

Separation Agreement & General Release

CONFIDENTIAL

Re: Separation Agreement and General Release

Dear _____:

This letter proposes the following Separation Agreement and General Release ("Agreement") between you and _____ ("Company") regarding the terms of your separation from _____.

I. Background

A. You were employed by the Company as _____. You and the Company have agreed to terminate your employment relationship on an amicable basis.

B. On _____, your employment with the Company terminated.

II. Terms of Agreement

In order to effect the termination of your employment and to provide you with certain benefits that you would not otherwise be entitled to, you and the Company agree as follows:

1. This Agreement shall not be in any way construed as an admission by the Company that it has acted wrongfully with respect to you or any other person, or that you have any rights whatsoever against the Company.

2. Even if you do not sign this Agreement, the Company will pay you the compensation that you have earned through the date of your termination, any accrued vacation benefits, and [insert any appropriate profit sharing, etc. plan name here] in accordance with the terms and conditions of such plan. Similarly, even if you do not sign this Agreement, you will be offered benefits to which you are entitled under the Consolidated Omnibus Budget

Reconciliation Act of 1985 ("COBRA"), and you retain all benefits under the Company's 401(k) Plan.

3. In exchange for the promises contained in this Agreement and release of claims as set forth below, and provided that you sign this agreement and return it to me by _____ [21 days from date of letter], 20____ and do not revoke this Agreement as set forth in Paragraph 13(d):

a. The Company will pay you a severance allowance in the amount of your current base monthly salary of \$_____ beginning _____, and ending _____ to be paid on a monthly basis and in accordance with the Company's normal payroll process.

b. The Company will pay for your medical coverage (i.e., COBRA benefits) under the _____.

c. If you wish, the Company will pay for an outplacement service (to be selected by the Company) for services rendered in assisting you in locating another job, for a period of _____ months following the date of your termination or until you begin working for another employer, whichever occurs first. These payments are contingent upon your cooperation with the outplacement service and upon active efforts by you to locate another position.

4. In consideration of the promises contained in this Agreement, you agree:

a. On behalf of yourself and anyone claiming through you, irrevocably and unconditionally to release, acquit and forever discharge the Company and/or its parent corporation, subsidiaries, divisions, predecessors, successors and assigns, as well as each's past and present officers, directors, employees, shareholders, trustees, joint venturers, partners, and anyone claiming through them (hereinafter "Releasees" collectively), in each's individual and/or corporate capacities, from any and all claims, liabilities, promises, actions, damages and the like, known or unknown, which you ever had against any of the Releasees arising out of or relating to your employment with the Company and/or the termination of your employment with the Company. Said claims include, but are not limited to: (1) employment discrimination (including claims of sex discrimination and/or sexual harassment) and retaliation under Title VII (42 U.S.C.A. 2000e etc.) and under 42 U.S.C.A. section 1981 and section 1983, age discrimination under the Age Discrimination in Employment Act (29 U.S.C.A. sections 621-634) as amended, under any relevant state statutes or municipal ordinances; (2) disputed wages; (3) wrongful discharge and/or breach of any alleged employment contract; and (4) claims based on any tort, such as invasion of privacy, defamation, fraud and infliction of emotional distress.

b. That you shall not bring any legal action against any of the Releasees for any claim waived and released under this Agreement and that you represent and warrant that no such claim has been filed to date. You further agree that should you bring any type of administrative or legal action arising out of claims waived under this Agreement, you will bear all legal fees and costs, including those of the Releasees.

5. You agree to refer any and all reference checks to _____ and you know that any such references will be limited to confirmation of your dates of employment and last position held. The obligation under this Paragraph is separable and any failure by the Company to perform the obligation in this Paragraph will only give rise to an action to enforce this Paragraph.

6. You agree that you will not, directly or indirectly, disclose the fact of and terms of this Agreement, including the severance benefits, to anyone other than your attorney, except to the extent such disclosure may be required for accounting or tax reporting purposes or as otherwise required by law.

7. This agreement shall be binding on the parties and upon their heirs, administrators, representatives, executors, successors and assigns and shall inure to their benefit and to that of their heirs, administrators, representatives, executors, successors and assigns.

8. On or before _____, you will return to me all of the Company's property in your possession including, but not limited to,

any phone cards, cellular phone, automobile and all of the tangible and intangible property belonging to the Company and relating to your employment with the Company. You further represent and warrant that you have not retained any copies, electronic or otherwise, of such property.

9. You will cooperate fully with the Company in its defense of or other participation in any administrative, judicial or other proceeding arising from any charge, complaint or other action which has been or may be filed.

10. You will continue to comply with the terms of the Proprietary and Confidentiality Agreement between you and the Company, executed on _____, and know and understand that the obligations contained in that agreement survive execution of this Agreement and your termination of employment. In particular, you shall not disclose any confidential or proprietary information (specifically including pricing, margins, key customer contacts and their profiles not generally known to the public) which you acquired as an employee of the Company to any other person or entity, or use such information in any manner that is detrimental to the interest of the Company. A copy of your Confidentiality Agreement is attached as Exhibit 1.

11. You agree that you will not make any comments relating to the Company or its employees which are critical, derogatory or which may tend to injure the business of the Company.

12. In the event that you breach any of your obligations under Paragraphs 8 through 11, any outstanding obligations of the Company hereunder shall immediately terminate, and any payments previously made to you pursuant to Paragraph 3 shall be returned to the Company.

13. You also acknowledge that you have been informed pursuant to the federal Older Workers Benefit Protection Act of 1990 that:

- a. You have the right to consult with an attorney before signing this Agreement;
- b. You do not waive rights or claims under the federal Age Discrimination in Employment Act that may arise after the date this waiver is executed.
- c. You have twenty-one (21) days from the date of this letter to consider this Agreement;
- d. You have seven (7) days after signing this Agreement to revoke the Agreement, and the Agreement will not be effective until that revocation period has expired.

14. The provisions of this Agreement are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

15. This Agreement sets forth the entire agreement between you and the Company and supersedes any and all prior oral or written agreements or understandings between you and the Company concerning the subject matter of this Agreement. This Agreement may not be altered, amended or modified, except by a further written document signed by you and the Company.

16.

17. You represent that you fully understand your right to review all aspects of this Agreement with an attorney of your choice, that you have had the opportunity to consult with an attorney of your choice, that you have carefully read and fully understand all the provisions of this Agreement and that you are freely, knowingly and voluntarily entering into this Separation Agreement and General Release.

If you are willing to enter into this Agreement, please signify your acceptance in the space indicated below, and return to me by _____ [21 days], 20____. As I noted earlier, this Agreement will not become effective, and none of the severance benefits in Paragraph 3 will be paid, until seven (7) days after the date you sign this Agreement.

PLEASE READ CAREFULLY. YOU ARE GIVING UP ANY LEGAL CLAIMS THAT YOU HAVE AGAINST THE COMPANY BY SIGNING THIS AGREEMENT.

Very truly yours,

Accepted and agreed to on this _____ day of _____, 20_____.

I do or do not (circle one) elect outplacement services pursuant to Paragraph 3(c).

Employee signature

Witness Signature: _____

Printed Name of Witness; _____

Date: _____