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Dear Sir or Madam

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Yours faithfully

Monaco Solicitors

**MONACO SOLICITORS**

**Settlement agreement template: Standard version 1**

Without prejudice and subject to contract

Private & Confidential

DATED…..

## **SETTLEMENT AGREEMENT**

THIS AGREEMENT is made on **[Date]**

BETWEEN:

(1) **[Employer]** of **[Address]** (The “Employer”); and

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

BACKGROUND

A. The Employee has been employed by the Employer since **[Date]** her last post being as a **[Job title]**.

B. Due to a mutual breakdown in trust and confidence between the Employee and Employer caused by a variety of issues and circumstances it is intended that the Employee’s employment will terminate on **[Date]**.

C. The purpose of this agreement is to settle all claims which the Employee has or may have against the Employer and any of its employees, workers, officers, agents or Members arising out of the Employee’s employment or its termination, whether or not any such claims exist or are known to exist or contemplated by the parties or are recognised by law at the date of this agreement.

D. The Employer and the Employee intend this Agreement to be an effective waiver of any such claims and to satisfy the conditions relating to settlement agreements contained in the relevant legislation.

IT IS AGREED AS FOLLOWS:

1 Termination of employment

1.1 The Employee’s employment with the Employer will terminate by mutual agreement on **[Date]** (the “Termination Date”).

1.2 The Employer enters into this agreement and makes the payment referred to in clause 2 of this agreement without any admission of liability whatsoever by the Employer.

2 Termination payment

2.1 In the period from the date of this agreement to the Termination Date, the Employer will pay the Employees basic salary, subject to normal deductions for tax and employee national insurance contributions. Subject to this agreement being signed by the Employee and her Representative, with the completion of appendix 1 of this agreement the employer will pay the final salary payment and the compensation payments referred to in clause 2.2 within 28 days of receiving this agreement duly signed by the Employee and her Representative or within 28 days of the termination date which ever date the latter. The Employer will provide the Employee with a Form P45 within 28 days of the termination date.

2.2 Subject to and conditional upon the Employee’s obligations under this Agreement the Employer shall in consideration of the termination of the Employee’s employment but without any admission of liability pay the Employee the sum of £xxx being the “Termination Payment” subject to the deductions referred to in clause 2.3 below. The Termination Payment consists of:

(a) £xxx as a payment in lieu of the Employees contractual notice period;

(b) £xxx as compensation for the termination of employment (loss of office);

(c) £xxx in respect of y days accrued but untaken holiday entitlement.

2.3 Payment of the Termination Payment is conditional upon the Employee`s agreement under clause 7 below and compliance with the warranties under clause 8 and 9 below.

2.4 The Termination Payment shall be subject to the following deductions:

(a) The Employer shall deduct from the sums listed at 2.2 (a) and 2.2 (c) the income tax and employee’s national insurance contributions for which the Employer is liable to account to HM Revenue and Customs in respect of the Termination Payment in accordance with the Income Tax (Pay As You Earn) Regulations 2003 (“PAYE Regulations”);

(b) The Employer and Employee believe that the first £30,000 of the sum referred to in clause

2.2 (b) can be paid without deduction of income tax or employee’s national insurance contributions. [The balance of this sum shall be subject to the deduction of the income tax which the Employer is required by law to account to HM Revenue and Customs in accordance with the PAYE Regulations.]
Any further liability to income tax and/or employee’s national insurance contributions on the Termination Payment and on any other benefits provided to the Employee pursuant to this Agreement shall be the Employee`s alone.

2.5 With effect from the Termination Date the Employee’s benefits, whether contractual or otherwise, will cease. For the avoidance of any doubt the Employer shall cease to provide any Employer’s contributions to the Employee’s pension with effect from the Termination Date.

3. Tax Indemnity

3.1 The Employer makes no warranty or representation as to whether income tax or employee national insurance contributions are lawfully payable in relation to the payments made under this Agreement.

3.2 The Employee shall be responsible for and shall indemnify the Employer against, and shall on written demand forthwith pay to the Employer any further income tax or employee national insurance contributions (and interest, costs, penalties or expenses relating to any tax assessment) that the Employer is required to pay or account for in respect of the payments made by the Employer to the Employee pursuant to this Agreement in excess of any amount deducted at source. In this regard the Employer shall be deemed to be obliged to pay any such amount if it receives a written demand from HM Revenue and Customs.

3.3 The Employer will give the Employee reasonable notice of any demand for tax which may lead to liabilities on the Employee under this indemnity and shall provide the Employee reasonable access to any documentation the Employee may reasonably require to dispute the claim (provided that nothing in this Clause shall prevent the Employer from complying with their legal obligations to HM Revenue and Customs).

4. Restrictions

4.1 The Employer makes the compensation payment referred to in clause 2 above in consideration of which, the Employee agrees and confirms that the Employee:

(a) has not disclosed or made use of and will not at any time after the date of this Agreement disclose or make use of, for the Employee’s own or any other person’s benefit, any trade secret or Confidential Information concerning the business, finances, affairs, products, services, processes, equipment or activities of the Employer or any of its or their respective customers, agents, suppliers or clients except with the consent of the Employer or where required to do so by law;

(b)has not and shall not directly or indirectly disclose to any third party the terms of and the circumstances surrounding the conclusion of this Agreement, save where such disclosure is required by any competent authority or to comply with any statutory requirement or is otherwise required for the purpose of enforcing any of the provisions of this Agreement. This clause does not prevent the Employee disclosing the terms of this agreement to the Employee’s professional advisers and spouse provided that the Employee agrees to take reasonable steps to prevent further disclosure by such individuals to any other persons;

(c) has not and shall not directly or indirectly make, publish or otherwise communicate any disparaging or derogatory statements, or encourage any other third parties to make such statements, whether in writing or otherwise, which are intended to or which might be expected to damage or lower the business or professional reputation or financial standing of the Employer or any of their respective present or former officers, partners, directors, agents, customers, consultants, workers, employees or Members;

(d) has not and shall not communicate to any third party including the press about any matter concerning the activities or financial position of the Employer and/or hold her self out as an employee or representative of the Employer following the Termination Date;

(e) The Employer shall not authorise its officers, agents, Members and employees to make, publish or otherwise communicate any disparaging or derogatory statements, whether in writing or otherwise, concerning the Employee;

(f) In the event that the Employee breaches this Clause 4 and without prejudice to any other remedies the Employer may ask for the payments the Employee has received under this agreement to be repaid to the Employer immediately, in full, on written demand; and

(g)
In the event that the Employee issues a claim in breach of Clause 7 of this agreement relating to her employment or its termination against her Employer, or their Officers, Employees, Agents or Members whether in the Employment Tribunals, the High Court, or otherwise, other than for the purposes of enforcing her rights under this agreement the employee agrees that full account will be taken of the payments that she has benefited from under this agreement.

(h) Upon receipt of a reference request for the Employee, the Employer will provide a reference on behalf of the Employee in the terms of the agreed reference attached to this settlement agreement Appendix 2. Unless a further request is made by the Employee this will be the only written reference provided and any oral reference given will be consistent with the terms of the agreed written reference. The reference will form part of the settlement agreement.

5. Return of Employer Property

5.1 The Employee agrees to return on or before **[Date]** to the Employer:

(a) in good condition and order, subject to fair wear and tear, all property of the Employer in the Employee’s possession or under the Employee’s control including, but not limited to all keys, mobile telephones, lap-top computers, security passes; and

(c) all correspondence, books, papers, files, documents and records (whether kept in hard copy or stored in electronic or in some other form), all computer discs and tapes which belong to or relate to the Employer or any of their respective customers, agents, suppliers, clients or contacts and further agrees that the Employee will not make or retain copies or extracts of the same in any form.

6. Legal Costs

6.1 Provided that the Adviser (who is [ ] of [ ]) has, by the Termination Date, delivered to the Employer’s Solicitors the Adviser’s Certificate as set out in Appendix 1 and provided that the Employee has complied with the Employee’s obligations under this Agreement, the Employer will pay the Employee’s legal fees up to a limit of £350 plus VAT incurred solely in advising the Employee in connection with the termination of the Employee’s employment and the preparation of this Agreement. The Employer will make the payment of such fees directly to the firm for which the Adviser works on receipt of a VAT invoice addressed to the Employee but marked payable (whether in whole or in part) by the Employer

7. Agreement

7.1 The Employee agree that the terms of this Agreement are offered by the Employer without any admission of liability on the part of the Employer and are in full and final settlement of all and any claims or rights of action that the Employee has or may have against the Employer or any of its or their respective current, former or future officers, workers or employees arising out of the Employees employment with the Employer or its termination or from events occurring after this Agreement has been entered into whether under common law, contract, statute or otherwise, whether such claims are, or could be, known to the parties or in their express contemplation at the date of this Agreement, including claims which as a matter of law do not at the date of this Agreement exist and whose existence cannot currently be foreseen in any jurisdiction and including, but not limited to, the following claims (each of which is hereby intimated and waived):

(i) for wrongful dismissal;

(ii) for breach of contract;

(iii) in respect of any right or entitlement the Employee has or may have to payment of bonuses, any benefit or award programme or grant of equity interest, or to any other benefit, payment or award the Employee may have received had her employment not terminated, save as otherwise set out in this Agreement;

(iv) for unfair dismissal and related claims, including under sections 93 and 111 of the Employment Rights Act 1996;

(v) for a statutory redundancy payment, under section 163 of the Employment Rights Act 1996 and/or any contractual redundancy payment;

(vi) for direct or indirect discrimination, harassment or victimisation because of and/or related to age, under section 120 of the Equality Act 2010 and/or direct or indirect discrimination, harassment or victimisation related to and/or on the grounds of age under regulation 36 of the Employment Equality (Age) Regulations 2006;

(vii)

in relation to working time or holiday pay, under regulation 30 of the Working Time Regulations 1998;

(viii)

in relation to unlawful deductions from wages or unauthorised payment under section 23 Employment Rights Act 1996;

(ix)

for breach of the Human Rights Act 1998;

(x)

for breach of obligations under the Data Protection Act 1998;

(xi)

(a)in relation to the right to be accompanied and/or detriment in relation to this right under sections 11 and 12 of the Employment Relations Act 1999.

(b)In addition, all claims (if any) whether contractual, equitable, tortious, statutory or otherwise, including (but not limited to) claims under English and/or European Union law:

(i) existing claims for personal injury;

(ii) for equality of terms, under sections 120 and 127 of the Equality Act 2010 and/or equal pay under section 2 of the Equal Pay Act 1970;

(iii) in relation to maternity, paternity, adoption, parental and dependants rights and/or leave including those under the Employment Rights Act 1996, the Maternity and Parental Leave etc Regulations 1999 and the Paternity & Adoption Leave Regulations 2002;

(iv)
for pregnancy or maternity discrimination, direct or indirect discrimination, harassment or victimisation because of and/or related to sex, marital or civil partnership status, pregnancy or maternity or gender reassignment under section 120 of the Equality Act 2010 and/or direct or indirect discrimination, harassment or victimisation related to and/or on the grounds of sex, marital or civil partnership status, gender reassignment, pregnancy or maternity under section 63 of the Sex Discrimination Act 1975;

(v)
for direct or indirect discrimination, harassment or victimisation because of and/or related to race under section 120 of the Equality Act 2010 [and/or direct or indirect discrimination, harassment or victimisation related to and/or on the grounds of colour, race, nationality or ethnic or national origin under section 54 of the Race Relations Act 1976;

(vi) for direct or indirect discrimination, harassment or victimisation because of and/or related to disability, discrimination arising from disability, or failure to make adjustments under section 120 of the Equality Act 2010 [and/or direct discrimination, disability-related discrimination, harassment or victimisation related to and/or on the grounds of disability or failure to make adjustments under section 17A of the Disability Discrimination Act 1995;

(vii) for direct or indirect discrimination, harassment or victimisation because of and/or related to religion or belief, under section 120 of the Equality Act 2010 [and/or direct or indirect discrimination, harassment or victimisation related to and/or on the grounds of religion or belief under regulation 28 of the Employment Equality (Religion or Belief) Regulations 2003;

(viii) for direct or indirect discrimination, harassment or victimisation because of and/or related to sexual orientation, under section 120 of the Equality Act 2010 [and/or direct or indirect discrimination, harassment or victimisation related to and/or on the grounds of under regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003;

(ix) for unlawful detriment under the section 48 Employment Rights Act 1996;

(x) in relation to the national minimum wage under the National Minimum Wage Act 1998, including sections 11, 18, 19D and 24;

(xi) for breach of the Public Interest Disclosure Act 1998;

(xii)

under sections 146 (detriment on ground related to union membership or activities);

(xiii)

for breach of obligations, including any claim for harassment or in respect of similar conduct, under the Protection from Harassment Act 1997;

(xiv)

in relation to the suspension from work under section 70 of the Employment Rights Act 1996;

(xv)

in relation to parental rights and flexible working, under sections 80 and 80H of the Employment Rights Act 1996;

(xvi)

in relation to time off work, under sections 51, 54, 57, 57B, 57ZC, 60, 63 and 63C of the Employment Rights Act 1996;
7.2 The waiver in clause 7.1 above does not apply to:

(a) any claims for personal injury other than (a) where the Employee is currently aware of any facts or circumstances which do or may give rise to the claim and (b) those which may be brought under any discrimination legislation; and

(b) any claims by the Employee to enforce this Agreement.

7.3 The waiver in clause 7.1 above shall have effect irrespective of whether or not, at the date of this Agreement, the Employee is or could be aware of such claims or have such claims in her express contemplation, including such claims of which she may become aware after the date of this Agreement in whole or in part as a result of new legislation or the development of common law or equity [or arising from events which occur after this Agreement but connected with the subject matter of this Agreement.

7.4 The Employee acknowledges that the conditions relating to settlement agreements under section 147 of the Equality Act 2010, section 77(4A) of the Sex Discrimination Act 1975 (in relation to claims under that Act and the Equal Pay Act 1970), section 72(4A) of the Race Relations Act 1976, section 288(2B) of the Trade Union and Labour Relations (Consolidation) Act 1992, paragraph 2 of schedule 3A of the Disability Discrimination Act 1995, section 203(3) of the Employment Rights Act 1996, regulation 35(3) of the Working Time Regulations 1998, section 49(4) of the National Minimum Wage Act 1998, regulation 41(4) of the Transnational Information and Consultation etc. Regulations 1999, regulation 9 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, regulation 10 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, paragraph 2(2) of schedule 4 of the Employment Equality (Sexual Orientation) Regulations 2003, paragraph 2(2) of schedule 4 of the Employment Equality (Religion or Belief) Regulations 2003, regulation 40(4) of the Information and Consultation of Employees Regulations 2004, paragraph 12 of the schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 and paragraph 2(2) of schedule 5 of the Employment Equality (Age) Regulations 2006 have been satisfied.

7.5 The Employee shall be liable for and shall indemnify the Employer in respect of any costs, claims, demands, fines or expenses (including legal and other professional expenses) which may be incurred by the Employer which arise out of or in connection with any claim (whether contractual, statutory or otherwise) brought by her or on her behalf, which, but for section 147 of the Equality Act 2010, she would have been prevented from bringing by this Agreement.

8 Warranties

8.1 The Employee represents and warrants that:

8.1.1 She has have received independent legal advice from the Adviser as to the terms and effect of this agreement and, in particular, its effect on her ability to pursue her rights before an employment tribunal or other court;

8.1.2 the Adviser is a relevant independent adviser within the meaning of the acts and regulations referred to at clause 7.4 above;

8.1.3 the Adviser shall sign and deliver to the Employer a letter in the form attached as Appendix 1 to this Agreement;

8.1.4 the Employee is not aware of any claims that you may have (whether at the time of entering into this Agreement or the future) arising out of or pursuant to or connected with her employment or its termination or otherwise, whether contractual, statutory or otherwise, nor any facts or circumstances, that may give rise to such claims;

8.1.5 the Employee has been advised by the Adviser that there is in force and was, at the time she received the advice referred to above, a policy of insurance covering the risk of a claim by her in respect of loss arising in consequence of that advice;

8.1.6 as at the date of this Agreement, there are no circumstances of which she is aware or of which she ought reasonably to be aware which would amount to a repudiatory breach by her of any express or implied term of your Contract of Employment/Service Agreement which would entitle (or would have entitled) the Employer to terminate her employment without notice or payment in lieu of notice and any payment or benefit provided to her pursuant to this Agreement is conditional upon this being so;

8.1.7 the Employee is not aware of any claim for personal injury she may have against the Employer arising out of or in connection with her employment with the Employer or any facts which may give rise to such a claim; and

8.1.8 the Employee has fully disclosed all matters which might reasonably affect the willingness of the Employer to enter into this Agreement.

8.2 the Employee acknowledges that the Employer has relied on the warranties set out in clause 8.1 when entering into this Agreement.

9. Counterparts

9.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all counterparts together shall constitute one and the same instrument.

10. Law and Jurisdiction

10.1 This Agreement shall be governed by and construed in accordance with English Law.

10.2 The parties submit to the exclusive jurisdiction of the English Courts and tribunals with regard to any dispute or claim arising under this Agreement.

11. General

11.1 In this Agreement:
(a) a reference to any legislative provision includes any lawful amendment or re enactment of it; and
(b) the headings are for convenience only and shall not affect its interpretation.

11.2 The Schedules to this Agreement form part of (and are incorporated into) this Agreement.

11.3 This Agreement sets out the entire agreement between the parties and supersedes all previous discussions, negotiations, agreements and arrangements (if any) whether oral or in writing and whether express or implied relating to the termination of the Employee’s employment by the Employer.

11.4 This Agreement, although marked “without prejudice” and “subject to contract” will when dated and signed by both parties and accompanied by the Adviser’s Certificate become an open document evidencing an agreement binding on the parties.

11.5 Nothing in this Agreement shall be taken to prevent the Employee from making a protected disclosure as defined by the Public Interest Disclosure Act 1998.

11.6 The complete or partial invalidity or unenforceability of any provision of this Agreement for any purpose shall in no way affect:-

(a) the validity or enforceability of such provision for any other purpose;
(b) the remainder of such provision; and/or
(c) the remaining provisions of this Agreement.

Signed for and on behalf of
**[Employer]**

By

Signed by
**[Your name]**

APPENDIX 1

ADVISER’S CERTIFICATE

I have given independent legal advice to **[Name]** of **[Address]** as to the terms and effect of the above agreement and in particular its effect on [employee]’s ability to pursue her rights before an employment tribunal. I confirm that I am a Solicitor of the Senior Courts of England and Wales holding a current practising certificate and that there is and was at the time I gave the advice referred to above in force a policy of insurance covering the risk of a claim by **[Your name]** in respect of any loss arising in consequence of that advice.

Signed ……………………………….

Address …………………………………….
……………………………………………….
……………………………………………….

Dated ………………………………………