

Virginia Model Severance Agreement

This is for educational purposes only and is not intended as legal advice. For a legal opinion on your settlement – you guessed it – consult with a lawyer.

THIS SEPARATION AGREEMENT AND GENERAL RELEASE (“Agreement”), dated as of _____, is between Employee and Employer (referred to collectively throughout as “Parties”). The parties have agreed that Employee will separate her employment from Employer, as provided in this Agreement and, in connection with such separation of employment, Employer has agreed to provide Employee with certain benefits to which she would not otherwise be entitled absent the execution of this Agreement. In consideration of the mutual promises contained in this Agreement, Employee and Employer agree as follows:

1. Separation of Employment. The parties have agreed that Employee’s final day of employment with Employer was Date (the “Separation Date”). The parties further agree that, as of the Separation Date, Employee was no longer authorized to incur any expenses, obligations, or liabilities on behalf of Employer. Except as expressly provided in Section 3 of this Agreement or as required by law, after the Separation Date, Employee was no longer entitled to receive any compensation or employer provided benefits. Provided, however, that Employee shall be entitled, if otherwise eligible, to exercise the right to continued coverage under the Employer medical benefit plan as provided by the Consolidated Omnibus Budget Reconciliation Act of 1986, 26 U.S.C. § 490B et seq. (“COBRA”) (and with respect to which Employer will provide Employee with a separate notice as required by federal law).

2. Severance Payments. In connection with Employee’s separation from employment, Employer will pay to Employee, (i) ___ weeks of full salary at \$_____/pay period), less applicable taxes and withholding, on the standard payroll schedule upon Employer’s confirmation of Employee’s execution of this Agreement, and (ii) for claimed lost wages, the gross sum of \$_____, less applicable taxes and withholding (collectively, the “Employee Payment”). The Severance Payment is provided in exchange for the releases and other promises made by Employee herein. The Severance Payment will be in the form of a company check and will be mailed to Employee eight (8) days after the execution and delivery of this Agreement. Except as provided above, Employee has no claim to any compensation or benefits of any kind or any other benefit plan available to employees of Employer by virtue of their employment with Employer. The Employee acknowledges and agrees that as of the Separation Date and the effective date of this Agreement, Employee holds no stock options or any other equity, as of the Separation Date. Employee acknowledges that she is not entitled to the Severance Payment outlined in Section 2 of this Agreement and that Employer has agreed to provide such benefit solely as consideration for Employee’s execution of this Agreement.

3. Acknowledgement of Payment of Wages: By your signature below, you acknowledge that as of the date of this Agreement, Employer except with respect to and excluding amounts set forth in Section 2 above, has paid you all wages, salary, bonuses, commissions, reimbursable expenses, and any similar payment due to you. Employer has paid Employee a final paycheck for all wages, salary, and any similar payments due to your from Employer from the date through the Separation Date, which was paid on Employer’s next available payroll following the Separation

Date. Employer shall also pay Employee all business expenses that are submitted within thirty (30) days from the Separation Date pursuant to Employer's existing policies on expense reimbursement.

4. General Release and Waiver of Claims. (a) In consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee, for herself and on behalf of her heirs, successors, and assigns hereby irrevocably and unconditionally releases, waives and discharges Employer and its parents, subsidiaries or otherwise affiliated corporations, partnerships or business enterprises, and each of their respective past and former officers, partners, members, employees, agents, insurers, representatives, counsel, shareholders, directors, successors and assigns, (collectively "Released Parties") from any and all causes of action, claims, charges, demands, losses, damages, wages, compensation, benefits, costs, attorney's fees and liabilities of any kind, including claims for age discrimination (collectively "Claims") that she may have or claim to have, in any way relating to or arising out of her employment with Employer through the date of this Agreement, regardless of whether these Claims are known or unknown. This irrevocable and unconditional release includes, but is not limited to, a release from any such matters or claims which Employee or anyone else could have raised on Employee's behalf arising out of or pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.; the Virginia Human Rights Act, § 2.2-3900, et seq. of the Code of Virginia; the Virginia Payment of Wage Law, § 40.1-29, et seq. of the Code of Virginia; the Virginia Minimum Wage Act § 40.1-28.8, et seq. of the Code of Virginia, other Virginia statutes and regulations, the United States Constitution, any and all amendments to said statutes, or any other federal, state or local employment law, any state contract or tort law, including, but not limited to, claims for infliction of emotional distress, wrongful termination, breach of the covenant of good faith and fair dealing, promissory estoppel or breach of an express or implied promise, misrepresentation or fraud, retaliation, defamation of character, claims for attorney's fees, or claims for any rights to future employment and benefits with Employer. Employee further understands that this release extends to all claims that she has or may have, based on any theory, whether developed or undeveloped, arising from or related to her employment or the separation of her employment with Employer, or any other fact or matter occurring prior to her execution of this Agreement.

(b) Employee understands that nothing in this Agreement generally prevents Employee from filing a charge or complaint with, or from participating in an investigation or proceeding conducted by, the EEOC, NLRB, or any other federal, state or local agency charged with the enforcement of any employment laws, although by signing this Agreement, Employee is waiving her right to monetary recovery based on claims released above that are asserted in such a charge or complaint.

(c) The General Release does not apply to: (i) any vested rights Employee may have under the Employer's 401(k) Plan, (ii) any Claims for worker compensation benefits, (iii) any rights or Claims to unemployment benefits, (iv) any Claims arising out of conduct, matter, event, or omission existing or occurring after you have signed this Agreement, (v) any Claims for breach of the provisions of this Agreement or to enforce this Agreement that arise after the date you sign this Agreement, (vi) any Claim you may have to challenge the knowing and voluntary

nature of this Agreement under the Older Workers Benefit Protection Act (“OWBPA”), (vii) and Claims for vested benefits as of the Separation Date pursuant to the terms of a Company sponsored benefit plan governed by ERISA, and/or (viii) any Claims that cannot be waived by law, including the right to file an administrative charge of discrimination.

(d) It is the intent of the parties that this General Release and Waiver of Claims shall fully resolve any and all Claims of any nature whatsoever arising out of Employee’s employment with Employer, now or previously existing which Employee may have against the Released Parties, whether presently known or unknown.

5. Return of Property. Employee warrants to the Employer that she has returned to Employer, or will return before the Effective Date (as defined in Section 12, all company property in her possession, including, but not limited to, data of any type whatsoever that has been in her possession or control, any company credit card (or credit card on which the company is guarantor), computer, fax or printer. Further, Employee agrees to repay to Employer the amount of any permanent or temporary advances and balance owing on any credit cards of any monies due and owing Employer or for which Employer is a guarantor.

6. Non-Disclosure. Employee agrees that she will not reveal to anyone, except her spouse, attorney, accountant, tax advisor any of the terms of this Agreement or the facts and circumstances leading up to this Agreement or any of the amounts, numbers or terms and conditions of any sum payable to Employee except as required by law; provided that any such persons to whom disclosure is made shall be informed of Employee’s duty not to disclose such information and shall agree not to further disclose such information.

7. Mutual Non-Disparagement. Employee represents, covenants, and agrees that she will not at any time after the Separation Date, through any medium, either orally or in writing, including, but not limited to, electronic mail, television or radio, computer networks, blogs, social media, such as Facebook, LinkedIn, or Twitter, or any other form of communication, disparage, defame, impugn, make untruthful comments, damage or assail the reputation, or cause or tend to cause the recipient of a communication to question the business condition, integrity, competence, good character, professionalism, services, business practices, or product quality of the Employer, whether by virtue of the Agreement or any of the details covered by the Agreement. Notwithstanding the foregoing, nothing in this paragraph shall limit your ability to provide truthful testimony as required by a subpoena issued by a court of competent jurisdiction, and as required by law or court order.

Employer likewise agrees that it will not at any time after the Separation Date, through any medium, either orally or in writing, including, but not limited to, electronic mail, television or radio, computer networks, blogs, social media, such as Facebook, LinkedIn, or Twitter, or any other form of communication, disparage, defame, impugn, make untruthful comments, damage or assail the reputation of the Employee, nor will the Employer make any further public comments regarding Employee’s departure from the Company.

8. Neutral Reference. Employee agrees to direct all requests for references to Employer’s Human Resources Department. In response to such requests that are so directed, Employer will confirm dates and duration of employment, position held, and final salary rate.

9. Non-Solicitation. Employee acknowledges that during the course of her employment she has had access to and knowledge of Proprietary Information. The term “Proprietary Information” means any and all confidential and/or proprietary knowledge, data or information of the Company. By way of illustration but not limitation, “Proprietary Information” includes, but is not limited to (a) trade secrets, inventions, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques (hereinafter collectively referred to as “Inventions”); and (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers. To protect Employer’s Proprietary Information, Employee agrees that for a period of twelve months after her last day of employment with Employer, she will not (a) directly or indirectly solicit or induce any employee of Employer to terminate or negatively alter his or her relationship with the Employer or (b) directly or indirectly solicit or attempt to solicit the business of any client or customer or prospective client or customer of the Employer of which she became aware during her employment with the Employer (other than on behalf of the Employer) or (c) directly or indirectly induce any client, customer, supplier, vendor, consultant or independent contractor of the Employer to terminate or negatively alter his, her or its relationship with the Employer.

10. Confidential Information. Employee acknowledges that in the course of her employment with Employer she has had access to confidential information and trade secrets relating to business affairs of Employer and/or its related companies and entities. Employee agrees that she is obligated to not disclose or otherwise make available to any person, company or other party confidential information or trade secrets, at any time. Nothing herein will be construed to prevent Employee from using the skills that she possessed prior to joining Employer Name for the benefit of another employer. This Agreement shall not limit any obligations Employee has under any employee confidentiality agreement, or terms and conditions of employment to which Employee has agreed, or State law.

11. Acceptance Period; Right to Rescind and/or Revoke. Employee has been informed that the terms of this Agreement shall be open for acceptance by her for a period of at least twenty-one (21) days after the date set forth above, during which time Employee may consider whether or not to accept this Agreement and seek counsel to advise her regarding the same. Employee agrees that changes to this Agreement, whether material or immaterial, will not restart this acceptance period. Employee has the right to revoke this Agreement only insofar as it extends to potential claims under the Age Discrimination in Employment Act by informing Employer of her intent to revoke this Agreement within seven (7) calendar days following her execution of it. Employee understands and agrees that this Agreement shall not become effective or enforceable until this 7-day revocation period has expired. Any rescission by Employee must be in writing and hand-delivered to Employer or, if sent by mail, postmarked within the applicable time period, sent by certified mail, return receipt requested, and addressed to _____.

Employee agrees that if she exercises any right of rescission or revocation, Employer may at its option either nullify this Agreement in its entirety or keep it in effect as to all claims not rescinded or revoked in accordance with the rescission or revocation provisions of this Agreement. In the event Employer opts to nullify the entire Agreement, neither Employee nor

Employer will have any rights or obligations whatsoever under this Agreement. Any rescission or revocation, however, does not affect Employee's separation from employment effective as of the date set forth in Section 1.

12. Effective Date. This Agreement does not become effective until the eighth day after Employee signs it and then only if it has not been nullified by Employer in the event of rescission or revocation under the procedures of Section 10.

13. Effect of Breach. In the event that Employee breaches any provision of this Agreement, Employer will have no further obligations under Section 2 of this Agreement and Employee agrees that Employer is entitled to repayment of all monies paid to Employee under Section 2 together with the attorneys' fees and costs incurred to collect the money and to seek injunctive relief.

14. No Admission. This Agreement is not an admission by the Released Parties that they have taken any improper actions with respect to Employee in violation of any federal, state, or local law or regulation.

15. Cooperation of Employee. Employee covenants and agrees to cooperate fully with the Released Parties concerning any business or legal matter about which she had knowledge during her employment with Employer or any Released Party.

16. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties with regard to all matters addressed in this Agreement and supersedes all prior negotiations and agreements relating to those matters. This Agreement is an integrated document and the consideration stated herein is the sole consideration for this Agreement. This Agreement is binding on the heirs, assigns, personal representatives, successors in interest, officers, directors, employees and agents of the Parties.

17. Severability. The Parties agree that in the event any provision in this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, or in the event that any provision cannot be modified so as to be valid and enforceable, then that provision shall be deemed severed from the Agreement and the remainder of the Agreement shall remain in full force and effect.

18. Choice of Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia with regards to its choice of law or conflict of law principles. The Parties hereto agree to personal jurisdiction in the Commonwealth of Virginia.

19. Choice of Forum. Any suit arising out of or relating to this Agreement shall be brought in the one of the courts for the Commonwealth of Virginia.

20. Acknowledgements and Time to Consider. You acknowledge and agree that (a) you have read and understand the terms of this Agreement; (b) you have been advised in writing to consult with an attorney before executing this Agreement; (c) you have obtained and considered such legal counsel as you deem necessary; (d) you have been given twenty-one (21) days to

consider whether to enter into this Agreement (although you may elect to not use the full twenty-one (21) day period at your option); and (e) by signing this Agreement, you acknowledge that you do so freely, knowingly, and voluntarily.

21. Effective Date and Revocation. This Agreement shall not become effective until the eighth (8th) day after you sign this Agreement (“Effective Date”). In other words, you may revoke your acceptance of this Agreement within seven (7) days after the date you sign it. Your revocation must be in writing and received by _____, at _____ by 5:00 p.m. Eastern Time on the seventh (7th) day in order to be effective.

22. ACKNOWLEDGMENT. EMPLOYEE AFFIRMS THAT SHE HAS READ THIS AGREEMENT AND HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT. THE PROVISIONS OF THIS AGREEMENT ARE UNDERSTANDABLE TO EMPLOYEE AND EMPLOYEE HAS ENTERED INTO THIS AGREEMENT FREELY AND VOLUNTARILY.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their signatures below.

EMPLOYEE:

Name:

Address:

Date:

EMPLOYER:

By:

Name:

Title:

Address: