Executive Compensation Issues in Employment Termination Agreements

American Bar Association
Section of Labor and Employment Law
Employment Rights and Responsibilities Committee
Midwinter Meeting
Las Vegas
March 30, 2012

Jonathan Ben-Asher
Ritz Clark & Ben-Asher LLP
40 Exchange Place – Suite 2010
New York, N.Y. 10005
(212) 321-7075
Jben-asher@RCBALaw.com
www.RCBALaw.com

Amy Shulman
Broach & Stulberg, LLP
One Penn Plaza – Suite 2016
New York, N.Y. 10119
(212) 268-1000
AShulman@Brostul.com
www.brostul.com
Whether you are representing an employer or an executive, when drafting and negotiating a severance agreement, you will have to take into account crucial issues of executive compensation. The employer must consider its executive compensation plans, the compensation agreements and equity awards already in place, its financial health, and the handling of other terminations. The executive will be focusing on his or her financial needs, what compensation the executive is being asked to forfeit, and what the executive is entitled to or can push to retain. Attorneys will need to grapple with these issues whether the executive's separation is involuntary or voluntary, since either circumstance can impact the timing, amount, and nature of payments to be made.

For both sides, it is crucial to consider the tax issues raised by Internal Revenue Code Sec. 409A, which penalizes deferred compensation, as that term is used as a term of art under the Code. The 409A issues that arise are complicated enough that most employment lawyers will want to consult with tax counsel to ensure that the executive’s departure arrangements will pass 409A muster.

What follows below is a sample separation agreement, annotated to highlight the crucial issues for executive compensation, and to note some answers. On the 409A issues, until the 409A provisions become second nature (which means probably never), be sure to check the IRS’ regulations. While they are quite long, they are well-organized, and fairly well-written for tax regulations.
SEPARATION AGREEMENT AND GENERAL RELEASE

Separation Agreement and General Release ("Agreement"), by and between Laura Employee ("Employee" or "you") and Big Company Inc. ("Company") on behalf of its past and/or present parent entities, subsidiaries, divisions, affiliates and related business entities, successors and assigns, assets, employee benefit plans or funds, and any of its or their respective past and/or present directors, officers, fiduciaries, agents, trustees, administrators, employees and assigns, whether acting as agents for the Company or in their individual capacities (collectively the "Company Entities")

1. Concluding Employment. a. You acknowledge your separation from employment with the Company effective January 24, 2012 (the "Separation Date"), and that after the Separation Date you shall not represent yourself as being an employee, officer, agent or representative of the Company for any purpose. The Separation Date shall be the termination date of your employment for purposes of participation in and coverage under all benefit plans and programs sponsored by or through the Company Entities except as otherwise provided herein and in accordance with the terms of such plans. Within 10 business days following the Separation Date, you will be paid for any accrued but unused vacation days, and payment for previously submitted un-reimbursed business expenses (in accordance with usual Company guidelines and practices), to the extent not theretofore paid.

b. You acknowledge that your last day at work will be October 24, 2011, and that you will be on a paid leave of absence from that date until the Separation Date. This leave of absence is in full and final satisfaction of any notice period or notice pay to which you might otherwise be entitled to under your Company offer of employment letter dated April 15, 2000 and any other subsequent amendments (the "Offer Letter").
The agreement entitles the employee to continue to receive salary into the calendar year after the one in which the employee stops providing services. Does this present a problem under 409A?

Sec. 409A penalizes payments made under deferred compensation plans; a deferred compensation plan is one in which a payment “may be” made or completed more than two and half months after the tax year in which the employee acquires “a legally binding right” to the compensation. 26 CFR 1.409A-1(b)(1). An employee acquires a legally binding right to the compensation when the compensation is no longer subject to a “substantial risk of forfeiture.”

For employers whose taxable year ends December 31, the allowable payment period -- called the "short term deferral period" -- runs through March 15 of the next year. Payments made within this time will be considered "short term deferrals," meaning they are compliant with 409A. 26 CFR 1.409A-1(b)(4). If the payments are not compliant with 409A, the tax penalties are that: 1) income is immediately accelerated and recognized; 2) there is an additional 20% tax on the income; and 3) interest is charged if the tax is not paid in the appropriate tax year.

Both the employer and employee will want to structure the arrangement so it either is not considered deferred compensation, or otherwise falls into one of the exceptions from 409A.
Which is the date of the employee’s separation from service for 409A purposes? Does it matter that the employee was on “paid leave”? See 26 CFR 1.409A-1(n)(1), defining involuntary separation from service, and 26 CFR 1.409A-1(n)(2), defining separation of service for Good Reason.

2. **Company Covenants.** In Company for your waiver of claims against the Company Entities and your compliance with the other terms and conditions of this Agreement, the Company agrees to pay you the following separation payments and benefits:

a. A severance payment in the approximate gross amount of $600,000 (less applicable tax withholdings and other payroll deductions). This severance payment shall be paid in a single lump sum amount on the next regular pay date following the later of the Effective Date of this Agreement or January 24, 2012 (provided this Agreement is effective, no later than March 13, 2012) and represents approximately 95.42 weeks of base pay at your current rate of pay. This severance payment is in full and final satisfaction of any severance or redundancy payment to which you might otherwise be entitled to under any Company severance plan, policy or guidelines. The 95 week period beginning January 24, 2012 shall be referred to as the “Severance Period.”

Where does the 95.42 weeks of pay come from? Is this number based on a severance formula in the Company’s ERISA severance plan? If representing an employee, be sure to obtain the severance plan and check.

What are the 409A implications of the severance being paid out? Is the separation a “separation from service” under 409A?
If so, the grounds for the termination (which ideally should track one of the grounds for a separation from service), and the “separation from service” language itself, should be included in the agreement. See 26 CFR 1.409A-1(n). The payment should be made within the 409A time limits. If the company is a public company, and the employee is one of the specified, highly compensated executives within the 409A regulations, the payment will have to be delayed six months. 26 CFR 1.409A-1(g).

b. The Company agrees to pay you a 2011 discretionary performance bonus in the gross amount of $465,000.00 (less applicable tax withholdings and other payroll deductions). This amount will be paid to you in a single lump sum cash payment on the first to occur of the date performance bonuses are paid to other Company senior executives or March 13, 2012.

How discretionary is the bonus? Is the employee getting something he might not otherwise be entitled to, or were there actual, contracted-for goals, sales criteria or revenue criteria which required the payment of a bonus based on meeting those goals? See examples to 26 CFR 1.409A-1(b)(4).

If the latter, does the bonus payment constitute separation pay under 409A? If the former, once the employee signs the severance agreement, she has a legally binding right to the bonus payment potentially to be paid in the next calendar year. The payment would be subject to 409A unless it falls within an exception. 26 CFR 1.409A-1(b)(1).
What is the significance of the March 13 date? To qualify for the “short term deferral” exception under 409A, payments must be paid within 2.5 months after the end of the taxable year in which the employee obtained a legally binding right to the compensation. 26 CFR 1.409A-1(b)(4). Thus, if paid by March 15, the payments should be exempt from 409A.

c. All un-vested restricted stock units (“RSUs”) which were granted to you under the Company 2006 Stock Incentive Plan (the "Incentive Plan") with respect to common stock of the Company (“Company Stock”) pursuant to written agreements (the “Equity Agreements”) will automatically vest in full subject to the approval of the Board of Directors of the Company (or a duly authorized committee) and notwithstanding anything to the contrary contained in the Incentive Plan or the Equity Agreements, as of the Separation Date, and such unrestricted shares of Company Stock (less shares utilized to satisfy applicable tax withholding requirements) will be distributed to you as soon as administratively feasible thereafter. The Incentive Plan and the Equity Agreements are hereby amended to provide for the foregoing accelerated vesting and distribution of shares of Company Stock.

Examine the governing equity documents to determine how equity will be treated in the absence of any language in the agreement. For each set of awards, there should be an equity plan, an equity agreement, and an award letter. Determine which document governs if there is a conflict between them. Since employers may change the terms of an equity
plan over the years as awards are issued, an employee’s awards may be governed by several sets of plans, agreements and award letters.

What do the documents provide will happen to an employee’s equity awards when the employment ends? Normally the treatment is most favorable if there is a not-for-cause termination or a reduction in force. Often a retirement (based on a formula of years of service and age) will be treated the same way. A resignation will often result in a penalty, and a termination for cause is sure to do that.

There are often similar penalties for post-termination misconduct (competition, client solicitation or employee solicitation which violates defined standards.)

The optimal goal for a departing employee is to retain the vested equity the employee has, and not forfeit future vesting. The governing plan documents may contain a provision allowing the Board of Directors or Compensation Committee to waive the terms of an equity plan which would otherwise result in a forfeiture by certain employees. In this agreement, it was agreed that the governing plan documents were “hereby amended” to allow for the favorable treatment of the employee’s equity. This type of language is unusual and most employers would be wary of it.
e. You shall continue to hold all vested and outstanding options granted to you under the 2002 and 2004 Company Stock Options Plans in accordance with the terms of the respective award agreements. In addition, any vested options you currently have will expire 90 days after your Separation Date.

*We don’t know what this means without examining the governing Stock Options Plans (as well as the award letters and option agreements.)* Typically, options vest over three to five years, though longer vesting is also possible. In some plans, the shares vest in equal portions annually; in others, a large chunk of the shares (for example, 40%) vests all at once after a set number of years, and the balance vest over several more years. The governing documents should clarify what treatment of the options “in accordance with the terms of the respective award agreements” means. *It may be possible to negotiate the continued vesting of options that the employee would otherwise lose because of termination, or the acceleration of some or all of the options to vest upon termination and the signing of a release.*

*The same forfeiture events described above, concerning the employee’s shares, could easily apply here. It is best that the separation agreement note that the termination is not one which would cause a forfeiture (for example, by stating that the termination is “not for cause and not a forfeiture event within the meaning of the Company’s 2007 Equity Plan).*

*What is the source of the expiration of the vested options? Is it required by the plan? Are the options ISOs, which do expire*
within 90 days of a separation date? If not, is the expiration a negotiable point?

To avoid forfeiting vested options, the employee will have to exercise the options, i.e., buy the option at the price set at the time the option was granted (called the “strike price”) before the expiration date. The goal for the employee is to realize a gain by maximizing the spread between the strike price and higher fair market value of the stock at the time of exercise. If possible, negotiating the expiration date is important in order to provide the employee with time to try to maximize that gain. Conversely, if the strike price is higher than the fair market value of the option at the time of exercise, the options will be “under water.” The time between vesting and expiration will give the employee time to try to minimize that loss.

If the options are ISOs or qualified stock options, the employee will not be taxed on the difference between the strike price and fair market value of the stock at the time of purchase. If the options are non-qualified, and if the fair market value of the stock is higher than the strike price, the employee will be taxed on the difference at the time of exercise, even if she doesn’t sell any exercised shares at the same time.

For clarity, it is best to refer to and attach a spreadsheet specifying the employee’s equity interests -- showing the dates of each award, the plan under which the award was made, vesting
dates, vested and unvested shares, and value (and if stock options, exercise price.)

d. You may be eligible to receive your Executive Incentive Plan 2011 (“EIP”) award in accordance with the rules of the EIP and as approved by the Managing Board of Company on June 1, 2007 and you will receive your EIP award in its entirety on the normal vesting date in 2012, subject to achievement of performance conditions and the decision of the quantum by the Compensation Committee. Any award shall be pro rata.

Who knows what this means? Not the employee, not the employee’s lawyer, and maybe not even the Company. The employee “may be eligible” to receive her Executive Incentive Plan 2011 award, as long as she achieves “performance conditions.”

This appears to guarantee nothing. What are the performance conditions -- Are they memorialized? Were they set or agreed upon during 2011, or are they about to be created? The Compensation Committee must also approve. Is that approval discretionary? The award must be pro rata, but what is the pro rata calculation based upon? Is the award a bonus? See examples to 26 CFR 1.409A-1(b)(4).

The separation agreement has the employee receiving the Award on the “normal vesting date in June, 2012.” Consider the 409A implications of this date: If it is a bonus, under 26 CFR 1.409A-1(b)(4), will the award avoid 409A penalties even though it will vest after the two and a half month short term deferral period?
3. **Acknowledgement.** You acknowledge and agree that the payment(s) and other benefits provided pursuant to this Agreement: (i) are in full discharge of any and all liabilities and obligations of the Company to you, monetarily or with respect to employee benefits or otherwise, including but not limited to any and all obligations arising under any alleged written or oral employment agreement, policy, plan or procedure of the Company and/or any alleged understanding or arrangement between you and the Company (including, but not limited to the Offer Letter, the Company Executive Incentive Plan, and any Company severance terms, policy, practice or guidelines, or any qualified or non-qualified retirement benefits plan established by the Company Entities); and (ii) exceed(s) any payment, benefit, or other thing of value to which you might otherwise be entitled under any policy, plan or procedure of the Company and/or any agreement between you and the Company.

4. **Release.** a. In consideration for the payments and benefits provided under this Agreement, you, for yourself and for your heirs, executors, administrators, trustees, legal representatives and assigns (hereinafter referred to collectively as “Releasors”), forever release and discharge the Company and its past, present and future parent entities, subsidiaries, divisions, affiliates and related business entities, successors and assigns, assets, employee benefit plans or funds, and any of its or their respective past, present and/or future directors, officers, fiduciaries, agents, trustees, administrators, employees and assigns, whether acting on behalf of the Company or in their individual capacities (collectively the “Company Entities”) from any and all claims, demands, causes of action, fees and liabilities of any kind whatsoever, whether known or unknown, which you ever had, now have, or may have against any of the Company Entities by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter up to and including the date on which you sign this Agreement.
b. Without limiting the generality of the foregoing, this Agreement is intended to and shall release the Company Entities from any and all claims, whether known or unknown, which Releasors ever had, now have, or may have against the Companies Entities arising out of your employment and/or your separation from that employment, including, but not limited to: (i) any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (the “ADEA”), the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974 (excluding claims for accrued, vested benefits under any employee benefit or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law), and the Family and Medical Leave Act; (ii) any claim under the New York State Human Rights Law, the New York City Administrative Code; (iii) any and all claims arising out of the Plan; (iv) any other claim (whether based on federal, state, or local law, statutory or decisional) relating to or arising out of your employment, the terms and conditions of such employment, the termination of such employment, and/or any of the events relating directly or indirectly to or surrounding the termination of that employment, including but not limited to breach of contract (express or implied), wrongful discharge, detrimental reliance, defamation, emotional distress or compensatory or punitive damages, including further any claim to additional compensation under the Offer Letter, the Company Executive Incentive Plan, the Company Stock Plan, the Company Stock Option Plan, and any Company severance terms, policy, practice or guidelines, or any qualified or non-qualified retirement benefits plan established by the Company Entities; and (v) any claim for attorneys' fees, costs, disbursements and/or the like. Nothing in this Agreement shall be a waiver of claims that may arise after the date on which you sign this Agreement.

In the Release, the employee is releasing any claims to additional compensation under the Company’s incentive, stock and stock option plans. The Company certainly wants this, but not the
The language “excluding claims for accrued, vested benefits under any employee benefit or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law” reads as if it might preserve claims for at least vested equity, but the specific waiver of equity claims would trump that language.

If, as employee counsel, you are satisfied that the agreement has preserved the employee’s rights to vest in the equity in issue, the release should include the language “Except as otherwise provided by this Agreement,” or, more broadly, “Nothing in this Agreement shall constitute a waiver or release of Employee’s interests under any Plan of the Company governing stock, stock options and incentive compensation.”

Had the employee asserted legal claims against the company? Severance payments made to settle bona fide legal claims, including common law and statutory employment claims, are generally not subject to 409A. The existence of a bona fide legal claim will depend on the facts of each case. See 26 CFR 1.409A-1(b)(11).

5. Waiver of Relief. You acknowledge and agree that by virtue of the foregoing, you have waived any relief available to you (including without limitation, monetary damages, equitable relief and reinstatement) under any of the claims and/or causes of action waived in paragraph 4. Therefore you agree that you will not seek or accept any award or settlement from any source or proceeding (including but not limited
to any proceeding brought by any other person or by any government agency) with respect to any claim or right waived in this Agreement.

6. **Non-Disparagement.** You agree that you will not disparage or encourage or induce others to disparage any of the Company Entities. For the purposes of this Agreement, the term “disparage” includes, without limitation, comments or statements to the press and/or media, the Company Entities or any individual or entity with whom any of the Company Entities has a business relationship which would adversely affect in any manner (i) the conduct of the business of any of the Company Entities (including, without limitation, any business plans or prospects) or (ii) the business reputation of the Company Entities. Nothing in this paragraph or this Agreement shall preclude you from responding truthfully to a valid subpoena, cooperating with a governmental agency in connection with any investigation it is conducting, or taking any action otherwise required or permitted by law.

7. **Cooperation.** a. You agree that you will cooperate with the Company and/or the Company Entities and its or their respective counsel in connection with any investigation, administrative proceeding or litigation relating to any matter that occurred during your employment in which you were involved or of which you have knowledge.

b. You agree that, in the event you are subpoenaed by any person or entity (including, but not limited to, any government agency) to give testimony (in a deposition, court proceeding or otherwise) which in any way relates to your employment by the Company and/or the Company Entities, you will give prompt notice of such request to John Lawyer, Vice President and General Counsel, Company, 1,000,000 Main Street, New York, New York 10005 (or his successor or designee) and will make no disclosure until the Company and/or the Company Entities have had a reasonable opportunity to contest the right of the requesting person or entity to such disclosure.
8. **Confidentiality.** The terms and conditions of this Agreement are and shall be deemed to be confidential, and shall not be disclosed by you to any person or entity without the prior written consent of the Company, except if required by law, and to your accountants, attorneys and/or immediate family, provided that, to the maximum extent permitted by applicable law, rule, code or regulation, they agree to maintain the confidentiality of the Agreement. You further represent that you have not disclosed the terms and conditions of the Agreement to anyone other than your attorneys, accountants and/or immediate family.

9. **Confidential Information, Non-Competition and Non-Solicitation.**

   a. You acknowledge that during the course of your employment with the Company and/or any of the Company Entities, you have had access to information relating to the Company and/or the Company Entities and their respective business that is not generally known by persons not employed by the Company and/or the Company Entities and that could not easily be determined or learned by someone outside of the Company and/or the Company Entities that provides the Company Entities with a competitive advantage, or that could be used to the Company Entities’ disadvantage by a competitor (“Confidential Information”) and that such information constitutes a valuable asset of the Company Entities. You shall not, without the prior written consent of the Company or as required by law, use or disclose or enable anyone else to use or disclose any Confidential Information of the Company Entities (whether or not developed by you). As used herein, the term “Confidential Information” includes, but is not limited to, all trade secrets, confidential information and know-how, but does not include information the Company has previously intentionally disclosed to the public or is otherwise in the public domain. You acknowledge and agree that your obligations under this paragraph shall survive the expiration of the Severance Period. You agree not to
disclose or use such Confidential Information at any time in the future except as may be required by law.

b. You agree that during the Severance Period, you will not, directly or indirectly:

   (i) own, control, manage, loan money to, represent, render any service or advice to or act as an officer, director, employee, agent, representative, partner or independent contractor of any securities or derivatives Company or other such entity or similar direct seller of market data in the financial services business, whose business competes with the businesses of the Company Entities or its majority-owned subsidiaries, in North America or Europe as such businesses were being conducted, or which the Company Entities was actively planning to enter, during your employment (“Competitive Activities”); provided, however, that (i) the foregoing shall not prohibit you from passive ownership of securities in any publicly traded company that is engaged in any such business as long as you do not own more than five percent (5%) or more of any class of the equity securities of such company, and (ii) nothing in this Agreement shall preclude you from accepting employment with, or providing services to, any entity that engages in Competitive Activities so long as you work solely in a subsidiary, division or other distinct unit of such any entity, including an Affiliate, that does not engage, and is not actively planning to engage, in Competitive Activities;

   (ii) Solicit, induce, influence, encourage, or attempt to solicit, induce, influence or encourage, either directly or indirectly, any person employed by the Company Entities to terminate his or her employment relationship with the Company Entities or otherwise interfere with any such person’s employment by or association with the Company Entities;
(iii) Induce, influence, encourage, or attempt to induce, influence or encourage, either directly or indirectly, any third party to terminate such party’s business relationship with the Company Entities or otherwise interfere with any business or contractual relationship of the Company Entities;

(iv) Take any other action detrimental to the relationship of the Company Entities with its employees, customers, vendors, or suppliers.

10. **Return of Property.** You represent that you have returned (or will return) to the Company all property belonging to the Company and/or the Company Entities, including but not limited to all proprietary and/or Confidential Information and documents in any form belonging to the Company, cell phone, Blackberry, beeper, keys, card access to the building and office floors, Employee Handbook, phone card, rolodex (if provided by the Company and/or the Company Entities), computer user name and password, disks and/or voicemail code. You further acknowledge and agree that the Company shall have no obligation to make the payment(s) and provide the benefits referred to in paragraph 2 above unless and until you have satisfied all your obligations pursuant to this paragraph.

11. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, void or unenforceable, such provision shall have no effect; however, the remaining provisions shall be enforced to the maximum extent possible. Further, if a court should determine that any portion of this Agreement is overbroad or unreasonable, such provision shall be given effect to the maximum extent possible by narrowing or enforcing in part that aspect of the provision found overbroad or unreasonable. Additionally, you agree that any breach of this Agreement shall constitute a material breach as to which the Company may seek all relief available under the law or at equity.
12. Miscellaneous. a. This Agreement is not intended, and shall not be construed, as an admission that any of the Company Entities has violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrong whatsoever against you.

b. Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the entity interpreting or construing this Agreement shall not apply a presumption against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document.

13. Assignment. This Agreement is binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

14. Governing Law; Arbitration. a. This Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to the principles of conflicts of law.

b. With the exception of a claim for injunctive relief, for which jurisdiction shall be reserved in the federal and/or state courts in New York County and with respect to which the parties consent to personal jurisdiction, any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration before a single arbitrator, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association (the “AAA”) then in effect. The decision of the arbitrator shall be final and binding on the parties hereto and judgment upon the award rendered by the arbitrator may be entered in
any court having jurisdiction thereof. To the extent permitted by law, the prevailing party will be entitled to all reasonable attorneys' fees and costs incurred in such arbitration.

15. **Entire Agreement.** You understand that this Agreement constitutes the complete understanding between the Company and you, and supersedes any and all agreements, understandings, and discussions, whether written or oral, between you and any of the Company Entities. No other promises or agreements shall be binding unless in writing and signed by both the Company and you after the Effective Date of this Agreement.

16. **Voluntary Agreement.** You acknowledge that you: (a) have carefully read this Agreement, and the Plan, in its entirety; (b) have been offered the opportunity to have at least 21 days to consider their terms; (c) are hereby advised by the Company in writing to consult with an attorney of your choosing in connection with this Agreement; (d) fully understand the significance of all of the terms and conditions of this Agreement and have discussed them with your independent legal counsel, or had a reasonable opportunity to do so; (e) have had answered to your satisfaction any questions you have asked with regard to the meaning and significance of any of the provisions of this Agreement and the Plan; and (f) are signing this Agreement voluntarily and of your own free will and agree to abide by all the terms and conditions contained herein.

17. **Acceptance.** You may accept this Agreement by signing it and returning it to Ms. Human Resource Person, Managing Director, Company, 1,000,000 Main Street, New York, N.Y. 10005. After executing this Agreement, you shall have seven (7) days (the “Revocation Period”) to revoke it by indicating your desire to do so in writing delivered to Ms. Human Resources Person at the address above by no later than 5:00 p.m. on the seventh (7th) day after the date you sign this Agreement. The effective date of this Agreement shall be the eighth (8th) day after you sign it (the “Effective Date”). If the
last day of the Revocation Period falls on a Saturday, Sunday or holiday, the last day of the Revocation Period will be deemed to be the next business day. In the event you do not accept this Agreement as set forth above, or in the event you revoke this Agreement during the Revocation Period, this Agreement, including but not limited to the obligation of the Company to provide you with the payments and benefits offered in paragraph 2 of this Agreement, shall be deemed automatically null and void.

18. **Headings and Captions.** The headings and captions herein are provided for reference and convenience only. They shall not be considered part of the Agreement and shall not be employed in the construction of the Agreement.

Signature: ___________________________ Date: ________________

STATE OF _____________ )
 ) ss.:
COUNTY OF ____________ )

On this __ day of ________ 2011, before me personally came __________________ to me known and known to me to be the person described and who executed the foregoing Agreement, and she duly acknowledged to me that she executed the same.

__________________________
Notary Public

COMPANY

BY: ____________________________ Date: ________________