

SAMPLE SEPARATION AGREEMENT AND RELEASE 40 AND OVER
[LETTERHEAD]

Insert Date

[Insert Employee Name]
[Insert Employee Address]

Dear _____:

As you know, your employment with _____ (the “Company”) will be terminated as of *[insert date]*. This separation agreement (“Agreement”) sets forth the total payments and benefits that you are eligible to receive if you sign the Agreement and comply with its terms.

1. Termination Date. Your last day of employment with the Company will be _____ (the “Termination Date”). Your health insurance benefits will continue through _____, and you will be receiving under separate correspondence your rights to continue your health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) and New York law at your expense. You will receive your final paycheck with the next regularly scheduled payroll cycle.

2. Payments and Benefits Not Subject to This Agreement. As the result of your termination you will be entitled to the following payments and benefits that are not subject to this Agreement: (a) all base salary earned as of _____, payable on the next payroll cycle; (b) a lump sum payment for any accrued but unused vacation, also payable on the next payroll cycle following the Termination Date; *[Delete if not applicable]* (c) any vested benefits pursuant to the terms of the applicable Company benefit plans, and (d) the right to elect medical and dental coverage at your expense under COBRA and/or New York state law. Except as otherwise specifically set forth in this agreement, you are not entitled to any additional benefits of any kind from the Company whether or not under a plan, program, policy or arrangement.

3. Severance and COBRA Subsidy. In consideration for you signing this Agreement, complying with the promises made herein and not revoking execution pursuant to paragraph 14 below, the Company agrees to provide you with the following:

(a) severance payments at a rate equal to your base salary, at the rate in effect at the time of your separation date, for 6 months; (b) a pro-rata portion of your annual bonus target for the year in which your termination occurs, plus any earned but unpaid bonus amounts from prior periods; (c) fully-subsidized COBRA coverage for ___ months, which will be paid directly by the Company to the carrier once you elect COBRA

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coverage. Should you decide to continue COBRA coverage after the expiration of the fully-subsidized period of time, you will need to pay the full premium plus an administrative fee directly to the COBRA Administrator.

You agree that the severance payment, pro-rata portion of your annual bonus target, and COBRA subsidy set forth in (a), (b), and (c) above exceed any payment, benefit, and/or other thing of value to which you are entitled under any plan or policy, or prior agreement or contract with the Company and/or the other Releasees (as defined below) and is in full discharge of any and all of the Company's and/or the other Releasees' potential liabilities and obligations to you, including but not limited to any claims for severance, variable pay, bonuses, commissions and/or any other remuneration in any form.

4. Release of Claims. In exchange for providing you with the severance payment set forth in paragraph 3 above, you, on your own behalf and on behalf of your heirs, administrators, executors and assigns, hereby irrevocably and unconditionally release, waive and forever discharge the Company, its direct and indirect parents, subsidiaries and affiliates, affiliated persons, partnerships and corporations, successors and assigns, and all of its past and present directors, members, partners, officers, shareholders, agents, representatives, employees, employee benefit plans and plan fiduciaries (collectively, the "Company Releasees"), individually and collectively, from any and all actions, causes of action, claims, demands, damages, rights, remedies and liabilities of whatsoever kind or character, in law or equity, suspected or unsuspected, known or unknown, past or present, that you had, may now have, or may later assert against any of the Company Releasees, arising out of or related to your employment or the termination of that employment by the Company (hereinafter referred to as "Claims"), including without limitation: (i) any Claims arising out of or related to any federal, state and/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 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, the Fair Credit Reporting Act, the New York State Human Rights Law, the New York Equal Rights Law, the New York Labor Law, the Administrative Code of the City of New York and (ii) any and all other Claims arising out of or related to any contract, any and all other federal, state or local constitutions, statutes, rules or regulations, ordinances, executive orders or public policy, or under any common law right of any kind whatsoever, including, without limitation, any Claims for any kind of tortious conduct (including but not limited to any claim of defamation or distress), promissory or equitable estoppel, breach of the Company's policies, rules, regulations, handbooks or manuals, breach of express or implied contract or covenants of good faith, quantum meruit, wrongful discharge or dismissal, and failure to pay in whole or part any compensation, bonus, commission, incentive compensation,

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severance pay or benefits of any kind whatsoever, or any claims for monetary or equitable relief in any way related to or arising from your employment or its termination.

Excluded from the General Release above are: (a) any claims or rights which cannot be waived by law, including but not limited to, your right to challenge the legal validity of this Agreement under the ADEA, as amended; (b) all rights to enforce the terms of this Agreement; (c) any vested right under or in any employee benefit plans; and (d) your right to participate in an administrative agency investigation, however, you waive your personal right to recover any money in connection with such investigation, charge or litigation as well as any right to recover money in connection with an investigation, charge or litigation filed by any other individual or by an administrative agency (such as the Equal Employment Opportunity Commission or any similar state or local agency), including any right you may have for attorneys' fees and costs.

5. Covenant Not To Sue. A "covenant not to sue" is a legal term which means you promise not to file a lawsuit in court. It is different from the General Release of claims contained in Section 4 above. Besides waiving and releasing the claims covered by Section 4 above, you further agree never to sue the Releasees in any forum for any reason, including but not limited to claims, laws or theories covered by the General Release language in paragraph 4 above. Notwithstanding this Covenant Not To Sue, you may bring a claim against the Firm to enforce this Agreement or to challenge the validity of this Agreement under the ADEA. If you sue the Releasees in violation of this Agreement, you shall be liable to the Releasees for its reasonable attorneys' fees and other litigation costs incurred in defending against such a suit. Additionally, if you sue the Releasees in violation of this Agreement, the Releasees can require you to return all but \$100 of the money and other benefits paid to you pursuant to Section 3 of this Agreement.

6. Cooperation. You agree that you will cooperate fully with the Company in connection with any existing or future litigation or investigation involving the company, whether administrative, civil or criminal in nature, in which and to the extent the Company deems your cooperation necessary.

7. Non-Disparagement. You agree not to defame, disparage or demean the Company or its parents, subsidiaries, affiliates, officers, members, partners, or employees, in any manner whatsoever.

8. Return of Company Property. You agree to return to the Company all Company property and information, including without limitation all reports; files; memoranda; records; identification cards; door and file keys; computer access codes; disks and instruction manuals; tape recordings; video recordings; and all other property which you received, prepared or helped to prepare in connection with your employment by the Company. You further agree not to retain any copies, duplicates, reproductions, or excerpts of such property.

9. Employee Acknowledgments. You also agree that you: (i) have been paid for all hours worked, including commissions, overtime, or other wages, and (ii) have not suffered any on the job injury for which you have not already filed a claim.

10. Entire Agreement. The terms described in this agreement constitute the entire agreement between you and the Company and may not be altered or modified other than in a writing signed by you and [the President of Company or insert appropriate person]. No promise, inducement or agreement not expressed herein has been made to you in connection with this agreement, and this agreement supersedes all prior arrangements, agreements, plans, policies, communications, commitments or obligations between yourself and the Company, whether written or oral, other than as specifically provided in this agreement.

11. Governing Law. This agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to its conflicts of law provisions. If any provision of this Agreement is rendered illegal or unenforceable, it is the intent of the parties that such provision be enforced to the fullest extent legally possible and that all other provisions of the Agreement shall remain in full force and effect.

12. No Admission of Liability. Neither this Agreement nor anything contained herein shall be construed as an admission by the Company that it has violated any federal, state or local law or any right or obligation that it may have owed to you.

13. Confidentiality. You agree not to disclose the existence of this Agreement or any of its terms or provisions to anyone other than your spouse, attorneys or accountants, except as required by law or to enforce the Agreement. You will also ask that your spouse, attorneys, and accountants keep the existence of this Agreement, its terms and provisions confidential. You further acknowledge a continuing obligation pursuant to the terms of the Confidentiality and Nondisclosure Statement that you signed on [insert date] to protect from disclosure of any trade secret, proprietary or confidential information of or in connection with the Company or any subsidiaries or affiliates of the Company.

14. Time to Review; Revocation. You acknowledge and understand that you have up to twenty-one (21) calendar days from receipt of this Agreement to consider its terms, although you may choose to sign this Agreement any time before the expiration of this period. **During this review period, you are encouraged to consult with an attorney regarding the terms of this Agreement. By signing this Agreement, you acknowledge and agree that you are entering into this Agreement freely, knowingly, and voluntarily, without any duress or undue influence, with a full understanding of its terms and with a full understanding and knowledge that you are waiving all**

claims against the Company through the date upon which you execute this Agreement.

After you sign this Agreement, you have seven (7) calendar days in which to revoke this Agreement. Any such revocation must be in writing and must be delivered either personally or by email (with original to follow by first class mail) to *[insert name address, email, fax]* by no later than 5:00 p.m. on the seventh (7th) day after the date that you sign this Agreement. If the last day of the revocation period is a Saturday, Sunday, or legal holiday, then the revocation period shall not expire until the next day which is not a Saturday, Sunday, or legal holiday. The effective date of this Agreement shall be the eighth (8th) calendar day after you sign the Agreement (“Effective Date”).

Very truly yours,

[Insert Company Name]

By: _____

AGREED TO AND ACCEPTED BY:

_____ Date: _____