**Separation and Release Agreement for a Group Separation**

This Separation and Release Agreement ("Agreement") is made by and between [enter name of employee] (the “Employee”), an individual, and [enter name of company], (the “Employer”).

WHEREAS, Employer desires to provide Employee with certain consideration to assist in the transition resulting from this separation; and

WHEREAS, Employee agrees, in exchange for such consideration, to waive and release any and all claims Employee may have against Employer which have accrued through the date below.

NOW THEREFORE, in consideration of the mutual promises and releases contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Date of Separation.** Employee acknowledges that his/her employment with Employer [will terminate] [terminated] on [insert date] (the “Separation Date”). Except as specified in this Agreement, Employee’s entitlement to any benefits or payments under any Employer-paid benefits programs, including, but not limited to, life insurance, retirement benefits, and disability benefits, [will cease] [ceased] as of the Separation Date. This is not meant to and does not affect Employee’s ability to exercise his/her rights under COBRA.

2. **Final Pay.** Employee will be paid his/her normal salary, less required withholdings, through the Separation Date. [OPTIONAL (depending on policy): Employee also will be paid for any unused and accrued [vacation/sick leave/PTO] of record as of the Separation Date, less required withholdings.] Employee agrees that he/she does not have knowledge of any potential or actual dispute with Employer about any unpaid wages or compensation that Employee believes he/she is entitled to but has not been paid as of the date he/she executes this Agreement.

3. **Consideration.** In consideration of Employee signing this Agreement and complying with its terms and after receiving the signed Agreement with the required passage of time, Employer agrees to provide this additional consideration (less all applicable state and federal taxes): [describe the total package which is over and above that which the employee is already entitled to receive in exchange for signing the Agreement]. Employee acknowledges that the consideration described in this Paragraph 3 is good, valuable, and sufficient. Employee further acknowledges that this consideration exceeds that to which he/she would be entitled under Employer’s policies, procedures, benefit plans, and practices.

4. **General Waiver and Release of Claims.** In consideration of the mutual agreements and covenants set forth in this Agreement, the sufficiency of which is hereby acknowledged, Employee for himself/herself, his/her heirs, and his/her legal representatives and assigns, releases and forever discharges Employer, its current and former officers, directors, employees, agents, successors, predecessors, assigns, affiliates, and parent and subsidiary companies, as well as Employer’s employee benefits plans (and any administrators, insurers, or fiduciaries thereof), and all persons acting by, through, under, or in concert with any of them (the “Releasees”), from any and all claims, charges, demands, suits, complaints, grievances, causes of action, and/or liability whatsoever (the “Claims”) involving any matter arising out of or in any way related, directly or indirectly, to his/her employment with Employer, his/her compensation and/or his/her separation from employment, or with respect to any other transaction, event or occurrence pre-dating the date Employee executes this Agreement, whether now known or unknown, including, but not limited to, any claim of breach of contract, wrongful discharge, intentional infliction of emotional distress, retaliation and/or employment harassment or discrimination, whether in tort or in contract, any employment intentional tort or violations of specific safety requirements, any claim for monetary or equitable relief, any statutory or common law claim for attorneys’ fees, any claim for interest on the amounts paid under this Agreement, or any other claim under present or future federal, state, or local statute or law, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (“ADEA”), the Americans with Disabilities Act, the Equal Pay Act, the Lilly Ledbetter Fair Pay Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the National Labor Relations Act, the Genetic Information Nondiscrimination Act, the Immigration Control Act, violations of the South Carolina Human Affairs Law and [Sections 37-5-106](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1001530&cite=SCSTS37-5-106&originatingDoc=I77ec3a4aef2e11e28578f7ccc38dcbee&refType=LQ&originationContext=document&transitionType=PLDocumentLink&billingHash=5D72FE19D8DB4590D30254A296E5664D69EEBB6F18B74F9E92C307821CDD1E22&ppcid=41f72138b61e471986f3dff0aaaffa41&contextData=(sc.Default)) (termination of an employee because a creditor garnished the employee's wages), 41-1-20 (unlawful discrimination against union members), 41-1-30 (unlawful termination of an employee replaced by an unauthorized alien), 41-1-70 (wrongful demotion or termination of an employee for complying with a subpoena or serving on a jury), 41-1-80 (retaliation against employees for instituting or participating in workers' compensation claims), 41-1-85 (adverse personnel action against employees for using tobacco products outside the workplace), and 53-1-110 (discrimination against employees who conscientiously oppose working on Sundays) of the South Carolina Code, with the exception of any Claim that applicable law precludes him/her from waiving. The identification of specific statutes is for purposes of example only, and the omission of any specific statute or law shall not limit the scope of this general waiver and release of claims in any manner.

[*OPTIONAL: Include the following if you want to include an age discrimination release:* This Release specifically includes any potential claim under the ADEA.]

Employee further represents and affirms that he/she has been paid and/or received all leave (paid or unpaid), vacation pay, compensation, wages, bonuses, commissions, and/or benefits to which he/she may be entitled and that no other leave (paid or unpaid), vacation pay, compensation, wages, bonuses, commissions, and/or benefits are due him/her, except as provided in this Agreement. Employee acknowledges that he/she has reported to Employer any and all known work-related injuries incurred by him/her during his/her employment.

5. **Excluded Claims and Rights.** Nothing in this Agreement, including but not limited to Paragraphs 7 and 8 of this Agreement, shall be construed to prohibit Employee from filing a charge with or participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission (“EEOC”), National Labor Relations Board, Securities and Exchange Commission, or other appropriate federal, state, or local administrative agency. Employee understands that he/she has waived and released any and all claims for money damages and equitable relief that Employee may recover from the Releasees pursuant to the filing or prosecution of any administrative charge against the Releasees by Employee, or resulting civil proceeding or lawsuit brought on Employee’s behalf for the recovery of such relief, and which arise out of the matters that are and may be released or waived by this Agreement. Employee understands, however, that this Agreement does not limit his/her ability to communicate with any government agencies or otherwise participate in any investigation or proceeding that may be conducted by any government agency, including providing documents or other information, without notice to Employer. This Agreement also does not limit Employee’s right to receive an award for information provided to any government agencies.

[*OPTIONAL: Include the following if you want to include an age discrimination release:* Additionally, nothing in this Agreement shall be interpreted or applied to affect or limit Employee’s otherwise lawful ability to challenge, under the Older Workers Benefits Protection Act (“OWBPA”) (29 U.S.C. § 626, et seq.), the knowing and voluntary nature of his/her release of any age claims in this Agreement before a court, the EEOC, or any other federal, state, or local agency.]

Furthermore, notwithstanding any confidentiality provision of this Agreement, Employee is hereby notified that pursuant to the Defend Trade Secrets Act of 2016, Employee will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. Additionally, Employee understands that an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

6. **Affirmations.** As of the execution of this Agreement, Employee has not filed, caused to be filed, or participated in any claim, complaint, amended complaint, charge, or action against Employer or the Releasees in any forum or form. Employee has not assigned or transferred any right in any claims to any person or entity. Employee has not been retaliated against for reporting any allegations of wrongdoing by Employer or its agents, including any allegations of corporate fraud.

7. **Non-Disparagement.** Employee agrees to not make any maliciously untrue statements about the Company, such that they are made with knowledge of their falsity or with reckless disregard for their truth or falsity. *[This is recommended language based on National Labor Relations Board guidance as of 3.22.23. If you want to make any changes to this provision in particular, please seek legal counsel.]*

8. **Confidentiality of Agreement.** Employee agrees not to disclose any information regarding the financial terms of this Agreement, except to professional advisors with whom Employee chooses to consult regarding consideration of this Agreement and to a spouse. The professional advisor or spouse, if informed, shall agree to keep the financial terms of this Agreement confidential. Notwithstanding the foregoing, it shall not be a breach of this paragraph to disclose the financial terms of this Agreement as may be strictly necessary: (a) to prepare a party’s income tax returns or financial records; (b) to satisfy the requirements of the law; (c) to comply with the lawful orders or processes of the courts; or (d) to enforce or comply with this Agreement. Additionally, this paragraph is not intended to and does not prohibit Employee from exercising Employee’s rights under the National Labor Relations Act. *[This is recommended language based on National Labor Relations Board guidance as of 3.22.23. If you want to make any changes to this provision in particular, please seek legal counsel.]*

9. **National Labor Relations Act and Other Protected Rights.** Nothing in this Agreement in any way prohibits or is intended to restrict or impede the Employee from discussing the terms and conditions of Employee’s employment with current or former co-workers or union representatives, filing unfair labor practice charge(s) with the National Labor Relations Board or assisting others in doing so, exercising additional rights under Section 7 of the National Labor Relations Act or assisting others in doing so, exercising protected rights to the extent that such rights cannot be waived by agreement, or otherwise disclosing information as permitted by law.

10. **Tax Liability.** All payments made pursuant to this Agreement will be reported to the IRS. Employer expresses no opinion concerning the allocation or taxability of these payments. Each payment and benefit paid pursuant to Paragraph 3 of this Agreement shall constitute a separate payment for purposes of Section 409A of the Internal Revenue Code of 1986 (“Section 409A”). The provisions are intended to comply with the requirements of Section 409A so that none of the payments and benefits to be provided will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. Employer and Employee agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate, or desirable to avoid imposition of any additional tax or income recognition before actual payment to Employee under Section 409A. Employee acknowledges that, to the extent that he/she may incur any additional tax liability as a result of the payments made to him/her under this Agreement, such liability is his/her sole responsibility. Employee is hereby advised to seek professional tax advice.

11. **[OPTIONAL]** **No Re-Employment.** Employee’s employment relationship with Employer has been permanently and irrevocably severed, and Employee forever waives any and all claims or rights to reinstatement, future employment, or reassignment with Employer and/or any Releasees (including, without limitation, Employer’s and Releasees’ parent corporations, subsidiaries, and divisions, predecessors, successors, and assigns). Employee agrees that Employee shall not at any time seek or accept future employment or assignment with Employer, and/or any Releasees (including, without limitation, Employer’s and Releasees’ parent corporations, subsidiaries, and divisions, predecessors, successors, and assigns) in any capacity.

12. **No Admission of Wrongdoing.** The parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Employer of any liability of any kind.

13. **Return of Employer Property and Non-Disclosure of Information.** Employee agrees to return all Employer property in their possession, including, but not limited to, [insert list of relevant Employer property]. Additionally, Employee acknowledges that the confidential and proprietary information and trade secrets about Employer’s business that Employee learned, or had access to, has been and was developed through Employer’s expenditure of substantial effort, time, and money. Employee acknowledges his/her ongoing obligation and agrees to maintain the confidentiality of all confidential and proprietary information and trade secrets of Employer for the one (1) year period immediately following Employee’s Separation Date. *[This one-year restrictive period for disclosure of confidential and proprietary information and trade secrets is recommended language based on National Labor Relations Board guidance as of 3.22.23. If you want to make any changes to this restrictive period, please seek legal counsel.]*

14. **[OPTIONAL] Nondisclosure/Noncompete Agreement.** Employee is reminded of his/her obligations under [names of agreements] dated [insert date]. [Use this provision, if applicable, to reference obligations under any existing nondisclosure/noncompete agreement.]

15. **[OPTIONAL]** **Unemployment Benefits.** If Employee applies for unemployment benefits after expiration of any wages or separation pay received, Employer will not actively contest Employee’s application. However, Employer will respond truthfully, completely, and timely to any inquiries by the South Carolina Department of Employment & Workforce concerning the termination of Employee’s employment.

16. ***[IMPORTANT: ONLY REQUIRED IF THE RELEASE INCLUDES AN ADEA WAIVER.]* Time for Consideration of Separation Package.** Employee expressly acknowledges and agrees that this Agreement includes a waiver and release of all claims which Employee has or may have under the ADEA. Employee acknowledges that with respect to any rights or claims of Employee under the ADEA, no rights or claims are waived by him/her that may arise from an event or transaction that occurs after the date this Agreement is executed by him/her. Employee acknowledges that he/she is and has been advised in writing, as reflected by this Agreement, of his/her right to seek legal counsel concerning the terms of this Agreement. Employee warrants that he/she has read this Agreement and is knowingly and voluntarily entering it. Employee further understands that he/she has at least forty-five (45) days to consider this Agreement and that he/she understands the provisions of this Agreement. Employee also acknowledges that he/she has seven (7) days following his/her execution of this Agreement to revoke the portion of this Agreement that relates to any claim he/she might assert under the ADEA and that he/she will not receive any consideration for the release of his/her ADEA claims, if any, until after the seven (7) day revocation period has expired without Employee revoking his/her consent to this Agreement. Employee agrees that any revocation by him/her must be made in writing on or before the eighth (8th) day following the execution of this Agreement and addressed and delivered to [Name and address] on or before the eighth (8th) day after he/she signs this Agreement. Employee acknowledges that he/she has received the required disclosures under the OWBPA which are attached to this Agreement.

17. **Governing Law.** This Agreement shall be construed and governed according to the laws of South Carolina, without regard to choice or conflicts of law provisions that would cause the application of the law of another jurisdiction, except to the extent such laws are preempted by United States federal law. In the event either party breaches any provision of this Agreement, Employee and Employer affirm that either may institute an action to specifically enforce any term or terms of this Agreement.

18. **Breach of this Agreement.** Employee promises to abide by the terms and conditions of this Agreement and understands that if he/she pursues a lawsuit in court or otherwise breaches this agreement, Employer shall be entitled to recover damages incurred or equitable remedies available with respect to such breach, in addition to any other remedies allowable by law. *[This is recommended language based on National Labor Relations Board guidance as of 3.22.23. If you want to include the recovery of attorneys’ fees, please seek legal counsel.]*

19. **Amendment.** This Agreement may not be modified, altered, or changed, except upon express written consent of both parties wherein specific reference is made to this Agreement.

20. **Severability.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

21. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any prior agreements or understandings between the parties regarding the subject matter covered herein [OPTIONAL: provided, however, that the terms and conditions of the [name of previously-executed nondisclosure/noncompetition/nonsolictation agreement] shall remain in full force and effect]. Employee acknowledges that he/she has not relied on any representations, promises, or agreements of any kind made to him/her in connection with his/her decision to accept this Agreement, except for those set forth in this Agreement.

22. **Headings.** The headings appearing in this Agreement are for convenience only and are not to be considered in interpreting this Agreement.

23. **Signatures.** This Agreement may be executed in more than one counterpart, each of which will be considered an original, and all of which will be considered a single agreement. Employee and Employer agree that electronic signatures, whether digital or encrypted, shall have the same force and effect as manual signatures.

**PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.**

*[IMPORTANT: ONLY REQUIRED IF THE RELEASE INCLUDES AN ADEA WAIVER.]* **EMPLOYEE IS ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO EMPLOYEE’S SIGNING OF THIS AGREEMENT AND GENERAL RELEASE. HAVING ELECTED TO EXECUTE THIS AGREEMENT AND GENERAL RELEASE, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION LISTED ABOVE, AND HAVING BEEN PROVIDED TIME TO CONSIDER THIS AGREEMENT, EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT AND GENERAL RELEASE INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST EMPLOYER AND RELEASEES.**

**ACCEPTANCE**

Employee acknowledges having read this Agreement, and, being offered a reasonable period to consider it and seek advice, agrees to be bound by its terms and conditions. This offer is withdrawn if not accepted by Employee by delivery of a signed copy to Employer representative listed below by [insert date, which would be 45 days out if includes ADEA waiver and, if not, could be another reasonable period, such as 7 days out].

**Employer: Employee:**

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

 (Signature) (Signature)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Typed or printed) (Typed or printed)

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**OLDER WORKERS BENEFIT PROTECTION ACT DISCLOSURES**

The Older Workers Benefit Protection Act (“OWBPA”) requires that employers provide specific information to employees who are 40 years of age or older and asked to execute a release of claims in connection with a group termination program. This document provides this information.

The class, unit, or group of individuals covered by the program (the “Decisional Unit”) includes all employees in the \_\_\_\_\_\_\_[Insert the name or names of the department, function, plant, location, area, etc., that covers all employees who were potentially considered for termination] \_\_\_\_\_\_\_\_\_\_. All employees in the Decisional Unit were eligible for selection.

The selection criteria included \_\_\_\_\_\_[Insert the criteria for selection of employees for termination, such as seniority, job performance, skills and abilities needed for the work going forward, suitability for jobs remaining after the reduction in force, position elimination, etc.].

Employees in the Decisional Unit who are 40 years of age or older who are being offered consideration under the \_\_\_\_[Insert name of agreement]\_\_\_\_\_ have 45 days from receipt of the Agreement within which to review and consider if they wish to sign the Agreement. Once the signed Agreement is returned to the COMPANY, the employee has seven days within which to revoke the Agreement.

The following is a list of the job titles and ages of employees selected for the program:

|  |  |
| --- | --- |
| **Job Title** | **Age** |
|   |   |
|   |   |
|   |   |

The following is a list of the job titles and ages of employees not selected for the program.

|  |  |
| --- | --- |
| **Job Title** | **Age** |
|   |   |
|   |   |
|   |   |

## *About this Document*

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