Example of settlement agreement

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# Settlement agreement

Within the meaning of Section 7:900 of the Dutch Civil Code

## The undersigned:

**<company>**, a private company with limited liability, having its registered office at <address> in <place>, duly represented by <boss>,<function>, hereinafter referred to as: the ‘‘**Employer**’’,

and

**<employee>**, born on <date of birth>, residing at <address> in <place>, hereinafter referred to as: the ‘‘**Employee**’’.

Jointly hereinafter referred to as “**Parties**” and individually as “**Party**”.

## Considering that:

* the Employee has been employed by the Employer as per <date>;
* the Employee is currently employed on the basis of an employment contract for an indefinite period of time in the position of <position> for a gross salary of <salary> per month based on a 40-hours working week, excluding 8% holiday allowance and (possible) other emoluments;
* a difference of opinion has arisen between the Parties about the way in which the position of the Employee should be exercised;
* Parties have consulted with each other about the performance of other suitable work within the organization, but it has become clear that the Employer cannot offer the Employee any other suitable work for redeployment;
* in this context, the Employer has indicated that it wishes to terminate the employment contract with the Employee and provided the Employee a termination proposal in that context;
* although the Employee truly believes that he is carrying out his work properly, it has gradually become apparent that it is no longer possible to maintain the contract of employment;
* there is no urgent cause (“dringende reden”)– within the meaning of article 7:678 of the Dutch Civil Code – for termination of the employment contract, nor did the Employee give a culpable reason (“ernstig verwijtbaar handelen of nalaten”) for termination;
* the termination of the employment contract is not related to any prohibition on termination;
* explicitly there is no question of the Employer terminating the existing employment contract between the Parties with the consent of the Employee as referred to in Section 7:671 of the Dutch Civil Code;
* the Employee has had sufficient time to reflect and has been given the opportunity to seek expert advice on the content regarding this settlement agreement and the associated consequences;
* The employer shall contribute to the legal cost of the employee, up to a maximum of € 850,- excl. VAT. The attorney will invoice directly to <company>.;
* Parties wish to terminate the employment contract at the express initiative of the Employer under the following conditions by means of this settlement agreement, hereinafter referred to as "the agreement";
* Parties wish to confirm their arrangements and outstanding issues exhaustively in this settlement agreement. This agreement refers to he, his and him.

## Declare to have agreed as follows:

### Termination of employment

1. The employment contract shall end by mutual consent, although the Employer has taken the initiative for termination. The termination enters into effect on <date> (hereinafter referred to as “**Termination Date**”), therefore the last day of employment is deemed to be <date>. With this End date, Parties have taken the applicable notice period into account.

### Releasement from the performance of duties

1. As per the date of signing this settlement agreement until Termination Date, the Employee will be released from the obligation to perform his duties, whilst Employer shall continue payment of his gross monthly salary (taking into account any deviating arrangements included in this settlement agreement) in order to enable Employee to fully focus on obtaining suitable work elsewhere. Any reimbursement of expenses will no longer be paid to the Employee from the date of exemption. If the Employee will become unfit for work during the releasement, the Employee is fully obliged to cooperate with the statutory obligations relating to reintegration.

### Severance payment and signing bonus

1. An amount equal to the gross amount of <compensation> shall be paid to the Employee by way of compensation. The Employee can decide on the use of this amount independently and the Employer shall, with due observance of the prescribed (statutory and contractual) deductions, pay this amount no later than one month after Termination Date in a manner to be indicated by the Employee, which shall not increase costs for the Employer and is in accordance with fiscal legislation and regulations. It is absolutely clear to the Employee that he is not also and separately entitled to any transitional remuneration (“transitievergoeding”) from the Employer, and/or an additional and/or fair and/or statutory remuneration or contractual (severance) remuneration or any other (variable) remuneration, bonus or thirteenth month in addition to this remuneration.
2. In the event that this settlement agreement will be signed by the Employee before <date>, the Employee shall receive an additional amount of <amount> gross in addition to the aforementioned compensation, as mentioned in clause 3. This amount shall be paid to the Employee simultaneously and under the same conditions as the aforementioned compensation.
3. If the Employee is able to and wishes to take up employment elsewhere and/or can and wishes to carry out work on the basis of an assignment agreement before Termination Date, the Employee shall immediately notify the Employer and shall not be bound by any notice period. In that case, the employment contract between the Parties shall, by mutual agreement, end on the date on which the Employee commences these activities (i.e.: the earlier end date). In doing so, the Employee is deemed to have waived – without any entitlement to (replacement) compensation – all other claims that he could have made against the Employer over the period from the earlier end date to the new end date. In this case, anywhere 'End date' is stated in this contract, the 'earlier end date' should be read. The other provisions of this settlement agreement (including but not limited to the aforementioned severance pay) will then remain in full force and effect.

### Incentive bonus

1. The Employer shall pay the Employee an additional payment of 10% of his gross basic salary including holiday allowance prorated to the number of chargeable days with the Customer worked to encourage the Employee to fulfil his duties effective of <date> until the Termination Date or until the end of the engagement that the Employee is current assigned on, whichever is earlier (“Incentive Bonus”). The Employee will be entitled to the Incentive Bonus if:
	1. the Employee works for the Employer until the Termination Date and therefore will not resign prior to the Termination Date; and
	2. the Employee is engaged on a client chargeable assignment up to and including the Termination Date; and
	3. the Employee will work until the Termination Date and continue to perform his duties and will fulfil his role in a professional manner up to and including the Termination Date; and
	4. the Employee will not be redeployed within the Employer or any associated or group Employer of the Employer.

The Employer shall pay the Incentive Bonus after deducing of income and any other applicable withholdings as follows:

* 1. 5% together with the monthly salary payment: and
	2. 5% within one month after the Termination Date to the Employee’s nominated bank account, after deducting the income tax and any other applicable withholdings.

### Final settlement

1. termination of the employment contract, i.e. after Termination Date, the Employer will proceed to the customary, final settlement (“eindafrekening”) of account on Termination Date, which means the following:
	1. payment of the (pro rata) holiday allowance accrued up to Termination Date;
	2. any and all outstanding holidays and/or other leave days accrued until Termination Date are deemed to have been taken before the end of the employment, so that the Employer will no longer owe the Employee any financial payment for that reason in this regard.

The Employee shall be provided with a written statement of this final statement, in a financial sense, within one month after Termination Date. Payment of this final statement shall be made within one month after Termination Date. It is clear to the Employee that he will not be entitled to other (variable) remuneration.

### Pension, insurance, etc.

1. As of Termination Date, the Employee's participation in any applicable pension scheme and related schemes ends. In accordance with the contractual and/or statutory obligations, the Employer shall settle the applicable pension scheme for the benefit of the Employee and shall fulfil the pension obligations until Termination Date. The Employee is aware that the termination of participation in the pension scheme has or may have consequences for the retirement and/or surviving dependant's pension promised during the period of employment with the Employer.
2. Insurance and/or (personnel) provisions end on Termination Date and are settled in accordance with the applicable regulations and/or the applicable provisions.

### Unemployment rights

1. Insofar as applicable, the Employee will submit an application for unemployment benefit in due time in accordance with the rules and deadlines as set by the UWV and will notify the Employer in writing, submitting a copy of the application form.
2. Any fictitious notice period applied by the implementing body (UWV) pursuant to article 19, section 3, of the Unemployment Insurance Act (WW) will be deemed to have been taken into account in the aforementioned compensation and/or Termination Date.
3. Whether or not the Employee is granted benefits under the social security laws, whether or not a penalty is applied, or whether or not the benefits are suspended, does not change this settlement agreement. The Employer will cooperate with a possible unemployment benefits application by the Employee, but points out that it cannot issue a guarantee for this purpose.

### Testimonial

1. Employer will provide the Employee with a neutral certificate of competency and, if requested, neutral references.

### Confidentiality

1. Parties will observe strict confidentiality in respect of the contents of this Settlement Agreement and will not submit this agreement to any third parties. In particular, the Employee will not make any statements regarding the contents of this Settlement Agreement to other employees or former employees of the Employer or to business contacts of the Employer.

### Prohibition negative remarks

1. Parties shall discuss how and when to communicate internally and externally (possibly by means of a communiqué) about (the reason for) the termination of the employment contract.
2. In the future, Parties will explicitly refrain from expressing a negative opinion on each other and the Parties will refrain, other than if there is a legal obligation to do so, from making statements on behalf of third Parties , or otherwise making statements – aforementioned in the broadest sense of the word - that may harm the interests of Parties.

### Employer belongings

1. In accordance with article <x> of the Employment Agreement, Employee shall not be entitled to withhold any property and/or accessories from the Employer on account of an alleged claim. Employee is obligated to return (in proper condition) the Employer’s property (including but not limited to: the mobile phone including all accessories, the keys and/or key cards, USB-drives, laptop, company car with keys and registrations) no later than two weeks after signing this settlement agreement.

### No employment elsewhere

1. Employee declares, to the best of his knowledge and belief, that at the time of signing the agreement he has no concrete prospect of other work, nor has he accepted any offer from a third party to enter into an employment contract or assignment agreement, nor does he currently have a serious/concrete prospect of finding a new job. Employee is aware that this circumstance is a condition for the Employer to enter into this agreement. Should it appear at any time that this statement is wholly or partly incorrect, or that relevant information has been concealed by the Employee, the Employer shall not be obliged to pay the salary and all emoluments for the period from the date of signature or, as the case may be, so much sooner if it transpires that the Employee has already taken up a position elsewhere up to and including Termination Date and the obligation to pay the severance payment, the rapid decision-maker's bonus and any other compensation. If and to the extent that the Employer has already paid salary and emoluments over the latter period at that time, the Employee is obliged to repay these amounts to the Employer immediately.

### Incapacity for work at/after termination of employment

1. If Employee becomes incapacitated for work before Termination Date, this does not lead to a change in the arrangements made in this agreement.
2. If an Employee becomes ill within four weeks of Termination Date and at that time is not working for another Employer and/or is not receiving unemployment benefit, he will report to the Employer (in his capacity as a former Employee) that same day that he is ill in accordance with the absenteeism regulations applicable at the (former) employer. If the Employee is ill at the time that he leaves employment and/or complies with the provisions of this article, the Employee must:
	1. comply with a call from the company doctor and/or employment expert of the Employer;
	2. provide the Employer with all the information Employer is required to provide to the UWV by virtue of the Sickness Benefits Act and/or the WIA (to the Employer if this person is a carrier of his own risk). If Employee does not give permission to provide medical information to the employer, he must provide this information to a company doctor or doctor authorised to do so;
	3. comply with all obligations arising from the Sickness Benefits Act and/or the WIA;
	4. cooperate in a reintegration programme or trial placement offered on behalf of the employer;
	5. to apply for (early) IVA benefit if and as soon as the company doctor considers this possible.
3. If the provisions of the previous article are violated or not complied with, the Employer is entitled to impose on the Employee an immediately payable penalty of <amount> for each violation, plus <amount> for each day that the violation continues. The fine shall be for the benefit of the Employer. In accordance with article 7:650 subsection 6 of the Dutch Civil Code, the Employer and the Employee hereby explicitly deviate from the provisions of Sections 3, 4 and 5 of article 7:650 of the Dutch Civil Code. The possibility of imposing a fine does not affect the right to compensation of damages on the basis of the law. However, the Employer may not impose a fine in respect of the same fact he claims damages for. The Employer also has the right to demand compliance with the obligations and/or prohibitions at any time.

### Other agreements

1. The terms and conditions of this agreement have been agreed in conjunction with each other and are therefore linked to each other. If, after the signing of this agreement by the Parties, a so-called urgent reason arises on Employee’s part pursuant to article 7:678 of the Dutch Civil Code, or if a premature termination of the employment agreement takes place on the basis of the law, the present agreement will lapse in its entirety and no rights can be derived from this agreement or parts of this agreement by or on behalf of the Employee.
2. By signing this agreement, the Employee declares to be aware of the consequences of agreeing to the provisions of this agreement; the Employee is fully aware of what this agreement entails.

### Settlement agreement and final discharge

1. This agreement is a settlement agreement (“vaststellingsovereenkomst”) within the meaning of article 7:900 of the Dutch Civil Code. Articles 7:900 up to and including 7:906 of the Dutch Civil Code are therefore applicable.
2. In the event of any conflict between the provisions of any other (written) agreement between Employer and Employee and this agreement, the provisions of this agreement shall prevail.
3. This agreement fully reflects all agreements made between the Parties with regard to the employment contract and the termination of the employment contract and all the subjects regulated in this agreement replace all previous agreements and promises made in this regard between the Parties – both verbally and in writing – including any correspondence relating thereto. Future changes in legislation and/or social security benefits will not lead to an amendment of this agreement.
4. After fulfilment of the obligations as set out in this agreement, Parties have nothing more to claim from each other and grant each other, for Employer also including all companies affiliated with Employer (including (foreign) group companies), final discharge from each other with respect to everything that they might have or would have had to claim from each other pursuant to the employment agreement and/or with respect to the termination thereof, the social plan and/or otherwise. However, the final discharge does not relate to the obligations of the Employee that may arise from possible loans or study costs scheme or mobility scheme and/or company car scheme or other user schemes and user agreements (however called), for example in the event of outstanding fines, unreported damage(s), etcetera.
5. After the reflection period referred to in the following article has expired and to the extent necessary, Parties expressly waive their right to invoke any lack of will in respect of this agreement and/or to invoke the voidability/nullity of this agreement and/or to dissolve this agreement and/or to invoke changed legislation.
6. Pursuant to article 7:670b of the Dutch Civil Code, the Employee has the right to dissolve the terms and conditions of the agreement by means of a written statement addressed to the Employer within 14 days of the date on which the agreement was reached, without the obligation to provide reasons. If and insofar as the Employee is exempt from performing work, the Employee is not entitled to salary during this period. Employer is therefore entitled, taking into account the applicable statutory regulations, to set off the salary already received by the Employee against what he will owe to the Employee in the future, or to regard these as vacation days taken and to deduct them from the Employee's holiday balance. If, after the dissolution declaration invoked, the Parties again reach agreement on the termination of the employment contract, the earlier revocation of (the consent to) the termination by mutual consent cannot lead to a second agreement with the Employer that is more financially advantageous for the Employee.
7. This Settlement Agreement shall be governed by Dutch Law. Any dispute arising from this Settlement Agreement will be submitted exclusively to the jurisdiction of the Dutch court.

Thus agreed and made in duplicate originals and signed and with initials on each page in

<place>, the Netherlands, on <date>.

<company> The Employee

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<name representative> <name employee>

<function>

<date> <date>