

<b><u>Form:</u></b>	Employee Settlement and Release Agreement.
<b><u>Description:</u></b>	This is a sample form agreement for the settlement of any claims by an employee against the employer. In exchange for the payment of a designated amount (Section 2), the employee agrees to waive any rights against the employer for wrongful termination or other claims the employee may have against the employer. (Section 4).
<b><u>Release:</u></b>	The release includes release of known and unknown claims. Section 5 refers to a waiver of Section 1542 of the California Civil Code. If a law other than California is to govern, an appropriate cross reference change may be appropriate.
<b><u>No Disparagement:</u></b>	Section 8 requires the employee not to make future disparaging remarks about the employer.
<b><u>References:</u></b>	Section 9 requires the employer only to give minimal information to prospective employers of the employee with respect to reference checks.
<b><u>Review by Counsel:</u></b>	This form is particularly legal sensitive and should be reviewed by the company's legal counsel.

## EMPLOYEE SETTLEMENT AND RELEASE AGREEMENT

This Employee Settlement and Release Agreement (the "AGREEMENT") is entered into by and between \_\_\_\_\_ ("EMPLOYEE") on the one hand and \_\_\_\_\_ ("COMPANY") on the other.

### Recitals

- A. EMPLOYEE is a former employee of the COMPANY.
- B. The parties wish to resolve any claim by EMPLOYEE against the COMPANY and all other existing differences completely and amicably, without litigation. EMPLOYEE acknowledges that the payment to him under this AGREEMENT is being made for the sole purpose of avoiding the uncertainties, vexations and expense of litigation.
- C. The parties represent that they have been advised about the AGREEMENT by their respective counsel, are competent to enter into it, fully understand its terms and consequences, and enter into it knowingly and voluntarily.

Based on these recitals, the parties agree as follows:

### Terms

- 1. No Admission. This AGREEMENT is entered in connection with the compromise of disputed claims. Neither this AGREEMENT nor any action or acts taken in connection with this AGREEMENT or pursuant to it will constitute an admission by COMPANY or any other person or entity of any violation of law, nor will it constitute or be construed as an admission of any wrongdoing whatsoever. In fact, COMPANY, its officers, employees, agents and representatives specifically deny committing any unlawful act against EMPLOYEE at any time.
- 2. Payment. Within three (3) days after execution of this AGREEMENT, and in consideration for the promises and covenants contained herein, COMPANY will cause to be delivered to counsel for EMPLOYEE a check in the amount of \$\_\_\_\_\_. Except for this payment, EMPLOYEE acknowledges and agrees that he is entitled to receive no other payments, benefits, or compensation from COMPANY. EMPLOYEE represents that there are no outstanding advances or other sums due COMPANY from EMPLOYEE.
- 3. Tax. Appropriate tax deductions shall be made by the COMPANY from the payment made under Section 2.
- 4. Release. EMPLOYEE, on behalf of himself and his representatives, spouse, agents, heirs and assigns, releases and discharges COMPANY and COMPANY's former, current or future officers, employees, representatives, agents, fiduciaries, attorneys, directors,

shareholders, insurers, predecessors, parents, affiliates, benefit plans, successors, heirs, and assigns from any and all claims, liabilities, causes of action, damages, losses, demands or obligations of every kind and nature, whether now known or unknown, suspected or unsuspected, which EMPLOYEE ever had, now has, or hereafter can, shall or may have for, upon or by reason of any act, transaction, practice, conduct, matter, cause or thing of any kind whatsoever, relating to or based upon, in whole or in part, any act, transaction, practice or conduct prior to the date hereof, including but not limited to matters dealing with EMPLOYEE'S employment or termination of employment with the COMPANY, or which relate in any way to injuries or damages suffered by EMPLOYEE (knowingly or unknowingly). This release and discharge includes, but is not limited to, claims arising under federal, state and local statutory or common law, including, but not limited to, the Age Discrimination in Employment Act ("ADEA"), Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, claims for wrongful discharge under any public policy or any policy of the COMPANY, claims for breach of fiduciary duty, and the laws of contract and tort; and any claim for attorney's fees. EMPLOYEE promises never to file a lawsuit or assist in or commence any action asserting any claims, losses, liabilities, demands, or obligations released hereunder.

5. Known or Unknown Claims. The parties understand and expressly agree that this AGREEMENT extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributable to any conduct of the COMPANY and its successors, subsidiaries, and affiliates, and all their employees, owners, shareholders, agents, officers, directors, predecessors, assigns, agents, representatives, and attorneys, whether known by EMPLOYEE or whether or not EMPLOYEE believes he may have any claims, and that any and all rights granted to EMPLOYEE under Section 1542 of the California Civil Code or any analogous state law or federal law or regulations, are hereby expressly WAIVED, if applicable. Said Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

6. Non-Disclosure. EMPLOYEE and his counsel represent that they have not disclosed the terms of this AGREEMENT to anyone other than EMPLOYEE's spouse. EMPLOYEE, his counsel and EMPLOYEE's spouse agree to keep the terms of the AGREEMENT, including the fact that a payment was made to EMPLOYEE and the amount of such payment, strictly confidential and, unless required by court order or other law, will not disclose such information without the prior written permission of the COMPANY to anyone except EMPLOYEE's attorneys or tax advisors, if any, but only after informing those persons that they too must keep the information confidential. If asked about the status of the dispute between the parties, EMPLOYEE, his counsel and EMPLOYEE's spouse may state only that "the matter has been resolved" or words to that effect, but will not otherwise disclose any information about this AGREEMENT or its terms. Because a breach of this confidentiality

paragraph would cause COMPANY damages that are impracticable or too difficult to fix, in the event of such a breach, EMPLOYEE shall be liable to COMPANY for liquidated damages in the amount of \$\_\_\_\_\_ for each breach, plus any attorneys' fees and costs owed pursuant to Section 13 herein and any equitable relief.

7. No Future Employment. EMPLOYEE promises not to seek employment or any other business relationship at any time in the future with COMPANY or any of its parents or affiliates and he forsakes any right to be employed or to have any other business relationship in the future with COMPANY or any of its parents or affiliates.

8. No Disparagement. EMPLOYEE agrees not to disparage COMPANY or any of its officers, employees, agents or representatives and will not knowingly say or do anything that would have an adverse impact on COMPANY.

9. References. In response to any request to COMPANY from any prospective employer for an employment reference regarding EMPLOYEE, the COMPANY shall provide only EMPLOYEE's dates of employment and final job title.

10. Further Documents. Each party agrees to execute or cause their counsel to execute any additional documents and take any further action which may reasonably be required in order to consummate this Agreement or otherwise fulfill the obligations of the parties thereunder.

11. Dispute. Should a dispute arise concerning this AGREEMENT or its performance, such dispute shall be resolved, at the election of the party seeking to enforce the AGREEMENT, either by court action, or by binding arbitration administered by the American Arbitration Association under its commercial dispute resolution rules. If arbitration is initiated, the arbitration shall be held in [\_\_\_\_\_] City \_\_\_\_\_], [\_\_\_\_\_] State \_\_\_\_\_].

12. Construction. This AGREEMENT shall be construed and enforced in accordance with the laws of the State of [California].

13. Attorneys' Fees. Should any action be brought by any party to this AGREEMENT to enforce any provision thereof, the prevailing party shall be entitled to recover, in addition to any other relief, reasonable attorneys' fees and costs and expenses of litigation or arbitration.

14. Integration. This AGREEMENT constitutes an integration of the entire understanding and agreement of the parties with respect to the matters referred to in this AGREEMENT. Any representation, warranty, promise or condition, whether written or oral, between the parties with respect to the matters referred to in this AGREEMENT which is not specifically incorporated in this AGREEMENT shall not be binding upon any of the parties hereto and the parties acknowledge that they have not relied, in entering into this AGREEMENT, upon any representations, warranties, promises or conditions not specifically set forth in this AGREEMENT. No prior or contemporaneous oral or written understanding, covenant, or agreement between the parties, with respect to the matters referred to in this AGREEMENT,

shall survive the execution of this AGREEMENT. Each party hereto assumes the risk of misrepresentation, concealment or mistake, and if any party should subsequently discover that any fact relied upon in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or law was incorrect, it shall not be entitled to set aside this AGREEMENT by reason thereof. This AGREEMENT may be modified only by a written agreement executed by both parties hereto.

15. Binding Agreement. The parties understand and expressly agree that this AGREEMENT shall bind and benefit (as applicable) the heirs, employees, owners, officers, shareholders, directors, subsidiaries, spouses, affiliates, successors, predecessors, agents, witnesses, attorneys, representatives, and assigns of the COMPANY and EMPLOYEE.

16. Construction. The language of this AGREEMENT shall be construed as to its fair meaning and not strictly for or against either party.

17. Counterparts. This AGREEMENT may be executed in counterparts and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and all counterparts taken together shall constitute one and the same AGREEMENT, which shall be binding and effective as to all parties.

18. Headings. Headings in this AGREEMENT are for convenience of reference only and are not a part of the substance hereof.

19. Time for Acceptance and Revocation. If required by applicable law, EMPLOYEE shall have up to 21 days from the date this Agreement is presented to EMPLOYEE to accept the terms of this AGREEMENT, although EMPLOYEE may accept it at any time within those 21 days. If required by applicable law, after acceptance, EMPLOYEE will still have an additional seven (7) days in which to revoke his acceptance. To so revoke, EMPLOYEE must send the COMPANY a written statement or revocation to be received by the COMPANY by the end of the seventh day.

20. Severability. If any provision of this AGREEMENT is held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect, except that, should paragraphs 4, 5 or 6 be held invalid, void or unenforceable, either jointly or separately, as a result of any action by EMPLOYEE, COMPANY shall be entitled to rescind the AGREEMENT and/or recover from EMPLOYEE any benefits provided to her under Section 2 above.

The parties each hereby execute this AGREEMENT as of \_\_\_\_\_, \_\_\_\_.

EMPLOYEE

\_\_\_\_\_

COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Certification by EMPLOYEE's Counsel**

We, \_\_\_\_\_, are counsel to [EMPLOYEE]. We have reviewed the AGREEMENT with our client. He has indicated that he is competent to enter into it, that he fully understands its terms and consequences, and that he enters into it knowingly and voluntarily. We also agree to abide by the confidentiality provision in Section 6 of the AGREEMENT.

Dated: \_\_\_\_\_.

By: \_\_\_\_\_