



Termination Agreement

This Termination Agreement (the "Agreement") is entered into this [day] of [month, year] (the "Effective Date"), between [name of party] ("Party A"), with offices located at [address], and [name of party] ("Party B") with offices located at [address]. Party A and Party B are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, Party A and Party B entered into a [name of contract being terminated, e.g., Sales Agreement] dated [date] (the "Contract"), pursuant to which [brief description of terminated contract, e.g., Party A agreed to sell goods to Party B] pursuant to the terms and conditions and as more fully set forth in the Contract; and

WHEREAS, the Parties desire to terminate the Contract pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the undertakings of the Parties as set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Termination of the Contract. The Parties mutually agree that Contract shall be terminated effective [date] (the "Termination Date"). [*Optional:* Except as expressly provided herein, the Contract will terminate according to the terms as set forth therein.] Upon the Termination Date, the Contract shall have no further force or effect.

2. Consideration. Each party acknowledges and agrees that it has already received all payments and amounts owed from the other Party under the Contract and that no additional consideration of any kind is due from the other Party with respect to the Contract.

3. Effect of Termination on Contract. Except as expressly provided in this Agreement, the Parties acknowledge and agree that their respective rights and obligations under sections [cite applicable Contract provisions] shall survive the termination of the Contract pursuant to the terms and conditions as set forth therein. Any and all transactions completed by the Parties under the Contract prior to the Termination Date shall remain in full force and effect and shall not be revoked or adversely effected as a result of the termination of the Contract or this Agreement.

4. Fees and Expenses. Each Party hereto shall bear its own fees and expenses (including attorneys' fees) incurred in connection with the Contract, this Agreement and the consummation of the transactions contemplated hereby.

5. Representations. Each Party hereby represents and warrants that it has not assigned or otherwise conveyed or delegated, in whole or in part, any claim or right that it has or may have under the Contract to any third party or person. Each Party represents that the execution and delivery of this Agreement is the duly

Termination Agreement

authorized and binding act of the Party, and that the Party's signatory hereto is duly authorized to execute this Agreement on behalf of the Party.

6. No Admission of Liability. Party A and Party B expressly agree and acknowledge that their entering into this Agreement shall not be construed in any manner as an admission of any liability, obligation, or wrongdoing on the part of either Party. Each Party expressly denies any and all liability or wrongdoing with respect to the Contract.

7. Cooperation between the Parties. Each Party shall fully cooperate with the other Party with respect to the performance of this Agreement. Each Party will provide or make available to the other Party any information and will execute, acknowledge and deliver such further documents that may reasonably be required in order to effectively perform this Agreement and to evidence the termination of the Contract and to release all obligations and liabilities of the Parties thereunder.

8. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of [state], without giving effect to the principles of conflicts of law of such state. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in [state, (specify county)]. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court. THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF THIS AGREEMENT.

9. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the Parties. There are no third party beneficiaries to this Agreement. Each Party acknowledges and agrees that it fully understands the provisions set forth in this Agreement and their effect, and that each Party is voluntarily entering into this Agreement.

10. Severability. If any provision or portion of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

11. Construction. The headings and captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference, and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain. This Agreement shall not be construed more strongly against either Party regardless of which Party is more responsible for its preparation.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

13. Notices. All notices or other communications required under this Agreement shall be in writing and shall be deemed effective when received and made by either (i) hand delivery, (ii) registered mail, (iii) certified mail, return receipt requested, or (iv) overnight mail, addressed to the Party to be notified at the following address or to such other address as such Party shall specify by like notice hereunder: Party [address]; Party B [address].

14. Entire Agreement; Modification. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written, oral, electronic or otherwise. No change, modification, amendment, or addition of or to

Termination Agreement

this Agreement shall be valid unless in writing and signed by authorized representatives of the Parties. Each Party hereto has received independent legal advice regarding this Agreement and their respective rights and obligations set forth herein. The Parties acknowledge and agree that they are not relying upon any representations or statements made by the other Party or the other Party's employees, agents, representatives or attorneys regarding this Agreement, except to the extent such representations are expressly set forth herein.

[*Optional Section 15*]. **15. Attorneys' Fees and Costs in Enforcement of the Agreement.** If either Party incurs any legal fees and/or costs and expenses in any proceeding to enforce the terms of this Agreement or any of its rights provided hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and any court, arbitration, mediation, or other litigation expenses from the other Party.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date set forth below.

PARTY A

By:

Name: [printed name]

Title: [title]

Date: [date]

PARTY B

By:

Name: [printed name]

Title: [title]

Date: [date]

End of Document

Drafting Notes

Drafting Note to Section 1

The agreement should include a provision that sets forth the effective date for termination of the underlying contract, which might be immediately upon execution of the agreement, or at a future agreed upon date. Counsel should review the contract being terminated and confer with the client and ascertain whether there are any outstanding obligations that need to be completed or other matters that should be resolved prior to the termination of the contract, and include a suitable termination date. The terminated agreement may contain specific terms regarding the parties' respective rights and obligation upon termination, in which case the optional language in the clause can be used to confirm that such terms will be followed with respect to the termination. If any termination provision in the Contract will be waived or modified, the Agreement should clearly identify such terms and specify whether the Parties agree to waive performance of such obligations or how such provisions are being modified pursuant to the Agreement. Note that this form does not include a release from either party to the other with respect to the Contract; if a release is desired, see [Release Agreement](#).

For a form termination agreement that include a mutual release of all claims relating to the terminated contract, see [Release Agreement](#).

Drafting Note to Section 2

The consideration, if any, to be provided by any Party to the Contract with respect to the termination should be fully set forth in the Agreement. Counsel will want to ensure that the Agreement will fully compensate the client for all amounts, including reimbursable expenses, that are due and owing from the other Party or the amount the Parties have agreed upon to resolve any claims and to terminate the Contract. In this form, there is no additional consideration to be paid. For certain contracts, additional consideration may be required, in which event Alternate Clause to Section 2 can be used.

Drafting Note to Section 3

If there are any provisions in the Contract that will survive the termination, the Agreement should clearly identify such provisions. In such cases, it is prudent to identify all of the clauses in the Contract that will survive termination. For example, the terminated agreement may have confidentiality provisions that are intended to survive termination. Similarly, if any provision in the Contract will be modified or waived pursuant to the termination, such terms should also be spelled out in the Agreement. Counsel should thoroughly review the Contract and ensure that no terms or rights that are supposed to survive are inadvertently terminated. If there will be any additional transactions taking place before the Termination Date (such as additional sales or performance of services), the Agreement should make clear that the termination will not have a negative affect or impact upon such transactions.

Drafting Note to Section 4

Unless otherwise agreed to by the Parties, each Party should be responsible for its costs and expenses incurred in entering into the Agreement. If the termination agreement will include payment of any amounts, including attorneys' fees or other costs incurred by a Party with respect to the Contract or the Agreement, such obligations should be clearly spelled out. However, the Parties may want to also include a provision that awards attorneys' fees and costs to the prevailing Party should there be a dispute regarding performance or enforcement of the Agreement, especially if the Agreement calls for any future payments or other performance that a Party may be compelled to seek legal relief to enforce (see Section 15).

Drafting Note to Section 6

The Parties will not want their entering into the Agreement to be deemed an admission of liability or wrongdoing of any kind. This clause makes clear that the Agreement shall not be construed as an admission of liability or wrongdoing by either of the Parties.

Termination Agreement

Drafting Note to Section 8

This provision provides the governing law that will be used to interpret the terms of the Agreement. The clause also contains an exclusive venue provision where any dispute between the Parties arising out of the Agreement must be litigated. Counsel for the drafting Party should select a convenient state and county for the venue. The provision further contains a jury waiver clause; counsel should confirm that such a waiver is desired by the client.

Drafting Note to Section 10

This is standard language in most commercial agreements, and provides that should a court find a particular clause in the Agreement invalid, all other terms of the Agreement will remain in full force and effect.

Drafting Note to Optional Section 15

If the parties will have no further obligations under the Contract upon execution of the Agreement, this clause may not be necessary. However, if any future performance is required, such as payment obligations or other consideration, the inclusion of a provision awarding fees to the prevailing party in any proceeding to enforce the Agreement can provide a significant incentive for timely performance of the Parties' obligations under the Agreement.