

# CONTRACT OF EMPLOYMENT GUIDANCE NOTE AND TEMPLATE CONTRACT

When employing a member of staff it is important that you provide them with a contract of employment. The contract sets out all of your requirements as an employer and the benefits that you are providing to your employee.

By reading this guidance you will understand typical terms used in an employment contract and you will have a template contract. The template should be used as a guide only as needs to be adapted to your social enterprise and the employee.

For further information please also see our guidance note and template for the offer of employment

# CONTRACT OF EMPLOYMENT GUIDANCE NOTE AND TEMPLATE CONTRACT

This guidance note gives a summary of the typical terms used in a contract of employment and it should be read together with the contract of employment precedent (“**Contract of Employment**”). References to clauses are references to clauses within that document.

Please note that this guidance and the attached template are written making certain assumptions which are identified to you but in particular please note that the contract of employment does not include restrictions on the employees’ post- employment activities (e.g. not competing with the business that the employee has just left or not taking clients with them on leaving) as these provisions need to be tailored to the employee’s role and the type of business. Please ask for specific legal advice if you wish to include such provisions.

## PARTIES

This paragraph should identify the parties to the agreement. If the employer is not a company, the term should be amended as appropriate.

### 1. COMMENCEMENT OF EMPLOYMENT

The employment start date should be specified in the Contract of Employment. It may also be appropriate to set out whether any previous periods of employment count as part of the employee’s period of continuous employment with the employer. This is because an employee must complete certain minimum periods of continuous employment with an employer to be eligible for certain rights and payments such as unfair dismissal, statutory redundancy payments and statutory maternity pay.

### 2. PROBATIONARY PERIOD

The purpose of having a probationary period is to give the employer time to assess the employee before making their position permanent. A probationary period typically lasts between three to six months, during which time the employer may dismiss the employee with minimal notice. Clause 2 is optional – if there is to be no probationary period or if the Contract of Employment is being used for existing employees, it should be deleted.

### 3. JOB TITLE AND DUTIES

The employee’s job title should be set out in the Contract of Employment and a brief description of the job and further details of the employee’s duties should be included

where this is not self-explanatory. To give the employer flexibility, it should consider keeping any job description as general as possible.

#### 4. PLACE OF WORK

The employee's usual place of work should be set out in the Contract of Employment. If the employee may be required to work elsewhere this should also be set out, as where there is no specific clause that deals with a requirement for the employee to move locations it is rare for an employer to be able to change an employee's place of work without consulting the employee. Clause 4 says that the employee is not required to work outside the United Kingdom for a period of more than one month.

#### 5. HOURS OF WORK

The Working Time Regulations 1998 limit the average weekly working time to 48 hours per week, over a set reference period. However, this does not apply where an employee opts out of the 48 hour working week. Whilst it is not unlawful to provide for such opt-out within a contract of employment, ideally it should be set out in a separate agreement to ensure it can be relied on.

The employee's hours of work should be set out in the Contract of Employment, as should any entitlement to breaks. If the employer requires the employee to work more than these hours (either with or without additional pay), and/or if the employer is permitted to vary the basis upon which overtime is paid or the rates are applied, this must be expressly stated. Clause 5.3 assumes that overtime is unpaid.

#### 6. PAY

Clause 6.1 assumes that the employee's basic salary will be paid monthly for the previous month worked, however this can be changed to reflect any alternative agreement, provided that rate of pay (or the method of calculating it) and the intervals at which the money is to be paid (e.g. monthly) are set out in the Contract of Employment.

Clause 6.1 contains an obligation on the employer to review (but not necessarily increase) the salary each year. If the employer does not want the obligation to increase the employee's salary, express wording to this effect should be included as failure to do so may lead to an implied right to a salary increase if reviews are given every year.

#### 7. LAY OFF AND SHORT-TIME WORKING

An employer may not want to include an express contractual right to lay an employee off or impose short-time working arrangements as a matter of course. However, an employer introducing lay-off or short-time working arrangements where this is not provided for in the Contract of

Employment may face unfair constructive dismissal claims (i.e. claims that the employer unfairly acted in such a way that the employee was left with no choice but to resign and is therefore treated as having been dismissed) or claims for unlawful deductions from wages.

#### 8. HOLIDAYS

##### 8.1 Entitlement

Clause 8.1 specifies a common holiday year in order to reduce administrative difficulties by ensuring that the holiday year runs from the same date for all employees.

Under the Working Time Regulations (“WTR”), the minimum holiday entitlement is 5.6 weeks a year (28 days) for a full time worker; accordingly, clause 8.1 assumes that leave will be granted for 20 days plus 8 public holidays. However, there is no statutory right to paid public holidays or days off to compensate for public holidays worked, as long as the total entitlement is not less than the minimum of 28 days for a full-time worker, pro rata for a part time worker.

##### 8.2 Arranging holiday

The second sentence of clause 8.2 allows the employer to set specific days as holiday, for example, to enable the closure of an office over the Christmas period.

##### 8.3 Untaken holiday

Under the WTR statutory leave may only be taken under the year that it is due. Therefore there is no automatic right for an employee to carry forward untaken leave. Clause 8.3 assumes that untaken holiday will be lost without any right to being paid instead. However, it is not uncommon for employers to allow employees to carry forward untaken holiday entitlement, up to a certain number of days.

An employee on sick leave continues to build up statutory holiday and, whilst an employee can agree to take their holiday during sick leave, an employer cannot require them to do so. Therefore, where an employee is unable (or unwilling) to take annual leave due to illness, he or she must be allowed to carry it over.

##### 8.4 Termination of employment

It is a statutory requirement to include terms which explain to the employee what happens to any accrued but untaken holiday in the event of the termination of their contract of employment. Clause 8.4 confirms that the employee will be paid as a replacement for any accrued holiday and conversely, that a repayment will be made by the employee in respect of any additional holiday taken over and above the entitlement for the portion of the year they have worked.

Where contractual holiday entitlement is provided under a contract of employment over and above the statutory minimum the contract should expressly state whether



there will be a payment as a replacement for untaken contractual holiday entitlement (in excess of any payment as a replacement for untaken statutory holiday).

## 9. SICKNESS ABSENCE

It is a legal requirement for employers to pay statutory sick pay (“**SSP**”) where an employee meets the requirements for qualification. One such requirement is that the employee follows any absence notification procedures set out in their contract of employment.

Clause 9.4 says that an employee must undergo a medical examination if requested by the employer. Whilst an employer cannot force an employee to have a medical examination, this clause ensures that if the employer's request is reasonable and proportionate, the employee's failure to comply will be a breach of contract.

## 10. SICK PAY

Employers may choose to pay employees in excess of SSP (known as company sick pay). If the company is to provide company sick pay, express provisions governing the payment of this should be set out in the Contract of Employment or alternatively, reference should be made to a separate comprehensive sick pay policy, as at clause 10. In addition, clause 10 provides the employer the right to withhold payment of company sick pay if the employee fails to follow the contractual notification procedure.

If the employer does not intend to pay more than SSP, this clause should be deleted.

## 11. PENSION

Since 2012, there has been a duty on employers to automatically enrol jobholders who meet specified criteria into a pension scheme and contribute at specified rates in respect of them. Employers must either use their own qualifying pension scheme or the National Employment Savings Trust. The duties are coming into effect in stages with the largest employers being affected from October 2012. Staging dates, by employer size, will continue to roll out until April 2017.

A suitable pension clause, specific to whether or not the employer has reached its staging date and the employer's current and future intentions for making pension provisions should be included in the Contract of Employment. A number of optional clauses are included at Appendix 1. The appropriate clause from the appendix should be added in to the main body of the Contract of Employment at clause 11 and those options which are not relevant should be deleted.

## 12. DATA PROTECTION

Clause 12 seeks to get the employee's consent to their personal data being processed. However, it is not intended to be a substitute for a comprehensive data protection policy. The employer should ensure that any data protection policy is non-contractual as this allows for changes to be made to the policy as necessary, without having to seek the agreement of the workforce.

Clause 12.1 draws the employee's attention to the employer's data protection policy and clause 12.4 requires the employee to comply with the provisions of the employer's data protection policy in relation to the handling of the personal data of others.

The employer is required, as an organisation that processes personal information, to register with the Information Commissioner's Office as a data controller, unless an exemption applies. Failure to do so is a criminal offence.

## 13. TERMINATION OF EMPLOYMENT

Clause 13 assumes an indefinite term of employment which can be terminated by notice by either the employer or the employee. Alternatively, an employer may want the Contract of Employment to provide for a fixed term contract or for a renewable fixed term. In any event, where the employment is not intended to be permanent, the Contract of Employment must specify an end date or the period for which the employment is to continue.

The notice period provided for in clause 13.2 reflects the minimum statutory notice period. Whilst an employer may increase this notice period, to do so may not be in an employer's best interest as it increases the costs of the payment to be made to an employee on termination.

## 14. CONFIDENTIALITY

Whilst there is an implied duty on an employee to keep confidential information confidential during the course of employment, this clause expressly states that the obligation continues following termination of the Contract of Employment. Employers should ensure that the clause is tailored according to the organisation type, to ensure that all types of information which it considers to be confidential and which the employee has access to are listed as being information of a confidential nature. The list at clause 14.1 is not a complete list of all such information and other items should be added to it as appropriate.

Clause 14.2 permits an employee to make protected disclosures within the meaning of the Employment Rights Act 1996. This clause must be included, as failure to do so may make the whole confidentiality clause void.

## 15. COMPANY PROPERTY

Clause 15 requires the employee to return all company property when their employment contract comes to an end.

## 16. GRIEVANCE AND DISCIPLINARY PROCEDURES

Clause 16 is not meant to replace full disciplinary and grievance policies. The employer should have these in place as non-contractual policies.

Whilst there are no statutory provisions regarding grievance or disciplinary procedures that an employer must comply with, employers should bear in mind the ACAS Code of Practice on Disciplinary and Grievance Procedures, as an unreasonable failure to do so could lead to any compensation awarded to an employee successful in an unfair dismissal claim being uplifted by up to 25 per cent.

## 17. BRIBERY AND CORRUPTION

The Bribery Act 2010 includes the introduction of a corporate offence of failing to prevent bribery. It is a defence for a commercial organisation to prove that at the time of the alleged offence, “adequate procedures” were in place, which were designed to prevent bribery. Whilst such measures will vary depending on the organisation, they could include having a formal written policy and an appropriate clause in contracts of employment.

Clauses 17.1 – 17.2 should only be included for employers with an anti-bribery and corruption policy in place. Where this is the case, clauses 17.3 – 17.9 should be deleted. For those employers that do not have an anti-bribery and corruption policy in place, clauses 17.1 – 17.2 should be deleted. An employer could consider amending clause 17.6 to allow an employee to give or receive hospitality, entertainment or gifts, either regardless of value or up to a financial limit, with the consent of their line manager.

Clause 17 is not meant to replace a full anti-bribery and corruption policy.

## 18. COLLECTIVE AGREEMENTS

Clause 18 is a statutory requirement. One of the options should be deleted as appropriate depending on whether a collective agreement with a trade union is in place which relates to any term or condition of the employee’s contract of employment.

## 19. CHANGES TO TERMS OF EMPLOYMENT

Clause 19 is intended to give the employer the contractual right to make reasonable changes to the terms of employment without first getting the employee’s consent. As one party cannot usually alter the terms of a contract without the other party’s consent, this clause should not be used by an employer to attempt to fundamentally alter the employee’s terms of employment. It is only intended to cover minor administrative changes.

## 20. ENTIRE AGREEMENT

Clause 20 means that the Contract of Employment overrides and excludes all previous agreements, side letters and side documents from having being binding as part of the agreement and therefore it may need to be amended or deleted if it is intended that other documents (or particular provisions within them) are to continue to have an effect.

## 21. THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 lets a person who is not a party to a contract rely on the contract against a party in some circumstances. This clause is intended to ensure that a person who is not party to the Contract of Employment has no right under the Act to rely on any terms of the contract as against the employer. This clause does not affect any right or remedy of any person which exists or is available otherwise than under that Act.

The Contracts (Rights of Third Parties) Act 1999 does not apply in Scotland. Therefore this clause should be deleted for Scottish contracts of employment.

## 22. GOVERNING LAW AND JURISDICTIONS

In clause 22.1 the parties agree that the law of England and Wales will govern the performance and interpretation of the Contract of Employment and any disputes arising under it. In clause 22.2 the parties agree that they will submit exclusively to the courts of England and Wales/ Scotland. Submitting exclusively to the courts of one country/region (jurisdiction) allows the parties to ensure that proceedings can only be brought in that jurisdiction (with limited exceptions).

# EMPLOYMENT CONTRACT TEMPLATE

Please note that this template is a guide only and is a comprehensive contract which should be adapted for your social enterprise and employee. If you wish to amend the contract you may wish to obtain some specialist legal advice and guidance.

**THIS AGREEMENT** \_\_\_\_\_ **20[14]**

## BETWEEN

- (1) **[NAME OF COMPANY]** (registered number \_\_\_\_\_)  
whose registered office is at \_\_\_\_\_  
("**Company**"); and
- (2) **[NAME OF EMPLOYEE]** of \_\_\_\_\_ ("**You**").

## IT IS AGREED:

### 1. COMMENCEMENT OF EMPLOYMENT

- 1.1 Your employment with the Company  
[commenced on] [will commence on] [date].

### 2. [PROBATIONARY PERIOD]

- 2.1 The first three months of your employment shall be a probationary period ("**Probationary Period**"). During the Probationary Period your performance and suitability for continued employment will be monitored.
- 2.2 During:
- 2.2.1 the Probationary Period; and

- 2.2.2 a reasonable period immediately following the end of your Probationary Period (if the Company has not concluded its review of your continued employment at the time the Probationary Period ends)

your employment may be terminated at any time by the Company on one week's written notice.

- 2.3 During the Probationary Period You are required to give the Company one week's written notice to terminate your employment.
- 2.4 A decision on your continued employment will be made on, or within a reasonable period of, the Probationary Period coming to an end. You will be informed in writing whether You have successfully completed your probationary period. On successful completion of your probationary period, the notice provisions set out in clause 13.2 shall apply.]

### 3. JOB TITLE AND DUTIES

- 3.1 You are employed as \_\_\_\_\_. You will be required to undertake such additional duties as the Company may reasonably require from time to time. You will report to \_\_\_\_\_ or such other person as may be authorised by the Company and notified to You.

- 3.2 You will not during your employment with the Company, except with the written consent of the Company, be directly or indirectly engaged, concerned or interested in any other business or occupation whatsoever.

#### 4. PLACE OF WORK

Your normal place of work is at \_\_\_\_\_ but You may be required to work at any other of the Company's premises within the United Kingdom from time to time. You will not be required to work outside the United Kingdom for a period of more than one month.

#### 5. HOURS OF WORK

- 5.1 Your normal hours of work are [9.00]am to [5.30]pm Monday to Friday inclusive.
- 5.2 You are allowed a [one hour] unpaid lunch break to be taken by prior arrangement with your manager between the hours of \_\_\_\_\_.
- 5.3 The Company has the right to require You to work such further hours as it considers necessary to perform your duties without additional pay.

#### 6. PAY

- 6.1 Your basic salary will be £ \_\_\_\_\_ per annum and will be paid monthly in arrears on the \_\_\_\_\_ day of each month, or on the first working day thereafter by credit transfer into your nominated bank or building society account. Your salary will be reviewed each year on \_\_\_\_\_ although there will be no obligation on the Company to award an upward increase following any such review. Any changes in your salary will be confirmed to You with your pay slip.
- 6.2 The Company shall be entitled to deduct any amounts owed to the Company by You from your salary. If, on the termination of your employment, You owe any money to the Company, the Company shall be entitled to deduct any such money from any salary due to You.

#### 7. LAY OFF AND SHORT TIME WORKING

[Your right to receive remuneration is dependent on You being provided by the Company with work of the kind which You are employed to do. The Company reserves the right in its absolute discretion to impose a lay off with no pay or to impose short time working with a pro rata reduction in pay. The Company may in its absolute discretion determine the duration of any period of lay off or short time working. During any period of lay

off or short time working You must remain contactable and available for work if required. You may in certain circumstances be entitled to receive a guarantee payment in which case the Company will comply with its statutory obligations. Please refer to section \_\_\_\_\_ of the Employee Handbook for further details.]

#### 8. HOLIDAYS

- 8.1 The Company's holiday year runs from 1 January to 31 December. You are entitled to 20 days' holiday per annum plus bank and other public holidays in [England and Wales] [Scotland]. ("**Holiday Entitlement**"). Holiday Entitlement is inclusive of statutory holiday under the Working Time Regulations 1998.
- 8.2 You must give at least one week's notice of proposed holiday days and these must then be approved by \_\_\_\_\_. The Company reserves the right to refuse any holiday request and to nominate days which must be taken as part of your holiday entitlement.
- 8.3 Untaken Holiday Entitlement in any holiday year may not be carried forward to any following holiday year and such Holiday Entitlement will be forfeited without any right to payment in lieu.
- 8.4 Holiday entitlement for any part of the year worked will be calculated on a pro rata basis at the rate of days per complete calendar month worked. On termination of your employment You shall be entitled to salary in lieu of any outstanding holiday entitlement. If You have taken more holiday than your pro rata holiday entitlement You will be required to repay (including by way of deduction from any monies which would otherwise be payable to You) to the Company any salary received in respect of the excess.

#### 9. SICKNESS ABSENCE

If You are absent from work because of sickness or injury You must:

- 9.1 notify your immediate line manager before [9] am on the first morning of absence, and if absent for more than one day, keep your immediate line manager regularly informed of the expected duration of your absence;
- 9.2 complete and return to the Company a self certification form in respect of the first [seven] days (including weekends) of any sickness absence;

- 9.3 provide the Company with a medical certificate from your GP or other registered medical practitioner for periods of sickness absence in excess of seven days (including weekends) or more and with medical certificates for each subsequent week of sickness absence;
- 9.4 if requested by the Company undergo a medical examination at the expense of the Company with a medical practitioner nominated by the Company;
- 9.5 if requested by the Company give written permission to the Company to have access to any medical or health report in its complete form prepared by any health professional on your physical or mental condition.

## 10. SICK PAY

You will be entitled, subject to the Company's discretion, to sickness benefits as set out in the Company Handbook. Company sick pay will not be paid if You fail to follow the notification requirements set out in clause 9.]

## 11. PENSION

[See Appendix I for appropriate clauses.]

## 12. DATA PROTECTION

- 12.1 The Company holds personal data and sensitive personal data relating to You which is subject to the Data Protection Act 1998. The Company will process and may disclose such data and You consent to the processing and disclosure of such data, both manually and by electronic means, both inside and, where necessary, outside the European Economic Area, for the purposes of the administration and management of your employment and/or the Company's business.
- 12.2 "Processing" includes anything that can be done with or in relation to data. It includes obtaining, recording, holding the data and carrying out operations on the data including organising, erasing or disclosing.
- 12.3 "Sensitive personal data" includes, but is not limited to, medical information for the purpose of your employment and fitness to carry out your duties and data regarding sex, marital status, race, ethnic origin or disability for the purpose of monitoring to ensure equality of opportunity within the Company.
- 12.4 You acknowledge that You may have access to personal and sensitive personal data during your employment with the Company relating to other employees and You agree to comply with the Company's data protection policy at all times.

## 13. TERMINATION OF YOUR EMPLOYMENT

- 13.1 You are required to give the Company one month's written notice of termination.
- 13.2 [After successful completion of your Probationary Period as provided for in clause 2] the Company is required to give You one month's written notice of termination during the first two years of employment and thereafter an additional week for each complete year of service up to 12 weeks for 12 or more years' service.
- 13.3 On termination of your employment You shall immediately return to the Company all Company property, including your company car, petrol expense card, other credit cards, keys and documents and letters of whatsoever nature or description You may have in any way related to the Company's business.
- 13.4 The Company reserves the right to terminate your employment without notice in the event of any act of gross misconduct or serious breach of the terms of this agreement.

## 14. CONFIDENTIALITY

- 14.1 Save as set out in clause 14.2, You may not use or disclose any trade secrets or other information of a confidential nature relating to the Company or its business during your employment. For the purposes of this clause 14 information of a confidential nature includes but is not limited to [marketing plans, product designs, client lists and price lists]. This obligation will continue after the termination of your employment unless and until any such information comes into the public domain other than through any breach of this clause 14 by You.
- 14.2 Nothing in clause 14.1 prevents You from:
  - 14.2.1 making a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996; or
  - 14.2.2 using or disclosing information which has been authorised by the Company or as required by law.

## 15. COMPANY PROPERTY

All documents and letters including information, documents and copies (whether written, printed, electronic, recorded or otherwise and wherever located) relating to the business of the Company which come into your possession during the course of your employment with the Company remain the property of the Company and must be returned to \_\_\_\_\_ immediately on request. On termination of your employment You must return to the Company such documents or letters or any other Company property which may be in your possession.



## 16. GRIEVANCE AND DISCIPLINARY PROCEDURES

- 16.1 The disciplinary and grievance procedures which apply to your employment with the Company are contained in the Company Handbook. For the avoidance of doubt these procedures are non-contractual.
- 16.2 If You have a grievance or are dissatisfied with any disciplinary action taken against You, You should first raise the matter with your immediate line manager/supervisor in writing, in accordance with the Company's grievance or disciplinary procedure, as appropriate.
- 16.3 The Company shall have the right to suspend You from your duties on full pay on such terms and conditions as it shall determine for the purpose of carrying out an investigation into any allegation of misconduct or negligence or an allegation of bullying harassment or discrimination against You and pending any disciplinary hearing.

## 17. BRIBERY AND CORRUPTION

- 17.1 [The Company expects the highest standards of integrity in relation to employees' dealings with the Company's customers, suppliers, agents and subcontractors and with any government official.
- 17.2 Adherence to the Company's anti bribery and corruption policy is a condition of your employment. Any breach of the policy will be regarded as a serious matter and may be dealt with under the disciplinary procedure. Serious cases may be treated as gross misconduct leading to summary dismissal which could result in termination of this agreement.]

### OR

- 17.3 [The Company expects the highest standards of integrity in relation to employees' dealings with the Company's customers, suppliers, agents and subcontractors and with any government official.

- 17.4 For the purposes of this clause:

- 17.4.1 a bribe is any gift, loan, fee, reward or other advantage given to or received from any person in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business and includes a kickback on any portion of a contract payment; and
- 17.4.2 hospitality, entertainment and gifts includes but is not limited to the offer or receipt of gifts, meals, goods, services, favours, loans, trips, accommodation and the use of property or invitations to events, functions or other social gatherings.

- 17.5 You are prohibited from offering, giving, authorising or accepting a bribe in any form. You are also prohibited from using any other route or channel to provide a bribe to or receive a bribe from the Company's customers, suppliers, agents or subcontractors or any government official.
- 17.6 [You are required not to give or receive hospitality, entertainment or gifts if these are intended, or could be reasonably interpreted, as a reward or encouragement for a favour or preferential treatment in connection with the Company's business.]
- 17.7 You are prohibited from making any direct or indirect contributions to political parties, organisations or individuals engaged in politics, or any charitable contribution or sponsorship as a way of obtaining advantage in business transactions [without the prior approval of \_\_\_\_\_].
- 17.8 You are prohibited from making any direct or indirect illicit or secret payments or transfers of value to government officials and from giving hospitality, entertainment or gifts to government officials [without prior authorisation from \_\_\_\_\_].
- 17.9 Where You suspect, believe or know that an act of bribery or corruption is being considered or carried out, You are required to report this to the Company using the procedure set out in the whistle blowing policy.]

## 18. COLLECTIVE AGREEMENTS

[No collective agreements exist which relate to any term or condition of your employment contract.]

### OR

[The following collective agreements are in force and govern your terms and conditions of employment. A copy of the agreement is available from \_\_\_\_\_ upon written request.]

Date	Parties	Terms governed

## 19. CHANGES TO YOUR TERMS OF EMPLOYMENT

The Company reserves the right to make reasonable changes to any of your terms and conditions of employment and You will be notified of minor changes of detail by way of a general notice to all employees and any such changes will take effect from the date of the notice. You will be given not less than one month's written notice of any significant changes which may be given by way of an individual notice or a general notice to all employees.

## 20. ENTIRE AGREEMENT

- 20.1 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 20.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and any documents referred to in it, they do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 20.3 Nothing in this clause 20 shall operate to exclude any liability for fraud.

## 21. THIRD PARTY RIGHTS

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 22. GOVERNING LAW AND JURISDICTION

- 22.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the law of [England and Wales] [Scotland].
- 22.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the [Scottish] courts [of England and Wales] over any claim or matter arising under or in connection with this agreement.

Signed for and on behalf of **[NAME OF COMPANY]** by:

Signature \_\_\_\_\_

Name (block capitals) \_\_\_\_\_

**Director/authorised signatory**

Signed by **[FULL NAME OF INDIVIDUAL]**:

Signature \_\_\_\_\_

# APPENDIX I: PENSION PROVISIONS

## SCENARIO 1: EMPLOYMENT COMMENCING PRE STAGING DATE

### OPTION 1: Employer has not reached its staging date and does not currently make any pension provision

- 22.3 [The Company does not operate an occupational pension scheme or provide access or contributions to a personal pension scheme and there is no contracting out certificate in force in relation to this employment.]
- 22.4 When the Company reaches its staging date for the purposes of the Pensions Act 2008, the Company will comply with any duties it may have in respect of You under part 1 of that Act.]

### OPTION 2: Employer has not reached its staging date but currently makes pension provision

- 1.1 [You are eligible to join the Company's \_\_\_\_\_ pension scheme, details of which may be obtained from \_\_\_\_\_. Membership of the scheme is strictly subject to the rules of the scheme as amended from time to time. The Company reserves the right to vary or discontinue any scheme in place from time to time.]
- 22.5 When the Company reaches its staging date for the purposes of the Pensions Act 2008, the Company will comply with any duties it may have in respect of You under part 1 of that Act.
- 22.6 The Company shall be entitled to deduct from your salary any amounts payable by You as member contributions to such pension scheme as the Company is using from time to time.

- 22.7 There is [no] [a] contracting out certificate in force under the Pension Schemes Act 1993 as amended.]

## SCENARIO 2: EMPLOYMENT COMMENCING POST STAGING DATE

### OPTION 1: Employer has reached its staging date and will only do what is needed to comply with the minimum requirements of the Act (using the processes under the Act and NOT contractual enrolment)

- 1.2 [The Company will comply with any duties it may have in respect of You under part 1 of the Pensions Act 2008.]
- 1.3 The Company is currently using the \_\_\_\_\_ pension scheme in respect of its duties under part 1 of the Pensions Act 2008. Membership of the scheme is strictly subject to the rules of the scheme as amended from time to time. The Company reserves the right to vary or discontinue any scheme in place from time to time.
- 1.4 The Company shall be entitled to deduct from your salary any amounts payable by You as member contributions to such pension scheme as the Company is using from time to time.
- 1.5 There is [no] [a] contracting out certificate in force under the Pension Schemes Act 1993 as amended.]

**OPTION 2: Employer has reached its staging date and will only automatically enrol or enrol those eligible under the Act (using the processes under the Act and NOT contractual enrolment) but will exceed the minimum contribution requirements of the Act.**

- 1.6 [The Company will comply with any duties it may have in respect of You under part 1 of the Pensions Act 2008.
- 1.7 The Company is currently using the \_\_\_\_\_ pension scheme in respect of its duties under part 1 of the Pensions Act 2008. Membership

of the scheme is strictly subject to the rules of the scheme as amended from time to time. The Company reserves the right to vary or discontinue any scheme in place from time to time.

- 1.8 The Company shall be entitled to deduct from your salary any amounts payable by You as member contributions to such pension scheme as the Company is using from time to time.
- 1.9 There is [no] [a] contracting-out certificate in force under the Pension Schemes Act 1993 as amended.]

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