Waivers and Releases and other employee requirements –

I. Use of Waivers and Releases of Claims with Incentivized Voluntary Separation Programs

Where the Department has conducted incentivized voluntary separation programs, it has consistently been the Department's policy to require waivers and releases of claims from employees separating. The Department developed a sample waiver and release of claims for these purposes that has been quite successful and is set forth below. For such waivers to be binding, an employee must receive consideration greater than that to which the employee would otherwise be entitled upon separation from employment.

Waivers are mandatory bargaining subjects. Therefore, if the affected employees are represented for purposes of collective bargaining by a labor organization and the parties' collective bargaining agreement does not contemplate requirement of execution of a waiver as a condition for receiving severance pay, the employer must notify the union of its intent to use a waiver in connection with the separation program and give that union ample opportunity to bargain regarding that matter. If, as provided in the sample waiver, the employer seeks federal age discrimination waivers, employees must be given 45 days to consider the waiver and seven days after the date of execution of the waiver to revoke their agreement to be bound by the waiver. In such cases, the "census" data (regarding the ages and classifications of employees eligible to participate in the separation program and of employees not eligible to participate) required under the Older Workers Benefit Protection Act must also be provided. *See* 29 U.S.C. § 626(f)(1)(H).

Severance pay plans are also generally welfare benefit plans within the meaning of the Employee Retirement Income Security Act (ERISA). If there is a severance pay plan that does not provide that employees separating must execute a waiver in order to receive severance under the plan, the plan will have to be amended consistent with the terms of the plan and applicable legal requirements for notice to participants before employees can be required to execute a waiver in order to receive severance pay.

Voluntary Separation Program
General Release and Waiver

The Voluntary Separation Program (VSP) General Release and Waiver ("Agreement') is entered into by and between _____("Employee") and **[COMPANY NAME]** as part of Employee's voluntary election to terminate employment with the Employer.

IN EXCHANGE FOR THE PROMISES SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:

1. **Voluntary Termination and Agreement Not to Seek Employment:** Employee voluntarily terminates his or her employment with Employer effective _____. Absent the express written authorization of the U.S. Department of Energy (DOE) or the National Nuclear Security Administration (NNSA), Employee agrees not to be employed by the Employer or any other contractor or subcontractor to the DOE or NNSA for work performed under a contract with the DOE or NNSA for a period of one (1) year from the date of Employee's separation. This includes, but is not limited to, temporary employment service contracts, general task order assignments, indefinite quantity contracts, basic ordering agreements, and consultant contracts. However, this does not preclude Employee from employment with a company which is providing goods or services for a DOE or NNSA facility under a fixed priced contract or purchase order and whose primary business activities are not in support of such DOE or NNSA facility.

2. **Waiver of Reemployment Preferences:** Employee agrees that the Employer has no obligation to reemploy Employee in the future and Employee waives any recall, rehire, or rehire preference rights under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

3. **Claims Released and Waived:** Except as set forth in Paragraph 4 below, Employee, on behalf of himself or herself and any person or entity entitled to sue on Employee's behalf, waives and releases Employer, its parents, subsidiaries, and affiliates, the DOE and NNSA, and their employees, officers, directors, shareholders, agents, and successors, from any causes of action or claims, whether known or unknown, that arise out of Employee's resignation and separation from employment with Employer and any causes of action or claims that arise out of Employee's employment with Employer, up to and including the date the Employee signs this Agreement under any federal, state or local law, including, but not limited to the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act of 1990, Title VII of the 1964 Civil Rights Act, the Equal Pay Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or other applicable state or local laws. Employee will not assert any claim or cause of action released under this agreement in any judicial and/or administrative proceeding. Employee

waives the right to obtain any legal or equitable relief in, or as the result of, any administrative proceeding, or as the result of any judicial proceeding brought on the employee's behalf.

4. **Claims Not Waived:** Employee does not waive:

(a) any cause of action or claims that arise out of Employee's employment with Employer that have been asserted in writing and filed with the appropriate agency or court prior to the date on which the Voluntary Separation Program was announced,

(b) any rights or claims that "may arise" (as that term is defined under the Older Workers Benefit Protection Act) after the date this Agreement is executed,

(c) any claims relating to pension or retiree health benefits that may be currently accrued under the Employer's retirement program,

(d) any claims under applicable state worker's compensation laws,

(e) any claims for occupational injuries or illnesses, including but not limited to claims arising under the Energy Employees Occupational Illness Compensation Program Act,

(f) any other rights or claims Employer may not, by law, ask Employee to waive, including but not limited to, the right to seek judicial determination of the validity of this Agreement under the Older Workers Benefit Protection Act, or

(g) the right to file a charge, cooperate or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission ("EEOC") or any other federal, state or local regulatory or law enforcement agency charged with investigation of employment discrimination claims. If Employee or anyone on Employee's behalf seeks any payment in connection with a claim released by this Agreement, Employee agrees that this Agreement precludes such payment.

5. **Continued Applicability of Employment Agreement:** The Employee agrees to continue to abide by all obligations and restrictions pertaining to:

a) the use and protection of intellectual property as set out in the employment agreement signed by the Employee at the beginning of his or her employment at the **[ADD SITE OR COMPANY NAME]** or in any other agreements, obligations, confidentiality provisions or policies pertaining to intellectual property and/or
b) non-disclosure of classified information as set out in any agreement between Employer and Employee or in any other obligations, non-disclosure

provisions or policies, or as otherwise mandated by applicable United States laws and/or DOE regulations and policies.

6. **Consideration:** In exchange for Employee's voluntary separation and execution of this Agreement, Employer will give Employee the consideration outlined in the description included with the Agreement. Employee agrees that the VSP separation pay is more than what the Employee is entitled to under the terms of Employer's existing compensation and benefits plans. Employer reserves the right to provide equivalent benefits in another form in the unlikely event that any aspect of the Program is improper under the law.

7. **Other Obligations Including Repayment:** Employee agrees to perform all steps required by Employer's policies and procedures at the separation of his or her employment. If Employee becomes employed as prohibited in Paragraph 1 or otherwise violates any provision of this Agreement, then, in addition to any other remedies Employer has under this Agreement, Employer may require Employee to repay a portion or all of the payments or any benefits under this Agreement, and Employee agrees to payment.

8. **Waiver of Forty-Five Day Right to Consider: Employee is advised to consider this Agreement and to consult with an attorney of his or her choice, and Employee has had the opportunity to do so. Employee has had the right to consider this Agreement for a period of at least forty-five (45) days prior to entering into this Agreement. Employee has the right to rescind this Agreement for a period of seven (7) days following execution of this Agreement by giving written notice to [LIST HR PROFESSIONAL OR OTHER POINT OF CONTACT, INCLUDING ADDRESS/ROOM NUMBER]. If Employee rescinds the Agreement, it shall not be effective and enforceable, and Employee will not receive any of the benefits described in Paragraph 6. Should Employee sign this Agreement before the end of the 45-day period, Employee states that Employee voluntarily and knowingly waives any right to consider the Agreement for the full 45-day period, that Employee has not been pressured to waive the 45-day period by any employee of [COMPANY NAME] including by fraud, misrepresentation or threats. Employee further states that [COMPANY NAME] has not threatened to withdraw or alter the VSP prior to the expiration of the 45-day period and that Employee has not been offered any additional benefit in order to sign the Release before the 45-day period expires. Employee has read and understands the terms and contents of this Agreement, and Employee freely, voluntarily, and without coercion enters into this Agreement and agrees to be bound by its terms.**

9. **Modification**: This Agreement can only be modified if both parties agree in writing.

10. **Disclosure of Required Information:** Employee has received all of the information required to be disclosed in these circumstances under the Age

Discrimination in Employment Act regarding who is covered by the Program, the eligibility factors, the time limits of the Program, the ages and job titles of everyone eligible for the Program, and the ages of ineligible employees in the same job classification or organizational unit.

11. **Severability**. If a court finds any part of this Agreement not valid, the other parts will remain valid and enforceable.

Clause headings are for convenience only. They do not change the meaning of any provision of this Agreement and may not be used to interpret the Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY AND CONSULT AN ATTORNEY. THIS AGREEMENT CONTAINS A RELEASE OF KNOWN AND UNKNOWN CLAIMS AS DESCRIBED IN PARAGRAPH 3, ABOVE, SUBJECT TO THE LIMITATIONS EXPRESSLY SET FORTH IN PARAGRAPH 4.

Agreed to:

Employee Name: _____ Number:_____
(Please Print)

Employee Signature: _____ Date:_____

Employer
Representative
Signature: _____ Date:_____

I. Self-Select Request for Separation

The Department has over the years moved away from use of incentivized voluntary separation programs. Use of waivers in these situations requires the delay necessary to accommodate the requirement that employees be given 45 days to consider a waiver and 7 days after the date of execution of the waiver to revoke their agreement to be bound by the waiver if waiver of federal age discrimination claims is sought. The Department accordingly developed an application form for employees participating in self-select separation programs. By clearly establishing the voluntary nature of the employees' decision to participate in the separation program, the application has effectively prevented the assertion of any age or other discrimination claims without triggering the 45 and 7 day schedule required for waiver of federal age discrimination claims. No consideration beyond the severance pay itself is required, nor is any amendment of the severance pay plans required. When dealing with situations involving represented employees, the employers must give the unions representing those employees notice and the opportunity to request bargaining concerning implementation of the self-select program generally, but use of the application has not presented any additional practical concerns.

The model self-select application is set forth below.

SECTION 1 – APPLICATION FOR SELF-SELECT VOLUNTARY SEPARATION IN CONJUNCTION WITH THE INVOLUNTARY SEPARATION PROGRAM

I hereby VOLUNTARILY APPLY to be considered for termination from employment with [Contractor] ("Employer") [ADD WHERE APPROPRIATE: "in conjunction with the Involuntary Separation Program"]. I am selecting this option of my own free will after having had an opportunity to review the terms, conditions and consequences of designating myself for the "self-select" process. I understand that if there are insufficient volunteers, then I may be considered for involuntary termination, and therefore, by voluntarily applying to be considered for termination, I will be assisting the Employer in determining who should be terminated. **I agree** that the Employer has no obligation to reemploy me in the future and I understand that I do not have rehire preference rights under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

I understand that this Request is subject to the approval of the Employer and, if approved, my employment will be terminated subject to the same terms and conditions applicable to all other participants in the Self-Select Voluntary Separation in Conjunction with the Involuntary Separation Program. The separation package has been explained to my satisfaction.

I agree that, if I am selected by the Employer to participate in the Self-Select Request for Separation [ADD WHERE APPROPRIATE: "in Conjunction with the Involuntary Separation Program"] and I then become employed by the Employer or any other contractor or subcontractor to the Department of Energy or the National Nuclear Security Administration for work performed under a contract with the Department of Energy or the National Nuclear Security Administration within a period of one (1) year from the date of my separation, I may be required to repay a portion or all of the severance payments which I received pursuant to my participation in the Self Select Voluntary Separation [ADD WHERE APPROPRIATE: "in Conjunction with the Involuntary Separation Program, and I agree to such payment"]. Examples of employment that may require me to repay severance include, but are not limited to, work under contracts or subcontracts with the Department of Energy or the National Nuclear Security Administration such as temporary employment contracts, service contracts, general task order assignments, indefinite quantity contracts, basic ordering agreements, and consultant contracts. However, my obligation to repay severance would not be triggered by employment with a company that provides supplies, equipment, materials, commodities, or services for a Department of Energy facility under a fixed priced contract or purchase order and whose primary business activities are not in support of such Department of Energy facility.

I have read this Request to terminate employment as part of the Self–Select Voluntary Separation [ADD WHERE APPROPRIATE: "**in Conjunction with the Involuntary Separation"] Program and agree to abide by the terms set forth herein if my Request is accepted:**

Name: _____ **Employee Number:_____**
(Print Last Name, First Name, MI)

Signature: _____ **Date: _____**

II. Use of Waivers and Releases of Claims with Involuntary Separation Programs

It is generally more difficult to find consideration for a waiver where there is an involuntary separation. Where the contractor's work force is already covered by broader corporate personnel policies requiring the use of waivers and releases of claims by involuntarily separating employees in return for receipt of severance pay, waivers that comply with legal requirements can be used. Legally compliant waivers may also be used where the applicable severance pay policies or an applicable collective bargaining agreement anticipates that involuntarily separating employees must execute a waiver in order to receive severance. The Department also understands that contractors may wish to use waivers in other circumstances and encourages contractors to discuss their concerns in this regard in their specific plan for the separation program involved to ensure agreement as to how the issue will be resolved in particular cases.