You use this document at your own risk and are responsible for checking it complies with applicable laws and guidance, and with any subsequent legislation or guidance under the Coronavirus Job Retention Scheme

COMPANY/BUSINESS NAME

AGREEMENT FOR FURLOUGH

Employee Name: XXXX

[If a current employee] This is a variation to your contract of employment, designed to implement and take advantage of the government’s Coronavirus Job Retention Scheme.

[If you are rehiring an old employee who left after 28 Feb 2020] This is an extension to your contract of employment which was previously terminated on [DATE]. We agree that your contract [resumes] [resumed] on [DATE], and you confirm you have not done any work for us since then. [You agree that any gap in continuity of employment shall break continuity, and that this situation shall not be treated as continuing employment by custom or arrangement, and that the gap was not due to a temporary cessation of work]. Your employment will end on 31 May 2020 unless extended by further written agreement, and the reason for termination will be the same reason as it previously was. See note 1.

1. We agree that from [DATE] you [shall be] [were] on Furlough. This means you cannot do any work for us, apart from undergoing training, although your contract of employment will continue. We will normally expect you to be on Furlough for at least three weeks, as that is the minimum period which will allow us to reclaim 80% of your basic salary from HMRC.

2. We will pay you:- [PICK ONE OPTION]

• 80% of your contractual remuneration, calculated according to paragraph 3. You agree to waive entitlement to any further remuneration during your Furlough.

• 80% of your basic salary, calculated according to paragraph 3, up to a maximum of £2,500 per month. You agree to waive entitlement to any further remuneration during your Furlough.

• your normal salary.

Note: if choosing either of the first two options, you need to agree the reduction in salary with the employee. This wording achieves that, but you should explain it carefully so they know what they are signing.

3. Your salary is calculated as

[for salaried employees] your actual salary before tax as it stood on 28 February 2020

[for employees with irregular earnings who have been employed for a full 12 months] the higher of:- (i) your same month’s earnings from the previous tax year; or, (ii) your average monthly earnings from the 2019-20 tax year.

[for employees with irregular earnings who have been employed for less than 12 months] an average of your monthly earnings since you started.

[and whichever option is chosen, add…] When calculating your salary or average earnings, we only include sums due under your contract (eg basic salary, contractual commission and fees) and monetary benefits in kind (such as contractual allowances). It does not include non-contractual earnings, such as tips, or the value of non-monetary benefits in kind (such as health insurance).

4. Deductions for tax, national insurance contributions, [add any other deductions] and pension will continue to be made from your salary.

5. OPTIONAL: You agree to defer the salary set out at paragraph 2 until HMRC’s online portal enabling us to claim your salary under the government’s Coronavirus Job Retention Scheme has opened, and we have had a reasonable opportunity to put in a claim and receive the funds. However, if we decide to cancel your Furlough and ask you back to work before you have been on Furlough for three weeks, we will pay you the monies otherwise due under this agreement immediately.

6. If, for any reason, HMRC decides not to pay us (or decides to reclaim) any monies in connection with your salary, we are entitled to not to pay it to, or to reclaim it from, you (including by making deductions from future salary payments to you), and no further payments shall be due.

7. Your Furlough shall end on the earliest of the following events:-

(a) the government’s Coronavirus Job Retention Scheme ending

(b) either you or us ceasing to be eligible for funding under that scheme; or,

(c) us deciding to cancel your Furlough and asking you to return to work, which we [will not give you less than XXX days’ notice for] [can do at any time and with immediate effect].

8. If we cancel your Furlough and ask you to return to work, we may subsequently ask and require you to go back on Furlough. If we do, it will be on the same terms as set out in this Agreement unless we sign a different agreement with you.

9. CHOOSE ONE:

When on Furlough, you may not do any work for any other employer or organisation,

whether as an employee or on a self-employed basis, unless you already did that work before going on Furlough.

OR If you work for any other organisation during your Furlough, other than one you already worked for before going on Furlough, you must tell us. There is a risk this means HMRC will reclaim your salary payments and, if they do, you will have to repay it to us as set out at paragraph 6.

OR You are free to work for any other organisation, or as a self-employed person, during your Furlough.

10. OPTIONAL – IF THE EMPLOYEE IS IN A PROBATIONARY PERIOD: Your probationary period is extended by the length of time you are on Furlough.

11. OPTIONAL – THIS ADDS A LAY-OFF CLAUSE IF ONE DID NOT PREVIOUSLY EXIST: When your Furlough ends, while we will always endeavour to provide you with work, in the event of insufficient work being available you agree we are entitled to place you on short time or lay you off without any pay except for statutory guarantee payments.

12. OPTIONAL – see note 2: During your Furlough, you are required and agree to take every third week as annual leave (unless you have exhausted your annual leave entitlement).

13. OPTIONAL: During your Furlough, we may require you to undertake [the following] training (which we will pay for) [insert training if known].

14. If HMRC or the government issues further legislation or guidance on the Coronavirus Job Retention Scheme, we may make reasonable consequential amendments to this agreement, which shall take effect retrospectively if appropriate, by giving you 24 hours’ notice of those changes in writing.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_ (Employer)

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_ (Employee)

Note 1: Employers should be cautious about agreeing to rehire somebody in order to give them access to the Coronavirus Job Retention Scheme. Although it is permitted under the Scheme (assuming they were on the payroll as of 28 February 2020], it carries the following

risks:-

• their continuity of employment will continue, potentially tipping them over two years (leading to unfair dismissal and redundancy rights) or giving them an additional year for statutory redundancy pay purposes, basic award or notice pay rights

• their effective date of termination will change to 31 May 2020, meaning that they then have until 31 August to contact Acas to initiate Early Conciliation for most types of claims

• you might face an unfair selection for redundancy claim, where one did not previously exist, if you make them redundant a second time when your financial circumstances have changed or when the consultation requirements might differ

• you might find you are subsequently contemplating making 20+ people redundant within a period of 90 days, leading to collective consultation obligations.

Note 2: It is unclear from the Coronavirus Job Retention Scheme whether employees can be required to take annual leave during furlough, or whether annual leave breaks a furlough period (and might lead to non-recovery of funds from HMRC). My view is that is it permissible to take annual leave whilst on furlough, but many lawyers take the opposite view. Including this clause allows an employer to deplete an employee’s annual leave allowance, but there is some risk until the scheme is clarified. During the first 5.6 weeks of annual leave, normal remuneration (not 80% remuneration) should be paid, meaning the employer will need to ‘top up’ the payment