**Without Prejudice Subject to Contract COT3**

**Name of Employee [Mary Smith]** who holds the following job role/s **[(job A)Teaching Assistant, (job B) After School Club Assistant and (job C) Midday Supervisor]** referred to as Employee throughout this Agreement and the London Borough of Waltham Forest (the Employer), together the Parties, have entered into this Agreement through the conciliation of the Advisory Conciliation and Arbitration Service (ACAS), in accordance with sections 18, 19 and 19A of the Employment Tribunals Act 1996 and have agreed as follows:

1. It is the Parties express intention by this COT3 to settle any claims wherever brought relating specifically to payment of holiday pay for the period from January 2016 to March 2021, arising in relation to the failure to calculate holiday pay in accordance with the terms of the Green Book during the Employee’s employment.
2. As part of this Agreement, the Employer recognises that there will be term time workers who have worked overtime, in addition to their normal contractual hours. In recognition of this and where there has been a failure to correctly calculate holiday pay or a failure to factor in overtime pay in holiday pay calculations the Employer will agree to pay the Employee the difference. This payment is an additional payment made to the Employee in addition to the payment referred to at clause 1 of this Agreement. The Employer agrees that those Employees affected will receive a backdated payment at 1st April 2021 pay rates for the period 1st April 2018 to 31st March 2022.
3. The terms of this COT3 are legally binding between them, having acted of their own free will and without duress.
4. The Respondent shall, without admission of liability, pay to the Employee a settlement sum which forms part of this Agreement. Following negotiations with the recognised Trade Unions, a Collective Agreement has been reached that Employees that have worked for the Employer will receive a maximum payment of compensation of 5 years and 3 months to reflect the backpay of holiday pay not paid correctly for applicable years from January 2016 to March 2021, this sum will be calculated to reflect actual length of service. The sum is to be calculated using pay rates as at April 2020.
5. As applicable a separate payment will be paid to the Employee of £50 in respect of each complete year of continuous service of actively participating in the Local Government Pension Scheme (LGPS) in the period prior to March 2014 to reflect potential impact under the previous and now closed final salary pension scheme arrangements under the LGPS prior to April 2014. This payment will be paid to current eligible staff who were actively participating in or contributing to the LGPS prior to April 2014 for service applicable to their employment with the London Borough of Waltham Forest.
6. For the avoidance of any doubt, the Employer’s annual leave year commences from 1st April through to 31st March the following year.
7. The Employer recognises that there will be some Employees who have multiple employment contracts with the Employer for different jobs. Where an Employee is a member of the Local Government Pension Scheme then the payments at clause 8 (c) and (d) will only be paid once, despite the Employee having multiple employment contracts. In relation to payments at clauses 8 (a)(b)(e) and (f), where applicable will be paid per contract.
8. The Employee will receive a total sum of £[insert amount] and this sum compromises of the following breakdown:
9. Job A £{insert amount}, job B £{insert amount} and job C £{insert amount} in respect of settlement of any liability relating to the failure to correctly calculate holiday pay in accordance with Green Book terms, this payment which will be subject to deductions for tax and National Insurance, as applicable. This payment will not be liable for pensionable contributions.
10. The Employer recognises that the Employee and the Employer may not have paid the correct pension contribution due to the failure to pay holiday pay correctly during the period from 1st January 2016 to 31st March 2021 and therefore as compensation for any potential pension loss suffered the Council will increase the compensation to employees who were active members of the Pension scheme by 6.8%. This is calculated as 6.8% of the offer set out at clause 8(a). The Employee will receive £ {insert amount] which represents pension loss. This payment will be subject to deductions for tax and National Insurance, as applicable. This payment will not be liable for pensionable contributions. For the avoidance of any doubt, this is an additional payment, separate to the payment at clause 8(a).
11. £{insert amount} in respect of compensation for any pension loss for the period prior to 2014 which will be subject to deductions for tax and National Insurance, as applicable. This payment will not be liable for pensionable contributions
12. £(insert amount) as a gesture of goodwill paid to the Employee to recognise the length of time it has taken by the Employer to process offers and reach a final Agreement. This payment will be subject to tax and national insurance contributions. This payment will not be pensionable.

**Overtime Hours Only**

1. The Employer agrees to pay an additional amount of [insert amount] which represents the holiday pay that the Employee should have received for having undertaken overtime during the period 1st April 2018 to 31st March 2022. This payment has been calculated at 1st April 2021 pay rates. This payment is subject to tax, national insurance contributions and is not pensionable. The Employer accepts that it is possible some Employees have been paid holiday pay on overtime hours, but this may not have been calculated correctly and in this situation the Employer will ensure the Employee is not disadvantaged and it is this difference in pay which will be paid to the Employee.
2. The Employer will also pay [insert amount] which represents compensation of 6.8% for pension loss for the period 1st April 2018 to 31st March 2022, this payment only applies where there has been a failure to properly calculate or take into account overtime on the holiday pay calculation. This is calculated as 6.8% of the offer set out at clause 8(e) of this Agreement. This payment will be subject to deductions for tax and National Insurance, as applicable. This payment will not be liable for pensionable contributions

9. The payments referred to at clause 8 will be made after being notified by ACAS that this Agreement is legally binding and will be paid within the next available payroll date.

1. Only Employees who were members of the Local Government Pension Scheme will receive the pension loss payments referred to at clause 7 of this Agreement.

11. The payments referred to at clause 8 are in full and final settlement of the following:

1. all and any claims relating to holiday pay for underpaid holiday pay that may have accrued from January 2016 to March 2016 and annual leave years 2016/17 to 2020/21 inclusive which the Employee could have against the Respondent under the Working Time Regulations 1998, Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, Employment Rights Act 1996, Equality Act 2010 and for any claims relating to accrued pension loss from January 2016 to 31st March 2021.
2. In full and final settlement of all holiday pay claims relating to overtime for the period 1.4.18 to 31.3.22, including pension loss claims.

12. The Employee and the Respondent shall keep the terms of this settlement confidential except where disclosure is to HM Revenue and Customs and / or the government in relation to those in receipt of statutory benefits, as required by law or, where necessary and appropriate, to their legal or professional advisers (including trade union officials) or immediate family (provided that they agree to keep the information confidential).

13. The Employee and Respondent will continue to comply with their obligations (both express and implied) under their contract of employment

14. The Employee will not be prevented for making a protected disclosure under Part IVA of the Employment Rights Act 1996, making a disclosure to any regulator regarding any malpractice, reporting a criminal offence to any law enforcement agency or assisting with a criminal investigation of prosecution.

To be agreed by Employee via online means provided by ACAS

Signed by Employee:

Dated:

Signed by Respondent:

Mark Hynes, Director of Governance and Law

Dated: