

EMPLOYMENT SEPARATION AGREEMENT

1. **THE PARTIES.** This Employment Separation Agreement ("Agreement") is made and effective as of _____ ("Effective Date") by and between:

Employer: _____ with a mailing address of _____ ("Employer"), AND

Employee: _____ with a mailing address of _____ ("Employee").

Collectively, the Employer and Employee shall be referred to as the "Parties." It is known that the Parties wish to separate and discontinue their employment relationship in an amicable manner. Now, therefore, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

2. **EMPLOYMENT STATUS.** The Parties acknowledge that the last day of employment shall be _____ ("Employee's Last Day"). The Employer has paid the Employee all payments due through _____ and all standard deductions and regular payroll tax withholdings have been made. These payments shall be reflected in the IRS W-2 form that the Employer shall issue for the fiscal year.

3. **SEVERANCE.** In consideration of the promises set forth in this Agreement, the Employer agrees to: (check one)

☐ - **No Severance.** No other promises of payment shall be due to the Employee in this Agreement.

☐ - **Severance in Multiple Payments.** Employer agrees to continue payments to the Employee at their standard pay of \$_____ ending on _____ with payment(s) to be processed, at the same interval while employed, on a ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other: _____ basis ("Severance Payment(s)"). Such continuation of pay shall be contingent upon the execution and non-revocation of this Agreement. Employee shall make it known to the Employer if the Employee prefers to have their Severance Payment(s) deposited or delivered in a different manner than while employed. Employee agrees that the Severance Payment(s) is more than what the Employer is required to pay under its standard policies and procedures.

a.) **Other Severance.** In addition to the Severance Payment(s), the Employee shall be due: (check one)

☐ - **No Other Severance.** No other promises of payment, property, or benefits shall be due to the Employee in this Agreement.

☐ - **Other Severance.** _____

☐ - **Severance in a Single Payment.** Employer agrees to make a single payment to the Employee, due _____, in the amount of \$_____ ("Severance Payment(s)"). The Severance Payment(s) shall be subject to the appropriate taxes and other payroll deductions required by law, and these monies

shall be included in the IRS W-2 form the Employer shall issue to the Employee for the fiscal year. Employee agrees that, to the extent that any federal, state, or local taxes may be or become due or payable as part of the Severance Payment(s), the Employee shall be fully responsible for paying such taxes. Employee further agrees to indemnify the Employer and its agents, employees, members, former employees, partners, directors, officers, trustees, consultants, shareholders, attorneys, and insurers, both past and present, from, and hold them harmless against, any claim, liability, penalty, or tax consequence made by any local, state, or federal administrative agency or court of competent jurisdiction for such unpaid taxes, including costs and counsel fees incurred by the Employee as a result of such claims.

a) **Other Severance.** In addition to the Severance Payment(s), the Employee shall be due: (check one)

☐ - **No Other Severance.** No other promises of payment, property, or benefits shall be due to the Employee in this Agreement.

☐ - **Other Severance.** _____

4. **RETURN OF PROPERTY.** If the Employee has not done so already, the following property shall be returned to the Employer by _____:

("Company Property")

5. **NON-COMPETE.** The Parties agree that, at no time during employment, the Employee engaged in any activity that directly or indirectly competed with the business of the Employer. Nevertheless, after the Effective Date or the Employee's Last Day, whichever is later, the Employee shall be bound to the following:

☐ - **There SHALL NOT be a Non-Compete.** There shall be no non-compete or condition that affects the Employee, in any way whatsoever, from seeking future employment in the same or related industry as the Employer.

☐ - **There SHALL be a Non-Compete.** There shall be a non-compete that prohibits the Employee from working in the same or similar industries that directly or indirectly compete with the Employer in accordance with the following terms and conditions:

a) **Industries.** The Employee shall be barred from providing products or services in the following industries:

("Non-Compete Industries").

b) **Term.** The Employee shall be barred from providing products or services in the Non-Compete Industries for a period of _____ ☐ month(s) ☐ year(s) following the Effective Date or Employee's Last Day, whichever is later ("Non-Compete Term").

- c) **Location.** The Employee shall be barred from providing products or services in the Non-Compete Industries during the Non-Compete Term for the following market areas: (choose one)

☐ - **Radius.** The non-compete jurisdiction shall be for _____ miles from _____

☐ - **State.** The jurisdiction of the non-compete shall be for the State of _____.

6. **EMPLOYEE'S BENEFITS.** Employer agrees that any and all benefits that were provided to the Employee shall continue until _____. In addition, the Employer shall assist the Employee in the transfer, change, or termination to any employment benefits, including but not limited to health insurance plans, dental insurance plans, vision insurance plans, life insurance plans, disability insurance, childcare benefits, wellness programs, retirement plans, government assistance programs, and/or any other program or benefit that was readily accessible and being used by the Employee.
7. **INDEMNIFICATION.** Under this Agreement, the Employer agrees to indemnify and release the Employee from any and all actions during their employment and the Employee agrees to indemnify and release the Employer and any of its predecessors, successors, parent, affiliated, or subsidiary companies, and its present or former officers, directors, agents, board members, representatives, or employees, and the various Employer benefit plans, committees, trustees, fiduciaries, trusts, and their respective successors and assigns, heirs, executors, and persona or legal representatives ("Releasees") from any and all claims or causes of action the Employee may have or claim to have against the Releasees, including any claims arising out of or relating in any way to the Employee's employment with the Employer and/or the termination of such employment. The claims released include, but are not limited to:
- a) **Statutory Claims.** All claims arising out of or related to any federal, state, or local labor or civil rights laws, as amended, including, without limitation, the federal Civil Rights Acts of 1866, 1871, 1964 and 1991 (including but not limited to limited to Title VII), the Age Discrimination in Employment Act of 1967, the Older Workers' Benefit Protection Act of 1990, the Workers' Adjustment and Retraining Notification Act, the Employee Retirement Income Security Act of 1974, the Family and Medical Leave Act of 1993, the Equal Pay Act, the Americans with Disabilities Act of 1990, the Genetic Information Nondiscrimination act, and the Fair Credit Reporting Act;
 - b) **Constitutions.** All claims arising under the United States or state constitutions;
 - c) **Executive Orders.** All claims arising under any executive order or derived from or based upon any state or federal regulations;
 - d) **Common Law.** All common law claims, including but not limited to any and all rights to discovery, claims for wrongful discharge, constructive discharge, violation of public policy, breach of an express or implied contract, breach of an implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, defamation, conspiracy, tortious interference with contract or prospective economic advantage, promissory estoppel, equitable estoppel, fraud, misrepresentation, detrimental reliance, retaliation, and negligence;

- e) **Claims for Compensation.** All claims for any compensation, including commissions, back wages, front pay, punitive damages, pay increases, bonuses or awards, fringe benefits, disability benefits, severance benefits, reinstatement, retroactive seniority, pension benefits, contributions to retirement plans, or any other form of economic loss;
- f) **Injury.** All claims for personal injury, including physical injury, mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, interest, liquidated damages, and punitive damages; and
- g) **Fees.** All claims for costs, interest, and attorneys' fees.

Nothing contained in this section is intended, nor shall be construed to: (i) waive or release any future claim arising after the date this Agreement is signed by the Employee; or (ii) limit the Employee's right to enforce the terms of this Agreement. The Employee understands that any offer by the Employer to offer Severance Payment(s) or any other payment not mentioned in this Agreement does not constitute an admission by the Employer that it has conducted any misconduct or violated any statute, law, regulation, or ordinance, or have any other legal obligation that it may owe to the Employee with respect to any aspect of their employment with the Employer or their separation therefrom.

- 8. **LITIGATION.** Employee represents that the Employee has not, and agrees to not, file any lawsuit or claim against the Releasees based on any events, whether known or unknown, occurring prior to the date of the execution of this Agreement, including but not limited to any events related to, arising out of, or in connection with their employment with the Employer, or the termination of such employment, in any court or tribunal of the United States, with the state of employment, or any other state, city, county, or local jurisdiction. Employee also acknowledges and agrees that while this release does not preclude the Employee from filing a charge with the National Labor Relations Board, the Equal Opportunity Commission, or a similar state or local agency, or from participating in any investigation or proceeding with such an agency, the Employee will not personally recover monies, and expressly waives the right to recover such monies, for any complaint or charge filed against the Employer with any federal, state, or local board, agency, or court.
- 9. **PRIOR AGREEMENTS.** Any prior agreements between the Employee and the Employer that impose confidentiality, non-disclosure, non-competition, non-solicitation, or other post-employment covenants upon the Employee shall remain in force and effect. In addition, from and after the Effective Date, the Employee agrees not to divulge or use to the detriment of the Employer, the Employee's benefit, or the benefit of any other person or entity, any proprietary or confidential information or trade secrets related to the Employer, including, without limitation, the Employer's trade secrets or other intellectual property rights, personnel information, know-how, customer lists, pricing information or other confidential or proprietary data, including data acquired in connection with their employment by the Employer (collectively referred to as "Confidential Information"). On or before the Effective Date or the Employee's Last Day, whichever is later, the Employee shall immediately deliver to the Employer all property that may contain Confidential Information, including but not limited to memoranda, books, papers, letters, and other data and all copies thereof, whether or not such materials contain Confidential Information, then in the possession or control of the Employee. Confidential Information does not include information that: (i) has become publicly known and generally made available through no wrongful act of the Employee; or (ii) has been rightfully received by the Employee from a third (3rd) party who is authorized to make such disclosure.

10. CONFIDENTIALITY. The Employee agrees to maintain the terms of this Agreement in confidence and shall not disclose any of the negotiations, terms, or payments made under this Agreement to any individual or entity. Provided, however, the Employee shall not be prohibited from making disclosures to the Employee's spouse, domestic partner, attorney, tax advisors, individuals or entities necessary to exercise Section 8 rights under the National Labor Relations Act, or as otherwise required by law or in order to respond to any inquiry from any private or governmental entity or tax agency in response to a court order. Employee agrees that if the Employee is served or otherwise receives notice of any such court order, or if the Employee believes such disclosure is required by any state or federal law, the Employee shall immediately provide written notice to the Employer so that it may be afforded the opportunity to oppose the same prior to such disclosure.

It shall not be considered a breach of the obligation of confidentiality for the Employer to make disclosure of the terms of this Agreement to the extent necessary to obtain approval for, and as required for implementation of, the terms, or for purposes of reporting this Agreement internally, or as part of the normal external disclosure of financial information to an auditor, or as required by taxing or other governmental authorities. The Parties represent that no unauthorized disclosures concerning the terms of this Agreement were made prior to signing this Agreement. In the event the Employee is asked about the terms of this Agreement, the Employee may state that their employment with the Employer has been terminated and that the relationship ended in an amicable manner.

This section shall NOT in any way restrict or impede the Employee from exercising protected rights, including those rights under the National Labor Relations Act, to the extent that such rights cannot be waived by agreement or from complying with any applicable law, regulation, or a valid court order of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order.

11. BREACH. Any breach by the Employee of the obligations under this Agreement shall be considered a material breach of this Agreement. Employee acknowledges and understands that, in the event of such a breach or threatened breach of this Agreement, the Employer, in addition to any other rights and remedies it may possess, shall be entitled to appropriate injunctive relief, and shall be further entitled to recover its reasonable costs and attorneys' fees incurred in seeking relief for any such breach or threat by the Employee.

12. DISPARAGING REMARKS. The Parties agree that they will not criticize, denigrate, or disparage each other as set forth herein. Employee agrees and covenants not to make, publish, or communicate to any person or entity or in any public forum any maliciously false, defamatory, or disparaging remarks, comments, or statements concerning the Employer or any of its business, employees, officers, or directors.

This section shall NOT in any way restrict or impede the Employee from exercising protected rights, including those rights under the National Labor Relations Act, including the right to file unlawful labor practices (ULP) charges or participate, assist, or cooperate in ULP investigations, to the extent that such rights cannot be waived by agreement or from complying with any applicable law, regulation, or a valid court order of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order.

13. OTHER AGREEMENTS. Employee acknowledges that the only consideration the Employee has received for authorizing this Agreement is that set forth herein. No other promise, inducement, threat, agreement, or understanding of any kind or description has been made with the Employee to cause the Employee to enter into this Agreement. Employee further acknowledges that the consideration the Employee is receiving from the Employer through this Agreement is greater than any amount they are otherwise entitled to from the Employer.

14. REVIEW. Employee agrees and recognizes that the Employee was given at least twenty-one (21) days to review this Agreement with legal counsel and that the Employer recommends that this Agreement is reviewed with a licensed attorney in the state that specializes in employment matters. Nevertheless, the Employee acknowledges that the Employee understands the language of this Agreement and accepts its terms freely, voluntarily, and without duress or coercion.

a) **Revocation Period.** In order to promote the best interests of the Employee, the Employer allows the unrestricted revocation of this Agreement within seven (7) days of its Effective Date ("Revocation Period"). Such revocation shall be known to the Employer immediately and, in order to successfully revoke this Agreement, any payment made to the Employee must be returned to the Employer within such time frame. If any federal, state, or local laws, regulations, or ordinances require that the Revocation Period is for more time than stated, this Agreement shall adhere to any minimum required time period and the Employee shall have the same rights to revoke this Agreement.

15. SEVERABILITY. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions, shall not be affected thereby and said illegal, unenforceable, or invalid part, term, or provisions shall be deemed not to be part of this Agreement.

16. GOVERNING LAW. This Agreement shall be governed by the State of _____ and its courts shall have the jurisdiction to be the proper venue for any disputes that may arise out of this Agreement.

17. ADDITIONAL TERMS AND CONDITIONS.

18. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding and agreement between the Parties and fully supersedes any and all prior contracts or agreements between the Parties pertaining to compensation or severance, and it likewise fully supersedes any and all other conflicting agreements or understandings between the Parties.

I, THE EMPLOYEE, ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND UNDERSTAND ALL OF ITS TERMS, INCLUDING THE FULL AND FINAL RELEASE AND WAIVER OF CLAIMS SET FORTH ABOVE. I FURTHER ACKNOWLEDGE THAT I HAVE VOLUNTARILY ENTERED INTO THIS SEVERANCE AGREEMENT AND GENERAL RELEASE, THAT I HAVE NOT RELIED UPON ANY REPRESENTATION OR STATEMENT, WRITTEN OR ORAL, NOT SET FORTH IN THIS AGREEMENT, AND THAT I HAVE BEEN GIVEN THE OPPORTUNITY AND BEEN ENCOURAGED TO HAVE THIS AGREEMENT REVIEWED BY AN ATTORNEY.

Employer Signature: _____ **Date:** _____

Print Name: _____

Title: _____

Employee Signature: _____ **Date:** _____

Print Name: _____