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| --- |
| Private & Confidential  |
| **WITHOUT PREJUDICE: SUBJECT TO CONTRACT****Dated**  |
|  **[EMPLOYER NAME] (1)** **and** **[MALE EMPLOYEE] (2)** |
| **Settlement Agreement** |
|  |

**THIS AGREEMENT** is dated **[date]** and is made **BETWEEN:**

1. **[Employer name]** of **[address]** (the “Company”); and
2. **[Male employee]** of **[address]**(the “Employee”);

WHEREAS:

1. The Employee’s employment with the Company as **[job title]** under the terms of a contract of employment dated **[insert date]** (“the Employment Contract”) ***[terminated] [will terminate]***by mutual consent on **[date]** (“the Termination Date”).
2. The Employee asserts various claims against the Company arising out of the termination of his employment.
3. The Employee and the Company have agreed to settle such claims on the terms hereinafter provided.
4. The Company is entering into this agreement for itself and as agent for all its Associated Companies and is duly authorised on that behalf.

**IT IS AGREED as follows:**

# Definitions

## In this Agreement references to specific clauses are references to clauses in this Agreement unless otherwise stated and:

“**Associated Companies**” or “**Associated Company**” means any subsidiary or holding company of the Company having the same meanings set out in Section 1159 of the Companies Act 2006 or as amended.

 “Employment” means the Employee’s employment with the Company, the terms of which are set out in the Employment Contract.

“Employment Contract” means the contract of employment more particularly described in recital (A).

 “PAYE Regulations” means the Income Tax (Pay as You Earn) Regulations 2003 (as amended, extended or replaced from time to time).

“Severance Payment” means the payment more particularly described in clause 2.

“Termination Date” means the date more particularly described in recital (A).

# Payments to the Termination Date

## The Employee will receive from the Company:

### all outstanding salary and benefits due up to and including the Termination Date; and

### any accrued and outstanding holiday pay due up to and including the Termination Date; and

### reimbursement of any outstanding expenses which would normally be reimbursed to the Employee in accordance with, and subject to, the terms of the Company’s expenses policy.

2.2 All payments under this clause 2 will (where necessary) be taxed in accordance with the PAYE Regulations and such tax and National Insurance Contributions as are required to be deducted at the time of payment by the Company will be deducted prior to payment of the net balance to the Employee.

# Severance Payment

## Subject to the Employee’s compliance with his obligations under this Agreement, the Company shall pay to the Employee and without admission of liability the sum of £**[amount]** (the “Severance Payment”) to be paid free of tax subject to clause 3.1.2 below.

### The Severance Payment is in respect of compensation for loss of office and termination of Employment

### The Severance Payment shall be subject to any deductions the Company is required by law to make. These will include (without limitation) income tax using tax code OT on the balance of the Severance Payment in excess of £30,000 in accordance with Regulation 37 of the PAYE Regulations and the Company will account for the same to HM Revenue and Customs. The Company gives no warranty as to the taxable status of the Payment and any further liability to tax on the Payment and on any other benefits provided to the Employee under this Agreement shall be the Employees alone;

### Any furtherliability to tax on the Severance Payment and on any other benefits provided to the Employee pursuant to this Agreement shall be the Employee’s alone.

## The Employee’s P45 shall be issued to him prior to payment of the Severance Payment.

# Insurance cover

## As further compensation for loss of employment, the Company shall until **[date]** continue to provide for the Employee:

### Life assurance cover on the terms subsisting on the Termination Date; and

### private medical insurance on the terms and conditions subsisting on the Termination Date.

# Tax indemnity

## The Company makes no warranty as to the taxable status of the Severance Payment and benefits and accordingly the Employee undertakes that if the Company or any of its Associated Companies is called upon to account to HM Revenue and Customs (“HMRC”) for any income tax, national insurance contributions, or other deductions or payments of whatever nature, or interest and/or penalties thereon arising in respect of the payments made and benefits provided under this Agreement, **[other than the non-cumulative OT rate** **income tax deducted under clauses 2 and 3]**(any such marginal income tax, national insurance contributions, interest and/or penalties referred to in this Agreement as the “excess tax”), and if the Company or any other company pays the excess tax to HMRC, the Employee will, at the written request of such company and provided he has received notification of the amount due within 14 days of the Company becoming aware of the claim, immediately pay to such company an amount equal to the excess tax (on an after-tax basis).

# Pension

## ***[This clause should be included if the pension scheme is a company scheme, and not a personal scheme]***

## The Employee’s accrued rights under the Company’s pension scheme **[insert scheme name]** up to the Termination Date **[*Note: care needed if this is in the future*]** will not be affected by the terms of this Agreement. The Scheme Administrator will write to the Employee separately regarding the options open to him in connection with the Employee’s membership of the Company’s pension scheme.

# Garden Leave

## As of the Termination Date and with ongoing effect, the Employee shall immediately cease to hold himself out as authorised on behalf of the Company.

## The Employee will go on a period of garden leave and will not be required to attend the Company’s offices from the date of this Agreement to the Termination Date although during such period the Employee will continue to receive salary and other contractual benefits due under the Employment Contract and agrees to answer any reasonable queries relating to his employment that may be raised by the Company from time to time prior to the Termination Date.

# Secrecy

## The Employee undertakes that he will not at any time, whether directly or indirectly, make, publish or otherwise communicate any disparaging or derogatory statements, whether in writing or otherwise, concerning the Company or any of its Associated Companies or any of its or their officers, shareholders or employees.

## Both the Employee and the Directors of the Company agree to keep the terms on which the Employment is terminated strictly confidential and agree not to disclose, communicate or otherwise make public the same to anyone (save to professional advisers, immediate family, relevant tax authorities and otherwise as may be required to be disclosed by law

# Confidential Information and Covenants

## In accordance with the Employment Contract, the Employee undertakes not to divulge to, or commercially make use of, whether directly or indirectly for his own benefit or purposes or for the benefit or purpose of any other person, firm, corporation, company, association or business entity, any trade secrets or confidential information (including but not limited to terms of contracts or arrangements, existing and potential projects, or financial information regarding the Company or its Associated Companies or their respective customers, clients or suppliers, disputes, business development and/or marketing programmes and plans) belonging to or which relate to the affairs of the Company or any Associated Company or any of its customers, clients or suppliers.

## The Employee’s obligations under this clause shall be deemed to include and the Employee shall return all copies, drafts, reproductions, notes, extracts, records, plans, documents, materials or summaries (howsoever made, in form or media) of the foregoing by the Termination Date.

## The Employee also confirms that the restrictive covenants contained in clause **[number]** of the Employment Contract expressed to have ongoing effect past the Termination Date shall remain in full force and effect notwithstanding the termination of his employment.

***[Clause 9.2 only needed if there are express covenants in the contract and if existing covenants are extended or new ones included this is an area where advice needed e.g. there are invariably adverse tax consequences]***

# Company property

## The Employee represents and warrants that he has returned on or before the Termination Date to the Company all property, equipment, records, correspondence, documents, files and other information (whether originals, copies or extracts) belonging to the Company or any of its Associated Companies and that he has not retained any copies.

# Reference

## The Company agrees to provide to the Employee and to any prospective employer requesting the same a reference in the form of Schedule 1 to this Agreement and not to directly or indirectly make any statements or comments (whether written or oral) inconsistent with the said reference.

# Breach of agreement

## The Employee further agrees that if, having entered into this Agreement he breaches the provisions of clauses 8, 9 and 10 he will, without prejudice to clause 13 below and any other remedies that the Company may have and which arise from such breach, forthwith:

### Repay (or the Company will retain if not already at that time already paid) the Severance Payment referred to at clause 3 to the Company; and

### indemnify the Company against all costs (legal or otherwise) incurred by the Company in recovering or seeking to recover the Severance Payment from him.

### In addition, the Employee recognises that in such circumstances the Company will no longer be bound by its obligations under clauses 4 (if any), 6 (if any), 8 and 11.

# Compensation/damages payable to the Employee

## Notwithstanding the provisions of this Agreement in the event that the Company is ordered to pay any compensation or damages to the Employee by an employment tribunal or civil court, the Employee agrees forthwith to pay an equivalent sum to the Company or to repay the Severance Payment referred to in clause 3, whichever is the lesser amount.

# Legal expenses

## The Company shall on the production of a valid VAT invoice certified to be a true copy addressed to the Employee but marked payable by the Company pay to the Employee’s solicitors, up to a maximum sum of **[£250]** plus VAT in respect of the Employee’s legal expenses to the extent these are incurred in connection with the termination of the Employment and/or relate exclusively to the negotiation and preparation of this Agreement. These costs will be paid by the Company within 21 days of receiving a properly addressed invoice.

# Settlement

## The Employee acknowledges that he has carefully considered the facts and circumstances relating to the Employment and the termination thereof and agrees that he will not institute any proceedings or complaints before an employment tribunal or court arising out of or in connection with the Employment or its termination including (without limitation) in respect of any of the following specific claims [**INDEPENDENT ADVISER TO ADD DETAILS OF ANY OTHER RELEVANT CLAIMS**]:

### Any claim for wrongful dismissal or any other claim for breach of contract;

### any claim for unfair dismissal under Part X of the Employment Rights Act 1996;

### any claim for a statutory redundancy payment pursuant to section 135 of the Employment Rights Act 1996;

### failure to allow reasonable time off to look for work or arrange training or failure to provide remuneration for time off pursuant to the Employment Rights Act 1996 (as amended);

### any claim arising out of a contravention or an alleged contravention of Part II of the Employment Rights Act 1996 (Protection of Wages);

### any claim of a protective award payment;

### any claim of direct or indirect discrimination, harassment or victimisation on the grounds of sex, marital or civil partnership status or pregnancy or maternity under the Sex Discrimination Act 1975 and the Equality Act 2010;

### any claim of equal pay under the Equal Pay Act 1970 and the Equality Act 2010;

### any claim of direct or indirect discrimination, harassment, or victimisation on the grounds of race, colour, nationality or ethnic or national origin under the Race Relations Act 1976 and Equality Act 2010 and/or religion or belief under the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2010;

### any claim of direct or indirect discrimination on the grounds of disability, disability related discrimination or discrimination arising from a disability, harassment or victimisation related to disability or a failure to make reasonable adjustments under the Disability Discrimination Act 1995 and the Equality Act 2010;

### any claim under Regulation 30 of the Working Time Regulations 1998;

### any claim under the Transfer of Undertakings (Protection of Employment) Regulations 2006;

### any claim for unlawful detriment under Part V of the Employment Rights Act 1996;

### any claim under the Public Interest Disclosure Act 1998;

### any claim under the Data Protection Act 1998;

### any claim under the Employment Relations Act 1999 and/or the Employment Rights Act 1996;

### any claim of direct or indirect discrimination, harassment or victimisation on the grounds of sexual orientation under the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2010;

### any claim under the Trade Union and Labour Relations (Consolidation) Act 1992;

### any claim under the National Minimum Wage Act 1998;

### any claim under any provision of directly applicable European law;

### any claim under any provision of the Human Rights Act 1998;

### any claim arising out of Part VIII of the Employment Rights Act 1996;

### any claim of direct or indirect discrimination, harassment; or victimisation on the grounds of age and/or claims concerning retirement under the Employment Equality (Age) Regulations 2006 and the Equality Act 2010;

### any claim for less favourable treatment on the grounds of part-time status, under regulation 8 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000;

### any claim for less favourable treatment on the grounds of fixed-term status under regulation 7 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2000;

### Claims for a detriment relating to occupational and personal pension schemes under regulation 17 and paragraph 8 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006;

### Any claims for failure to comply with obligations under the Information and Consultation of Employees Regulations 2004;

### any claim under regulations 27 and 32 for failure to comply with obligations under the Transnational Information and Consultation of Employees Regulations 1999;

### any claim of harassment under Section 1 of the Protection from Harassment Act 1997;

### any claim of direct or indirect discrimination, victimisation or harassment on the grounds of gender re-assignment under the Sex Discrimination Act 1975 and the Equality Act 2010;

### any claim arising out of the Bribery Act 2010;

### any personal injury claim of which he/she was aware at the date of this agreement or which may be brought under discrimination law; and

## The Employee confirms that he is not aware of having any claim for personal injury against the Company or any Associated Company at the date of this Agreement.

## The Employee agrees that the terms of this Agreement are in full and final settlement:

### of the claims set out in clause 15.1; and

### any other claims whether at common law or otherwise and in any jurisdiction in the world

### which he may have against the Company or any Associated Company or its or their officers, directors, employees ,shareholders or agents arising out of or connected with his Employment or its termination or the Employment Contract or its termination excepting any claims for personal injury or accrued pension rights.

# Warranty

## The Employee represents and warrants:

### That he has received advice from a “relevant independent adviser” (for the purposes of the legislation specified in clause 17 below) as to the terms and effect of this Agreement (and in particular its effect on the Employee’s ability to pursue his rights before an employment tribunal) and that he will procure that such adviser forthwith provides a certificate in the form of Schedule 2 to this Agreement and that in such Schedule the name and other relevant details of the said adviser are correctly set out;

### that the claims and prospective proceedings listed at clause 15 are all of the claims and prospective proceedings that he has against the Company, any Associated Company or their, officers, agents ,shareholders and employees arising out of or in connection with his Employment (including the termination thereof).

## The Company enters into this Agreement in reliance upon the representation and warranty given by the Employee at clause 15.1. In the event that the Employee brings any proceedings relating to his Employment (including its termination) against the Company, any Associated Company or its or their officers, employees or agents the Employee agrees that without prejudice to any other claims or rights of the Company he will repay to the Company on demand the Severance Payment and that sum will be recoverable as a debt.

## The Company warrants that it is currently is unaware of any outstanding claim against the Employee as at the date of this Agreement.

# Compliance with Legislation

The conditions regulating settlement agreements (previously known as compromise agreements) contained in:

## Section 203(3) Employment Rights Act 1996;

## Section 18 (1)(d) of the Employment Tribunals Act 1996;

## Section 77of the Sex Discrimination Act 1975;

## Section 72 of the Race Relations Act 1976;

## Section 14 of the Public Interest Disclosure Act 1988;

## Section 288 Trade Union and Labour Relations (Consolidation) Act 1992;

## Section 9 of the Disability Discrimination Act 1995;

## Regulation 35 of the Working Time Regulations 1998;

## Section 49 of the National Minimum Wage Act 1998;

## 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;

## Transnational Information and Consultation of Employees Regulations 1999 (Amendment) Regulations 2004;

## Regulation 35 of the Employment Equality (Religion or Belief) Regulations 2003;

## Regulation 35 of the Employment Equality (Sexual Orientation) Regulations 2003;

## Regulation 43 and Schedule 5 of the Employment Equality (Age) Regulations 2006;

## Part 10 section 147 of the Equality Act 2010;

## Paragraph 13 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendments) Regulations 2006;

## Section 58 of the Pensions Act 2008; and

## Compromise Agreements (Description of Person) Order 2004 (Amendment) Order 2004.

are intended to be and have been satisfied.

# Miscellaneous

## This Agreement shall be governed by and interpreted in accordance with English Law

## Subject to any provision which specifically refers to an Associated Company and which is intended to confer benefits on any such Associated Company, no term of this Agreement is enforceable by a person who is not party to it.

# Whole agreement

## This Agreement sets out the entire agreement between the parties and supersedes all prior discussions between them or their advisers and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings whenever given and whether orally or in writing. If signed by all parties to the Agreement it shall then, notwithstanding being marked “without prejudice” or “without prejudice subject to contract” and subject to any written statement to the contrary, be treated as an open and binding agreement.

**IN WITNESS** whereof this Agreement has been executed the day and year first above written.

SIGNED by **[name]** )

for and on behalf of the Company )

dated )

Witnessed by ………………………………………. (name)

……………………………………………………….. (signature)

……………………………………………………….. (address)

………………………………………………………..

SIGNED by **[name]** )

the Employee )

dated )

Witnessed by ……………………………………… (name)

………………………………………………………. (signature)

………………………………………………………. (address)

1. Reference

1. Certificate by Adviser

I, **[name]** of **[firm]** confirm that I have given independent legal advice to **[name of employee]** as to the terms and effect of the above Agreement and in particular its effect on my client’s ability to pursue his rights before an employment tribunal.

I confirm that I am a Solicitor of the Senior Courts holding both at the date of the above Agreement and at the date the said advice 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 which covers the risk of a claim by **[name of employee]** in respect of any loss arising in consequence of that advice.

Signed ……………………………………………

 **[name of adviser]**