful information in response to a subpoena or other legal process.

12. Return of COMPANY Property; Obligation to Protect Proprietary Information. To the extent Employee has not already done so, s/he agrees to return to the COMPANY all COMPANY property, including but not limited to the files and documents, whether electronic or hardcopy, and whether in Employee's possession or under his/her control. Employee also understands that whether s/he signs this Agreement or not, s/he must maintain the confidentiality of COMPANY trade secrets, confidential and/or proprietary information ("Proprietary Information"), and not make use of any Proprietary Information on behalf of anyone. S/he acknowledges that s/he remains bound by the **[Name of Confidentiality Agreement]** that s/he signed at the time of hire, **a copy of which is attached hereto**, and that as a result of his/her employment with the COMPANY s/he has had access to the COMPANY's Proprietary Information (as defined in the agreement), that s/he will hold all Proprietary Information in strictest confidence and that s/he will not make use of such Proprietary Information on behalf of anyone.

13. Acknowledgement of Representation or Opportunity to be Represented by Counsel; Attorneys' Fees. Employee acknowledges that s/he has been or had the opportunity to be represented by counsel in the negotiation and preparation of this Agreement. The parties further agree that each party will be responsible for his/her or its own attorney's fees and costs incurred in connection with this Agreement.

14. Arbitration. Except for any claim for injunctive relief arising out of a breach of a party's obligations to protect the other's Proprietary Information, the parties agree to arbitrate any and all disputes or claims arising out of or related to the validity, enforceability, interpretation, performance or breach of this Agreement, whether sounding in tort, contract, statutory violation or otherwise, or involving the construction or application or any of the terms, provisions, or conditions of this Agreement. Any arbitration may be initiated by a written demand to the other party. The arbitrator's decision shall be final, binding, and conclusive. The parties further agree that this Agreement is intended to be strictly construed to provide for arbitration as the sole and exclusive means for resolution of all disputes hereunder to the fullest extent permitted by law. The parties expressly waive any entitlement to have such controversies decided by a court or a jury.

15. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

16. Savings Clause. Should any of the provisions of this Agreement be determined to be invalid by a court, arbitrator, or government agency of competent jurisdiction, it is agreed that such determination shall not affect the enforceability of the other provisions herein. Specifically, should a court, arbitrator, or agency conclude that a particular claim may not be released as a matter of law, it is the intention of the parties that the general release, the waiver of unknown claims, and the covenant not to sue above shall otherwise remain effective to release any and all other claims.

17. Complete and Voluntary Agreement. This Agreement constitutes the entire understanding of the parties on the subjects covered. Employee expressly warrants that s/he has read and fully understands this Agreement; that s/he has had the opportunity to consult with legal counsel of his/her own choosing and to have the terms of the Agreement fully explained to him/her; that s/he is not executing this Agreement in reliance on any promises, representations or inducements other than those contained herein; and that s/he is executing this Agreement voluntarily, free of any duress or coercion.

18. Modification. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing signed by Employee and an authorized representative of the COMPANY.

19. Counterparts and Copy of Signatures. The parties intend that the Agreement will be signed in counterparts and that the counterparts shall constitute a single agreement. The parties further agree that a copy of a signature shall have the same force and effect as an original signature.

20. Expiration of Offer; Effective Date of Agreement. This offer expires at 5:00 p.m. on the seventh day after delivery to Employee, i.e., _____, 201_. The Agreement will be effective on the date timely signed by Employee.

Dated: _____

For COMPANY

Dated: _____

Employee