Full name: Settlement agreement: employment (long form) (England and Wales).

Settlement agreement

**WITHOUT PREJUDICE AND SUBJECT TO CONTRACT**

DRAFT

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

**BETWEEN**:-

(1) [name] whose registered office is at [address] (the "**Company**"); and

(2) [name] of [address] (the "**Employee**");

**WHEREAS:**-

1. The Employee was employed by the Company since [date]
2. Following the [Company's decision to dismiss the Employee] **OR** [parties agreement to mutual termination of employment] **OR** [the Employee’s decision to resign], the Employee's employment with the Company terminated on [date] (the "**Termination Date**").
3. The Company and the Employee wish to settle all claims which the Employee has or may have against the Company, any Associated Company and any of its or their respective present or former officers, shareholders, employees or workers arising out of the Employee's employment or its termination, whether or not any such claims exist or are known to or contemplated by the parties or are recognised by law at the date of this Agreement.

**IT IS AGREED AS FOLLOWS:**

1. Salary and benefits to termination
	1. The Employee [will be **OR** has been] paid his/her salary and has received his/her contractual benefits up to and including the Termination Date less PAYE deductions for income tax and employee national insurance contributions. [The Company [has deducted **OR** shall deduct] from the final salary payment any outstanding sums due from the Employee to [the Company **OR** any Group Company].]
	2. The Company [shall make **OR** has made] a payment to the Employee in respect of [NUMBER] of days' outstanding holiday, up to and including the Termination Date less PAYE deductions for income tax and employee national insurance contributions.
	3. The Company [shall make **OR** has made] a payment to the Employee in lieu of [NUMBER] [weeks' **OR** months'] notice pursuant to [CLAUSE NUMBER] under his employment contract less PAYE deductions for income tax and employee national insurance contributions.
	4. [The Employee will be reimbursed all outstanding expenses amounting to £[insert amount] in respect of fuel expenditure and business travel expenses provided that the Employee provides legitimate receipts for those expenses in accordance with the Company's expense policy.]
2. termination Payment
	1. Provided that the Employee has complied with the Employee's obligations under this Agreement, within 14 days of the latest of (i) the Termination Date, (ii) receipt by the Company's Solicitors of the signed Adviser's Certificate and (iii) receipt by the Company's Solicitors of this Agreement duly signed by the Employee, the Company shall pay to the Employee the following sums (the "**Termination Payment**"):-
		1. [£..................] as compensation for loss of employment, which is made without admission of liability;
		2. a statutory redundancy payment amounting to [£................] (the "**Redundancy Payment**"); and
		3. [£.......................] as compensation for hurt feelings, stress and settlement of the tribunal claim.

and the Employee acknowledges that no other payments or benefits of any kind are due from the Company or any Associated Company except as provided for in this Agreement.

The Company and the Employee understand that sections 401 to 403 of the Income Tax (Earnings and Pensions) Act 2003 apply so that [insert amount up to £30,000] the Termination Payment can be paid without deductions for income tax or national insurance contributions. [The balance of the Termination Payment will be paid subject to PAYE deductions for income tax and national insurance contributions].

1. [PENSION

The Company shall notify the trustees or administrators of the [NAME OF PENSION SCHEME] (Pension Scheme) that the Employee's employment [has been terminated **OR** will terminate] and request written confirmation of the Employee's accrued entitlement under the Pension Scheme and request that the options available for dealing with his entitlement are sent to the Employee. [Subject to the rules of the Pension Scheme, the Company shall before the Termination Date pay £[AMOUNT] into the Pension Scheme in order to augment the Employee's benefits.]**]**

1. Tax Indemnity
	1. The Company 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.
	2. The Employee shall be responsible for and shall indemnify the Company and any Associated Company against, and shall on written demand forthwith pay to the Company or any Associated Company, any further income tax or employee national insurance contributions (and interest, costs, penalties or expenses relating to any tax assessment save for any interest, costs, penalties or expenses incurred solely by reason of the default or delay of the Company (other than any of the Company's actions envisaged by this Agreement) that the Company or any Associated Company is required to pay or account for in respect of the payments made by the Company to the Employee pursuant to this Agreement in excess of any amount deducted at source. In this regard the Company or any Associated Company shall be deemed to be obliged to pay any such amount if it receives a written demand from HM Revenue and Customs.
2. restrictions
	1. In consideration for entering into this Agreement and not pursuing any of the claims listed in clause 7, the Employee agrees and confirms that the Employee:
		1. 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 Company or any Associated Company or any of its or their respective customers, agents, suppliers or clients except with the consent of the Company or where required to do so by law;
		2. has not and shall not directly or indirectly disclose to any third party (other than the Employee's professional advisers and/or spouse) 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; and
		3. has not and shall not directly or indirectly make, publish or otherwise communicate any disparaging or derogatory 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 Company, any Associated Company or any of their respective present or former officers, shareholders, agents, workers or employees.
	2. In the event that the Employee breaches this Clause 5 and without prejudice to any other remedies the Company may have the Employee agrees that the payment referred to in Clause 2.1 shall be repaid by him/her to the Company immediately on written demand.
3. Return of Company Property
	1. The Employee agrees to return on or before [*insert date*] to the Company:
		1. in good condition and order, subject to fair wear and tear, all property of the Company or any Associated Company in the Employee's possession or under the Employee's control including, but not limited to all keys, mobile telephones, lap-top computers, fax machines, pagers, security passes or credit cards; and
		2. 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 Company, any Associated Company 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.
		3. The Company car registration number [*number*]
	2. By signing this Agreement the Employee confirms that s/he has first copied to the Company and then irretrievably deleted all documents, records and other information obtained from or prepared for the Company, its customers or clients or any agent of the Company from the hard disk of any personal computer used by him which does not have to be returned to the Company under this Clause and from any magnetic or optical discs or other software or memories in his possession or control which similarly do not have to be returned under this Clause. The Employee also confirms that s/he has informed the Company of any passwords used by him/her on computers which are the property of the Company or any Associated Company.
4. Agreement
	1. Following careful consideration of the facts and circumstances relating to the Employee's employment by the Company and its termination, the Employee agrees not to institute or continue any of the following specific claims or proceedings against the Company or any Associated Company or any of its or their respective present or former officers, shareholders, employees or workers before an employment tribunal, court or otherwise arising out of or connected with the Employee's employment and/or its termination and agrees that the terms of this Agreement are in full and final settlement of the following specific claims:-
		1. for breach of contract or wrongful dismissal;
		2. for unfair dismissal, under section 111 of the Employment Rights Act 1996;
		3. in relation to the right to a written statement of reasons for dismissal, under section 93 of the Employment Rights Act 1996;
		4. for a statutory redundancy payment, under section 163 of the Employment Rights Act 1996;
		5. in relation to an unlawful deduction from wages or unlawful payment, under section 23 of the Employment Rights Act 1996;
		6. for unlawful detriment, under section 48 of the Employment Rights Act 1996 or section 56 of the Pensions Act 2008;
		7. in relation to written employment particulars and itemised pay statements, under section 11 of the Employment Rights Act 1996;
		8. in relation to guarantee payments, under section 34 of the Employment Rights Act 1996;
		9. in relation to suspension from work on medical or maternity grounds, under section 70 of the Employment Rights Act 1996;
		10. in relation to parental rights and flexible working, under sections 80 and 80H of the Employment Rights Act 1996;
		11. in relation to time off work, under sections 51, 54, 57, 57ZC, 57ZF, 57ZH, 57ZM, 57ZQ, 57B, 60, 63 and 63C of the Employment Rights Act 1996;
		12. in relation to working time or holiday pay, under regulation 30 of the Working Time Regulations 1998;
		13. for failure to allow access to records, for non-compliance with a notice of underpayment and/or detriment under sections 11, 18, 19D and 24 of the National Minimum Wage Act 1998;
		14. for equal pay or equality of terms under sections 120 and 127 of the Equality Act 2010 and/or relying on Article 157 of the Treaty on the Functioning of the European Union [and/or section 2 of the Equal Pay Act 1970];
		15. for pregnancy or maternity discrimination, direct or indirect discrimination, harassment or victimisation related to sex, marital or civil partnership status, pregnancy or maternity or gender reassignment under section 120 of the Equality Act 2010;
		16. for direct or indirect discrimination, harassment or victimisation related to race under section 120 of the Equality Act 2010;
		17. for direct or indirect discrimination, harassment or victimisation related to disability, discrimination arising from disability, or failure to make adjustments under section 120 of the Equality Act 2010;
		18. for direct or indirect discrimination, harassment or victimisation related to religion or belief under section 120 of the Equality Act 2010;
		19. for direct or indirect discrimination, harassment or victimisation related to sexual orientation, under section 120 of the Equality Act 2010;
		20. for direct or indirect discrimination, harassment or victimisation related to age, under section 120 of the Equality Act 2010;
		21. 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;
		22. 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 2002;
		23. under regulations 27 and 32 of the Transnational Information and Consultation of Employees Regulations 1999;
		24. under regulations 29 and 33 of the Information and Consultation of Employees Regulations 2004;
		25. under regulations 45 and 51 of the Companies (Cross-Border Mergers) Regulations 2007;
		26. under paragraphs 4 and 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006;
		27. in relation to a deduction of unauthorised subscriptions, failure to comply with certificate of exemption or objection to contributing to political fund, refusal of employment on grounds relating to trade union membership, an offer contravening the right not to be offered an inducement relating to trade union membership or activities or collective bargaining, detriment related to trade union membership or activities, time off or pay for carrying out trade union duties or learning representative duties and/or time off for trade union activities, under sections 68A, 87, 137, 145A, 145B, 146, 168, 168A, 169 and 170, of the Trade Union and Labour Relations (Consolidation) Act 1992;
		28. for remuneration for the protected period following the making of a protective award under section 192 of the Trade Union and Labour Relations (Consolidation) Act 1992;
		29. in relation to the obligations to elect appropriate representatives and/or inform and consult and/or any entitlement to compensation, under the Transfer of Undertakings (Protection of Employment) Regulations 2006;
		30. in relation to the right to be accompanied under section 11 of the Employment Relations Act 1999;
		31. in relation to refusal of employment, refusal of employment agency services and detriment under regulations 5, 6 and 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010;
		32. in relation to the right to request time off for study or training under section 63I of the Employment Rights Act 1996; and
		33. in relation to the right to equal treatment, access to collective facilities and amenities, access to employment vacancies and the right not to be subjected to a detriment under regulations 5, 12, 13 and 17(2) of the Agency Workers Regulations 2010.
		34. in relation to an agency worker’s right to remuneration when her assignment end on maternity grounds under section 70A of the Employment Rights Act 1996;
		35. for physical or psychiatric illness arising out of or relating to any acts of discrimination, harassment, victimisation or detriment;
		36. any stress-related claims and/or any claim relating to depression;
		37. in relation to any other personal injury;
		38. for harassment under the Protection from Harassment Act 1997;
		39. for failure to comply with obligations under the Human Rights Act 1998;
		40. for compensation or damage suffered as a result of a breach of the Data Protection Act 2018 and/or the General Data Protection Regulation (GDPR);
		41. any claim under any provision of directly applicable European law;
		42. in relation to the right to be accompanied under regulation 17 of the Employee Study and Training (Procedural Requirements) Regulations 2010;
		43. in relation to the right not to be subjected to a detriment under regulation 3 of the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015;
		44. in relation to unauthorised deductions under Regulation 6 of the Posted Workers (Enforcement of Employment Rights) Regulations 2016.
	2. The waiver in clause 7.1 shall not apply to the following:
		1. any claims by the Employee to enforce this agreement;
		2. claims in respect of personal injury of which the Employee is not aware and could not reasonably be expected to be aware at the date of this agreement (other than claims under discrimination legislation)[; and **OR** .]

any claims in relation to accrued entitlements under the [NAME] pension scheme

1. Independent Legal Advice
	1. The Employee warrants that, in accordance with the legislation governing settlement agreements:
		1. the Employee has taken independent legal advice from the Qualified Lawyer as to the terms and effect of this Agreement and in particular its effect on the Employee's ability to pursue the Employee's rights before an employment tribunal or other court; and
		2. the Qualified Lawyer has advised the Employee that they are a Solicitor holding, both at the date of this Agreement and at the date the said advice was given, a current practising certificate and that there is currently in force and was at the time the said advice was given a contract of insurance covering the risk of a claim by the Employee in respect of loss arising in consequence of the said advice.
	2. The Employee shall procure that the Qualified Lawyer delivers the Adviser's Certificate to the Company's Solicitors.
	3. The Company shall pay the Qualified Lawyer’s fee of [£..................] plus VAT forthwith upon presentation of an invoice.
2. warranties
	1. The Employee further warrants that:
		1. before receiving the advice referred to in Clause 8.1.1, the Employee disclosed to the Qualified Lawyer all facts or circumstances relating to the Employee's employment and its termination that may give rise to a claim against the Company, any Associated Company or any of its or their respective present or former officers, shareholders, employees or workers;
		2. the Employee is not aware of any claims or circumstances which have given or might give rise to any claims including any claim for personal injury and/or industrial disease against the Company, any Associated Company or any of its or their respective present or former officers, shareholders, employees or workers, arising out of or connected with the Employee's employment and/or its termination, other than those specified in Clause 6 of this Agreement which are the only claims the Employee has;
		3. the Employee has not commenced any proceedings in any court, tribunal or otherwise in any jurisdiction against the Company, any Associated Company or their respective present or former officers, shareholder, employees or workers in respect of any claim whatsoever and undertakes not to commence any such proceedings;
		4. the Employee has neither started nor been offered (either in writing or orally) other paid work in any capacity, nor has the Employee been given any indication that an offer of paid work will be forthcoming; and
		5. the Employee is not in breach of any duty the Employee may owe to the Company or any Associated Company, nor has the Employee acted in breach of his contract of employment (both express and implied provisions) and there are no matters of which the Employee is aware relating to any acts or omissions by the Employee or any third party which, if disclosed to the Company, might affect its decision to enter into this Agreement.
	2. The Employee acknowledges that the Company has entered into this Agreement in specific reliance on the warranties in Clause 9.1. Accordingly the Employee agrees that should the Employee breach any of those warranties and without prejudice to any other remedy the Company might have:
		1. the Employee will repay to the Company the Termination Payment (excluding the Redundancy Payment) (less any tax deducted) immediately on written demand;
		2. any benefits the Employee is entitled to receive from the Company whether pursuant to this Agreement or otherwise shall cease to be made available with immediate effect; and
		3. the Company shall immediately be released from any continuing obligations under this Agreement.
3. Compliance with Legislation

## The Employee acknowledges that the conditions relating to settlement agreements under section 147(3) of the Equality Act 2010, section 288(2B) of the Trade Union and Labour Relations (Consolidation) Act 1992, 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 of Employees 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, regulation 40(4) of the Information and Consultation of Employees Regulations 2004, paragraph 13 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, section 58 of the Pensions Act 2008, Regulation 62(4) of the Companies (Cross-Border Mergers) Regulations 2007 and Regulation 9 of the Posted Workers (Enforcement of Employment Rights) Regulations 2016 are satisfied by this Agreement.

1. **[RESTRICTIVE COVENANTS**
	1. [Notwithstanding clause 18.3, the Employee acknowledges that the post-termination restrictions in clause [NUMBER] of his contract with the Company dated [DATE] will continue to apply after the Termination Date [save that the period of each will be reduced by the period that s/he spends on Garden Leave] **OR** The Employee agrees to be bound by the restrictive covenants contained in Schedule 2 to this Agreement].
	2. [The Company shall pay £[AMOUNT] to the Employee as consideration for his/her entering into the restrictive covenants in Schedule 2, such sum to be paid within 14 days after the Termination Date or receipt by the Company of a copy of this agreement signed by the Employee and receipt by the Company of a letter from the Adviser as set out in Schedule 1, whichever is later. The Company shall deduct income tax and National Insurance contributions from this sum.]**]**
2. **[TRIBUNAL PROCEEDINGS**
	1. Immediately on execution of this Agreement, the Employee shall notify the employment tribunal in writing that the claim[s] against the Company in case number [NUMBER] are withdrawn irrevocably having been settled by this agreement, and should be dismissed. The Employee shall immediately send a copy of such notification to the Company for the attention of [POSITION].
	2. Neither the Employee or the Company shall make or pursue any application for costs, preparation time or wasted costs in connection with [that claim **OR** those claims].**]**
3. REFERENCE

On receipt of written requests from potential employers of the Employee, the Company shall provide a standard company reference, setting out the Employee’s name, job title and dates of employment. If the Company obtains information after the date of this agreement which would have affected its decision to provide such a reference, it shall inform the Employee and may decline to give a reference.

1. THIRD PARTY RIGHTS
	1. Section 1 of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**") shall apply to this Agreement but only to the extent that any Associated Company and/or any present or former officers, shareholders, workers or employees of the Company or any Associated Company (together the "**Third Parties**") shall be entitled to enforce in its their own right the terms of Clauses 4.2, 5.1, 6, 7.1.
	2. In accordance with section 2(3)(a) of CRTPA, the whole or any part of this Agreement may be rescinded or varied by agreement between the Employee and the Company without the consent of any Associated Company or of any other person who is not named as a party to this Agreement.
2. Counterparts

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.

1. Law and Jurisdiction
	1. This Agreement shall be governed by and construed in accordance with English Law.
	2. The parties submit to the exclusive jurisdiction of the Courts and tribunals of England and Wales with regard to any dispute or claim arising under this Agreement.
2. Definitions

"**Adviser's Certificate**"means a certificate in the form attached as Schedule 1 to this Agreement, signed by the Qualified Lawyer advising the Employee;

"**Agreement**" means the agreement between the parties contained herein;

"**Associated Company**” means the Company’s ultimate parent undertaking and all undertakings which are ultimately owned or controlled by the ultimate parent undertaking of the Company for the time being;

"**Company's Solicitors**"means …………………………………………………………………………………

"**Confidential Information**" means any information which came into the possession of the Employee in the course of the Employee's employment and is identified or treated by the Company or any Associated Company as confidential or which, by reason of its character or the circumstances or manner of its disclosure, is evidently of such a nature, including, but not limited to, business plans, business methods, corporate plans, management systems, finances, maturing new business opportunities, research and development projects, concepts, ideas, new products, product formulae, source codes, software, software designs, graphic designs, artwork, processes, inventions, discoveries or know-how, sales statistics, sales techniques, marketing surveys and plans, costs, profit or loss, prices and discount structures, the names, addresses and contact details of customers and suppliers or potential customers and suppliers;

"**Qualified Lawyer**"means ………………………………………………………………………………………

1. General
	1. In this Agreement:
		1. a reference to any legislative provision includes any lawful amendment or re‑enactment of it; and
		2. the headings are for convenience only and shall not affect its interpretation.
	2. The Schedules to this Agreement form part of (and are incorporated into) this Agreement.
	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 Company.
	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.
	5. Nothing in this Agreement shall be taken to prevent disclosure by the Employee of information:
		1. for the purpose of making a protected disclosure within the meaning of Part IVA of the Employment Rights Act 1996 (Protected Disclosures), provided that the disclosure is made in accordance with the provisions of that Act.**[** This includes protected disclosures made about matters previously disclosed to another recipient.**]**;
		2. for the purpose of reporting misconduct, or a serious breach of regulatory requirements, to a regulator;
		3. for the purpose of reporting an offence to a law enforcement agency and/or co-operating with a criminal investigation or prosecution; and/or
		4. that has come into the public domain otherwise than by a breach of confidence by you or on your behalf.
	6. The complete or partial invalidity or unenforceability of any provision of this Agreement for any purpose shall in no way affect:-
		1. the validity or enforceability of such provision for any other purpose;
		2. the remainder of such provision; and/or
		3. the remaining provisions of this Agreement.
2.

 **[*To be written on Advisors' letterhead*]**

To: **[*Company name*]**

[*address*]

Dear Sirs

**Re: [*Name of Employee*]**

I refer to the terms of the Settlement Agreement of today's date between my client [*name of employee*] ("my Client") and [*name of Company*] (the "Company"). I hereby certify that:

1. I am a Solicitor, holding now and at all relevant times a Practising Certificate with The Solicitors Regulation Authority (SRA).
2. Before the said Settlement Agreement was signed I had advised my Client as to its terms and effect and in particular its effect on my Client's ability to pursue his rights before an employment tribunal.
3. At the time I gave the advice there was in force a contract of insurance covering the risk of a claim by my Client in respect of loss arising in consequence of such advice.
4. I am a relevant independent adviser within the meaning of the legislation governing settlement agreements. In particular, I am not acting for or employed by the Company, any associated employer or any person connected with the Company as those terms are defined by the governing legislation.

Yours faithfully

Signed…………………………………….

[*Name of Solicitor*]

Dated…………………………………….

# [SCHEDULE 2

**Insert restrictive covenants if applicable.]**

|  |
| --- |
| **SIGNED** by or on behalf of the parties on the date which first appears in this Agreement. |
|  |

|  |  |
| --- | --- |
| **SIGNED** by Duly authorised for and on behalf of the Company**SIGNED** by [***Name of Employee***]the Employee | ……………………………………………………………………………………. |