Dear [Employee Name]

**FLEXIBLE FURLOUGH**

We are writing to you regarding the continuing impact of the Covid-19 pandemic on our business. [*Insert brief details.*]

The Government has extended the Coronavirus Job Retention Scheme (CJRS) until 30 April 2021. We refer to this as the ‘Extended CJRS’.

Employees on furlough under the Extended CJRS can work on a part-time basis and receive pay at their normal contractual rate for the hours that they work (their ‘Furlough Working Hours’), plus ‘Furlough Pay’ in accordance with the terms of the Extended CJRS for the portion of their usual hours that they are not working (their ‘Furloughed Hours’). This is known as ‘Flexible Furlough’.

We wish to agree with you that you will be placed onto Flexible Furlough with effect from [DATE].

*NOTE: Furlough agreements must be in place before the start of the employee’s furlough period (but may be varied during the furlough period).*

[*WHERE YOU ARE PART WAY THROUGH A REDUNDANCY CONSULTATION PROCESS THAT AFFECTS THE EMPLOYEE* *AND YOU NEED TO CONTINUE WITH IT:* Please note that, although we are placing you on Flexible Furlough, we will continue to consult with you about your possible redundancy. We will, of course take into account evolving circumstances and discuss these with [you/your representatives] during the consultation process. One possible outcome of the consultation process may be that we take steps to implement any necessary redundancy dismissal at the appropriate time, including while the Extended CJRS is in operation.]

[*WHERE YOU ARE PART WAY THROUGH A REDUNDANCY CONSULTATION PROCESS THAT AFFECTS THE EMPLOYEE BUT YOU HAVE DECIDED THAT YOU DO NOT NEED TO CONTINUE WITH IT FOR THE TIME BEING IN LIGHT OF THE EXTENDED CJRS:* Please note that, in view of the availability of the Extended CJRS, we have decided to pause our current redundancy process. However, we may need to restart this process at some stage, and take steps to implement any necessary redundancy dismissals at the appropriate time, including while the Extended CJRS is in operation, taking into account evolving circumstances.]

*NOTE: The Government guidance on the Extended CJRS states that an employer must follow the normal rules on redundancies if it needs to make a furloughed employee redundant. Our view is that it remains possible to claim for a furloughed employee during the redundancy consultation process up to the point that you give notice of dismissal. However, from 1 December 2020, it is no longer possible to claim for a furloughed employee who is serving their notice period.*

Your usual hours are [[NUMBER] per [day/week/month] *OR insert details of how usual hours are calculated*]. [*EITHER:* During your Flexible Furlough, your Furlough Working Hours will be [NUMBER] hours per [day/week/month], with the remaining [NUMBER] hours per [day/week/month] constituting your Furloughed Hours.][*OR, IF YOU DO NOT KNOW HOW MANY HOURS YOU WILL NEED THE EMPLOYEE TO WORK:* During your Flexible Furlough, we will not require you to work for your full usual hours each [day/week/month]. Any hours that we require you to work will be your Furlough Working Hours, with the remainder of your usual working hours in that [day/week/month] constituting your Furloughed Hours.]

*NOTE: In order to claim under the Extended CJRS for an employee on flexible furlough, you will need to calculate the employee’s “usual hours” and their Furloughed Hours, with funding under the Extended CJRS only available in respect of the Furloughed Hours.*

*How you work out your employee’s usual hours will depend on whether the employee works fixed or variable hours and may involve some complicated calculations. For more information, see Question 23 – How should you work out usual hours and furloughed hours for an employee on flexible furlough? – of the FAQs on ‘Furlough under the extension to the Coronavirus Job Retention Scheme (Extended CJRS)’ on our website.*

[*EITHER:* You will be required to work your Furlough Working Hours across the following days and times: [*INSERT DETAILS OF WORKING PATTERN (e.g. Monday to Friday, 8am to 12pm / or Mondays and Tuesdays, 8am to 6pm)*].][*OR, IF YOU CANNOT SPECIFY THE PRECISE WORKING PATTERN IN THIS LETTER, INSERT DETAILS OF HOW YOU WILL INFORM THE EMPLOYEE OF WHEN THEY ARE REQUIRED TO WORK (e.g. [We anticipate that you will normally be required to work 2 days per week, but some weeks the number of days may be higher.] [You will work your Furlough Working Hours on an ‘as required’ basis.] Your line manager will provide you with details of your shift times by email at least one week in advance.)*]

[*IF YOU HAVE SPECIFIED A NUMBER AND/OR PATTERN OF FURLOUGH WORKING HOURS:* Should the number or pattern of Furlough Working Hours we require you to work change, we will confirm your amended Furlough Working Hours and Furloughed Hours and working pattern in writing. We will aim to give you at least [NUMBER] days’ notice of any such change.]

*Ideally, you should be as precise as possible about the number and pattern of hours that you will require employees to work while on flexible furlough. However, we have included options for where you cannot specify a set number of hours and/or working pattern upfront in this letter.*

*Where you do specify a number and pattern of working hours, we have provided above that the Company will notify the employee of any change in the number or pattern of their Furlough Working Hours. However, strictly speaking, you should seek to agree any such change with the employee rather than imposing it.*

We will pay you [*INSERT DETAILS OF EMPLOYEE’S NORMAL PAY (e.g. hourly rate, shift allowances, etc.)*] for your Furlough Working Hours, calculated in accordance with your terms and conditions of employment.

For your Furloughed Hours, your normal entitlement to pay under your terms and conditions of employment will be suspended. Instead, we will pay you Furlough Pay, calculated in accordance with the terms of the Extended CJRS as 80% of your pay for your Furloughed Hours, up to the applicable cap under the Extended CJRS for those hours.

*NOTE: Employees are entitled to receive 80% of their pay for their Furloughed Hours, up to the cap set under the Extended CJRS. For an employee who is on full furlough (i.e. who does not carry out any work for their employer while furloughed), that cap remains set at £2,500 per month. However, the cap is reduced for employees who are on flexible furlough on a pro rata basis depending on the proportion of their usual hours that they work.*

*This letter assumes that the employer will pay 80% of the employee’s pay for their Furloughed Hours subject to the applicable cap, although it is open to employers to top up employees’ Furlough Pay beyond the cap or up to 100% of normal pay if they wish to do so. If you intend to top up pay for Furloughed Hours, you will need to amend the wording of this letter accordingly.*

*Under the terms of the Extended CJRS, the employer needs only to cover National Insurance and employer pension contributions for hours not worked, with the grant under the Extended CJRS covering the full amount of Furlough Pay (i.e. the 80% of the employee’s pay for their Furloughed Hours, up to the applicable cap). On 17 December 2020, the Government announced that it would maintain the level of its contributions towards employees’ furlough pay (at 80% of pay for Furloughed Hours, up to the applicable cap) for the duration of the scheme.*

Your Furlough Pay and your pay for your Furlough Working Hours will be subject to deductions for tax and employee national insurance contributions [and employee pension contributions]. As far as practicable, payments will be made on your normal pay days.

During Flexible Furlough, your continuity of employment will continue.

[*IF YOU OPERATE A COMPANY SICK PAY SCHEME:* Any company sick pay payable in respect of sickness during Flexible Furlough will be based on the adjusted rate of pay to which you are entitled during Flexible Furlough.]

[*EITHER:* Your other terms and conditions of employment will remain the same during the period of Flexible Furlough.] [*OR:* Your other terms and conditions of employment will remain the same during the period of Flexible Furlough, save for the following changes: [*insert details of the changes that you wish to make*]*.*]

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

1. the Company needing you to return to work on your normal contractual hours (whether or not working from home) . [You will return on [DATE]] [*OR:* We will try to give you at least [NUMBER] days’ notice of when we need you to return]; or

2. the Company needing you to move onto full furlough, where you are not required to do any work. If we need to move you onto full furlough, we will try to give you at least [NUMBER] days’ notice of this and will discuss the arrangements with you and confirm them in writing; or

3. the Extended CJRS coming to an end (currently anticipated to be on 30 April 2021); or

4. the termination of your employment for any reason, whether by you or by the Company (including for redundancy).

*NOTE: The guidance and the Treasury Direction provide that, from 1 December 2020, employers cannot claim for a furloughed employee who is serving their contractual or statutory notice period (whether relating to dismissal (for any reason), resignation, or retirement). Note that in the vast majority of cases, employees whose employment ends following a period of furlough will be entitled to full pay for the notice period. However, the law in this area is complicated. For more information about the status of furlough arrangements during an employee’s notice period and what you need to pay an employee who has been given, or who has given, notice of termination, see Question 31 – What is the position in relation to notice periods from 1 December if a furloughed employee’s employment is terminating? – of the FAQs on ‘Furlough under the extension to the Coronavirus Job Retention Scheme (Extended CJRS)’ on our website.*

While you are on Flexible Furlough, we will not provide you with any work during your Furloughed Hours and you may not do any work for us or for any organisation linked or associated with us during your Furloughed Hours. However, we may require you to undertake training during your Furloughed Hours. You can also undertake volunteer work during your Furloughed Hours, although you should take care to follow Government guidance on social distancing and self-isolation.

If you currently have a second job with another employer, you may continue with that job, provided that it does not prevent you from being able to work for us during your Furlough Working Hours.

You may not undertake any new paid work for any other organisation, or on your own account, without our permission. If you wish to undertake other paid work during your Flexible Furlough, please contact [your line manager / HR] to seek our permission. Please note that, if we do agree for you to undertake other paid work, you will still need to be able to work for us during your Furlough Working Hours, complete any training that we may require you to carry out during your Furloughed Hours and to return to work for us on the basis of your normal contractual hours (potentially at short notice) if we require you to do so.

*NOTE: The guidance on the Extended CJRS indicates that employees may undertake paid work for another organisation where this is permitted under their employment contract and that this won’t affect your ability to claim in respect of them.*

*We have therefore suggested that employees who have an existing second job may continue with this but that employees are not permitted to undertake new paid work for another organisation or on their own account during flexible furlough without permission. We have also reminded employees that if they do undertake other paid work they still need to work for the Company during their Furlough Working Hours, be able to complete any required training during their Furloughed Hours and be available to return to work should you require them to do so.*

*Also note that if you require employees to complete training during their Furloughed Hours, then you must pay them at least the NLW/NMW for the time spent training, even if this is more than the percentage of their wage that will be subsidised by the Government under the Extended CJRS.*

Please note that we may ask you to take some of your holiday entitlement during your Flexible Furlough. We will write to you about this separately if applicable.

It is essential that we have a record of your agreement to the terms in this letter as an indication of your agreement by [DATE] in order to place you on Flexible Furlough so that we are able to claim in respect of you under the Extended CJRS. Please confirm your agreement by signing and returning this letter to [*contact details*].

*NOTE: Although it would be preferable for the company to have a copy of the letter signed by the employee as a record of acceptance, if the letter is sent to employees by email, they may not have access to printing and scanning facilities that would enable them to provide this. Accordingly, you could as an alternative provide for employees to confirm their agreement by replying to the Company’s email using a set form of words, such as “I confirm my agreement to the variation of my terms and conditions of employment to place me on Flexible Furlough as described in the letter from the company dated [DATE]”, or using voting buttons.*

Kind regards

[Name, position]

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I confirm my agreement to the variation of my terms and conditions of employment as stated in this letter.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_

(Employee)