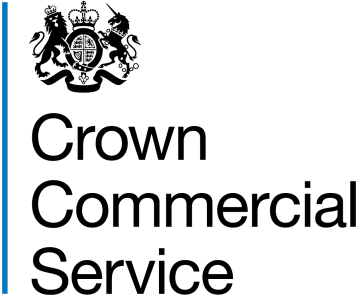
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**SECONDMENT AGREEMENT**

**Trade Law Panel**

**RM6183**

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## Introduction

1. Secondments, in or out of the Civil Service, are a valuable way to exchange knowledge and skills with other sectors and, as such, departments are actively encouraged to use them.

A secondment is a move between a Civil Service department and an external organisation, such as the wider public, voluntary or private sector, for an agreed time period.

1. Secondments are either:

**Outward**; when a Civil Service employee moves temporarily to work in an external organisation outside of the Civil Service, but remains employed by the Civil Service.

**Inward**; when an individual from outside of the Civil Service moves temporarily to work for a Civil Service department but remains employed by their external organisation.

### The benefits a secondment can bring

1. Secondments are a key element of the Civil Service development offer and talent development strategy. They provide opportunities to:

* develop specific skills required for organisational performance that cannot be developed within the Civil Service
* develop talent via recognised programmes
* build a broader understanding of departmental delivery chains and relationships with strategic partners.

1. Secondments:

* bring new skills back into the business
* build capability through skills transfer between the Civil Service and external organisations
* offer development opportunities to employees
* increase awareness of customers and the impacts departments have on them
* support employers in other sectors to build their capability.

### What to know before you start

1. **The Civil Service Management Code (section 10.3)** gives particular information around:

* Conduct and discipline
* Pensions arrangements
* Injury Benefits
* Recruiting to inward secondments
* Pre-appointment checks for inward secondments

These are referenced in this guidance at appropriate points. Details of further Civil Service guidance which may be useful when considering a secondment can be found at [Annex 1](#_Annex_3_–).

Discussing secondment opportunities

1. Discussing a potential secondment with an external organisation will require an element of negotiation for either an inward or an outward placing. To get the best outcome it is advisable to:

* start discussions as early as possible; involving departmental HR, finance, and where necessary legal colleagues from the outset
* be clear about Civil Service rules or requirements: e.g. the Civil Service Commission’s Recruitment Principles allow inward secondments of up to two years without the need for fair and open competition
* ensure that the individual being seconded understands and is a part of any discussions at the appropriate stage
* be flexible wherever possible; but also be aware of the wider aims of the secondment and keep the business benefits at the forefront of discussions.

## Outward secondments

### Glossary of terms

**Employee -** Current civil servant undertaking a secondment in an external organisation.

**Host** **organisation** - An external organisation that is not part of the Civil Service.

**Home department** - Civil Service department where the employee is permanently employed.

## Requests for secondments

1. When an employee considers a secondment would be beneficial to their development they should talk this through with their manager. Completing the business case template at [Annex 2](#_Annex_4_-) is a good way to help both parties decide if the opportunity would be a good one for the employee and provide benefits to the business.

### Eligibility

1. To be eligible for a secondment an employee must:
   * have been recruited in line with the [Civil Service Commission's Recruitment Principles](https://civilservicecommission.independent.gov.uk/recruitment/recruitment-principles/) (appointment on merit through fair and open competition)
   * be in a position to clearly benefit from development outside of the Civil Service
   * have successfully completed their probationary period
   * demonstrate acceptable performance and attendance levels
   * not have an immigration visa restriction which specifies a particular place of work.
2. If an eligible employee is on a fixed term contract consider the decision alongside the business benefit in relation to:
   * fixed term employees are usually recruited to undertake a specific piece of work
   * the secondment can only be agreed for the remaining duration of the fixed term contract or less
   * there may be limited opportunities for the employee to bring skills back to the department.

### Business benefits

1. If an employee meets the eligibility criteria, managers will need to consider the business benefits that will be gained by the department and the wider Civil Service as a result of the secondment.

### Decision making

1. If it is agreed the secondment is a good opportunity a consideration may be how to fill the role left by the employee going on secondment. There may be occasions when their specific role should be retained for them, for example where they have gone on secondment to bring back specific skills to the business; or their post can be filled permanently depending on the type of post and length of secondment. The following options can also be considered:
   * offering the role to an employee on a development programme
   * asking for an exchange with the host organisation
   * advertising the role as a loan.

**[DN: Department to insert link to approval process for vacancy filling].**

### Communicating decisions

1. Managers should communicate the decision to the employee by providing clear reasons and rationale, particularly where the secondment is refused. If refused, managers should consider other ways in which the employee could be further developed.

## Agreements for secondments

1. The Civil Service Management Code states that the terms of the secondment are for negotiation between the home department, the host organisation and the employee.
2. A written agreement which is understood by all parties should be in place before a secondment begins. This is normally, but not exclusively, written by the home department with input by the host organisation.
3. A template for an outward secondment agreement is available at [Appendix 1](#_Appendix_1_–_1).

### The agreement should cover

1. **Duration** This should be appropriate to the nature of the opportunity and not exceed two years unless there is a specific business justification for doing so. Outward secondments are to develop new skills for the Civil Service and the duration should reflect this. The agreement should include an **end date**.

**Notice Periods** should be agreed to cover circumstances where either the home department or the host organisation needs to terminate the agreement.

**Pay** The usual arrangement is for the employee to continue to be on the payroll and receive the pay awards of their home department with the external organisation reimbursing the salary costs. Moving employees to the payroll of the external organisation is not recommended as there are implications regarding Civil Service Pension Schemes contributions and reckonable service.

Employees may not necessarily continue to be entitled to non contractual allowances they are in receipt of in the home department.

**Reimbursement** There can be variations in how much salary is reimbursed. There are occasionally circumstances where the home department may agree not to be reimbursed, or may be partially reimbursed, for example where the secondment is very short or where there is a significant business benefit which offsets the cost. This will need to be agreed by **[DN departments to insert relevant approvals route].**

As the employee remains on their home department’s payroll during a secondment, VAT is applied to the salary as the host organisation is considered to be purchasing a service from the home department.

**Pensions** Regardless of whether the employee will remain on their department’s payroll during the secondment the employee must be given a written statement of the effect upon their pension arrangements. Managers will need to refer to their departmental pension’s administrator regarding this.

**Automatic enrolment** Duties should be included within the secondment agreement. As employees retain the terms and conditions of their home department and remain on their payroll, it is the home department that is responsible for automatically enrolling the worker under legislation.

Injury benefitsIf the employee remains in the pension scheme of their department they must receive injury benefit cover from the department. In other cases, the receiving organisation must provide the cover. Departmental pension’s administrators will be able to provide advice where there is any doubt about liability. A written statement must be given to the employee explaining who is providing the injury benefit. It is advisable to do this within the secondment agreement.

**Terms and Conditions** The secondment agreement will specify any changes to contractual terms but the employee will normally remain on those of their home department.

**Policies** There should be a clear understanding of the policies the employee is working under during the secondment. A practical approach may be to use the host organisation’s policies for day to day management activities but where policies link to payroll mechanisms it may be better to use those of the home department.

**Conduct and Business Appointment Rules** A civil servant on outward secondment remains subject to the Civil Service Management Code and the existing rules of their home department. The Business Appointment Rules continue to apply. During the secondment, the employee must also behave as if they were members of the host organisation in following its policies and directives.

**Return arrangements** The secondment agreement should outline what post the employee is eligible to return to at the end of the secondment period; the minimum commitment should be that a department will accept the employee back at their previous grade and location where possible. If there is no post available or the home department no longer occupies the previous location, the employee will be declared surplus.

**Duty of care.** The agreement should be clear about theresponsibility to protect the employee from reasonably foreseeable risk or harm which might occur as a result of their work. The under-pinning principle is that a home department will always retain responsibility for the duty of care but that it can choose to discharge this responsibility by asking the host organisation to take responsibility for some or all aspects.

## At the start of the secondment

1. Once the secondment is agreed, the practical steps to facilitate the transfer will need to be undertaken. A line manager checklist is available at [Annex 3](#_Employee_Details).

A **home** manager should:

* confirm the employee has been recorded as going on secondment
* ensure that keep in touch arrangements have been agreed.

## During the secondment

### Keep in Touch

1. Keep in touch activities need to be tailored to suit all parties. Key things to consider are:

* method, e.g. tele-kit, video conference, face to face, telephone
* departmental information required such as newsletters or vacancy bulletins
* frequency e.g. weekly, monthly
* other information required by the host line manager, which will depend on the payroll and management arrangements in place.

**The home line manager** has overall responsibility for maintaining the programme of keep in touch and ensuring a smooth return process. They should review the employee’s development goals and ensure they have an effective development plan.

* They are also responsible for updating the employee about key developments such as:

-any promotion opportunities

-any restructuring taking place within the home department

-early release schemes they may be eligible to apply for whilst on secondment.

* **The employee** is responsible for ensuring the agreed keep in touch arrangements are followed, actively informing both managers of any changes or developments in their home department and the timescales for returning at the end of the secondment.
* **The host line manager** is responsible for engaging with and supporting the keep in touch process.

### Managing the employee whilst on secondment

1. As the employee remains on their home departmental payroll, their home line manager will need to ensure that they are taking all necessary action linked to pay. This includes but is not limited to: performance management, annual leave and sick pay.
2. All the actions taken for an employee on secondment should be recorded to ensure they are not treated differently from other employees managed under those policies.
3. It can be complex for a host line manager to manage individuals on secondment using unfamiliar policies, processes and entitlements. Home line managers should be as helpful as possible in interpreting departmental policies and supporting with any issues that arise.

### Ending early

1. Secondments will usually come to an end at the pre-agreed end date but either the home department or host organisation can terminate the secondment by giving the agreed notice.
2. A secondment may need to end because:

* the employee accepts a new permanent role
* the home department encounters exceptional resourcing issues and requests that the employee return early (this would only be due to an urgent business need)
* significant business change in either the home department or host organisation, for example a TUPE or Machinery of Government change
* the secondment is not working successfully and discussion has not resolved the problem.

## Towards the end of the secondment

1. As part of the [keep in touch](#_Managing_the_employee) arrangement it is important to plan the employee’s return to the home department.

This should include a review of the benefits of the secondment and any discussion of how further benefit could be achieved in the time remaining. It is important to assess this against the benefits listed in the original business case, the objectives set for the employee and progress made.

If it is confirmed that the secondment will end at the pre-agreed time the home department needs to start considering what post the employee will return to. The department will also need to consider how best to use the development the employee has gained from the secondment.

### Extending the secondment

1. In exceptional circumstances the host organisation may wish to extend the secondment. They can make this request but the home department will need to agree. This decision should be based on the original purpose of the secondment and an assessment of the continued benefits to all parties. A secondment’s purpose is to bring new skills into the Civil Service; those which are extended may not deliver this. The outcome of the extension request should be recorded formally so that all parties are aware of the outcome.

## At the end of the secondment

1. It is essential that the employee and home line manager regularly communicate and plan well in advance the practical arrangements that need to be made to facilitate an effective return. This will include any steps required to induct the employee back into the organisation and any payroll amendments which may be required.

Both the home department and the host organisation should take part in a review meeting to hand over fully, following the secondment.

Employees should be kept fully up-to-date with any organisational changes which may alter the return arrangements. In the event that it is not possible to accommodate the employee as planned, the employee should be notified as soon as possible, and managed in line with the home department’s surplus policies.

### Evaluation and using new skills

1. When an employee returns to the department they should meet with their home manager to:

* review the outcomes of the keep in touch meeting which took place towards the end of the secondment
* discuss and evaluate the benefits gained from the secondment compared with the original objectives and agree next steps to build on the experience. It may also be useful to have a follow up evaluation once the employee has been back in post for a number of months.
* find ways to share their learning in their work environment.

## Further help

1. The Frequently Asked Questions provide further detailed advice in response to questions that employees or managers may ask when considering a secondment opportunity.

## Inward Secondments

### Glossary of terms

**Individual** Current employee of an external organisation, undertaking a secondment in a Civil Service department; they will not be a current civil servant.

**Home organisation** External organisation where the individual is permanently employed

**Host department** Civil Service department where the individual is undertaking the secondment.

## Using secondments to fill a role

1. As secondments are classed as external recruitment they are subject to the requirements of the Civil Service Commission’s Recruitment Principles. Secondments into the Civil Service are also covered by the recruitment freeze. As such use of them will require discussion with senior management and be subject to existing departmental processes to gain approval to recruit externally. The benefits to the department and the wider Civil Service will need to be made clear as part of this process.
2. Inward secondments must be conducted in line with the Civil Service Commission’s Recruitment Principles. To facilitate movement between the Civil Service and other employers the Commission allows **secondments of up to two years without the need for recruitment via fair and open competition based on merit**.
3. Numbers of inward secondments need to be included in departmental annual reports to the Civil Service Commission.

### Advertising

1. Secondment opportunities could be advertised on CS Jobs, through professional networks or to communities using that profession's website. If advertised on CS Jobs this would be classed as appointment on merit through fair and open competition and the limit of two years would not apply. However, as the aim of a secondment is to develop skills within the Civil Service, longer periods should not normally be required.

### Direct placement

1. Secondments may also be filled by identifying a suitable individual, where:

* a department approaches an individual, employed by an external organisation, with very specialised skills to carry out particular work, and the individual’s organisation agrees to a secondment
* pre-existing ‘exchange’ arrangements exist between Civil Service departments and external organisations or professions as part of a recognised scheme
* an individual has a particular development need or interest and there is an opportunity which is suitable, available and of business benefit to the department.

1. It is important that all activity undertaken to fill a role using a secondment is in line with equality legislation.

## Applications for secondments

1. When considering a secondment application, the potential host manager should assess it in line with the requirements of the role. They should make clear to the individual the duration, salary, terms of secondment, and the need for agreement from the home organisation.
2. They will also need to make clear to the individual that the role is offered on a secondment basis and is not an offer of permanent employment.

### Pre-appointment checks

1. Managers will need to ensure that personnel security risks are effectively managed by applying controls and checks relevant to the specific secondment post. The Civil Service Nationality Rules will not apply where the individual remains the employee of an external organisation. As the individual is working within the Civil Service they will require all other pre-appointment checks in the same way as a permanent new starter. This will also include ensuring that the individual does not have any visa restrictions that limit the secondment. It is helpful to make individuals aware of the pre-appointment checks process, any timescales involved, and additional restrictions that would otherwise apply if employed directly by the Civil Service.

[Annex 1](#_Annex_1_–_) lists guidance to be aware of. These checks should be conducted in line with departmental recruitment guidance **[DN: Department to insert links].**

## Secondment agreements

1. The Civil Service Management Code states that the terms of a secondment are a matter for negotiation between the home organisation, the host department and the individual.

A secondment should always be under-pinned by a written agreement between all parties. A template for an inward secondment agreement is available at [Appendix 2](#_Appendix_2_–_1).

During an inward secondment the individual will be carrying out work for the Civil Service department whilst remaining employed by their home organisation. The home organisation’s agreement would normally be used. As long as the department’s interests are represented the template used should not be a barrier. The department can suggest the use of the template at Appendix 2 if the home organisation agrees.

### Checking the details of an agreement

1. Consider:

**Duration and end date** To facilitate movement between the Civil Service and other employers the Commission allows secondments of up to two years without the need for recruitment via fair and open competition based on merit. Any proposal for a longer secondment at the outset, or to extend the appointment beyond two years requires the approval of the Commission. Timescales in agreements should reflect this.

**Notice periods** should be agreed to cover circumstances where either the home organisation or the host department needs to terminate the agreement.

**Pay** The usual arrangement is for the individual to continue to be on the payroll of the home organisation and be covered by their pay arrangements, with the host department reimbursing salary costs. Departments should not normally agree to reimburse variable pay such as bonuses.

**Reimbursement** VAT is payable by the host department as they will need to use an invoice to pay the home organisation for the individual’s costs; this is because during a secondment the individual remains on their home organisation’s payroll.

**Automatic enrolment** duties should be included within the secondment agreement. As the individual will retain the terms and conditions of their employer and remain on their payroll, it is the home organisation that is responsible for automatically enrolling the worker under legislation.

**Injury benefits** Arrangements for injury benefit cover must be agreed before any inward secondment commences and given to the secondee in writing, explaining who provides the benefit and what it is comprised of. If the individual remains in the pension scheme of their home organisation they should receive injury benefit cover from them. In other cases, the host must provide the cover. Departmental pension’s administrators will be able to provide advice where there is any doubt about liability.

**Terms and Conditions** The secondment agreement will specify any temporary changes to contractual terms but the individual will normally remain on those of their home organisation.

**Policies** There should be a clear understanding of which policies the individual is working under during the secondment. Where policies link to pay systems it may be better to use those of their home organisation whilst following those of the host department for areas linked to day to day management activity.

**Conduct** Individuals seconded in to the Civil Service must be made aware that they will be subject to the Official Secrets Acts and are also required to observe the Civil Service and departmental rules on conduct, confidentiality and security. They should ensure that there is no conflict of interest that will cause embarrassment either to their home organisation or their host department. These may be in addition to rules that are applicable to them in their home organisation.

**Duty of care** The agreement should be clear about theresponsibility to protect the individual from reasonably foreseeable risk or harm which might occur as a result of their work. The under-pinning principle is that a home organisation will always retain responsibility for the duty of care but that it can choose to discharge this responsibility by asking the host department to take responsibility for some or all aspects.

## At the start of the secondment

1. Once the secondment is agreed, the practical steps to facilitate the transfer will need to be undertaken.

A **host** manager should be aware of:

* any reasonable adjustments required and ensure these are in place
* keep in touch arrangements and responsibilities that have been agreed
* arrangements for paying the individual, including expenses
* the arrangements for managing the individual and whose policies they are working under
* the external organisation’s policies that relate to pay such as performance management, annual leave, attendance management.

## During the secondment

### Keep in touch

1. Keeping in touch during the secondment is the responsibility of all the parties involved:

* **The individual** is responsible for ensuring the agreed keep in touch arrangements are followed, actively informing both managers of any changes and the timescales for returning at the end of the secondment.
* **The home line manager** has overall responsibility for maintaining the keep in touch programme and ensuring a smooth return process. They will need to liaise with their employee and provide the host line manager with information needed to manage the individual.
* **The host line manager** is responsible for engaging with, and supporting, the keep in touch process and supplying information required by the home organisation.

### Managing the employee

1. During the secondment the host line manager is responsible for the day to day management of the individual and should maintain accurate records which can be shared with the home organisation as necessary.

As the individual remains on their home organisation’s payroll, the policies linked to pay will need to be adhered to and any required action taken; these will include performance management, annual leave and attendance management.

Both managers should discuss and agree what the requirements are in terms of record keeping and paperwork.

It can be complex managing individuals on secondment where some of the policies used are those of the home organisation and as a result are unfamiliar to the host line manager. In order to ensure the process runs smoothly any issues that arise which are covered by the home organisation’s policies, processes and entitlements should be discussed with the home manager as part of the keep in touch process.

#### Ending a secondment early

1. Secondments will usually come to an end at the pre-agreed end date. Either the host department or the home organisation can terminate the secondment early by giving the agreed notice period.
2. A secondment may need to end early because:

* the individual accepts a new permanent job role
* the individual returns to the home organisation due an urgent business requirement
* the secondment is not working successfully and discussion has not resolved the problem.

## Towards the end of the secondment

1. Towards the end of the secondment a review of the benefits of the secondment, and any discussion of how further benefit could be achieved in the time remaining, should be undertaken. This should involve the home organisation as this will support the evaluation process and build links for future opportunities.

### Extending the secondment

1. As inward secondments are used to transfer skills and facilitate movement between the Civil Service and other employers, the Civil Service Commission allows **secondments of up to two years without the need for recruitment via fair and open competition based on merit**.

Any proposal for a longer secondment at the outset, or to extend the appointment beyond two years requires the approval of the Commission. Additional information is available from the [Commission’s website](http://civilservicecommission.independent.gov.uk/civil-service-recruitment/exceptions).

## At the end of the secondment

1. Activity undertaken at the end of the secondment should include:

* Performing a review of the secondment and the skills and benefits it has brought for: the host department, the individual, the home organisation and the wider Civil Service. This will be key for informing future secondment activity.
* Considering keeping in contact with the individual as a way to build networks outside of the Civil Service which could lead to similar arrangements in the future.

## Further help

1. The Frequently Asked Questions provide further detailed advice in response to questions that employees or managers may ask when considering a secondment opportunity.

## Annex 1 – Civil Service guidance and rules to consider

**Section 10.3 of the Civil Service Management Code** sets out rules concerning:

* Conduct and discipline
* Pensions arrangements
* Injury Benefits
* Recruiting to inward secondments
* Pre-appointment checks for inward secondments

This guidance reflects the Management Code position but the source information can be found [here](https://www.gov.uk/government/publications/civil-servants-terms-and-conditions).

**Cabinet Office Recruitment Freeze Guidelines** This applies to those taken on inward secondment, even if the individual stays on their home organisation’s payroll or there is a zero cost agreement.

**Civil Service Commission’s Recruitment Principles** The Civil Service Management Code states that inward secondments must not conflict with rules governing appointment on merit through fair and open competition. The rules allow secondments to be an exception to the Principles but also put a limit of two years on their duration. Secondments recruited via a fair and open competition route will be rare but if this does occur that posting will not be treated as an exception and can be for a period of longer than two years. The link can be found [here](https://civilservicecommission.independent.gov.uk/recruitment/recruitment-principles/).

**Pre-appointment checks guidance** All those moving into the Civil Service on secondment need to have undergone pre-appointment checks. Refer to departmental guidance and the:

* **Baseline Personnel Security Standard,** this sets out the standard security checks across Government and the different clearance level required for different roles. **[DN: Department to insert link to departmental guidance]**
* **Civil Service Nationality Rules,** these apply only to inward secondments where the terms of the secondment agreement are such that the individual is considered to be employed by the Civil Service.  These can be found [here](hhttps://www.gov.uk/government/publications/nationality-rules).

## Annex 2 – Business case template

Employees wishing to apply for a secondment opportunity must satisfy the eligibility criteria set out in the secondments policy and complete the business case template. Detailed information should be provided to enable managers to make an informed decision on whether they are able to support and approve the application.

All sections should be completed in full:

|  |  |  |  |
| --- | --- | --- | --- |
| **Employee name and grade** |  | | |
| **Details of the secondment opportunity: employer, type of business/organisation, role type and working hours** |  | | |
| **Duration of secondment** |  | | |
| **Details of personal development the opportunity would provide** |  | | |
| **Details of business benefits to the home department**. **For example, skills or knowledge that you will return with.** |  | | |
| **Details of business benefits to the wider Civil Service.** |  | | |
| **Details of business benefits to the host organisation**. |  | | |
| **Outcome (please give reasons for accepting or rejecting the request).** |  | | |
| **Manager name and grade** |  | | |
| **Signature** |  | **Date** |  |

## Annex 3 - Line manager checklist (outward secondments)

The checklist below can be used to record evidence throughout the secondment process. An up to date copy should be retained which can be reviewed as part of the `Keeping in Touch` process. If there is a change of home manager during the secondment this checklist should be handed to the new manager.

### Employee details

|  |  |
| --- | --- |
| Name |  |
| Grade |  |
| Contact details |  |

### Host manager details

|  |  |
| --- | --- |
| Name |  |
| Business/organisation |  |
| Contact details |  |

### Secondment request

|  |  |
| --- | --- |
| Have the eligibility requirements been met? (see Secondments Policy) | *Confirm checks and insert details of any issues/concerns.* |
| Does the business case evidence benefit for the department, the employee, and the Civil Service? | *If yes record date business case approved. If not insert reason refused and date employee informed.* |
| Does the employee understand the return arrangements? Record details of discussions |  |

Secondment agreement -Does theemployee understand the arrangements for:

|  |  |
| --- | --- |
| Terms and conditions? |  |
| Salary and expenses? |  |
| Keeping in Touch? |  |
| Development reviews? |  |
| Absence reporting arrangements? |  |
| Performance reporting? |  |
| Recording the terms of the agreement? | *Ensure the employee and manager have a signed and dated copy of the agreement.* |

### Prior to the secondment

|  |  |
| --- | --- |
| What arrangements have been made for filling any vacancy left by the secondment? |  |
| Have you taken action on any HR/payroll changes required e.g. has the employee been recorded as going on secondment? |  |
| Have you undertaken relevant performance action? |  |
| Have you considered reasonable adjustments? |  |

**During the secondment**

|  |  |
| --- | --- |
| Are you sending the employee regular communications from the home department as required, e.g. job opportunities? |  |
| When will the keep in touch meetings taking place? Record dates if required. |  |
| Has the employee requested an extension to the secondment? |  |
| Has the extension been agreed? |  |

**Planning for the employee’s return**

|  |  |
| --- | --- |
| Has a discussion taken place with the employee about return? |  |
| Is the employee’s original post still available? If not has an alternative post been found? |  |
| Has the employee’s return date been agreed by all parties? |  |
| Do any reasonable adjustments need to be made prior to the employee’s return? |  |

|  |  |
| --- | --- |
| Does the employee require an induction? |  |
| Has the host manager sent over the relevant paperwork and performance reports? |  |
| Has an evaluation of the secondment opportunity and development gained taken place? Record any meeting date(s). |  |

**Post return**

|  |  |
| --- | --- |
| Has a further evaluation review been conducted six months after the return date? |  |

## 

## Appendices – Template Secondment Agreements

## Appendix 1 – Outward secondment agreement

# AGREEMENT FOR SECONDMENT OF CIVIL SERVICE EMPLOYEE TO NON-CIVIL SERVICE ORGANISATION

**Warning**: this is only a template and must be adapted to suit individual circumstances. Legal advice should be taken where appropriate.

This Agreement is made between:

1. **[Insert name of non-Civil Service (external) organisation]** of [**insert address]** (“the Host”)
2. the Department of [**insert Civil Service Department name]** (“the Department”)
3. **[insert name of Civil Service employee]** (“the Secondee”).

## Secondment and duration

* 1. The Secondee will be seconded by the Department to work for the Host in the post of **[insert post title**] from **[insert start date]** to **[insert end date].** The Secondees line manager during the secondment will be **[insert name or job title of line manager]**; if a change of line manager is necessary the details will be given to the Secondee and the Department.

## Status of Secondee; return to Department

* 1. The Secondee will remain the employee of the Department for the duration of the secondment and will not become, or be regarded as, the employee of the Host. If the Secondee ceases to be employed by the Department for any reason during the secondment period then the secondment will terminate immediately.
  2. At the end of the secondment the employee will return to the home department. The home department will do its best to place the employee in either the same post or another post at the same grade and location as s/he was in before the secondment started, but it cannot guarantee that any post will be available. **[Home departments may wish to make reference to their deployment policies here.]**
  3. On returning to the Department any terms of the Secondee’s contract which were varied because of the secondment will revert back to their original state. Any higher remuneration which applied because of the secondment will cease with the secondment.
  4. Any temporary promotion linked to the secondment will cease when the secondment ends and the Secondee will return to the Department at their original grade.

## Location and hours of work

* 1. During the secondment the Secondee’s place of work will be **[insert place of work]**.
  2. The Secondee’s hours of work during the secondment will be **[insert working hours]**.

## Remuneration

* 1. During the secondment the Department will continue to pay the Secondee his/her normal remuneration (including pay for sickness absence, annual leave and pension contributions) **[DN less any department/role specific allowances].** This includes any Departmental pay award which has been made but has not yet come into effect.

**OR (if the rate of pay is higher during the secondment)**

During the secondment the Department will pay the Secondee at the rate of £ [insert special pay rate if applicable] per annum and will also provide the same benefits as applied before the secondment [or insert here a list of which Departmental benefits will be provided and whether any additional Host benefits will apply. This can be done in an Annex if necessary]. Any departmental pay award which was made before the secondment starts but is not yet effective will not apply.

* 1. The Department will also be responsible for paying PAYE tax and national insurance contributions and any other applicable deductions in respect of the Secondee’s remuneration.
  2. **Pay Awards:** Any pay awards that are implemented within the Department during the secondment should be applied to the Secondees salary as and when they occur.

**OR** (if the rate of pay is higher during the secondment)

Any pay increases during the secondment will be determined by the Host with the Department’s consent. **[DN: a requirement for consent is included so that the Department can prevent any inappropriate increases being granted.]** Any such pay increase will only apply during the period of the secondment. Departmental pay awards will not apply.

On the Secondee’s return to the Department his/her salary will be set as follows: **[insert details of how the salary on return will be calculated. E.g. it could be the pre-secondment salary adjusted in line with pay changes which have taken place in the department during the secondment, and based on the box markings (or host equivalents) in appraisals which were done during the secondment. Departmental pay policies may set out what happens about pay on return from a secondment, in which case this clause can refer to the relevant policy.]**

## Reimbursement

* 1. The Host will reimburse the Department for the full cost of the Secondee’s remuneration during the secondment, including any performance-related pay, all benefits, employer’s National Insurance contributions and pension contributions. The Host will also pay VAT where applicable on the invoiced amount.

**OR (if less than full reimbursement is to be made)**

The Host will reimburse the Department for the cost of the Secondee’s salary [and ...................... **[Insert any extras**]. The host will also pay the VAT where applicable on the invoiced amount.

* 1. Reimbursement will be made within **[insert suitable period, e.g. 30 days]** of the Department providing the Host with an invoice giving details of the cost and showing any applicable VAT. Invoices will be presented monthly/quarterly **[delete as appropriate]** in advance/arrears/on the following dates **[delete as appropriate, insert relevant dates].**

[DN: if the pay or reimbursement arrangements are complex it may be appropriate to deal with them in an Annex to the agreement.]

## Performance Management; performance related pay

* 1. During the secondment the Department will continue to conduct performance reviews of the Secondee and will make decisions about any performance-related pay in accordance with its procedures. If the Host is liable to reimburse the Department for any performance-related pay, the Department must consult the Host before making a decision about such pay.
  2. The Host will provide the Department with appropriate input for these purposes, to agreed timescales.

**OR (delete as appropriate)**

Performance reviews during the secondment period will be conducted by the Host under its procedures, with appropriate input from the Department. Decisions about any performance-related pay will be made by the Host under its policies, but will require the consent of the Department. **[DN: this is included so that the department will be able to prevent any inappropriate bonuses being paid.]**

The Secondee will not be entitled to any performance-related pay awarded by the Department.

The Host will assist the Department as appropriate with any post-secondment appraisal which includes work done during the secondment.

**[DN: it is important to make sure that the chosen options for whose appraisal and performance systems are used will mesh together properly. In general the party which makes decisions about performance pay should also make decisions about appraisals.]**

## Pension and Injury Benefit Schemes

* 1. The home department that is responsible for automatically enrolling the worker under legislation.
  2. This secondment will not affect the Secondee’s occupational pension arrangements with the Department.

**OR**

* 1. The pension arrangements during the secondment will be as follows**: [Insert details of changes. The Management Code requires that the Secondee be given a written statement of the effect of the secondment on pension.]**
  2. This secondment will not affect the Secondee’s eligibility for the Civil Service Injury Benefit Scheme. **[If alternative arrangements are being made, this clause will require amendment. The Management Code requires that the Secondee be given a written statement setting out who is providing the benefit and what it comprises.]**

## Expenses and training

* 1. Any travel, subsistence or other expenses incurred by the Secondee in the course of the secondment will be reimbursed [by the Department in accordance with the rules applicable in that department] or **[delete as appropriate]** [by the Host in accordance with the rules of the Host].
  2. **[Insert any applicable provisions about who provides and pays for training and development during the secondment.]**

## Health and safety

* 1. During the secondment the Host will be responsible for the Secondee’s health & safety, and will ensure that the Secondee is only required to work for such periods and at such times as are permitted by the Working Time Regulations 1998.

## Leave and associated pay

* 1. During the secondment the Secondee will continue to be entitled to holiday, sickness absence and other leave (and any associated pay) as provided for in his/her terms and conditions of employment with the Department. At the beginning and end of the secondment any accrued annual leave will be transferred with the Secondee.

**OR (delete as appropriate)**

During the secondment the Secondee will be entitled to holiday, sickness absence and other leave (and any associated pay) as provided for in the Host’s terms and conditions. At the beginning and end of the secondment any accrued annual leave will be transferred with the secondee.

* 1. The Secondee must book leave and report any sickness or other absence to **[insert details].** **In some cases it may be appropriate for the Secondee to report to his Departmental line manager and to the permanent Employer]**.
  2. In **the event the Secondee takes maternity/paternity [DN: delete as appropriate] or adoption leave and:**

**The original secondment has not ended** **prior to return**, the Host consents to continue with the secondment and the Secondee has the opportunity to return to the Host organisation to complete the remainder of the secondment period.

**The original secondment ends during the period of leave,** the Host consents to the Secondee continuing on the agreed secondment terms (if any additional terms were granted) until the secondment period would have finished, had the Secondee not taken **[DN insert type]** leave. At that point, even if the period of leave has not expired they will return to the Home department and move back onto the terms in place prior to the secondment.

## Standards, including confidentiality and conflicts of interest

* 1. During the secondment the Secondee will observe all the Host’s rules, policies and procedures relating to conduct and standards, including confidentiality, unless the Department’s rules, policies or procedures require a higher standard, in which case the Secondee will observe that higher standard. This will also apply after the secondment has ended, in relation to any continuing obligations. **[DN: this will cover things like confidentiality, non-dealing or conflicts of interest rules which go further than the home department’s policies and which the Secondee must stick to even after the secondment ends.]**
  2. In the event of any breach of this clause (“Standards, including confidentiality”) the Host will inform the Department, and may terminate the secondment early as set out in the termination clause in this agreement.
  3. The Secondee’s attention is particularly drawn to the following Host policies which are attached to this agreement: **[insert details of policies which are specific to the Host in respect of standards and conduct].**
  4. The Secondee will continue to be bound by the Civil Service Code at all times during the secondment. The same applies to the Business Appointment Rules; these place restrictions on the work which civil servants are able to carry out after leaving the Civil Service and can be found in the Department’s staff handbook and in the Civil Service Management Code. The Secondee will also continue to be bound by the Official Secrets Act.
  5. The Department will not require the Secondee to disclose or use any information which is confidential to the Host, and will keep confidential any confidential information it acquires as a result of the secondment.
  6. The Host will not require the Secondee to disclose or use any information which is confidential to the Department, and will keep confidential any confidential information it acquires as a result of the secondment.
  7. If an actual or potential conflict of interests arises during the secondment, any party which becomes aware of the conflict will notify the other parties in writing as soon as possible, and all the parties will attempt to manage the conflict appropriately. If this is not possible the secondment must be terminated in accordance with the termination clause in this agreement.

## Discipline and grievances

* 1. The Secondee will continue to be subject to the disciplinary and grievance procedures of the Department in respect of matters occurring during the secondment. The Host will co-operate with the Department in such matters, including by providing any necessary information.

## Policies and procedures

* 1. Except as otherwise provided in this agreement, the Secondee will continue to be subject to the Department’s policies and procedures during the secondment.

**OR (if it is more appropriate for the Host’s policies to apply)**

Except as otherwise provided in this agreement, the Secondee will be subject to the Host’s policies and procedures**. [DN consider whether to draw the Secondee’s attention here to any major differences between the policies/procedures, or attach the relevant policies. Also consider whether any particular policies of Host organisation will not be appropriate, such that the Department’s policies should apply instead.]**

## Duty of care

* 1. The Department retains responsibility for the duty of care.

**Or [Delete as appropriate]**

The Host [insert name] has the duty of care during the secondment.

**[DN: The responsibility for duty of care must be mutually agreed]**

## Data protection

By signing this agreement the Secondee agrees to appropriate information about him/her being passed between the Host and the Department and processed by them for employment, managerial, administrative and similar purposes and to comply with legal requirements. Such information will be held securely. Further information about data protection can be found in the Host’s staff handbook. **[DN: departments should note that the processing of sensitive data may require more specific consent from the employee.]**

**[DN: the Host may wish to review and add further information here.]**

## Early termination

Either the Host or the Department may terminate the secondment for any reason by giving **[e.g. one month]** notice in writing to the other two parties.

* 1. The Host may also terminate the secondment on grounds of serious misconduct by the Secondee, by written notice to the other two parties with immediate effect.
  2. Either the Host or the Department may terminate the secondment if a conflict of interests arises which cannot be appropriately managed, by written notice to the other two parties with immediate effect.

## Information and monitoring of leave

* 1. The Host/Department **[delete as appropriate]** will monitor annual leave, sickness absence and other leave. The Host and Department will each provide the other with any information the other needs in order to manage the Secondee, both during the secondment and when it ends. **[It may be appropriate to make provision here for the party that does the monitoring to provide regular reports to the other party about leave and other management matters.]**
  2. The Secondee must notify both the Host and the Department if his/her home address changes during the secondment.

## Ethical considerations

* 1. This clause will apply during the secondment and for **[insert suitable period e.g. six months, on which legal advice should be taken]** months after its termination.
  2. The Host will not induce (or attempt to induce) the Secondee to leave the Department or take up employment with the Host.
  3. Neither the Department nor the Secondee will induce (or attempt to induce) any of the Host’s staff with whom the Secondee has worked to leave the Host or take up employment with the Department.
  4. This clause will not prevent either the Department or the Host from running general recruitment campaigns or from offering employment to an individual who responds to such a campaign.

## Liability and indemnities

* 1. The Secondee will work under the supervision of the Host. The Department will not have any liability to the Host for the acts or omissions of the Secondee in the course of the secondment. **[DN: this is to guard against claims being made by the Host if the Secondee does poor work.]**
  2. The Host will indemnify the Department fully and keep it indemnified fully at all times against any loss, injury, damage or costs arising out of any act or omission of the Secondee in the course of the secondment. **[DN: this is to ensure that the Host and not the Department pays if a third party (including the Host’s own staff) makes a claim based on the actions of the Secondee – e.g. if a host employee claims that the Secondee bullied him. The department will remain vicariously liable for the Secondee’s actions during the secondment and that is why it could be sued by third parties.]**
  3. The Host will indemnify the Department fully and keep it indemnified fully at all times against any loss, injury, damage or costs arising out of any act or omission of the Host or its employees, officers or agents relating to the secondment. **[DN: this ensures that the Host should pay if it treats the Secondee badly (e.g. discrimination) or negligently causes him to suffer injury, and the Department has to make a pay-out to the employee or incur other costs as a result.]**

## Intellectual property

* 1. Any intellectual property which arises in the course of the Secondee’s work for the Host shall belong to the Host.
  2. **[DN: If the Department may wish to use any of the intellectual property produced by the Secondee, wording should be added here so that the Host grants the Department a suitable licence to use this and any confidentiality restrictions elsewhere in this agreement are lifted.]**

## Assignment

* 1. This agreement may not be assigned by any party to the agreement without the agreement of the other two parties.

## Governing law and jurisdiction

* 1. This agreement is governed by and will be construed in accordance with the law of England.
  2. The parties irrevocably agree that the Courts of England and Wales will have exclusive jurisdiction in relation to any dispute or difference arising out of or in connection with this agreement or its subject-matter or formation (including non-contractual disputes or claims).

## Variation

* 1. The terms of this agreement may only be varied by agreement in writing between the Host and the Department.

**[DN: you may also wish to consider with your legal advisers whether to include additional clauses dealing with service of notices, third party rights and non-waiver of remedies, an “entire agreement” clause and an interpretation clause. Although rarely used you may wish to consider these in relation to your particular business need.]**

|  |  |  |
| --- | --- | --- |
| **Signed by:** | **On behalf of:** | **Date:** |
| **[insert name of signatory]** | **[insert department name]** |  |
| **[insert name of signatory]** | **[insert host organisation name]** |  |
| **[insert name of signatory]** | **Employee** |  |

## Appendix 2 – Inward secondment agreement

# AGREEMENT FOR SECONDMENT OF INDIVIDUAL FROM NON-CIVIL SERVICE ORGANISATION INTO CIVIL SERVICE DEPARTMENT

**Warning**: this is only a template and must be adapted to suit individual circumstances. Legal advice should be taken where appropriate.

This Agreement is made between:

1. **[Insert name of seconding non-Civil Service organisation]** of [**insert address]** (“the Employer”)
2. the host Department of **[insert Civil Service Department name]** (“the Department”)
3. **[Insert name of individual secondee]** (“the Secondee”) of **[insert address]**.

## Secondment and duration

* 1. Appointment to a post in the Home Civil Service (“the Civil Service”) is governed by the Constitutional Reform and Governance Act 2010 and the Civil Service Commission’s Recruitment Principles issued by the Civil Service Commissioners. The Principles except secondments of up to two years to the Civil Service from the requirement that selection for appointment should be made on the basis of fair and open competition.
  2. The Secondee will be seconded by the Employer to work for the Department in the post of [**insert post title] [for the purposes of – insert detail here on relevant project or general indication of purpose].** The secondment shall be from **[insert start date]** to **[insert end date]** unless terminated earlier in accordance with this Agreement. The parties may agree to extend the secondment provided that the secondment does not in any event exceed two years in duration.
  3. The Secondee’s reporting manager during the secondment will be **[insert name or job title of line manager]**; if a change of reporting manager is necessary the details will be given to the Secondee and the Employer.
  4. During the secondment the Secondee will work under the supervision of the Department and carry out all reasonable instructions from the Department. The Secondee will carry out their duties during the secondment in a professional manner and to a professional standard, exercising the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person of their level.
  5. The Employer will take out and maintain in full force with a reputable insurance company a reasonable level of insurance cover for loss, injury or damage caused to or by the Secondee in connection with the secondment.
  6. The Secondee will not, without the prior written approval of the Department, do any act, enter into any contract, make any representation, give any warranty, incur any liability or assume any obligation, whether expressly or by implication, on behalf of the Department, or bind or hold himself/herself out as capable of binding the Department in any way.
  7. The Secondee will not carry out any work for the Employer during the secondment, except **[DN: insert any exceptions, e.g. attending Employer training or updates or doing small amounts of handover work near the start of the secondment. Be aware of possible conflicts of interest.]**
  8. The Secondee will remain the employee of the Employer for the duration of the secondment and will not become, or be regarded as, the employee of the Department. If the Secondee ceases to be the employed by the Employer for any reason during the secondment period then the secondment will terminate immediately.
  9. If the Secondee is held to be employed by the Department at any time during the secondment then the Department may dismiss the Secondee and the Employer shall offer the Secondee employment on the terms that applied immediately before that dismissal.

## Location and hours of work

* 1. During the secondment the Secondee’s place of work will be **[insert place of work]**. The Department may require the Secondee to work from other locations as necessary. The Secondee will be informed in advance of any change to the place of work [as long as it remains within reasonable travelling distance].
  2. The Secondee may be required to travel on the Department’s business to such locations and by such means and on such occasions as the Department may from time to time require.
  3. The Secondee’s hours of work during the secondment will be **[insert Departmental working hours]** plus any additional time as may be reasonably required by the Department from time to time.

## Remuneration

* 1. During the secondment the Employer will continue to pay the Secondee his/her normal remuneration (including pay for sickness absence and annual leave, any variable pay, all benefits, and pension contributions).
  2. The Employer will continue to be responsible for paying PAYE tax and national insurance contributions and any other applicable deductions in respect of the Secondee’s remuneration.
  3. Any pay rises during the secondment will be determined by the Employer in the normal way**.**

## Pensions - automatic enrolment

* 1. The Home employer remains responsible for automatically enrolling the employee under legislation.

## Reimbursement

* 1. The Department will pay the monthly/quarterly **[delete as appropriate]** sum of **[insert monthly or quarterly payment amount]** which represents the Secondee’s basic salary and pension contributions as a contribution towards the cost of employing the Secondee, plus VAT if applicable. The Department will not be liable to pay any additional sums (other than the Secondee’s expenses, as set out below).
  2. Payment/reimbursement will be made within **[insert suitable period, e.g. 30 days]** of the Employer providing the Department with an invoice giving details of the payments due and showing any applicable VAT. Invoices will be presented monthly/quarterly **[delete as appropriate]** in advance/arrears/on the following dates **[delete as appropriate/add dates]. [DN consider adding other details such as the address to which invoices should be sent, any reference/purchase order number which must be quoted, etc.]**
  3. The Employer must ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. The Department will not be liable to pay any items not included in the final invoice.
  4. [If the Secondee is away from work for any reason for more than **[insert period of time, e.g. six weeks**], the Department’s obligation to make payments under clause 5.1 will not apply during that absence.][If this occurs the Department and the Employer will review the secondment, and possible options will include continuing the secondment, ending it on notice or extending it by agreement.] **[DN: both parts of this clause are optional. Note that if a secondment is reviewed, care should be taken not to act in a way which constitutes unjustifiable discrimination, e.g. it may be discriminatory to end a secondment because the secondee is on maternity leave.]**

## Performance Management; performance-related pay

* 1. During the secondment the Employer will continue to conduct performance reviews of the Secondee in accordance with its procedures. **[If the Department is liable to reimburse the Employer for any performance-related pay, consider including a mechanism for keeping this under control – see note to alternative clause 5.1 above.]**
  2. The Department will provide the Employer with appropriate input for these purposes as required.
  3. The Department will assist the Employer as appropriate with any post-secondment performance review which includes work done during the secondment.
  4. During the secondment the Employer will continue to make decisions about any performance-related pay in accordance with its procedures.
  5. For the avoidance of doubt, the Secondee will not be paid any performance-related pay awarded by the Department to its own employees.

## Expenses and training

* 1. Any travel, subsistence or other expenses wholly, exclusively and necessarily incurred by the Secondee in the course of the secondment and in connection with the secondment will be reimbursed by the Department in accordance with its rules and policies provided such expenses are evidenced in such manner as the Department may specify from time to time.
  2. The Department will allow, in consultation with the Employer, reasonable absence from the Secondee to attend such training courses and other meetings at the Employer’s offices as are normally appropriate for a staff member of their level and experience provided that reasonable notice of such training courses and/or meetings is given to the Department. Any such training courses and any related travel expenses will be paid for by the Employer and are not recoverable from the Department.
  3. Where the Department requires the Secondee to attend training, the Department will meet the costs of such training including the course fees and reasonable travel and subsistence expenses in accordance with its policies.

## Health and safety

* 1. During the secondment the Department will be responsible for the Secondees health & safety insofar as this is within the Department’s control. The Department will ensure that the Secondee is only required to work for it for such periods and at such times as are permitted by the Working Time Regulations 1998.

## Leave and associated pay

* 1. During the secondment the Secondee will continue to be entitled to holiday, sickness absence and other leave (and any associated pay) as provided for in his/her terms and conditions of employment with the Employer. At the beginning and end of the secondment any accrued annual leave will be transferred with the secondee.
  2. The Secondee must book leave with and report any sickness or other absence to **[insert details. In some cases it may be appropriate for the Secondee to report to his Departmental reporting manager and to his Employer]**.
  3. **In the event the secondee takes maternity/paternity [DN: delete as appropriate] or adoption leave and:**

**Secondment has not ended prior to return,** the Department will consent to continue with the secondment and the individual has the opportunity to return to the department to complete the remainder of the secondment period.

**Secondment ends during the period of leave**, the Department consents to the individual continuing on the agreed secondment terms (if any additional terms were granted) until the secondment period would have finished, had the employee not taken leave. At that point, even if the period of leave has not expired they will return to the employer and move back onto the terms in place prior to the secondment.

**[DN: The department and the employer are not obligated to extend the secondment but if all parties agree to this due to strong business justification for doing so then this approach may be taken, however it is important to note that secondments which are recruited to as an exception to the commissioners principles are limited to two years.]**

## Standards

* 1. During the secondment the Secondee will observe the provisions of the Civil Service Code (attached), the Official Secrets Acts, and all the Department’s rules, policies and procedures relating to conduct and standards, including confidentiality and security, unless the Employer’s rules, policies or procedures require a higher standard, in which case the Secondee will observe that higher standard in addition. This will also apply after the secondment has ended, in relation to any continuing obligations (including confidentiality and the Business Appointment Rules).
  2. In the event of any breach of this clause the Department will inform the Employer, and may terminate the secondment early as set out in the termination clause in this agreement.
  3. The Secondees attention is particularly drawn to the following Departmental policies which are attached to this agreement:
     1. **[Insert list, including e.g. confidentiality, Official Secrets, non-dealing rules, security, the Business Appointment Rules, political activities, conflicts of interest, declaration of interests, hospitality, etc.]**
  4. The Secondee should note that the Business Appointment Rules (which form part of the Civil Service Management Code) may place restrictions on the work which he/she is able to carry out after the secondment comes to an end.
  5. The Department will not require the Secondee to disclose or use any information which is confidential to the Employer. Any information the department does acquire as a result of the secondment will be kept confidential.
  6. The Employer will not at any time require the Secondee to disclose or use any information which is confidential to the Department, and will at all times keep confidential any confidential information it acquires as a result of the secondment.
  7. If an actual or potential conflict of interests arises during the secondment, any party which becomes aware of the conflict will notify the other parties in writing as soon as possible, and all the parties will attempt to manage the conflict appropriately. If this is not possible the secondment must be terminated in accordance with the termination clause in this agreement.

## Discipline and grievances

* 1. The Secondee will continue to be subject to the disciplinary and grievance procedures of the Employer during the secondment. The Department will co-operate with the Employer in such matters, including by providing any necessary information as required.
  2. The Department and the Employer will notify each other promptly if they become aware of any disciplinary issue or grievance.

## Policies and procedures

* 1. Except as otherwise provided in this agreement, the Secondee will continue to be subject to the Employer’s policies and procedures during the secondment.

## Duty of care

* 1. The Employer retains responsibility for the duty of care during the secondment.

**Or [Delete as appropriate]**

The Department has the duty of care during the secondment.

**[DN: The responsibility for duty of care must be mutually agreed]**

## Data protection

* 1. By signing this agreement the Secondee agrees to appropriate information and personal data (as defined in the Data Protection Act 1998 as amended from time to time) about him/her being passed between the Employer and the Department and the Department holding, processing and accessing such information and personal data both manually and by electronic means for legal, personnel, employment, managerial, administrative and similar purposes and to comply with legal requirements and central guidance.

## For the purposes of this clause references to "personal data" include "sensitive personal data" as defined by the Data Protection Act (as amended from time to time). Sensitive personal data that may be held by the Employer and may be transferred to the Department where necessary will include information about: the Secondee's physical or mental condition, the commission or alleged commission of any offence; any proceedings for an offence committed or alleged to have been committed by the Secondee, including the outcome or sentence in such proceedings; and racial or ethnic origin or religious or similar beliefs (for the purposes of equal opportunities monitoring).

* 1. Such information will be held securely. Further details about data protection can be found in the Department’s Staff Handbook. **[DN: check and if necessary amend this clause to ensure that it matches the Department’s data protection policy. Departments should also note that processing of sensitive personal data may require more specific consent from the employee.]**
  2. In the interests of open government and public access to information, the Department may need to disclose details of officials who are on secondment to it from non-Civil Service organisations, including the Secondee’s name, the name and address of the Employer, the nature of the work done and the sums paid to the Employer by the Department. This could be made necessary or desirable by legislation, Parliamentary questions, and requests for information under the Freedom of Information Act, or by central guidance or departmental policy on disclosure. The Employer and the Secondee consent to such disclosure. In deciding what disclosure should be made, the Department will take account of its obligations under the Data Protection Act 1998.

## Early termination

* 1. Either the Employer or the Department may terminate the secondment for any reason by giving [insert a suitable period, e.g. one month] notice in writing to the other two parties.
  2. The Department may terminate the secondment with immediate effect without notice (or payment in lieu of notice):
     1. On termination of the Secondee’s employment with the Employer;
     2. If the Employer is guilty is of any serious or repeated breach of the terms of this agreement; or
     3. If the Employer becomes bankrupt or makes any arrangement or composition with or for the benefit of its creditors.
  3. The Department may also terminate the secondment on grounds of:
     1. serious misconduct by the Secondee or any other conduct which affects or is likely to affect or prejudice the interests of the Department or is otherwise unsuitable for the work of the Department;
     2. Where the Secondee is unable to properly perform his/her duties by reason of ill health, accident or otherwise for a period or periods aggregating at least [x] working days,

by written notice to the Employer with immediate effect.

* 1. Either the Employer or the Department may terminate the secondment if a conflict of interests arises which cannot be appropriately managed, by written notice to the other with immediate effect.
  2. [If there is a review of the secondment under sub-clause **[insert number of sub-clause above dealing with long-term absence]** and the Department considers it reasonable to end the secondment early, the Department may terminate the secondment by written notice to the Employer with immediate effect.]

## Information and monitoring of leave

* 1. The Employer/Department **[delete as appropriate]** will monitor annual leave, sick absence and other leave. The Employer and the Department will each provide the other with any information the other needs in order to manage the Secondee, both during the secondment and after it ends. **[DN: It may be appropriate to make provision here for the party that does the monitoring to provide regular reports to the other party about leave and other management matters.]**
  2. The Secondee must notify the Department if his/her home address changes during the secondment.

## Ethical considerations

* 1. This clause will apply during the secondment and **for [insert suitable period, on which legal advice should be taken]** months after its termination.
  2. The Department will not induce (or attempt to induce) the Secondee to leave the Employer or take up employment with the Department.
  3. Neither the Employer nor the Secondee will induce (or attempt to induce) any of the Department’s staff with whom the Secondee has worked to leave the Department or take up employment with the Employer.
  4. This clause will not prevent either the Department or the Employer from running general recruitment campaigns or from offering employment to an individual who responds to such a campaign.

## Return of property

* 1. At the end of the secondment or at any time on request, the Secondee and the Employer will return all property supplied by the Department and all documents (including copies) which the Secondee has produced, received or obtained in connection with the secondment, and will irretrievably delete any electronic copies thereof. The Employer and Secondee will confirm in writing and produce such evidence as is reasonable to prove compliance with these obligations.

## Intellectual property

* 1. All Intellectual Property Rights in the output from the Contract shall vest in the Individual who shall grant to the Host department a non-exclusive, unlimited, irrevocable licence to use and exploit the same.
  2. Subject to this Clause and save as expressly granted elsewhere under the Contract, the Host department shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Individual or its licensors and the Individual shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Host department or its licensors.
  3. The Individual shall on demand fully indemnify and keep fully indemnified and hold the Host department and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Host department and or the Crown may suffer or incur as a result of any claim that the performance by the Individual of the Contract infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").
  4. If a Claim arises, the Host department shall notify the Individual in writing of the Claim and the Host department shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Individual shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Individual:
     1. shall consult the Host department on all substantive issues which arise during the conduct of such litigation and negotiations;
     2. shall take due and proper account of the interests of the Host department;
     3. shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Host department into disrepute; and
     4. shall not settle or compromise the Claim without the prior written approval of the Host department (not to be unreasonably withheld or delayed).
  5. The Individual shall have no rights to use any of the Host department’s names, logos or trademarks without the prior written approval of the Host department.

**[DN: if the Secondee is likely to produce any valuable/significant IP, departmental legal advice should be sought on whether this clause should be expanded].**

## Assignment

* 1. This agreement may not be assigned by any party to the agreement without the agreement of the other two parties.

## Governing law and jurisdiction

* 1. This agreement is governed by and will be construed in accordance with the law of England.
  2. The parties irrevocably agree that the Courts of England and Wales will have exclusive jurisdiction in relation to any dispute or difference arising out of or in connection with this agreement or its subject-matter or formation (including non-contractual disputes or claims).

## Variation

* 1. The terms of this agreement may only be varied by agreement in writing between the Employer and the Department.

## Third Party Rights

* 1. A person who is not a party to this agreement may not enforce any of its terms under the Contract (Rights of Third Parties) Act 1999.

## Notices

* 1. Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being [or by sending it by fax to the fax number notified by the relevant party to the other party]. Any such notice shall be deemed to have been received:
     1. if delivered personally, at the time of delivery; [and]
     2. in the case of pre-paid recorded delivery or registered post, [48] hours from the date of posting[; and
     3. in the case of fax, at the time of transmission].
  2. In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post [or that the notice was transmitted by fax to the fax number of the relevant party].

## Indemnity

* 1. The Host shall indemnify the Employer fully and keep the Employer indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by:
     1. the Secondee in relation to any loss, injury, damage or costs arising out of any act or omission by the Host or its employees or agents [during the Secondment Period]; or
     2. a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Secondee [during the Secondment Period OR in the course of carrying out the Services].
  2. The Employer shall indemnify the Host fully and keep the Host indemnified fully at all times against any claim or demand by the Secondee arising out of their employment by the Employer or its termination during the Secondment Period (except for any claim relating to any act or omission of the host or its employees or agents).]

## ENTIRE AGREEMENT

* 1. This agreement [together with any documents referred to in it] constitute[s] the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the Secondment.
  2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of,] any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
  3. The only remedy available to either party for breach of this agreement shall be for breach of contract under the terms of this agreement.
  4. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.
  5. Nothing in this agreement shall limit or exclude any liability for fraud.

**[DN departments: you may also wish to consider with your legal advisers whether to include additional clauses dealing with service of notices, third party rights and non-waiver of remedies, an “entire agreement” clause and an interpretation clause. Although rarely used you may wish to consider these in relation to your particular business need.]**

|  |  |  |
| --- | --- | --- |
| **Signed by:** | **On behalf of:** | **Date:** |
| **[insert name of signatory]** | **[insert department name]** |  |
| **[insert name of signatory]** | **[insert name of employer]** |  |
| **[insert name of signatory]** | **Secondee** |  |

This Agreement is made between:

1. **[Insert name of non-Civil Service (external) organisation]** of [**insert address]** (“the Host”)
2. the Department of [**insert Civil Service Department name]** (“the Department”)
3. **[insert name of Civil Service employee]** (“the Secondee”).