MARS SETTLEMENT AGREEMENT

**WITHOUT PREJUDICE**

**& SUBJECT TO CONTRACT**

**[NAME OF EMPLOYER]**

**and**

**[NAME OF EMPLOYEE]**

**SETTLEMENT AGREEMENT**

**STRICTLY CONFIDENTIAL**

**THIS AGREEMENT** is made on the day of 201[0]

**BETWEEN:**

[**Name of Employer**] of [**insert address**](“**the Employer**”)

and

[**Name of Employee**] of [**insert address**] (“**the Employee**”)

**WHEREAS**

(A) The Employee’s employment with the Employer [**shall terminate/terminated**] on [**insert date**] in accordance with MARS. Pursuant to the payment rate model set out in MARS, and subject to the terms of this agreement, the Employee is entitled to a sum equivalent to [**insert**] months’ salary by way of Severance Payment.

(B) This Agreement is in full and final settlement of all or any claims the Employee has and/or may have against the Employer, its directors, officers, agents and/or employees arising out of or in connection with the employment and/or its termination whether or not these claims are or could be in the contemplation of the parties at the time of signing this Agreement.

(C) The parties intend this Agreement to be an effective waiver of any such claims and agree that it constitutes a valid settlement agreement under section 203 of the Employment Rights Act 1996.

**IT IS AGREED** by the Parties as follows:

# DEFINITIONS

In this Agreement the following terms shall have the following meanings:

## “**Adviser**” means [**insert name**] of [**insert details of law firm or details of union if relevant adviser is from a union**] of [**insert address**];

##  *“Confidential information”* means any information of a confidential or secret nature relating to any and all aspects of the business of the Employer including but not limited to personnel data, financial information, budgets, reports, business plans, strategies, know-how, data, research, processes, procedures and programs, client/customer information, patient information, pricing, sales and marketing plans and details of past or proposed transactions whether or not written or computer generated or expressed in material form;

## “**Contract of Employment**” means the contract of employment between the Employer and the Employee;

## **“EXPIRY DATE”** means the final day of the period of service for which the Employee has been compensated by the Severance Payment (as measured in equivalent months’/part-months’ salary);

## **“MARS”** means the Employer’s Mutually Agreed Resignation Scheme established pursuant to section 20 of Agenda for Change (Pay Circular (AforC) 3/2010)

## **“NEW APPOINTMENT”** means any NHS employment that the Employee commences within 6 months of the Termination Date;

## **“NHS”** means the National Health Service in England;

## “**person**” includes references to an individual, company, firm or association;

## **“**NHS TDA means the NHS Trust Development Authority;

## “**Termination Date**” means [**insert date**].

# TERMINATION OF EMPLOYMENT

## The Employee’s employment with the Employer [**shall terminate/terminated**] on the Termination Date.

## Until the Termination Date the Contract of Employment [**shall remain/has remained**] in full force and effect and the Employee [**shall act/has acted**] in accordance with its terms.

## With effect from the Termination Date the Employee shall not hold himself out as being an employee of the Employer or having any continuing connection with the Employer.

## The Employer shall pay to the Employee his contractual salary (subject to prior deductions for income tax and national insurance contributions) until the Termination Date following which and save as set out in this Agreement the Employee shall have no further claim to any further payment or benefit in connection with his employment.

# SEVERANCE payment

## Subject to the Employee acting in accordance with this Agreement and the Employer receiving prior approval by the NHS TDA ,without any admission of liability the Employer shall pay to the Employee the sum of [£**insert amount**] (“**the Severance Payment**”) [**by cheque/electronic transfer**] within [**21**] days following the later of the Termination Date, or receipt by the Employer of a copy of this Agreement signed by the Employee, or receipt by the Employer of the certificate set out at Schedule 1 signed by the Adviser.

## The Severance Payment shall be paid to the Employee subject to prior deductions in respect of amounts which remain outstanding and due from the Employee to the Employer on the Termination Date.

# taxation of the severance payment

## The parties agree that the Severance Payment is compensation for loss of employment and not a contractual payment of any kind and therefore [**EITHER:** **shall be paid to the Employee without prior deductions for tax as the parties consider that the provisions of Section 403 of the Income Tax (Earnings and Pensions) Act 2003 apply (although the Employer gives no warranty to this effect)*.* / OR: the first £30,000 of the Severance Payment shall be paid to the Employee without prior deductions for tax as the parties consider that the provisions of Section 403 of the Income Tax (Earnings and Pensions) Act 2003 apply (although the Employer gives no warranty to this effect). The balance of the Severance Payment shall be paid subject to prior deductions for income tax at the appropriate rate.**] *(Drafting note: provisions in brackets subject to whether Severance Payment is under or over £30,000. If under, first provision to be used and remainder deleted; if over, first provision to be deleted and second used)*

## The Employee shall be wholly liable for any amounts assessed as due in respect of any income tax, national insurance contributions or other deductions including related interest, penalties, costs or expenses payable on the Severance Payment [**(if any, of which the parties believe, in accordance with Part 6 Chapter 3 of the Income Tax (Earnings and Pensions) Act 2003, there to be none**] (*Drafting note: provision in square brackets applicable if Severance Payment under £30,000)* save for employers national insurance contributions and shall indemnify and keep indemnified the Employer in respect of any liability that it may incur for such amounts, provided that the Employer shall give the Employee reasonable opportunity to contest the amounts said to be due provided that nothing in this clause shall prevent the Employer from complying with its legal obligations with regard to HM Revenue and Customs or any other authority.

# FULL AND FINAL SETTLEMENT

## In reliance on the warranties given by the Employee in this Agreement and without any admission of liability the Employer shall pay to the Employee the sums under this Agreement in full and final settlement of all or any claims or other rights of action or costs or expenses (whether under the laws of England and Wales, European Union or any other law) that the Employee has or may in the future have against the Employer, its directors, officers, agents or employees arising out of or in connection with the Employee’s employment and/or its termination whether under common law, contract, statute or otherwise including and limited to claims for [**brief** **description of the claim, typically for MARS likely to be: constructive and/or unfair dismissal under the Employment Rights Act 1996; a contractual or statutory right to notice of termination of employment or payment in lieu thereof; a statutory redundancy payment under the Employment Rights Act 1996;** **a contractual redundancy payment; breach of contract, including without limitation wrongful dismissal;]**.

## In reliance on the warranties given by the Employee in this Agreement and without any admission of liability it is further the intention of the parties that the Employer shall pay to the Employee the sums under this Agreement in full and final settlement of all or any claims or other rights of action or costs or expenses (whether under the laws of England and Wales, European Union or any other law) that the Employee has or may in the future have against the Employer, its directors, officers, agents or employees arising out of or in connection with the Employee’s employment and/or its termination whether under common law, contract, statute or otherwise including without limitation:

1. any claim to wages under Part II Employment Rights Act 1996 (“ERA”) or for damages for breach of contract or a notice payment or for any other payment due as compensation for loss of office;
2. any claim for unfair dismissal under Part X ERA;
3. any claim for a redundancy payment under Part XI ERA;
4. any claim for detriment under section 47B ERA;
5. any other claim under the ERA including, but not limited to, any other claim for detriment under Part V ERA;
6. any claim brought under sections 68A, 87, 137, 145A, 145B, 146, 168, 168B, 169, 170, 174 and 192 of the Trade Union and Labour Regulations (Consolidation) Act 1992;
7. any claim in relation to working time and holiday pay arising under regulations 14, 16 or 30 of the Working Time Regulations 1996;
8. any claim for discrimination (whether direct or indirect), harassment or victimisation on grounds of or because of race, colour, nationality or ethnic or national origins brought under section 54 Race Relations Act 1976 or under 120 Equality Act 2010;
9. any claim for discrimination (whether direct or indirect), harassment or victimisation on grounds of or because of religion or belief brought under regulation 28 Employment Equality (Religion or Belief) Regulations 2003 or under section 120 Equality Action 2010;
10. any claim for discrimination (whether direct or indirect), harassment or victimisation on grounds of or because of sex, gender reassignment, pregnancy and maternity or marriage and civil partnership brought under section 63 Sec Discrimination Act 1975 or under section 120 Equality Act 2010;
11. any claim brought under section 2 Equal Pay Act 1970 or for equality of terms under section 120 or 127 Equality Act 2010;
12. any claim for discrimination (whether direct or indirect), harassment or victimisation on grounds of or because of sexual orientation brought under regulation 28 Employment Equality (Sexual Orientation) Regulations 2003 or under section 120 Equality Act 2010;
13. any claim for discrimination (whether direct or indirect), harassment or victimisation on grounds of or because of age brought under regulation 36 Employment Equality (Age) Regulations 2006 or section 120 Equality Act 2010;
14. any claim for discrimination (including direct, indirect and in respect of failure to make adjustments), harassment or victimisation relating to, arising from or because of disability brought under section 17A Disability Discrimination Act 1995 or section 120 Equality Act 2010;
15. any claim for less favourable treatment or detriment brought under regulation 8 Part-time workers (Prevention of Less Favourable Treatment) Regulations 2000;
16. any claim for less favourable treatment or detriment brought under regulation 7 Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002;
17. any claim in relation to the obligations to elect appropriate representatives or any entitlement to compensation, under the Transfer of Undertakings (Protection of Employment) Regulations 2006;
18. any claim under sections 11, 18, 19D, 23 and 24 of the National Minimum Wage Act 1998;
19. any claim under section 11 Employment Relations Act 1999;
20. any claim under the Equality Act 2010;
21. any claim in civil proceedings under section 3 of the Protection from Harassment Act 1997 (the “Act”) including for the avoidance of doubt any claims that the Employer is vicariously liable for the actual or apprehended breach by a person under section 1 of the Act;
22. for compensation for personal injury arising out of any claim for discrimination of any kind;
23. any claims or appeals for Temporary Injury Allowance or Permanent Injury Benefit under the terms of the NHS Injury Benefits Scheme or under any successor provisions

## The Employee further agrees to accept the sums payable under this Agreement in full and final settlement of all or any other claims which he has or may in the future have against the Employer or its directors, officers, agents or employees, arising out of or in connection with his employment and/or its termination which are not listed in clauses 5.1 or 5.2 but in respect of which the Employment Tribunal has jurisdiction.

## The Employee further agrees that the waiver in clauses 5.1, 5.2 and 5.3 shall have effect in respect of claims that the Employee has or may in the future have whether or not such claims exist or are known to the parties at the time of signing this Agreement and whether or not they could be in the contemplation of the parties at the time of signing this Agreement (including such claims of which the Employee becomes aware after the date of this Agreement in whole or in part as a result of new legislation or the development of common law or equity).

## Clauses 5.1 to 5.4 are without prejudice to any rights that the Employee has in relation to his accrued pension rights if any or any personal injury claims arising out of his employment. [**The Employee is not aware at the date of this agreement of any grounds for bringing a claim of personal injury against the Employer.**].

## In the event that the Employee breaches a term of this Agreement and/or commences any claim arising out of or in connection with the Employee’s employment and/or its termination against the Employer or its directors, officers, agents or employees, whether in the Employment Tribunal, the High Court, the County Court or otherwise (with the exception of claim[s] described at clause 5.5 above), the Employee warrants that he will repay to the Employer on demand the Severance Payment, in full, and that the sum will be recoverable by the Employer as a debt, together with all costs (including legal fees) reasonably incurred by the Employer in recovering the Severance Payment and/or in relation to any claim so issued and that the Employee agrees that the Employer shall be released from any continuing obligation under the Agreement.

## The Employee agrees that except for the payments set out in this Agreement he shall not be eligible to any further sums arising out of or in connection with his employment and/or its termination, including but not limited to bonuses, benefits, payments or awards.

# employee warranties

## The Employee acknowledges and accepts that the Employer in entering this Agreement acts in reliance on the Employee warranties contained in this Agreement and the payment of the Severance Payment is conditional on such warranties being true and accurate. The Employee represents and warrants that:

## the claims and prospective claims referred to at clauses 5.1 to 5.3 amount to the entirety of the claims which he believes he has or may have against the Employer or its directors, officers, agents or employees, whether at the time of entering into this Agreement or in the future arising out of or in connection with his employment and/or its termination;

## he has not commenced any claim and shall not commence any claim or proceedings in relation to those claims or prospective claims referred to at clauses 5.1 and 5.3 whether in the Employment Tribunal, the High Court, the County Court or otherwise;

## he has not commenced and shall not commence any other claim not referred to at clauses 5.1 and 5.3 howsoever arising in the Employment Tribunal, the High Court, the County Court or otherwise against the Employer, its directors, officers, agents or employees which without limitation includes any such claim of which the Employee is unaware at the date of this Agreement and which is not in the contemplation of the parties at the time of signing this Agreement;

## he has withdrawn or will withdraw before the Termination Date:

1. any appeals and/or grievances against the Employer and any of its employees, officers, agents or non-executive directors;
2. any requests made to the Employer under the Data Protection Act 1998;
3. any complaints to an ombudsman or similar body in respect of the Employee’s employment or its termination (including but not limited to any such complaints concerning entitlement to any pensions and/or any other benefits)

## there are no circumstances of which the Employee is aware or ought reasonably to be aware which would amount to a repudiatory breach of contract, of either an implied or express term which would or would have entitled the Employer to terminate the Contract of Employment summarily;

## he has taken independent legal advice from the Adviser and has raised all issues relevant to his employment and/or its termination, which may give rise to a claim against the Employer, its directors, officer, agents or employees and has asked the Adviser to advise on whether he has or may have any claims under clauses 5.1 to 5.3;

## he has received advice from the Adviser about the terms and effect of this Agreement on his ability to pursue any complaint before an Employment Tribunal or court;

## the Adviser is a qualified lawyer or a relevant legal adviser within the meaning of Section 203 (3A) of the Employment Rights Act 1996;

## the Adviser has confirmed that there is in force, and was at the time the advice was received, a policy of insurance or indemnity covering the risk of a claim by the Employee in respect of a loss arising as a consequence of the advice provided by the Adviser; and

## the Adviser shall sign and deliver the certificate at Schedule 1.

# employer’s property

## The Employee warrants that he will account for and return to the Employer on or before the Termination Date all property belonging to the Employer which is or has been in his possession or under his control. For the avoidance of doubt such property includes but is not limited to documents and software, computers, dictating machines, mobile telephones, keys and security passes. Documents and software shall include but not be limited to correspondence, files, papers, reports, minutes, plans, records, surveys, diagrams, computer printouts, floppy discs, manuals, patient/client documentation or any other medium for storing information and shall include copies and originals of such documents and software. The Employee will provide passwords to all these documents and software to the Employer within seven days upon request.

# REPAYMENT

The Employee agrees that if he takes up a New Appointment in the NHS in the first month after the Termination Date, the Severance Payment will be repaid in full. If he takes up a New Appointment in the NHS after the first month but before the Expiry Date then the Employee will repay that part of the Severance Payment that is in respect of the period from the date that he takes up a New Appointment until the Expiry Date. Any repayment of the Severance Payment will be reduced as appropriate to reflect a New Appointment being at a lower grade and to reflect net salary in a New Appointment. The Employer may make provision in its discretion for a schedule of staged repayments of any unexpired element of the Severance Payment, and in exercising that discretion it shall have regard to the amount owed by the Employee under this clause 8. It is a further requirement of this clause 8 that the Employee shall inform the Employer in writing of a New Appointment as soon as possible after he has been offered and has accepted a New Appointment.

# SuBSEQUENT REDUNDANCY PAYMENTS

The Employee agrees that if he becomes entitled in the future to any redundancy payment in respect of any future period of NHS employment, the Severance Payment will be set off against any such redundancy payment, where the period of employment covered by the Severance Payment is taken into account for the purposes of calculating the Employee’s redundancy entitlement. The Employee undertakes to inform any future NHS employer that he has received the Severance Payment and the Employee understands consequently that any possible overpayment following a redundancy settlement will be recovered.

# SETTLEMENT AGREEMENT

## The parties agree that the conditions regulating settlement agreements contained in section 77(4A) of the Sex Discrimination Act 1975 (in relation to claims under that Act and the Equal Pay Act 1970), section 72(4A) of the Race Relations Act 1976, section 288(2B) of the Trade Union and Labour Relations (Consolidation) Act 1992, paragraph 2 of schedule 3A of the Disability Discrimination Act 1995, 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 etc. 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, paragraph 2(2) of schedule 4 of the Employment Equality (Sexual Orientation) Regulations 2003, paragraph 2(2) of schedule 4 of the Employment Equality (Religion or Belief) Regulations 2003, regulation 40(4) of the Information and Consultation of Employees Regulations 2004, paragraph 12 of the schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, paragraph 2(2) of schedule 5 of the Employment Equality (Age) Regulations 2006, section 147 of the Equality Act 2010, section 58 of the Pensions Act 2008 and any other relevant legislation are intended to be and have been satisfied by the terms of this Agreement.

# confidentiality

In consideration of the Employer entering into and complying with its obligations under this Agreement, the Employee warrants that:

1. In accordance with [his/her] common law duties and [his/her] contractual duties under the Contract of Employment [he/she] will not disclose to any person (except as required by law) any Confidential Information concerning any matter relating to the business or affairs of the Employer or its directors, officers, agents, employees or patients which Confidential Information has been acquired by the Employee in the course of [his/her] employment unless such information comes into the public domain otherwise than by a breach of confidence on the part of the Employee; and
2. That [he/she] will not make or publish any untrue, disparaging, misleading or derogatory statements about matters concerning the Employer, its directors, officers or employees and/or take part in any conduct conducive or potentially conducive to bringing the Employer, its directors, officers, agents or employees into disrepute.
3. The Employer shall use its reasonable endeavours to ensure that its directors, officers, agents and employees shall not divulge the fact of, negotiation, nature and/or terms of the Agreement except to its professional advisers in connection with the conclusion of this Agreement or where required by any competent authority or Court of Law or HM Revenue & Customs or as otherwise required by law.
4. For the avoidance of doubt, nothing in this Clause specifically and nothing in this Agreement generally, shall prejudice any rights that the Employee has or may have under the Public Interest Disclosure Act 1998 and/or any obligations that the Employee has or may have to raise concerns about patient safety and care with regulatory or other appropriate statutory bodies pursuant to [his/her] professional and ethical obligations including those obligations set out in guidance issued by regulatory or other appropriate statutory bodies from time to time.
5. With regard to the confidentiality obligations generally on either party in this Clause nothing in those obligations shall prevent this Agreement from being subject to scrutiny by a statutory body tasked with the scrutiny of public bodies, such as the National Audit Office or the Public Accounts Committee.

# USE OF DATA

The Employee acknowledges and agrees that information relating to the Severance Payment will be noted on the NHS Electronic Staff Record system and submitted to the NHS TDA. The Employee further acknowledges and agrees that such information may be used to track whether or not the Employee is re-employed by the NHS within 6 months of the Termination Date and that the NHS TDA may use such data in anonymised form to evaluate MARS.

# LEGAL EXPENSES

## The Employer shall pay the Employee’s reasonable legal expenses **[up to £400 inclusive of VAT]** as a contribution towards the Employee’s cost of obtaining independent legal advice, following receipt by the Employer of an invoice for **[up to £400 inclusive of VAT]** from the Adviser addressed to the Employee but marked payable by the Employer. The Employee warrants that the legal costs referred to in this clause 13 have been incurred only in connection with the termination of his employment and accordingly the parties consider that HMRC Extra-Statutory Concession A81 applies. (*Drafting note: £400 plus VAT is the maximum contribution under MARS, and may be less.*)

# WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

## The parties agree that this Agreement shall be deemed without prejudice and subject to contract until it has been executed and dated by the parties upon which time it shall become open and binding.

# entire agreement

## The parties agree that this Agreement including the Schedules attached constitutes the entire Agreement between the parties and supersedes any previous agreement or pre-contractual statement.

## The parties agree that the clauses of this Agreement are severable and if any court finds that any clause is unenforceable, then such unenforceability shall not affect the enforceability of the remaining clauses.

# COUNTER PARTS

## This Agreement may be executed in counterparts, which when together shall constitute one and the same instrument.

# GOVERNING LAW AND JURISDICTION

## This Agreement shall be governed by and construed in accordance with the law of England and Wales.

## Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

**Signed by**

**[Employee]**

**Dated**

**Signed by**

**[For and on behalf of the Employer]**

**Dated**

**SCHEDULE 1**

**RELEVANT INDEPENDENT ADVISER’S CERTIFICATE**

I hereby certify as follows:

1. I am a relevant independent adviser within the meaning of Section 203 (3A) of the Employment Rights Act 1996.

2. I have advised the Employee on the terms and effect of the settlement agreement between the Employer and him and in particular on its effect on his ability to pursue his rights before an Employment Tribunal.

3. I am not acting (and have not acted) in relation to this matter for the Employer or any associated employer.

4. There is in force a policy of insurance in the form of professional indemnity insurance covering the risk of a claim by the Employee in respect of loss arising in consequence of the advice I have given him.

5. The conditions regarding settlement agreements and settlement contracts under the Sex Discrimination Act 1975, the Race Relations Act 1976, the Trade Union and Labour Relations (Consolidation) Act 1992, the Disability Discrimination Act 1995, the Employment Rights Act 1996, the Working Time Regulations 1998, the National Minimum Wage Act 1998, the Transnational Information and Consultation etc Regulations 1999, the Part-time workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Maternity and Parental Leave (Amendment) Regulations 2001, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Information and Consultation of Employee Regulations 2004, the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, the Pensions Act 2008 and any other relevant legislation have been complied with.

Signed .............................................................................Date:

Address: