

**(A3) Terminations: Practical Tips & Settlement Agreements**  
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**This sample agreement is provided for educational purposes only and should not be used without consideration of the specific circumstances as some provisions may not apply and/or may not be lawful or enforceable in certain circumstances.**

**SEPARATION AGREEMENT and GENERAL RELEASE**

This is a Separation Agreement and General Release (“Agreement”) made and entered into between [Employee] (“Employee”) and [Employer] (“Employer”). The purpose of this Agreement is to state the terms that have been agreed upon for concluding Employee’s employment with Employer.

WHEREFORE, Employee and Employer, each intending to be legally bound, have agreed to the following:

1. **Payment to Employee.** Employer shall pay Employee severance pay equal to [\_\_\_] weeks of Employee’s current salary in the amount of [\$\_\_\_\_], less all applicable withholdings. Employer shall make that payment within 10 business days after this Agreement becomes effective. Employee agrees that the foregoing consideration shall constitute an accord and satisfaction and a full and complete settlement of any possible claims by Employee. The consideration shall constitute the entire amount of monetary consideration to be provided to Employee pursuant to this Agreement. Employee agrees that Employee will not seek any further compensation for any other claimed damage, costs or attorneys’ fees in connection with the matters encompassed in this Agreement.

2. **Full release of claims.** In exchange for the consideration set forth in this Agreement, Employee agrees unconditionally to release and forever discharge Employer, its directors, officers, employees, agents, members and related entities, and all of their directors, officers, employees, agents and insurers (“Releasees”), from any and all claims that Employee had, now has or may have had against Employer or the Releasees at any time prior to the date this agreement becomes effective. Each of the Releasees is intended to be a third party beneficiary under this Agreement. Employee and Employer understand the word “claims” to include all actions, claims, causes of action, and grievances, whether actual or potential, known or unknown, and specifically but not exclusively all claims arising out of Employee’s employment with Employer and the termination of Employee’s employment, and any other claim or cause of action regardless of the forum in which it may be brought, including, without limitation, Title VII of the Civil Rights Act of 1964; the Reconstruction Era Civil Rights Act; the Civil Rights Act of 1991; the Equal Pay Act; the Americans with Disabilities Act; the Family and Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act of 1974; the Age Discrimination in Employment Act of 1967; the National Labor Relations Act; the Occupational Safety and Health Act; the Fair Credit Reporting Act; the United States Constitution, Hawaii State Constitution, Hawaii Employment Practices Law; Hawaii Wage and Hour Law; Hawaii Wages and Other Compensation Law; and any claims under any applicable federal, state or local labor and employment law or ordinance, including, but not limited to, any alleged breach of obligation, covenant or duty arising in contract and/or in tort; all common law claims including, without limitation, claims for wrongful discharge, breach of express or implied

contract, intentional infliction of emotional distress, fraud, detrimental reliance, defamation; claims for any compensation including back wages, front pay, fringe benefits, incentive compensation, vacation pay, or any other form of economic loss; and all claims for attorneys fees or costs.

3. **Acknowledgments; consideration and revocation periods.** Employee acknowledges that this Agreement includes a release of claims under the Age Discrimination in Employment Act of 1967 and that the following information has been disclosed to Employee in connection with such claims:

- a. Employee has carefully read and reviewed its provisions.
- b. Employee has had an opportunity to consult with an attorney before executing this Agreement and is hereby advised to do so.
- c. Employee is knowingly and voluntarily signing this Agreement.
- d. Employee understands that Employee has 21 days from receipt of this Agreement to consider its terms to review and execute this Agreement. Employee understands that Employee must send the original of this Agreement to [HR Director at \_\_\_@\_\_\_\_\_.com] on or before the 21<sup>st</sup> day from Employee's receipt of this Agreement, before it may become effective.
- e. Employee understands that Employee has seven days after signing this Agreement to revoke his decision and that this Agreement shall not become effective until after the eighth day after Employee has signed and not revoked it. Employee also understands that, should Employee decide to revoke this Agreement before it becomes effective, Employee must do so by written notice to [HR Director at \_\_\_@\_\_\_\_\_.com] on or before the seventh day after Employee signs this Agreement.

4. **No pending complaints and non-interference.** Employee represents that Employee has not, at any time up to and including the date on which this Agreement becomes effective, filed any complaint against Employer or the Releasees with any state or federal court, and that Employee will not do so at any time hereafter. Should Employee violate any part of this paragraph 4, then Employee shall be liable for repayment of the entire amount of any payment made by Employee according to paragraph 1 of this Agreement, and shall be liable to Employer and the Releasees for their reasonable attorney's fees and other litigation costs and expenses incurred in defending against any complaint. Notwithstanding the above, nothing in this agreement shall prohibit the parties from filing any charge or participating in any investigation by any governmental agency, however the payments under paragraph 1 shall be the only compensation to which Employee shall be entitled with respect to the claims released by this Agreement.

5. **Advance against workers' compensation.** If Employee receives any compensation under the Hawaii Workers' Compensation Law, Haw. Rev. Stat. Chapter 386, then the amount paid pursuant to paragraph 1 shall be considered an advance in lieu of compensation

and Employer will be entitled to deduct the amounts paid from and credit against any amounts payable as such compensation (e.g., medical and rehabilitation benefits, income and indemnity benefits, funeral and burial expenses or attorneys' fees and costs) pursuant to Haw. Rev. Stat. § Section 386-52(a), and Haw. Admin. Rule § 12-10-24. Employee will fully cooperate with Employer in obtaining approval of the deduction and credit (except for the minimum amount that Employer may deem sufficient consideration for the release provided by paragraphs 2 and 3 of this Agreement).

6. **Termination of employment.** Employee acknowledges and agrees that Employee's employment and any employment agreement with Employer ended effective [\_\_\_\_], 2015; that Employer properly paid Employee for all hours worked as of that date; that Employee's health care coverage provided by Employer will end [*end of month*] and that Employee is entitled to no other compensation or benefits from Employer. Nothing in this Agreement shall affect Employee's right to benefits vested under any benefit plan; provided that the payments made according to paragraph 1 of this Agreement shall not be cause for the re-computation of those vested benefits or any other benefits that may have been provided by Employer.

7. **Non-admission.** It is expressly understood and agreed that the making of this Agreement by Employer is not an admission that any action taken or not taken with respect to Employee was improper or unjust, or that Employer or Releasees in any manner acted in violation of any law or duty owed to Employee arising out of Employee's employment with Employer, or the termination thereof, and liability is expressly denied by Employer.

8. **Confidentiality.** Employee shall keep the existence and terms of this Agreement confidential, and Employee will not disclose any information concerning the Agreement to anyone, except to Employee's immediate family, attorney(s), tax advisor(s), the tax authorities, or as otherwise required by law, or as necessary to enforce this Agreement, and shall further ensure that such individuals or entities keep the existence and terms of this Agreement confidential.

9. **Return of property.** Employee shall return all information, equipment and property that belong to Employer or Releasees, including hard copy files and electronic data.

10. **Non-disclosure.** Employee shall not disclose to anyone any matters considered confidential by Employer or Releasees.

11. **Non-disparagement.** Employee shall not make or utter any disparaging remarks about Employer or Releasees, including disparaging remarks about individuals associated with Employer or Releasees, public or private comments, statements, and/or communications which in any way disparage or reflect negatively on Employer or Releasees or any individuals associated with Employer or Releasees. This provision applies to all acts or statements that disparage, discredit, or call into disrepute, without regard for the truth or falsehood of the statement and regardless of whether the statement(s) would constitute a claim for defamation.

12. **Liquidated damages.** Employee acknowledges and agrees that the time and expenses involved in proving in any forum the actual damage or loss suffered by Employer if

there is a breach of paragraphs 8, 9, 10, and/or 11 of this Agreement make this case appropriate for liquidated damages. Accordingly, instead of requiring any proof of damages or losses, Employee agrees that as liquidated damage for any single incident of breach of the paragraphs 8, 9, 10 and/or 11 (but not as a penalty), Employee shall pay to Employer an amount equal to the severance pay provided by Employer according to paragraph 1 of this Agreement (except for the minimum amount that Employer may deem sufficient consideration for the release provided by paragraphs 2 and 3 of this Agreement). Neither the breach of said paragraphs 8, 9, 10 and/or 11 of this Agreement nor the payment of liquidated damages shall affect the continuing validity or enforceability of this Agreement. Employer shall recover all of the reasonable attorneys' fees and costs incurred in connection with any claim based upon a breach of paragraphs 8, 9, 10 and/or 11 of this Agreement.

13. **Severability and modification.** The provisions of this Agreement are severable, and if any part of this Agreement is found by any court or arbitrator to be illegal or unenforceable, the other provisions shall remain fully valid and enforceable and the parties agree to enter or have the court or arbitrator substitute a valid term that is enforceable and as close possible to the provision found unenforceable. Otherwise, this agreement may only be modified by a writing signed by the parties.

14. **Entire agreement.** This Agreement sets forth the entire agreement between the parties and fully supersedes any and all prior negotiations, agreements, or understandings, whether written or oral, between the parties pertaining to the subject matter of this Agreement. Employee acknowledges that in executing this Agreement, Employee has not relied on any other representation, statement or promise by Employer regarding this Agreement other than those expressly contained herein.

15. **Dispute resolution.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be referred to final and binding arbitration by a single arbitrator in accord with the rules and procedures of Dispute Prevention and Resolution of Hawaii. Unless otherwise determined by the arbitrator, and to the extent permitted by applicable law, the cost of any arbitration shall be borne equally by both parties, with each party to bear their own attorneys' fees, costs and expenses incurred.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, and all of such counterparts shall for all purposes constitute one agreement, binding on the parties hereto, notwithstanding that all parties are not signatory to the same counterpart. Delivery of any executed counterpart of a signature page to this Agreement by e-mail or facsimile shall be effective as delivery of an executed original counterpart of this Agreement.

Date: \_\_\_\_\_

\_\_\_\_\_  
[EMPLOYEE]

\_\_\_\_\_  
[EMPLOYER]

Date: \_\_\_\_\_

\_\_\_\_\_  
By:  
Its: