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Dear Sir or Madam

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Yours faithfully

Monaco Solicitors

**MONACO SOLICITORS**

**Settlement agreement template, including pension payment**

Without prejudice and subject to contract

DATED

**[Employer]**

and

**[Your name]**

## SETTLEMENT AGREEMENT

THIS AGREEMENT is made on [Date] BETWEEN:
(1) **[Employer]** of **[Address]** (“Employer”); and

(2) **[Your name]** of **[Address]** (“Employee”).

BACKGROUND

(A) The Employee’s contract of employment has been terminated through mutual agreement.

(B) The Employee has or may have the claims particularised in clause 6.3, as well as various other claims arising out of his contract of employment and its termination which are not subject to statutory contracting-out restrictions.

(C) The parties wish to enter into this Agreement on the terms set out below.

1 Interpretation

1.1 A reference in this Agreement to one gender includes a reference to other genders.

2 Termination of employment

2.1 The Employee’s contract of employment will terminate on **[Date]** (“Termination Date”).

3 Final arrangements

3.1 Subject to clause 3.3 the Employee was entitled to his normal salary and benefits up to and including the Termination Date, and to the extent that payment of salary has not already been made, the Employer will pay any arrears within 21 days of the later of the date of this Agreement or the Termination Date.

3.2 The Employer will within 21 days of the Termination Date provide the Employee with a P45.

3.3 Save as expressly provided in this Agreement the Employee shall not be entitled to any pay, bonuses or other benefits in respect of any period before or after the Termination Date.

3.4 The Employer will upon receiving a request from any prospective employer of the Employee addressed to the Head of HR provide a reference in the terms of the attached schedule. The Head of HR will not depart from the terms of the attached schedule if asked for an oral reference and will respond to any particular enquires in a manner which is, as far as reasonably practicable, consistent with what is said in the attached schedule.

4 Termination payment

4.1 Without admission of liability, subject to compliance by the Employee with the terms of this Agreement and on condition that the warranties in clauses 10 and 11.3 are true, the Employer will pay to the Employee within 21 days of the later of the date of this Agreement or the Termination Date the sum of £30,000 by way of compensation for loss of employment through mutual agreement in accordance with section 403 Income Tax (Earnings and Pensions) Act 2003. Pension

4.2 The Pension Scheme means the >PENSION PROVIDER TO BE INCLUDED HERE Policy number ><.

4.3 The Employer shall, subject to the status of the Pension Scheme as a registered pension scheme as defined in section 150(2) Finance Act 2004 not being prejudiced, pay within 21 days of the later of the date of this Agreement or the Termination Date £26,000 into the Pension Scheme to provide additional benefits for the Employee.

5 Release and settlement

5.1 The Employee agrees that the payment in clause 4.1 and 5.2 is in full and final settlement of all claims or rights of action of any kind whatsoever which the Employee may have against

5.1.1 the Employer; and

5.1.2 any Connected Person
in relation to his employment, its termination and any related or connected matter.

5.2 For the avoidance of doubt the settlement in clause 6.1 extends to all claims:

5.2.1 whether arising under statute (including any directions or regulations made thereunder), at common law, under the Memorandum and Articles of Association, in equity or under any EU Directive, regulation or other legislation applicable in the United Kingdom and enforceable against the Employer; and

5.2.2 whether arising in the United Kingdom or in any other country in the world; and

5.2.3 arising out of facts existing at the date of this Agreement whether or not the legal basis for such a claim was known to the Employee at that date.

5.3 This Agreement relates to the following claims subject to statutory contracting-out restrictions which the Employee has or may have against the Employer or a Connected Person, namely:

5.3.1 any claim to wages under Part II Employment Rights Act 1996 (“ERA”);

5.3.2 any claim for unfair dismissal under Part X ERA;

5.3.3 any claim for redundancy under Part XI ERA;

5.3.4 any claim for detriment brought under section 146 Trade Union and Labour Relations (Consolidation) Act 1992;

5.3.5 any claim for statutory holiday pay arising under regulation 14 or 16 Working Time Regulations 1998;

5.3.6 any claim for discrimination (whether direct or indirect), harassment or victimisation on grounds of or because of age brought under regulation 36 Employment Equality (Age) Regulations 2006 or under section 120 Equality Act 2010;

5.3.7 [any claim for discrimination (including direct, indirect and in respect of failure to make adjustments), harassment or victimisation relating to, arising from or because of disability brought under section 17A Disability Discrimination Act 1995 or under section 120 Equality Act 2010;] and

5.3.8 any claim under section 11 Employment Relations Act 1999

5.4 The Employee agrees to refrain from instituting any of the claims set out in clause 6.3 (“Particularised Claims”). The parties agree that each of the Particularised Claims is to be regarded as a particular complaint or particular proceedings for the purposes of the provisions of the relevant Act or Regulations referred to in clause 6.3.

5.5 This clause 6 does not settle any claim for personal injury (other than any such claim arising from or in connection with any of the Particularised Claims or under the Protection from Harassment Act 1997) of which the Employee has no knowledge, and could not reasonably be expected to have knowledge, at the date of this Agreement and the Employee confirms that he has no knowledge of any facts or medical conditions which may give rise to such a claim.

5.6 Nothing in this Agreement shall settlement the Employee’s rights in respect of accrued pension rights.

6 Confidentiality

6.1 The Employee agrees to keep the terms of this Agreement confidential and not to disclose them to any third party save as required by law and save that:

6.1.1 he may make disclosure of its terms to his professional advisers to obtain professional advice; and

6.1.2 he may disclose its terms to his immediate family provided such family members agree to keep what has been disclosed confidential.

6.2 The Employer agrees to keep the terms of this Agreement confidential and not to disclose them to any third party save as required by law and save that:

6.2.1 it may make disclosure of its terms to its professional advisers to obtain professional advice;

6.2.2 it may disclose its terms as necessary to its officers, agents and employees providing it shall make reasonable endeavours to ensure that the recipients of this information keep it confidential; and

6.2.3 it may publish such information about the fact and terms of this Agreement as may be required by any rule or practice imposed upon or otherwise adopted by the Employer in the light of its obligations to any regulatory authority or organisation to which it is directly or indirectly accountable, whether financially or otherwise.

6.3 The Employee shall not represent himself as being employed by the Employer after the Termination Date.

6.4 The Employee confirms that following the Termination Date, he will not disclose or communicate to any person, company, business entity or other organisation any information of a confidential nature relating to the Employer or to its business or trade secrets.

6.5 The Employee agrees that he will not make or publish (whether directly or through a third party) any derogatory or defamatory remarks about the Employer or a Connected Person.

6.6 Nothing in this clause shall prevent the Employee from disclosing information which he is entitled to disclose under the Public Interest Disclosure Act 1998, provided that the disclosure is made in accordance with the provisions of that Act and the Employee has complied with the Employer’s current policy regarding such disclosures.

6.7 In consideration of the Employee accepting the restrictions set out in this clause the Employer will pay to the Employee an additional payment of £100.00 less tax and national insurance.

7 Tax and National Insurance

7.1 The Employer believes that in accordance with section 403 Income Tax (Earnings and Pensions) Act 2003 the £30,000 payment referred to in clause 4.1 will be tax free.

7.2 The Employee hereby agrees to be responsible for the payment of any further income tax in respect of payments received in connection with the termination of his employment with the Employer and any payments made or benefits provided under this Agreement and hereby agrees to indemnify the Employer and keep the Employer indemnified against all and any liabilities to taxation and employees’ national insurance (including in each case any associated penalties and interest together with any reasonable costs and expenses) which the Employer may incur in respect of or by reason of such termination of employment and the payments made or benefits provided under this Agreement PROVIDED THAT prior to making any payment of tax in respect of the sums referred to in clause 4.1, the Employer will forward to the Employee particulars of the demand made by HM Revenue and Customs and allow the Employee 21 days in which to reply to HM Revenue and Customs directly with a copy of such response to the Employer.

8 Employee’s obligations

8.1 The Employee confirms that he will return to the Employer prior to the Termination Date:

8.1.1 all property and equipment belonging to the Employer including but not limited to any laptop computer, computer software or hardware, electronic diaries/organisers, fax machines, mobile/car telephones (including the original sim card), fuel card, badges, security passes and keys, uniform; and

8.1.2 all passwords, databases, documents, records, correspondence, files and other information (whether originals, copies or extracts and howsoever stored) belonging to the Employer or which the Employee has acquired in the course of his employment.

8.2 The Employee shall not retain any copies (in any form) of the items referred to in clause 9.1.2 and by signing this Agreement confirms that he has irretrievably deleted or destroyed any copies which would otherwise remain in his possession after full compliance with clause

8.3 The Employee has withdrawn:

8.3.1 any appeals and grievances against the Employer or any Connected Person;

8.3.2 any requests made to the Employer under the Data Protection Act 1998; and

8.3.3 any complaints to an ombudsman or similar body in respect of his employment or its termination (including but not limited to his entitlement to any pensions and any other benefits).

9 Employee’s warranties

9.1 The Employee warrants that, as at the date of this Agreement:

9.1.1 having taken advice from the Relevant Independent Adviser (as defined in clause 11.1) and having provided him or her with full instructions):

(i) he has or may have the claims comprised in the Particularised Claims;

(ii) he does not have any other complaints or claims against the Employer which are subject to statutory restrictions on contracting out;
(iii) he does not have any other claims against the Employer which are not fully settled by this Agreement; and

(iv) he has not brought and will not bring proceedings of any nature against the Employer.

9.1.2 there are no circumstances of which he is aware or ought reasonably to be aware which would amount to a repudiatory breach by him of any express or implied term of his contract of employment which would (or would have) entitled the Employer to terminate his employment without notice or payment in lieu of notice (if he was still employed).

9.1.3 he has not made any statement or taken any steps prior to the date of this Agreement which would constitute a breach of any of the provisions of clause 7 if it had occurred after the date of this Agreement.

9.1.4 he has complied with clauses 9.12 to 9.3 inclusive.

9.2 The Employee acknowledges that the Employer has entered this Agreement in reliance on the warranties set out in this clause and in clause 11.3, and that the Employer’s obligation to make the payment in clause 4 and clause 5 is conditional on those warranties being true at the date of this Agreement.

10 Advice

10.1 The Employee has received independent legal advice from a solicitor of the Senior Courts who holds a current practising certificate (“Relevant Independent Adviser”) as to the terms and effect of this Agreement and in particular its effect on his ability to pursue his rights before an Employment Tribunal in accordance with the provisions of the Acts and Regulations set out in clause 12. The name of the Relevant Independent Adviser is [NAME AND ADDRESS].

10.2 The Employee is advised by the Relevant Independent Adviser that there is in force and there was at the time that the Employee received the advice referred to above, a contract of insurance or indemnity covering the risk of any claims by the Employee in respect of loss arising in consequence of the advice.

10.3 The Relevant Independent Adviser by signing this Agreement warrants to the Employer that:

10.3.1 the statements set out in clauses 11.1 and 11.2 are true; and

10.3.2 he has not acted for the Employer; and

10.3.3 he in all other respects satisfies the requirements laid down by section 203 ERA with regard to relevant independent advisers and is not prevented from acting as an independent adviser by any other relevant statutory provision.

10.4 The Employer shall on the production of an appropriate copy VAT invoice addressed to the Employee but marked payable by the Employer pay to the Employee’s solicitors Astons Legal Limited the maximum sum of £350.00 plus VAT in respect of the Employee’s legal expenses incurred solely in relation to the termination of his employment.

11 Settlement agreements

11.1 The Employer and the Employee agree and acknowledge that the conditions regulating settlement agreements contained in section 203 ERA, regulation 35 Working Time Regulations 1998, section 147 Equality Act 2010, schedule 5 Employment Equality (Age) Regulations 2006, section 77 Sex Discrimination Act 1975, section 72 Race Relations Act 1976, schedule 4 Employment Equality (Religion or Belief) Regulations 2003, schedule 4 Employment Equality (Sexual Orientation) Regulations 2003, schedule 3A Disability Discrimination Act 1995, section 288 Trade Union and Labour Relations (Consolidation) Act 1992, and section 49 National Minimum Wage Act 1998 are intended to be and have been satisfied.

12 Miscellaneous

12.1 If any of the Employee’s rights have not been validly and lawfully excluded by the provisions of this Agreement (which is not admitted), and:

12.1.1 the Employee exercises such rights; or

12.1.2 an employment tribunal or other court shall find that the Employee is entitled to any remedy (whether monetary or non-monetary) against the Employer,
then, without prejudice to the Employer’s other remedies under this Agreement, all sums paid to the Employee under this Agreement shall be re-paid to the Employer forthwith and shall be recoverable as a debt or, at the Employer’s election, set off against any sums awarded to the Employee and the Employer shall be released from any further obligations under this Agreement.

13 Third parties

13.1 It is agreed that no person, other than the Employer or the Employee, shall be able to enforce any term of this Agreement in his or her own right.

14 Whole agreement

14.1 This Agreement sets out the entire agreement between the parties and supersedes all discussions between them and their advisers and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings whenever given and whether orally or in writing.

15 Law and Jurisdiction

15.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

16 Completion

16.1 Notwithstanding that this Agreement is marked “without prejudice” and “subject to contract” when it is signed by the Employer, the Employee and the Relevant Independent Adviser and dated it shall become an open and binding document.

16.2 This Agreement may be executed in one or more counterparts and shall be as valid and binding as if all parties had executed the same document.

17 Definitions

17.1 “Connected Person” means an officer, employee, agent of the Employer or a member of the Employer’s governing body.

**Schedule:**

Agreed reference

Reference Request

Dear Sir/Madam
I am writing in response to your request for a reference for the person detailed below. It is the company’s policy to provide a reference in a standard format. The nature of your request will therefore have determined the information provided as a response below.

**[Name]**

**[Job Title]**

Date of commencement **[Date]**

Date of Leaving **[Date]**

The information given above is provided in confidence and good faith and is accurate to the best of our knowledge and belief. However, the information is provided strictly on the basis that no liability is accepted by, or on behalf of, either the employer or the author, and that any risk is borne entirely by the party placing reliance on such information.

Yours sincerely

**[Name]**

Signed:………………………….

For and on behalf of the Employer

Signed:…………………………..

Employee

Signed:…………………………..

Relevant Independent Adviser