### Sample Severence Agreement

### (Individual – Protected Class)[[1]](#endnote-1)

THIS SEVERANCE AGREEMENT (this "Agreement") is made and entered into effective the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Employer"), on behalf of itself and any of its subsidiaries and affiliates and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Employee").

A. Employee's position with Employer is being eliminated effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_.

B. It is the intention of the parties to settle and adjust fully all matters between them relating to Employee's employment with Employer and its affiliates and subsidiaries on the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Employee agree as follows:

1. TERMINATION. Employee's effective date of termination of employment with Employer will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ ("Termination Date").[[2]](#endnote-2)

2. SEVERANCE PAYMENTS. In exchange for the release contained in paragraph 5 hereof, Employer agrees to pay Employee \_\_\_\_\_\_\_\_[[3]](#endnote-3) weeks of Employee's annual salary on a pro rata basis on the same dates as regular payroll checks are issued by Employer.[[4]](#endnote-4) Such severance payments will commence eight days after Employee’s execution of this Severance Agreement. Employee will be paid for Employee's unused vacation and/or sick leave as of Employee's Termination Date in Employee's last regular paycheck. The severance payments and vacation pay will be subject to all applicable withholding taxes and other employment taxes as are required by the Internal Revenue Service or other taxing authorities. Employer shall be authorized to deduct from such payments any amounts due Employer from Employee including without limitation \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.[[5]](#endnote-5)

3. OUTPLACEMENT EXPENSES. Employer will provide Employee with certain outplacement services through an outplacement firm chosen by Employer. The foregoing notwithstanding, no outplacement services will be made by Employer until after this Agreement is fully effective as provided in Paragraph 5, below. Employer makes no warranty or guarantee of any kind (including as to availability or timing) with respect to such outplacement services.

4. BENEFITS DURING SEVERANCE PERIOD.

(a) Employee shall be entitled to the following additional benefits if, on the Termination Date, Employee was a participant in the insurance programs noted and if elected by Employee:

Check if

elected by

Employee

\_\_\_\_\_ Health Insurance. Employer will pay the same level of contribution which it paid for Employee's group health insurance program in effect on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ for \_\_\_\_\_ weeks from the Termination Date.[[6]](#endnote-6)

\_\_\_\_\_ Supplemental and Dependent Life Insurance. Employee may elect to continue any supplemental and dependent life insurance currently carried by Employee at Employee's expense for \_\_\_\_\_ weeks from the effective date of termination. Employee is responsible for coordinating any conversion.

\_\_\_\_ Life Insurance. To the extent Employee is currently covered by Employer group life insurance program, Employer will continue premium payments for \_\_\_\_\_ weeks from the Termination Date.

(b) If coverage is elected by Employee, Employee's portion of the cost of the above benefits during the severance period will be withheld from Employee's severance pay on a pro rata basis. If Employee elects to continue coverage of health or supplemental and dependent life insurance benefits under this Agreement, and thereafter wishes to terminate any such coverage before the expiration period identified above, Employee must submit a written request to terminate coverage to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Employer. After receipt of the request by Employee, Employer will refund unused insurance premiums withheld from Employee’s severance pay.

(c) After the severance payment period, Employee must coordinate health continuation coverages under the Consolidated Omnibus Budget Reconciliation Act of 1995 (COBRA) with the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Employer. The Employee will coordinate any conversion rights directly with the applicable insurance carrier.

(d) After the period for which severance payment is made pursuant to this Agreement, Employer shall not dispute claims by Employee for unemployment compensation benefits as allowed by applicable law (and to the extent Employee is otherwise eligible for such benefits) on the basis of the circumstances of Employee’s termination from employment.

1. RELEASE. In consideration of the amounts paid by Employer under this Agreement, Employee agrees to and does hereby release Employer and all subsidiaries and affiliates of Employer, as well as their current or former agents, equity holders, officers, directors, managers, employees, predecessors, successors and assigns, from all claims, charges, causes of action or other liabilities which may have arisen as of the date of the execution of this Agreement (hereafter collectively referred to as "claims"), whether in contract or tort, known or unknown, arising out of or relating in any way to Employee's employment and termination of employment with Employer, its subsidiaries or affiliates, including, but not limited to, claims for wrongful discharge, wages and benefits, breach of contract, alleged discrimination under Title VII of the Civil Rights Act of 1964, age discrimination under state or local law or the Age Discrimination in Employment Act of 1987 (ADEA), the Older Workers Benefit Protection Act of 1990, and any other claims under federal, state or local law, including the Worker Adjustment and Retraining Notification Act (WARN) and the Americans with Disabilities Act.

 (a) Employee has a period of twenty-one (21) calendar days from \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ to consider, sign and return this Agreement. To be effective, this Agreement must be signed and submitted to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Employer by Employee no later than midnight on \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_. An agreement signed or submitted by Employer after midnight on \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ will be invalid and unenforceable.

(b) In addition, Employee may revoke this Agreement by notifying the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Employer in writing within a period of seven (7) calendar days after signing this Agreement. If not revoked by Employee in writing, this Agreement will become fully effective and irrevocable upon expiration of the seven (7) day revocation period. Employee understands that if Employee cancels this Agreement, all of Employer's obligations to Employee hereunder will immediately cease, and Employer will owe Employee no further amounts under this Agreement.

(c) Employee is advised by Employer to consult with an attorney before signing this Agreement. Employee has either done so or waives that right.

(d) Employee understands that if Employee timely revokes this Agreement, Employer will have no obligation to provide the termination payments and other benefits hereunder (except as otherwise required by law). Benefits payable under this Agreement shall not be made until after the seven day revocation period has elapsed.

6. REPRESENTATIONS. Each party is executing this Agreement solely in reliance upon each party's own knowledge, belief and judgment and not based upon the representations made by anyone on behalf of any such party.

7. DENIAL OF LIABILITY; CONFIDENTIALITY OF AGREEMENT. This Agreement is not and shall not be construed as an admission by Employer of any violation of its policies and procedures or of any federal, state or local law or regulations, or the admission of any claims now or hereafter asserted by Employee. Employee agrees that the existence and terms of this Agreement are confidential and shall not be disclosed by Employee to any third party without the prior written consent of Employer, except as necessary to for Employee to consult with Employee's counsel.

8. CONFIDENTIALITY AND RETURN OF PROPRIETARY MATERIALS.

(a) Employee hereby agrees that Employee will not at any time, without the prior written consent of Employer or unless required by law, disclose or permit access to any Confidential Information (as defined below) obtained during Employee's employment with Employer or thereafter to any person, firm, corporation or entity of any kind, and Employee further agrees not to use any such Confidential Information for Employee's own benefit or profit or for the benefit or profit of any other person, firm, corporation or entity of any kind. Employee will surrender and turn over to Employer, on or before the Termination Date, all materials and records, or copies thereof, whether in tangible form or on a computer disk or other electronic storage medium, relating to Confidential Information currently in Employee's possession or control.

(b) Employee agrees that, on or before the Termination Date, Employee will deliver promptly to Employer (i) all documents and materials, including software, notes, data, reference materials, sketches, drawings, memoranda and records, in any way incorporating or reflecting any Confidential Information, and (ii) any other Employer-owned items in Employee's possession or control. Any such documents, materials or items in a form not physically returnable shall be promptly destroyed.

(c) Employee shall indemnify and hold Employer harmless from and against any and all loss, damage, cost or expense resulting from any violation of this paragraph 8.

(d) For purposes of this Agreement, "Information" and "Confidential Information" shall be defined as follows:

(i) "Information" means all information, including without limitation, all financial information, product information, marketing information, long range planning, corporate strategy, pricing and rate information, trade secrets, correspondence, contracts, procedures and any other information, written or oral, made known to Employee by or on behalf of Employer in any manner.

(ii) "Confidential Information" means all information as above defined except Information which prior to or after receipt thereof by Employee (i) was or becomes publicly known without disclosure by Employee, or (ii) was or is acquired from a third party provided that third party in providing such Information has not thereby breached any agreement with, or acted in derogation of any confidential relationship with, Employer. The burden shall be on Employee to establish any exception provided herein.

 (e) Employee acknowledges and agrees that in the event of a violation of the covenants contained in this paragraph 8, Employer shall be entitled to injunctive relief in addition to any other rights or remedies to which Employer may be entitled. In the event any covenant contained in this paragraph 8 is held to be unreasonable in any respect, then the court so holding may effect any change to such covenant to the extent necessary to render such covenant enforceable.

 9. NO REEMPLOYMENT. Employee agrees that Employee will not attempt to seek reemployment with Employer. In the event Employee nonetheless attempts to seek reemployment with Employer, Employer shall have the right to reject without cause any such employment application by Employee.

10. MISCELLANEOUS.

(a) The consideration set forth in this Agreement is all that Employee will receive and no promises for any other or further consideration have been made by anyone.

(b) A cause of action shall accrue immediately on the commencement of any claim or action contrary to this Agreement and this Agreement may be pleaded by any party hereto as a defense or may be asserted as a counterclaim or cross-claim in any such claim or action. In particular, any initiation of any claims as described in paragraph 5, above, shall be a breach of this Agreement and shall entitle Employer to recover the consideration as set forth in paragraph 2-3 above. In addition to all other rights and remedies, in the event of any breach of this Agreement by either party, the nonbreaching party shall be entitled to recover reasonable attorneys' fees and expenses incurred in connection with or as a result of any such breach.

(c). Employee represents and warrants that Employee has not assigned or transferred, in whole or in part, any claim, right, demand or cause of action which Employee may now have or may have had or claims to have, of whatever kind or nature, against Employer, to any other person, firm or corporation, or other entity, in any manner.

(d) If any provision or any part thereof of this Agreement is held to be invalid or unenforceable or contrary to public policy, the remainder of this Agreement shall not be affected thereby.

(e) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, successors, transferees, and assigns. Notwithstanding the foregoing, benefits payable or otherwise provided for under this Agreement shall not be subject in any manner to sale, transfer, assignment, pledge, or other voluntary encumbrance of any kind, by will or by a document signed by Employee during Employee's lifetime.

(f) This Agreement may not be changed or terminated orally and shall be construed under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_.[[7]](#endnote-7) Any court proceedings arising out of or pertaining to this Agreement shall only be commence in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ court for \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, or the federal district court for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ District of \_\_\_\_\_\_\_\_\_\_ situated in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The parties agree to promptly and voluntarily submit to the jurisdiction of such courts.

(g) The paragraph headings contained herein are for the convenience of reference only and shall not be construed so as to affect the interpretation or construction of any substantive provision of this Agreement.

(h) This Agreement supersedes any prior written or verbal commitment regarding the subject matter hereof, except that this Agreement shall in no manner be deemed to alter or diminish the obligations and commitments of Employee under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which provisions shall survive the termination of Employee’s employment with Employer hereunder and shall remain in full force and effect as if such provisions were set forth herein.[[8]](#endnote-8)

(i) Unless otherwise required in this Agreement, notice shall be hand delivered or shall be given by certified mail to Employer or to Employee as follows:

 To Employer:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and to Employee at the address indicated below:

 To Employee:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THE UNDERSIGNED, BY EXECUTION HEREOF, STATE THAT THEY HAVE READ THIS RELEASE AND WAIVER OF CLAIMS AGREEMENT, THAT THEY UNDERSTAND AND FULLY AGREE TO EACH AND EVERY PROVISION HEREOF, THAT THEY HAVE THE APPROPRIATE AUTHORITY TO EXECUTE THIS RELEASE AND SETTLEMENT AGREEMENT, AND THAT THEY EACH ACKNOWLEDGE RECEIPT OF A COPY HEREOF.**

**EMPLOYER**

**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**EMPLOYEE:**

**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. This Agreement is designed as a severance arrangement for an individual who is age 40 or over but is not a part of a group or class layoff. Such an individual is protected under the Older Workers Benefit Protection Act, 29 U.S.C. §626(f) (“OWBPA”). Consult your attorney to determine whether your situation applies to an employee who is a member of a protected class. Although this Agreement is tailored to the requirements of the OWBPA, you should also consult with your attorney to ensure that all of the requirements of the statute have been satisfied in connection with any termination. Furthermore, all severance arrangements must be tailored to the employer's and employee’s particular situation and to terms negotiated with the employee(s). FOR EXAMPLE, THIS AGREEMENT IS NOT APPROPRIATE FOR ANY UNION EMPLOYEE WHO IS SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT WITH EMPLOYER. Consult your attorney to determine whether additional or different terms than those identified in this Agreement are applicable to your situation. [↑](#endnote-ref-1)
2. Insert the applicable date here and in Recital "A" above. [↑](#endnote-ref-2)
3. Insert the applicable number of weeks. [↑](#endnote-ref-3)
4. The OWBPA requires that, in exchange for a release from Employee, a severance agreement must provide to Employee more than is otherwise owed. In other words, for an OWBPA release to be binding and valid, it must provide for payment of greater severance than would be required under policy or other contract. [↑](#endnote-ref-4)
5. Insert any applicable amounts, if any, owed by Employee to Employer. Consult your attorney for advice in this area. [↑](#endnote-ref-5)
6. Please note that certain health insurers may require that an employee be on full time, active duty in order to maintain coverage. In such situations, this form will need to be revised. One alternative in such situations is to treat Employee as immediately eligible for COBRA status and then to reimburse Employee for the cost of such coverage during the severance period. Consult your attorney for advice. [↑](#endnote-ref-6)
7. Insert the name of the state whose law is to govern the contract. The appropriate state is usually the state in which the employment relationship is based. Consult your attorney for advice. [↑](#endnote-ref-7)
8. Insert reference to any agreement containing a non-compete, confidentiality or proprietary rights provision, if any, under which Employee's covenants should continue unaffected by this Agreement. If Employee holds any equity interest or right convertible into or exercisable for equity in Employer, this Agreement should reference or include the manner in which such interest will be handled. Consult your attorney for the impact of this Agreement on any such other agreements. [↑](#endnote-ref-8)