Model Open-ended employment contract

*This document is based on **BNO's Model Open ended Employment Contract** and is featured by BEDA for inspirational purposes.*

*Local conditions, industry practice and legislation might vary in BEDA member states. **BEDA and BNO take no responsibility for the contents.***

The undersigned:

1. ..... (Chamber of Commerce no. …….),
having its registered office at …….in .....],
legally represented by its .....[*position*],
[*Mr/Ms*] ..... ,
referred to below as the 'Employer';

and

2. ..... ,
tax and national insurance number ……, born on ..... ,
residing at …….. in..... ,
referred to below as the 'Employee';

hereby enter into an employment contract subject to the following provisions:

1 Commencement, term and termination

1.1 The Employee will enter the Employer's service on ..... *[date]*.

1.2 This employment contract is open-ended.

1.3 Either of the parties may terminate this employment contract. Notice of termination must be given in writing, effective from the end of a calendar month. The notice period on termination of this employment contract is one month, on the understanding that the Employer must observe the following notice period if the term of employment is longer than five years:

- if the term of employment is longer than five years but shorter than ten years: two months;
- if the term of employment is longer than ten years but shorter than 15 years: three months;
- if the term of employment is longer than 15 years: four months;

2 This employment contract ends by operation of law on the day on which the Employee reaches the state pension age or, if a different retirement age applies to him or her, the age at which he or she becomes entitled to pension. Probationary period

2.1 The first two months of this employment contract are a probationary period.

2.2 During the probationary period both the Employer and the Employee may terminate this employment contract at any time with immediate effect.

3 Position and work

3.1 The Employee will hold the position of .....*[name of position]*.

3.2 The Employee's customary work includes: .....
.....

3.3 The agreed work will (primarily) be performed at ..... *[location]*.
3.4 The Employee must perform the agreed work to the best of his or her ability, focussing on the Employer's interest, and must follow the instructions given by or on behalf of the Employer.
3.5 Where necessary, and insofar as reasonable, the Employee undertakes also to perform work other than that which forms part of his or her customary work.

4 Weekly working hours

4.1 Full-time employment is a minimum of 40 hours a week.
4.2 The days and hours on which the work must be performed are ….....days to …….....days from …..... a.m. until ..... p.m., including half an hour's lunch break.
4.3 Without the Employer's written consent the Employee is not permitted to work from home.
4.4 The Employee is required to work overtime after the customary working hours if that is necessary in the interest of the business, without the Employee being entitled to any extra remuneration.

5 Salary, holiday allowance and pension

5.1 At the start of the employment relationship the Employee's gross monthly salary amounts to …….. *[amount]* on the basis of a 40-hour working week. The salary is paid at the end of each month, after making all statutory deductions and deductions agreed on with the Employee. Breaks are for the Employee's account. Overtime is not paid, unless otherwise agreed with the Employee.
5.2 If the Employee has been employed for a full year on 31 May, the holiday allowance is 8% of the gross salary actually received during the preceding period from 1 June until 31 May. The holiday allowance is paid in the month of May of each year.
5.3 If the Employee has not yet been employed for a full year on 31 May, the holiday allowance consists of a part of the amount stated in paragraph 2 that is proportional to the period of employment until 31 May.
5.4 The Employee *[will/will not]* take part in the pension scheme that applies within the company, administered by ..... *[name of pension fund/insurer]*.

6 Annual days' holiday

6.1 In the case of a 40-hour working week, the Employee is entitled to 24 days' holiday on full pay per calendar year, consisting of 20 statutory and 4 non-statutory days. If the employment commences or ends in the course of a calendar year, the number of days' holiday accrued or to be accrued by the Employee is determined on a pro rata basis.
6.2 The Employee must consult with the Employer in a timely manner on the scheduling of the days' holiday. Days' holiday may be taken only with the Employer's approval.
6.3 Statutory days' holiday that have not been taken lapse on 1 July of the year following that in which the days' holiday were accrued. Non-statutory days' holiday that have not been taken lapse five years after the year in which the days' holiday were accrued.
6.4 Days' holiday accrued during the employment period that have not been taken and have not lapsed entitle the Employee at the end of the employment to a payment in cash equal to the amount of salary over a period equal to the number of days' holiday.
6.5 The Employer will deduct any excess days' holiday taken by the Employee from the final settlement at the end of the employment.

7 Incapacity for work

7.1 In the event of incapacity for work the Employee must:
   a. call in sick to his or her manager before the start of the work, by 10 a.m. at the latest;
   b. inform the Employer about the expected duration of the incapacity for work;
   c. inform the Employer about his or her current place of abode; and
   d. make every effort to recover and reintegrate, and refrain from any action that may hinder and/or delay that recovery.
7.2 After one month of incapacity for work the Employee's expense allowances, if any, lapse until the time at which the Employee resumes his or her work.
7.3 In the event of incapacity for work, 100% of the Employee's gross salary payments are continued during the first year or, if the employment contract has been entered into for a shorter period, until the end of the employment. The statutory sickness regulations apply at the end of the first year of sickness.
7.4 If the incapacity for work is due to actions and/or negligence (carelessness) on the part of the Employee, the Employer may decide to apply the statutory regulations notwithstanding clause 7.3. It is at the Employer's discretion whether such a situation exists.

7.5 If the former Employee falls sick within 28 days after the end of the employment, he must immediately inform his or her former Employer in writing. The former Employee must then comply with the former Employer's first notice to submit to an examination by its company doctor. This obligation also applies to a former Employee who is sick on the termination of his or her employment.

8 Ancillary activities

8.1 The Employee is not performing any ancillary activities on the conclusion of this employment contract. *[OR: The Employee is performing the following ancillary activities on the conclusion of this employment contract: ..... [specify ancillary activities].*

8.2 Without the Employer's prior written consent the Employee is prohibited during the term of this employment contract from directly or indirectly performing any remunerated or unremunerated work for third parties. The Employee must furthermore refrain from doing business for his or her own account. The Employee furthermore may not directly or indirectly accept or stipulate any financial or other benefits from third parties that may be deemed to be related to his or her work at or for the Employer.

8.3 As soon as the Employee decides during the term of this employment contract to perform the ancillary activities referred to in paragraph 2, he must immediately inform the Employer accordingly, so that the Employer can assess the nature of the position or work and can decide whether or not to give its consent.

9 Confidentiality

9.1 During the term of this employment contract and after its termination the Employee is not permitted to make statements to third parties in any manner whatsoever about any detail regarding or related to the Employer's business or customers of which the Employee can or should reasonably understand that they may affect the interest of the business or the interest of those customers.

9.2 The Employee must at all times respect any confidentiality statements signed for the benefit of customers of the Employer.

10 Property

10.1 All hardware, software, digital and other documents (including copies of documents and e-mails) of any nature whatsoever, obtained in any manner whatsoever during the term of employment, all correspondence and copies thereof, data carriers or copies thereof and/or other documents, works or items that belong to the Employer on paper or in a digital form remain and/or become the Employer's property and may not be copied, destroyed, damaged, removed, sold or given in use to third parties. This clause expressly includes all communication with customers, order confirmations, training material, test equipment, demo and other models, etc.

10.2 The Employee is not permitted in any manner whatsoever to have or to hold in his or her private possession any items belonging to the Employer as referred to in clause 10.1, except insofar and for as long as that is necessary for the performance of his or her work for the Employer. The Employee must hand over the aforesaid items to the Employer or make them available to the Employer at its first request.

10.3 Without the Employer's prior written instruction or consent, the Employee is not permitted to install or cause the installation of software or fonts on computers and other systems of the Employer.

10.4 On termination of the employment the Employee must hand over all items belonging to the Employer or make them available to the Employer.

11 Intellectual and industrial property

11.1 In respect of all works made by the Employee in performing his or her duties during his or her employment, the Employer will be considered to be the author thereof

11.2 Without the Employer's permission, publication of works in respect of which the copyright is vested in the Employer is not permitted either during the employment or after its termination.

Optional clause:

11.3 *If the Employee makes an invention pursuant to his or her position, he must immediately inform the Employer accordingly. The Employer has the exclusive right of use of any invention made by the Employee pursuant to his or her employment or arising from that employment and has the right to register it or cause it to be registered, both in the Netherlands and abroad, with the duly authorised patent institute. Unless otherwise agreed in writing, the Employer will be named as the inventor and the provisions of the following subsection apply to the fee, if any.*

11.4 The Employee acknowledges that the remuneration received by him or her includes reasonable compensation for his or her deprivation, if any, of intellectual and industrial property rights.

11.5 The Employee will unconditionally and unreservedly cooperate, if necessary, in transferring those intellectual or industrial property rights to the Employer free of charge at its first request.

12 Non-compete clause

12.1 For a period of 12 months after the end of the employment and without the Employer's prior written consent, the Employee may not establish, conduct, jointly conduct or cause the conduct of any business that is equivalent, similar or related to the Employer's business in any form whatsoever, either directly or indirectly, may not have any financial interest or share in such a business in any form whatsoever, and may not work in or for such a business in any manner whatsoever, in employment or otherwise, remunerated or unremunerated.

12.2 The Employer agrees on this clause with the Employee on the grounds that .....
.....

[NB: Clause 12 is optional. If a non-compete clause would in fact make it impossible for the former employee to practise his or her profession during the term of the clause, a judge may annul it on the grounds that it is "unreasonably onerous". A judge may also find that a fee is due for the period during which the employee cannot work. If it is not strictly necessary to include this clause, a non-solicitation clause suffices: the former employee can then practise his or her profession, but cannot work for contacts of the former employer; see below].

13 Non-solicitation clause

13.1 During the term of this employment contract and for a period of 12 months after its termination and without the Employer's prior written consent, the Employee may not directly or indirectly, actively or passively, contact any contacts of the Employer or the businesses affiliated with it and/or work together with them in any manner whatsoever. Contacts include businesses and/or persons who were contacts of the Employer and/or of businesses affiliated with it during a period of three years before the termination of this employment contract, such as suppliers, customers, etc. Businesses for which or persons for whom a presentation or quotation was made during the period of 12 months before the end of the employment also fall within the scope of this clause.

13.2 During the term of this employment contract and for a period of three years after its termination and without the Employer's prior written consent, the Employee may not directly or indirectly contact, hire or work together with employees of the Employer and/or businesses affiliated with it and may not attempt to persuade them to resign. For the purposes of this clause the term "employees" means all the employees who worked at the Employer or at a business affiliated with it during a period of one year before the end of this employment contract and during a period of one year after the termination of this employment contract.

13.3 Both during the term of this employment contract and after its termination, the Employee must refrain in general from any activity that might negatively affect the relationship between the Employer and its customers.

14 Penalty clause

14.1 In the event of breach of or non-compliance with clauses 8, 9, 10, 11, 12 and 13, the Employee forfeits to the Employer, without any notice of default being required, a penalty payable immediately in the amount of EUR 15,000 per breach/non-compliance, increased by EUR 2,500 for each day on which the beach/non-compliance continues. The Employer furthermore reserves the right to demand performance of those clauses and/or to claim alternative compensation. The penalty is directly payable to and benefits the Employer.

15 Derogations and amendments

15.1 This employment contract is deemed to set out the entire agreement between the parties on the date of signature of this employment contract.

15.2 Any addition to or derogations from this employment contract are valid only if and insofar as agreed in writing between the parties.

15.3 Notwithstanding the provisions of paragraph 2, the Employer has the right if the interest of the business so requires unilaterally to amend the employment conditions recorded in this employment contract and the work rules and company rules based thereon.

16 Final provisions

16.1 This employment contract is governed by [xxxx] law.

16.2 The Employee declares that he has received a signed copy of this employment contract and of the work rules and company rules that form part of this employment contract. The Employee declares that he is aware of and agrees to the content of the applicable work rules and company rules. Those rules form an integral part of this employment contract. In the event of any inconsistency, the rules in this employment contract prevail.

16.3 If any provision of this employment contract is void or invalid, the other provisions continue to apply. The void and/or invalid provisions will then be replaced by provisions that are as closely as possible in keeping with the provisions originally intended by the Employer.

16.4 This employment contract replaces all oral and written agreements that may have been made between the parties before the date of signature of this employment contract.

Agreed and executed in duplicate originals:

in	in .....
on	on .....
the Employer ..... on its behalf:	the Employee
.....	.....