**SEPARATION AGREEMENT AND RELEASE**

 **THIS SEPARATION AGREEMENT** (the “Agreement”) is made and entered into by and between [Name of Employee] (the “Employee”), a resident of \_\_\_\_\_\_\_\_\_, and [Name of employer] (the “Company”).

1. Employee’s employment with the Company will terminate effective at the close of business\_\_\_\_\_\_\_, 20\_\_.

B. The parties desire to resolve all issues between them and have agreed to a full settlement of such issues.

**NOW, THEREFORE,** in consideration of the mutual promises and provisions contained in the Agreement, the parties, intending to be legally bound, agree as follows:

**AGREEMENTS**

1. **Termination of Employment**. Employee confirms the termination of employment with the Company and any affiliates was effective at the end of business on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_ (the “Termination Date”). Employee will be paid the base salary due through the Termination Date, in accordance with the regular payroll practices of the Company.
2. **Separation Benefits**. In consideration for Employee’s execution of, non-revocation of, and compliance with this Agreement, including the waiver and release of claims included herein, the Company will provide the following benefits to which the Employee is not otherwise entitled:
	1. The Company will pay to Employee as severance pay an amount equal to [Dollar amount/weeks of Employee’s regular salary], less all applicable state and federal withholding taxes and any other deductions the Company is required by law to make, in accordance with the Company’s regular payroll practices. This severance pay will be paid to Employee in equal installments with the first payment to be made on the first regular payroll date of the Company falling five or more business days after the expiration of the rescission period set forth below in section 3.B.
	2. [Add other benefits, if any (e.g., outplacement services, etc.)]

Employee understands and acknowledges that these benefits are in addition to anything of value that Employee would be entitled to receive from the Company if Employee did not sign or revoke the Agreement. Nothing in this Agreement shall be deemed or construed as an express or implied policy or practice of the Company to provide these or other benefits to any individuals other than the Employee. The above benefits will be discontinued should Employee rescind or fail to comply with any terms of the Agreement.

1. **Release by Employee**.
	1. Employee’s General Release.

Employee and Employee’s heirs, legal representatives, successors, and assigns (collectively, the “Releasors”) hereby forever irrevocably and unconditionally release and forever discharge the Company and its subsidiaries, successors, affiliates, and assigns, and its current and former Employees, officers, directors, shareholders, attorneys, plans, insurers, fiduciaries, and agents (the “Company Releasees”) from any claims, causes of actions, suits, debts, complaints, or demands of any nature whatsoever, arising out of any acts or omissions by any of the Company Releasees up to and including the date of this Agreement, including, without limitation, any claims under any federal, state, local, or foreign law, that Releasors may have, have ever had, or may in the future have arising out of, or in any way related to the Employee's hire, benefits, employment, termination, or separation from employment with the Company any acts or omissions which relate to Employee’s work or employment with the Company or any of its affiliates, whether such claims are past or present, known, suspected, or unknown, and any actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter, including, but not limited to:

* + 1. claims for violations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family Medical Leave Act (with respect to existing but not prospective claims), the Equal Pay Act, the Employee Retirement Income Security Act (with respect to unvested benefits), the Fair Labor Standards Act, the Civil Rights Act of 1991, Section 1981 of U.S.C. Title 42, all including any amendments and their respective implementing regulations, any other federal, state, local, or foreign employment laws based on race, gender, or age or any other protected class status, and any other federal, state, local, or foreign law (statutory, regulatory, or otherwise) that may be legally waived and released;
		2. any and all claims of retaliation and/or discrimination under the New Mexico Human Rights Act; any and all statutory claims arising out of employment, including, but not limited to, any claim brought under New Mexico’s Reemployment of Persons in Armed Forces Act, Fraud Against Taxpayers Act, Promoting Financial Independence of Domestic Violence Victims Act, and Employee Privacy Act;
		3. any and all claims arising under tort, contract, and quasi-contract law, including but not limited to claims of breach of an express or implied contract, tortious interference with contract or prospective business advantage, breach of the covenant of good faith and fair dealing, fraud, misrepresentation, promissory estoppel, detrimental reliance, invasion of privacy, negligence or other breach of duty, nonphysical injury, personal injury or sickness or any other harm, wrongful or retaliatory discharge, fraud, defamation, slander, libel, false imprisonment, and negligent or intentional infliction of emotional distress, retaliation, harassment, and any other claims for any other unlawful employment practices, whether legal or equitable;
		4. any and all claims for compensation of any type whatsoever, including but not limited to claims for salary, wages, bonuses, commissions, incentive compensation, vacation, and severance that may be legally waived and released; and,
		5. any and all claims for monetary or equitable relief, including but not limited to attorneys' fees, back pay, front pay, reinstatement, experts' fees, medical fees or expenses, costs, and disbursements.
	1. Specific Release of ADEA Claims**.**
		1. In further consideration of the payments and benefits provided to the Employee in this Agreement, the Releasors hereby irrevocably and unconditionally fully and forever waive, release, and discharge the Releasees from any and all Claims, whether known or unknown, from the beginning of time to the date of the Employee's execution of this Agreement arising under the Age Discrimination in Employment Act (ADEA), as amended, and its implementing regulations. By signing this Agreement, the Employee hereby acknowledges and confirms that:
			1. the Employee has read this Agreement in its entirety and understands all of its terms;
			2. by this Agreement, the Employee has been advised in writing of the right to consult with an attorney of the Employee's choosing before executing this Agreement;
			3. the Employee knowingly, freely, and voluntarily assents to all of the terms and conditions set out in this Agreement including, without limitation, the waiver, release, and covenants contained in it;
			4. the Employee is executing this Agreement, including the waiver and release, in exchange for good and valuable consideration in addition to anything of value to which the Employee is otherwise entitled;
			5. the Employee was given at least twenty-one (21) days to consider the terms of this Agreement and consult with an attorney of the Employee's choice, although the Employee may sign it sooner if desired and changes to this Agreement, whether material or immaterial, do not restart the running of the 21-day period;
			6. the Employee understands that the Employee has seven (7) from signing this Agreement to revoke the release in this paragraph by delivering a notice of revocation as indicated in section 17; and
			7. the Employee understands that the release contained in this paragraph does not apply to rights and claims that may arise after the Employee signs this Agreement.

These releases cover both claims that Employee knows about or may not know about or expect to exist, at the time of the signing of the Agreement.

1. **Claims Not Released.** Notwithstanding anything in this Agreement, Employee is not waiving any right that cannot by law be waived. Nothing in this Agreement shall interfere with the right of Employee to file a charge with the Equal Employment Opportunity Commission (“EEOC”), or other similar federal or state administrative agencies, or to participate in an EEOC investigation or proceeding although, under this Agreement, Employee has waived any right to recover individual relief or money damages which may be awarded on account of such a charge. This waiver and release is not effective to waive the right of Employee to enforce the terms of this Agreement or to assert claims that are based on events that happen after this Agreement becomes effective.
2. **Documents and Property.** Employee acknowledges and agrees that Employee has returned to the Company all records, documents, computer disks, or files of any type which were in Employee’s possession, together with all copies thereof. Employee also acknowledges and agrees that Employee has returned all keys, computers, credit cards, or other property of the Company or any of its subsidiaries or affiliates in Employee’s possession.
3. **Confidential Information.** Employee acknowledges that during the time Employee was employed by the Company, Employee had access to confidential and proprietary information of the Company, and its subsidiaries and affiliates. Employee agrees that Employee shall not at any time disclose any confidential information obtained during the course of Employee’s association with the foregoing to any person, firm, corporation, association, or other entity for any purpose or reason whatsoever, unless otherwise required to do so by law or unless such information has become public other than through disclosure by Employee. Employee acknowledges that any breach of the provisions of this section 6 will be considered a material breach of the Agreement and will entitle the Company or its affiliates to pursue all legal and equitable remedies and will entitle the Company to recover the full amount of the payments made to Employee under the Agreement.
4. **Full Compensation**. Employee understands that consideration provided by the Company under the Agreement will fully compensate Employee for and extinguish any and all of the potential claims Employee is releasing herein, including without limitation, any claims for attorneys’ fees and costs, and any and all claims for any type of legal or equitable relief.
5. **No Admission of Wrongdoing**. Employee agrees that the Agreement does not constitute an admission that the Company has violated any local ordinance, state or federal statute, or principle of common law, or that the Company has engaged in any unlawful or improper conduct towards Employee or others.
6. **Non-Disparagement [and Orderly Exit].** Employee agrees that Employee shall not disparage or defame or otherwise speak in a negative, derogatory or unflattering manner about the Company, its products, or its Employees and officers, whether in writing, verbally or electronically. Nothing herein prevents Employee from providing complete and truthful testimony to a court or governmental agency pursuant to a subpoena, court order or other legal means. [Employee also agrees to immediately exit the company premises in a quiet and orderly manner with no disruption to the work environment.]
7. **Legal Representation**. Employee acknowledges that Employee has been advised by the Company to consult with Employee’s own attorney before executing this Agreement, that Employee has had a full opportunity to consider the Agreement, that Employee has had a full opportunity to ask any questions that Employee may have concerning the Agreement, the release contained herein, or the settlement of Employee’s potential claims against the Company, and that Employee has not relied upon any statements or representations made by the Company or its attorneys, written or oral, other than the statements and representations that are explicitly set forth in the Agreement and any qualified Employee benefit plans sponsored by the Company in which Employee is a participant.
8. **No Re-Employment.**    Employee agrees that Employee’s employment relationship with the Company and its affiliates is being permanently and irrevocably severed, and Employee agrees not apply for re-employment with the Company or any of its subsidiaries, affiliates or related companies in any capacity and that any failure to re-employ Employee by Company or any of its subsidiaries, affiliates or related companies for any reason (or, if Employee has already been employed, dismiss Employee following discovery of that fact) will not constitute a discriminatory action.  Employee further covenants and agrees not to make any claim or commence any action based upon a failure to re-employ or future termination of Employee upon re-hiring.
9. **Successors and Assigns**.  The Company may freely assign this Agreement at any time. This Agreement shall inure to the benefit of the Company and its successors and assigns. The Employee may not assign this Agreement in whole or in part. Any purported assignment by the Employee shall be null and void from the initial date of the purported assignment.
10. **Governing Law, Jurisdiction, and Venue**. This Agreement and all matters arising out of or relating to this Agreement, whether sounding contract, tort, or statute, for all purposes shall be governed by and construed in accordance with the laws of [STATE] (including its statutes of limitations) without regard to any conflicts of laws principles that would require the laws of any other jurisdiction to apply. Any action or proceeding by either of the Parties to enforce this Agreement shall be brought in any state or federal court located in the state of [STATE], county of [COUNTY]. The Parties hereby irrevocably submit to the exclusive jurisdiction of these courts and waive the defense of inconvenient forum to the maintenance of any action or proceeding in these venues.
11. **Entire Agreement**. This Agreement is intended to define the full extent of the legally enforceable undertakings of the parties, and no promises or representations, written or oral, that are not set forth explicitly in the Agreement, or any of the aforementioned plans sponsored by the Company in which Employee is a participant are intended by either party to be legally binding. All other agreements and understandings between the parties are hereby cancelled, terminated, and superseded.
12. **Captions**. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.
13. **Modification and Waiver**. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Employee and by [POSITION NAME] of the Company. No waiver by either Party of any breach by the other party of any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the Parties in exercising any right, power, or privilege under this Agreement operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
14. **Severability**. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held to be unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the Parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The Parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement instead of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems necessary to carry out the intent and agreement of the Parties as embodied in this Agreement to the maximum extent permitted by law.

The Parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth in it.

1. **Notice to Rescind or Revoke**. Employee understands that the Agreement and the release contained herein will not become effective or enforceable unless and until Employee has not rescinded them and the applicable rescission period has expired. Employee understands that if Employee wishes to rescind, the rescission must be in writing and hand-delivered or mailed to the Company within the time period indicated in section 3.B. If mailed, the rescission must be postmarked within applicable rescission period and sent by certified mail, return receipt requested. All notices to the Company should be sent to:

[Company Name]

Attn: [Name or person/Title]

[Address]

[City, State, Zip]

[Email or fax, if allowable]

1. **Confidentiality of Agreement**. Employee agrees not to disclose, publicize, or allow or cause to be publicized or disclosed any of the terms of this Agreement, except as necessary to Employee’s legal and tax advisors, or as required by law, court order or to enforce this Agreement. Should Employee disclose to Employee’s legal or tax advisors or spouse any of the terms of this Agreement, Employee must first advise them of the confidential nature of the disclosure and that they under the same obligation of confidentiality.
2. **Remedies**. In the event of a breach or threatened breach by the Employee of any of the provisions of this Agreement, the Employee hereby consents and agrees that the Company shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. Any equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available relief.

If the Employee fails to comply with any of the terms of this Agreement or post-termination obligations contained in it, the Company may, in addition to any other remedies it may have, reclaim any amounts paid to the Employee under the provisions of this Agreement or terminate any benefits or payments that are later due under this Agreement, without waiving the releases provided in it.

The Parties mutually agree that this Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of the Agreement.

1. **Attorneys' Fees and Costs**. If the Employee breaches any terms of this Agreement or the post-termination obligations in it, to the extent authorized by governing law, the Employee will be responsible for payment of all reasonable attorneys' fees and costs that Company incurred in the course of enforcing the terms of the Agreement, including demonstrating the existence of a breach and any other contract enforcement efforts.
2. **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.
3. **Certification**. The parties certify that they have read the Agreement and that they understand the terms and effects of the Agreement.

**IN WITNESS WHEREOF,** the parties have executed the Agreement as set forth in the dates below:

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Employee Name]

 [Company Name]

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_. By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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