



Settlement Agreement and Release: A US Example

Jeremy A. Mercer,
Fulbright & Jaworski L.L.P. and
Evan A. Bloch, Pepper Hamilton
LLP

This Standard Document is published by Practical Law Company and is available on the ^{PLC}Law Department web service at <http://us.practicallaw.com/2-503-1929>.

A sample agreement between two or more parties settling a pending lawsuit and releasing future claims. This Standard Document has integrated notes with important explanations and drafting tips.

DRAFTING NOTE

General

This is an example of a settlement agreement and release that may serve as a useful starting point when drafting this type of agreement. To ensure that a settlement agreement and release achieves the parties' intended purpose, counsel should tailor it to the particular circumstances of the matter at issue. For additional information on the key issues to consider whenever entering into a settlement agreement, see *Settlement Agreement Drafting Issues Checklist* (www.practicallaw.com/2-501-1790).

SETTLEMENT AGREEMENT AND RELEASE

This [Confidential] Settlement Agreement and Release (this **"Agreement"**) is entered into as of [DATE] by and between (a) [NAME OF PARTY A] (**"DEFINE PARTY A"**) and (b) [NAME OF PARTY B] (**"DEFINE PARTY B"**). Collectively, [PARTY A] and [PARTY B] shall be referred to as the **"Parties"**.

BACKGROUND

WHEREAS [DESCRIBE ORIGIN OF DISPUTE AND/OR LITIGATION BETWEEN THE PARTIES].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, [PARTY A] and [PARTY B] hereby agree as follows:

DRAFTING NOTE

Background

In this background section, include a series of "WHEREAS" clauses that explain the beginning of the dispute or litigation or both between the parties, concluding with the "NOW, THEREFORE" clause.

AGREED TERMS

1. Payment by [PARTY B]. [PARTY B] will pay [PARTY A] the total sum of [AMOUNT IN WORDS] dollars (US\$[NUMBER AMOUNT]) (the **“Settlement Payment”**) as provided herein. The Settlement Payment shall be paid by [DESCRIBE MANNER OF PAYMENT] not later than [NUMBER] business days after counsel for [PARTY A] delivers an executed copy of this Agreement to counsel for [PARTY B]. [PARTY B] shall provide an executed copy of this Agreement to counsel for [PARTY A] not later than the date that [PARTY B] must pay the Settlement Payment.

The Parties acknowledge and agree that they are solely responsible for paying any attorneys’ fees and costs they incurred and that neither Party nor its attorney(s) will seek any award of attorneys’ fees or costs from the other Party, except as provided herein.

2. Taxes. [PARTY A] shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by it to any federal, state, local, or regional taxing authority as a result of the Settlement Payment. [PARTY A] understands that [PARTY B] has not made, and it does not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this Agreement. Moreover, [PARTY A] agrees to indemnify and hold [PARTY B] harmless in the event that any governmental taxing authority asserts against [PARTY B] any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon the payment of the Settlement Payment.

3. Mutual Release. The Parties, on behalf of themselves, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, hereby release and discharge the other Party, together with their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys’ fees and costs actually incurred), and punitive damages, of any nature whatsoever, known or unknown, which either Party has, or may have had, against the other Party, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from:

- (a) the dispute;
- (b) the litigation;
- (c) an agreement between the Parties;
- (d) any other matter between the Parties; and/or
- (e) any claims under federal, state, or local law, rule or regulation [IDENTIFY SPECIFICALLY IF NECESSARY].

This Agreement resolves any claim for relief that could have been alleged, no matter how characterized, including, without limitation, compensatory damages, damages for breach of contract, bad faith damages, reliance damages, liquidated damages, damages for humiliation and embarrassment, punitive damages, costs and attorneys fees related to or arising from the [DESCRIBE SUBJECT OF DISPUTE].

Mutual Release

Use this clause for two or more corporate parties. Revise it if one or more parties are individuals. The mutual release is drafted broadly and the parties may modify the scope of the release. For example, the parties may not wish to release each other from any and all claims, but rather limit the release to the claims that serve as the basis for the dispute that is being settled by this agreement. The parties may also wish to limit the parties that may be released. In addition, the parties may wish to supplement the release language as appropriate, including adding any statutory requirements required by the state law that governs the settlement agreement.

4. No Outstanding or Known Future Claims/Causes of Action. Each Party affirms that it has not filed with any governmental agency or court any type of action or report against the other Party, and currently knows of no existing act or omission by the other Party that may constitute a claim or liability excluded from the release in paragraph 3 above.

5. Acknowledgment of Settlement. The Parties, as broadly described in paragraph 3 above, acknowledge that (i) the consideration set forth in this Agreement, which includes, but is not limited to, the Settlement Payment, is in full settlement of all claims or losses of whatsoever kind or character that they have, or may ever have had, against the other Party, as broadly described in paragraph 3 above, including by reason of [DESCRIBE SUBJECT OF DISPUTE] and (ii) by signing this Agreement, and accepting the consideration provided herein and the benefits of it, they are giving up forever any right to seek further monetary or other relief from the other Party, as broadly described in paragraph 3 above, for any acts or omissions up to and including the Effective Date, as set forth in paragraph [NUMBER], including, without limitation, [DESCRIBE SUBJECT OF DISPUTE].

Acknowledgement of Settlement

Similar to paragraph 3, this paragraph is worded broadly. If the parties wish to limit the scope of the settlement for the parties and claims being released, they may do so if this limitation is consistent with the state law governing the settlement.

6. No Admission of Liability. The Parties acknowledge that the Settlement Payment was agreed upon as a compromise and final settlement of disputed claims and that payment of the Settlement Payment is not, and may not be construed as, an admission of liability by [PARTY B] and is not to be construed as an admission that [PARTY B] engaged in any wrongful, tortious or unlawful activity. [PARTY B] specifically disclaims and denies (a) any liability to [PARTY A] and (b) engaging in any wrongful, tortious or unlawful activity.

[7. Special Relief Provided. [DESCRIBE ANY SPECIAL RELIEF.]]

Special Release Provided

Include this clause if you wish to include special relief as part of the settlement. The clause should separately and specifically describe any special relief provided under the Settlement Agreement.

[8. Dismissal of Litigation. [PARTY A] and his/her/its counsel shall take whatever actions are necessary to ensure that the Litigation is dismissed in its entirety as to all defendants named therein, with prejudice and without costs or fees, within [NUMBER] days of his/her/its/their receipt of the Settlement Payment. [PARTY B] will cooperate with [PARTY A] in securing the dismissal of the Litigation as appropriate.]

DRAFTING NOTE

Dismissal of Litigation

Parties should include this clause if settling litigation. If the parties are already in litigation, they must take the appropriate procedural steps to dismiss the lawsuit in addition to signing the settlement agreement. For example, under certain circumstances the plaintiff in a federal lawsuit may voluntarily dismiss a case after settlement under Rule 41(a) of the Federal Rules of Civil Procedure (FRCP) by filing a notice or stipulation of dismissal with the court. Counsel also should review the FRCP, the court's local rules and governing statutes to determine if it must take additional steps to voluntarily dismiss the case, such as obtaining court approval of the settlement.

9. Confidentiality of Agreement. [Subject to the Permissible Disclosures set forth in paragraph [NUMBER] of this Agreement, the/The] Parties expressly understand and agree that this Agreement and its contents (including, but not limited to, the fact of payment and the amounts to be paid hereunder) shall remain CONFIDENTIAL and shall not be disclosed to any third party whatsoever, except the Parties' counsel, accountants, financial advisors, tax professionals retained by them, any federal, state, or local governmental taxing or regulatory authority, and the Parties' management, officers and Board of Directors, and except as required by law or order of court. Any person identified in the preceding sentence to whom information concerning this Agreement is disclosed is bound by this confidentiality provision and the disclosing party shall be liable for any breaches of confidentiality by persons to whom he/she/it has disclosed information about this Agreement in accordance with this paragraph. Nothing contained in this paragraph shall prevent any Party from stating that the Parties have "amicably resolved all differences," provided, however, that in so doing, the Parties shall not disclose the fact or amount of any payments made or to be made hereunder and shall not disclose any other terms of this Agreement or the settlement described herein. If any subpoena, order or discovery request (the "**Document Request**") is received by any of the Parties hereto calling for the production of the Agreement, such Party shall promptly notify the other Party hereto prior to any disclosure of same. In such case, the subpoenaed Party shall: (a) make available as soon as practicable (and in any event prior to disclosure), for inspection and copying, a copy of the Agreement it intends to produce pursuant to the Document Request unless such disclosure is otherwise prohibited by law; and (b) and, to the extent possible, shall not produce anything in response to the Document Request for at least ten (10) business days following such notice. If necessary, the subpoenaed Party shall take appropriate actions to resist production, as permitted by law, so as to allow the Parties to try to reach agreement on what shall be produced. This paragraph is a material part of this Agreement.

DRAFTING NOTE

Confidentiality of Agreement

This provision prohibits disclosure of the settlement agreement except to the affiliates and governmental authorities identified in this paragraph, and to the extent required by law or court order. It also requires the parties to notify each other if they receive a subpoena, order or discovery request asking for the settlement agreement, and to do so before providing it under those circumstances. Parties who wish to keep the terms of the settlement agreement confidential may use this clause and adapt it to their particular preferences.



10. Non-Disparagement. The Parties agree that, unless required to do so by legal process, [he/she/its officers and directors/their officers and directors] will not make any disparaging statements or representations, either directly or indirectly, whether orally or in writing, by word or gesture, to any person whatsoever, about the other Party or his/her/its

(a) spouse, attorneys or representatives

or

(b) affiliates, or any of its directors, officers, employees, attorneys, agents, or representatives.

For purposes of this paragraph, a disparaging statement or representation is any communication which, if publicized to another, would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, good character or product quality of the person or entity to whom the communication relates.

11. Agreement is Legally Binding. The Parties intend this Agreement to be legally binding upon and shall inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs and estates. Moreover, the persons and entities referred to in paragraph 3 above, but not a Party, are third-party beneficiaries of this Agreement.

12. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by each of the parties hereto.

13. New or Different Facts: No Effect. Except as provided herein, this Agreement shall be, and remain, in effect despite any alleged breach of this Agreement or the discovery or existence of any new or additional fact, or any fact different from that which either Party now knows or believes to be true. Notwithstanding the foregoing, nothing in this Agreement shall be construed as, or constitute, a release of any Party's rights to enforce the terms of this Agreement.

14. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

DRAFTING NOTE

Interpretation

This paragraph incorporates a standard severability clause that allows the remainder of the settlement agreement to remain in effect even if one or more of the agreement's provisions are found to be invalid. This paragraph also seeks to modify the general common law rule of contract interpretation that any ambiguities in the agreement are construed against the drafter.

15. Governing Law and Choice of Forum. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the [JURISDICTION], without regard to the principles of conflicts of laws. Any action to enforce this Agreement shall be brought only in [COURT].

Governing Law and Choice of Forum

This paragraph incorporates a standard choice of law and forum selection clause. This clause enables the parties to:

- Specify the system of law which will apply to the interpretation of an agreement and its effect if a dispute arises.
- Agree at the outset of their contractual relationship which state's or country's courts are to have jurisdiction to hear disputes arising from the contract.

Parties typically designate the court and governing law of the same jurisdiction. For example, the parties may designate New York law as the governing law and the state and federal courts located in Manhattan, New York, as the chosen forum for any disputes arising out of the settlement. Counsel should note, however, that state law may limit the parties' freedom to choose a particular state's law and courts to resolve disputes arising out of a settlement agreement or other contract. For example, New York by statute permits parties to certain types of contracts with an aggregate transactional value of \$250,000 or more to designate New York law as governing (N.Y. Gen. Oblig. Law § 5-1401). Where parties to this type of contract have designated New York law as governing and that contract has an aggregate transactional value of \$1 million or more, the parties also may designate New York as the governing forum for disputes arising under the contract (N.Y. Gen. Oblig. Law § 5-1402). If the parties' contract fails to meet these requirements, however, New York courts will not conclusively defer to the parties' chosen law or forum and will engage in a more probing analysis of the parties' chosen law or forum or both.

16. Reliance on Own Counsel. In entering into this Agreement, the Parties acknowledge that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their own choosing, that such terms are fully understood and voluntarily accepted by them, and that, other than the consideration set forth herein, no promises or representations of any kind have been made to them by the other Party. The Parties represent and acknowledge that in executing this Agreement they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by the other Party or by that other Party's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

17. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. Authority to Execute Agreement. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any By-law, Covenants and/or other restrictions placed upon them by their respective entities.

19. Effective Date. The terms of the Agreement will be effective when an executed copy of this Agreement is delivered to said counsel for [PARTY A] as described in paragraph 1 above (the "Effective Date").

READ THE FOREGOING DOCUMENT CAREFULLY. IT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

[WITNESS

[PARTY A - IF INDIVIDUAL]

Dated: _____]

[ATTEST:

for [PARTY A - IF CORPORATE ENTITY]

Title: _____

Dated: _____]

[WITNESS

[PARTY B - IF INDIVIDUAL]

Dated: _____]

[ATTEST:

for [PARTY B - IF CORPORATE ENTITY]

Title: _____

Dated: _____]

DRAFTING NOTE

Signature Block

The parties' lawyers may wish to have the parties' signatures notarized to avoid the possibility that one of the parties will claim that it never received or signed the agreement. The notary should fill in the required information in the section of the signature block titled "Attest." The parties should choose the signature block applicable to their specific circumstances.

Practical Law Company provides practical legal know-how for law firms, law departments and law schools. Our online resources help lawyers practice efficiently, get up to speed quickly and spend more time on the work that matters most. This Checklist is just one example of the many resources Practical Law Company offers. Discover for yourself what the world's leading law firms and law departments use to enhance their practices.

Contact Us

Practical Law Company
747 Third Avenue, 36th Floor
New York, NY 10017
646.562.3405
plcinfo@practicallaw.com
www.practicallaw.com