

SECONDMENT AGREEMENT

In relation to the secondment of

Dated [TBC]

Between

..... *[insert parent organisation]*

AND

THE INFORMATION COMMISSIONER'S OFFICE

AND

..... *[insert secondee name]*

THIS AGREEMENT is dated [TBC].

PARTIES

- (1) [Name and address of parent organisation] ('Employer'); and
- (2) The Information Commissioner's Office ('ICO'), Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

1. Secondment Details

- 1.1.** [Insert full name of secondee] ('Secondee') is an employee of the Employer. The parties have agreed that the Secondee will be placed on secondment with the ICO in accordance with the terms of this agreement.
- 1.2.** The secondment of the Secondee to the ICO will begin on **tbc** and will (unless the ICO and Employer agree to extend the term of the secondment in writing pursuant to clause 12.2) end on **tbc**, at which time the Secondee will return to **the Employer**.
- 1.3.** Whilst seconded to the ICO, the Secondee will act as an **[enter position or project role]** on a **full time/part time [delete as necessary]** and exclusive basis. They will carry out all reasonable instructions of the ICO during the secondment to the best of their abilities.
- 1.4.** The Secondee will assist the ICO by contributing to **[insert line of work]**.
- 1.5.** During the period of secondment the Secondee will be based at the ICO's office in **[insert office location]** or such other place as reasonably required by the ICO. Home working can be agreed at the ICO's discretion and in accordance with Government guidance in relation to coronavirus. All ICO staff are currently advised to work from home where possible. This will be continually reviewed and the Secondee will be notified of any changes.

2. Secondee Status

- 2.1.** During the period of the secondment, the Secondee will remain an employee of the Employer and as such will retain all existing terms and conditions of that employment.

2.2. The Employer acknowledges and agrees that, save where the Secondee is following the explicit instructions of the ICO, the Employer shall be liable for all acts and omissions of the Secondee during the period of the secondment. Accordingly, any reference within this agreement to an obligation imposed on the Secondee shall be construed as requiring the Employer to procure the Secondee's compliance with such obligation. By signing this agreement, the Employer confirms that the Secondee is aware of, and shall abide by, their obligations under this agreement.

2.3. Nothing in this agreement shall be construed, or have effect as construing, any relationship of employer and employee between the ICO and the Secondee. If any misconduct or difficulty of a disciplinary nature arises during the secondment, the ICO will notify the Employer and it will be dealt with under the Employer's own procedures.

3. Terms And Conditions

3.1. The Employer will continue to pay the Secondee's salary and provide any benefits due to the Secondee (or their dependents) and shall be responsible for statutory deductions. The Secondee's pension rights will be unaffected with all relevant pension contributions being paid by the Employer during the period of the secondment.

3.2. The Secondee will work the ICO's standard contractual working hours of 37 hours per week (or 7.4 hours per day where the secondment is part time) [detail any alternative arrangements]. There is a system of flexible working in operation which the Secondee will be able to adopt during the period of the secondment.

3.3. The Secondee will retain their substantive grade and seniority within the Employer, and will continue to be eligible for consideration for promotion within that organisation during the secondment period.

4. Charges

- 4.1** The ICO will pay a set secondment fee of [insert amount per [day], based on a full 7.4 hour working day] to the Employer for the purposes of this secondment.
- 4.2** Expenses incurred during the secondment (other than those incurred for travel between the Secondee's home and ICO offices) which are related to the performance of the required duties will be paid by the ICO [or detail alternative agreement]. The Secondee shall claim any expenses via the ICO Finance team using the procedure detailed on the ICO's staff intranet and in accordance with the rules and limits on expenses detailed in the ICO Expenses Guide.
- 4.3** Subject to the arrangements described in clause 4.2, should there be a requirement for the Employer to seek reimbursement for any expenses incurred whilst the Secondee is placed with the ICO, the Employer will invoice the ICO monthly in arrears for the actual expenditure made in the charge period. To qualify for reimbursement, such expenses must be approved by the ICO before being incurred.
- 4.4** Invoices shall be rendered monthly in arrears and must be sent to the ICO's Finance Department by emailing finance@ico.org.uk, along with an accompanying breakdown of all time worked on secondment by the Secondee during that month. All undisputed invoices will be paid within 30 days of receipt

5. Leave, Sickness Or Other Absence

- 5.1.** The Secondee will continue to be eligible for sick pay, holiday pay and any other absence entitlements in accordance with the terms and conditions of their employment with the Employer.
- 5.2.** The Secondee will report to their ICO line manager and their line manager at the Employer, any cases of sickness absence or other emergency absence in accordance with the relevant notification procedures for both the ICO and the Employer.
- 5.3.** The ICO will honour pre-agreed holiday commitments. Any future annual leave to be taken during the secondment period must be pre-agreed with the ICO line manager as well as the Employer.

5.4. Arrangements for special leave, parental or dependency leave, or similar, will be in line with the Employer's policies and must be arranged with the Secondee's line manager at the Employer, in consultation with the line manager at the ICO.

5.5. The Secondee's line manager at the ICO will maintain and make available to the Employer an attendance record in respect of the Secondee, recording absence due to annual leave, sick leave, special leave, absence due to industrial action and unauthorised absences.

6. Training And Development

6.1. The ICO will be responsible for providing to the Secondee, any training directly related to the requirements of the secondment and any further general staff training deemed appropriate.

6.2. The Secondee's temporary line manager at the ICO will carry out regular monthly discussions with the Secondee to review work objectives.

6.3. Any request for performance reports required by the Employer during the period of the secondment will be forwarded to the ICO line manager with notification of timescales and once completed returned to the Secondee's line manager at the Employer.

7. Discipline And Grievance

7.1. The Secondee will remain subject to the Employer's disciplinary and grievance procedures. Any such disciplinary matters which arise during the secondment and which the ICO becomes aware of, will be referred by the ICO to the Employer, who will take such action as may be deemed necessary under the relevant Employer disciplinary procedures. The ICO may also be involved in the investigation into any disciplinary investigations or proceedings involving the Secondee.

7.2. Notwithstanding the above, the ICO reserves the right to investigate grievances against the Secondee which arise in respect of the secondment, in accordance with the relevant ICO policies. The ICO will co-operate with the Employer in such matters, including by providing any necessary information.

- 7.3.** The ICO and the Employer will notify each other promptly if they become aware of any disciplinary issue or grievance relevant to the secondment.

8. Health And Safety

- 8.1.** The ICO has a Health & Safety Policy in which it accepts its responsibility under health and safety legislation. This includes ensuring, so far as is reasonably practicable, the health, safety and welfare of all employees and other persons working at or visiting its sites. The Employer, as the employer of the Secondee, retains their duties to the Secondee and any other individual engaged by them as required by the Health & Safety at Work etc. Act 1974 (HSW act) and any subordinate legislation.
- 8.2.** The Secondee will comply with the Health and Safety rules and regulations of the ICO whilst on secondment.

9. Security And Confidentiality

- 9.1.** The ICO is responsible for determining if the Secondee has appropriate security vetting and clearance, or undertaking necessary security checks if required.
- 9.2.** The Secondee is not permitted, either during or after the termination of their employment at the Employer, to use or to disclose to anyone (other than to comply with any legal, professional or regulatory requirement) any information of a confidential nature (whether by virtue of its nature or designated as such) relating to the ICO or its employees, including but not confined to business information and intellectual property. This includes any confidential information relating to the ICO that the Secondee creates, develops, receives or obtains during the secondment period. This does not apply to any information that is or comes into the public domain other than through the Secondee's unauthorised disclosure.
- 9.3.** The Secondee will be required to exercise due care in handling information which the Secondee acquires in the course of their official duties or more generally whilst at the ICO. The Secondee will be given proper access to all necessary information in order to perform their duties properly. However, the Secondee should only access what is needed for the purpose of their duties at the ICO and

should not browse such resources for more general 'learning' reasons.

- 9.4.** The Secondee and the ICO acknowledge that the Secondee will be subject to s132 Data Protection Act 2018 (which imposes an additional statutory duty of confidentiality on ICO staff) throughout the period of secondment and that this may restrict information that the Secondee is able to share with the Employer. The Employer procures that the Secondee has read section 132 of the 2018 Act and will comply with it in full.
- 9.5.** At the end of the secondment, the Secondee will not, without the prior written permission of the ICO, disclose or make use of any information received in confidence in the course of their secondment. This includes information received during the specific performance of their duties and more generally available whilst at the ICO.
- 9.6.** The Secondee will, both whilst seconded to the ICO and thereafter, agree to keep confidential and not communicate to the Employer or any other person, any information concerning the organisation, ways of working, know-how and affairs of ICO, or ICO's clients, that is confidential and which the Secondee may obtain as a result of their secondment, unless either permitted to do so by an appropriately authorised officer of the ICO or required to do so by a court of law or statutory provision.
- 9.7.** Subject to the Public Interest Disclosure Act 1998, if the Secondee becomes aware, during the secondment, of any malpractice within the ICO relating to a criminal offence, a failure to comply with any legal obligations, a miscarriage of justice, damage to the environment or the endangerment of an individual's health and safety, the Secondee may raise it as a concern with the ICO under its whistleblowing procedure (details of which will be made available to the Secondee). Or, where appropriate, the Secondee may raise the concern with the Employer under its own whistleblowing procedures (if any). If the ICO and/or Employer consider it appropriate, the Secondee will withdraw immediately from the secondment.

9.8. Subject to the Secondee observing any applicable statutory and common law provisions relating to the disclosure of confidential information and the terms of this agreement, the ICO does not intend that this agreement should prevent the Secondee from using the benefit of the secondment on their return to the Employer. This may include using and disclosing information of a general kind concerning the policies and practices of the ICO or the ICO's clients. However, such use must not involve the disclosure of any proprietary information or inappropriate confidences about the internal workings of the ICO on past, present or future projects, or the ICO's clients. For instance, the Secondee may be asked to provide a report to the ICO and the Employer following their secondment that will discuss in general terms the areas of business covered under the secondment, the benefits gained and any suggestions for future secondments of other staff.

9.9. Should any confidential information be required to be shared by the Secondee with the Employer, then express permission in writing should be obtained from the ICO first.

9.10. During the course of the secondment the Secondee will be expected to use only ICO equipment, or equipment approved by the ICO, for the purposes of any duties required as part of the secondment. All use of such equipment shall be subject to the ICO's Acceptable Use Policy, which will be made available to the Secondee. The Secondee is not permitted to use any equipment provided by the Employer or their own personal equipment for the purposes of carrying out their duties whilst on secondment at the ICO.

9.11. All documents, manuals, hardware and software provided for the Secondee's use by the ICO, any data or documents (including copies) produced, maintained or stored on ICO computer systems or other electronic equipment (including mobile phones), remain the property of ICO and shall be returned to the ICO at the end of the period of secondment, or if earlier upon termination of the secondment, or at the request of the ICO during the secondment period.

10. Intellectual Property

10.1. The definitions in this clause apply in this agreement.

Intellectual Property Rights: patents, rights to Inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Inventions: those inventions, ideas, works, suggestions and improvements (whether or not patentable) and all other products and materials to which the Intellectual Property Rights may attach..

10.2. The Secondee shall provide the ICO with full written details of all Inventions made wholly or partially by them at any time during the course of their secondment with the ICO which relate to, or are reasonably capable of being used by the ICO. The Secondee shall acknowledge that all Intellectual Property Rights subsisting (or which may in the future subsist) in all such Inventions shall automatically, on creation, vest in the ICO absolutely. To the extent that they do not vest automatically, the Secondee shall hold them on trust for the ICO. The Secondee shall agree promptly to execute all documents and do all acts as may, in the ICO's reasonable opinion, be necessary to give effect to this.

10.3. The Secondee hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which they have or will have in any existing or future works referred to above.

11. Data Protection

11.1. Definitions

The definitions in this clause shall apply in this agreement.

Data Protection Legislation: means all applicable data protection and privacy legislation, regulations and guidance including but not limited to Regulation (EU) 2016/679 as implemented into UK law by the EU (Withdrawal) Act 2018 and as amended by Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, ("UK GDPR"), the Law Enforcement Directive (Directive (EU) 2016/680), the Data Protection Act 2018, the Privacy and Electronic Communications ("EC Directive") Regulations and any guidance or codes of practice issued by the European Data Protection Board or Information Commissioner from time to time (all as amended, updated or re-enacted from time to time.)

The terms "**Personal data**", "**Data subject**", "**Controller**", "**Processor**" and "**Process**" (and its derivatives) shall have the meanings given to them in the Data Protection Legislation.

"**Seconded Personal Data**" means Personal Data of the Seconded that the parties exchange or process in connection with this agreement and/or the secondment.

11.2. The ICO and the Employer acknowledge that with regard to Seconded Personal Data, each party shall act as a Controller.

11.3. Each party shall comply with their respective obligations under Data Protection Legislation with regards to Seconded Personal Data.

11.4. Details of Seconded Personal Data to be shared under this agreement shall be recorded in the data sharing decision form as set out in the attached Appendix. The ICO and the Employer shall process the Seconded Personal Data in accordance with the attached Appendix.

11.5. Neither Party shall process Seconded Personal Data for any purposes other than those set out in this Agreement.

11.6. Each party shall collect any necessary permission, provide any necessary notice and do all such other things as are required under the Data Protection Legislation in order for it to disclose Seconded Personal Data to the other party for the purposes of: (i) administering the Seconded's contract of employment with the Employer; (ii) enabling the parties to perform their obligations and exercise their rights under this Agreement; and (ii) enabling the parties to meet their respective legal or regulatory obligations.

11.7. Each party may disclose Secondee Personal Data to any third parties including their sub-contractors and regulator provided that such disclosure is reasonably required in connection with the purposes above and is at all times in compliance with the applicable Data Protection Legislation.

11.8. The Secondee will comply with the ICO's Data Protection Policy when handling personal data relating to any employee, worker, contractor, customer, client, supplier, agent or third party of or involved with the ICO. The Secondee will also comply with the ICO's Information Security Policy and all other policies relating to the handling of personal data. Such policies will be provided to the Secondee by the ICO during a formal induction process, which will take place within a reasonable period following the commencement of the secondment.

11.9. Failure to comply with any of the policies referred to this agreement may be dealt with as a disciplinary matter and referred to the Employer and, in serious cases, may result in the termination of the secondment and this agreement.

11.10. Without limitation to paragraph 11.2 each party shall:

11.10.1. implement and maintain appropriate technical and organisational measures to protect Secondee Personal Data against unauthorised or unlawful Processing and against accidental loss or destruction of, or damage;

11.10.2. ensure that employees who have access to Secondee Personal Data have undergone training in the Data Protection Legislation and in the care and handling of Personal Data;

11.10.3. not disclose Secondee Personal Data to any third party in any circumstances except as required or permitted by this agreement; and

11.10.4. notify the other party promptly of any known breach of technical and organisational security measures where the breach has affected or could have affected Secondee Personal Data.

12. Variation, Early Termination Or Extension Of The Secondment

12.1. The secondment will terminate with immediate effect upon:

- 12.1.1. completion of the secondment period (or agreed extension period);
- 12.1.2. earlier termination by either the ICO or the Employer giving one months' written notice to the other;
- 12.1.3. in the event that the Secondee ceases to be an employee of the Employer; or
- 12.1.4. mutual agreement in writing between the ICO and the Employer.

12.2. The ICO may terminate the Secondment and this agreement with immediate effect without notice:

- 12.2.1. if the Employer is guilty of any serious or (after warning) repeated breach of the terms of this agreement; or
- 12.2.2. if the Employer becomes bankrupt or makes any arrangement or composition with or for the benefit of its creditors.

12.3. Any proposed extension to the secondment will be discussed and agreed in writing between the ICO and the Employer at least one month prior to the end of the original secondment term (or prior to the end of the current extension period where relevant).

12.4. Any other proposed variation may only be decided and varied by written agreement between persons authorised by the ICO and the Employer.

13. Non-Solicitation

13.1. The ICO will not, directly or indirectly, offer a contract of employment to the Secondee during the secondment or for a period of three months following its expiry or termination, without the prior written consent of the Employer. This will not prevent the ICO from running recruitment advertising campaigns nor from offering employment to another employee of the Employer who may respond to any such campaign.

14. Conflicts of Interest

14.1. A conflict of interest arises where a Secondee has a private interest which might influence, or be perceived to influence, that person's judgement in carrying out their public duties. Judgement may be influenced by financial interests or non-financial interests, and such interests can include those of family members and friends. Detailed guidance on the Secondee responsibilities in relation to

conflicts of interest is set out in the ICO Code of Conduct. The Secondee will be required to declare whether they have any such conflicts of interest, including private shareholdings or directorships, or any other circumstances which may, or may be perceived to, influence their judgement in relation to their role while at the ICO.

14.2. It is a condition of this secondment that the Secondee will ensure that, in the course of their official duties and performance of their obligations as part of the secondment, there will be no conflict of interest with which they are involved that will or may cause either embarrassment to, or difficulties for, the Employer or the ICO.

14.3. The following provisions will apply:

14.3.1. Before any particular work is allocated to the Secondee, they will be asked to examine whether they are aware of any conflict of interest that would arise. Checks will also be made to establish whether any conflicts of interest arise from the Employer's activities. Provided there are no such conflicts of interest, the Secondee may proceed with participating in the work. If, however, either the Secondee or the Employer have or have had an interest in the matter, the ICO will determine whether or not it would be proper or appropriate for the Secondee to participate in the matter on their behalf. Liaison will be maintained with the Employer during the secondment to ensure the ICO is aware of any new areas of work they are taking or have taken on to ensure any conflict of interest issues are given full consideration.

14.3.2. Before the end of the secondment, the ICO will consider specifically those areas of work the Secondee has been engaged in and, in the interests of both the Secondee and the ICO, the Employer's written agreement may be sought that for a given period (such period to be in most circumstances three months but exceptionally up to but not exceeding one year) the Secondee will not be engaged in work where it is apparent or likely that conflicts of interest could arise as a result of their prior work for the ICO under this secondment. These arrangements will also apply if the Secondee moves to another firm or undertakes work on their own behalf during the period covered by this restriction. The Secondee's formal agreement to the arrangement envisaged by this clause will be required. Notwithstanding the foregoing, in practice, the ICO seeks to avoid the need for such a 'cooling off period' and does so by not

involving the Secondee in issues where a potential conflict of interest with the activities of the Employer may arise.

14.3.3. The Secondee may retain their position within a partnership (outside of the Secondee's employment with the Employer, and subject to the Employer's prior written permission) if it makes no demand on the Secondee's time or responsibilities with the ICO, and provided that the Secondee avoids any involvement with the firm (partnership) concerned, or its clients, during the secondment except as agreed between the firm and the ICO.

14.3.4. The Secondee should dispose of any significant shareholdings in companies having a special or particular relationship with the ICO or operating in any field with which they will be officially concerned, although it may (subject to written confirmation from the ICO) be sufficient for the shareholdings to be placed temporarily in the hands of a trustee. In addition, shares must not be held by a trustee or comparable representative capacity when the Secondee is the person who has the primary responsibility for investment decisions. The ICO must be informed of any necessary action under this heading and will be available for advice. The Secondee should also avoid official dealings with the affairs of any company in which they have any shareholding, unless they have been told by the ICO, after official consideration of the facts of the case, that it is in order for them to do so.

14.3.5. Directorships (whether executive or non-executive) should be given up during the period of secondment, unless they involve no conflict with the Secondee's official position and no significant use of official time. Any directorships which are to be retained during the secondment should be notified to the ICO.

14.4. While on secondment to the ICO, the Secondee has a particular duty to ensure that their position at the ICO is not, and raises no reasonable suspicion of being, abused for their own personal interest. In particular the Secondee must not use information gained in their work to advance their own private financial interests or the financial interests of others. Any suggestion or evidence of the Secondee acting in contravention of this clause will be subject to an investigation and, without prejudice to further action, termination of the secondment.

15. Business Appointment Rules

15.1. If the Secondee does not return to the Employer at the end of the secondment, but wishes to take up employment with another organisation, the Secondee is expected to inform the ICO of their new position before entering into any written commitment with a new organisation. The ICO reserves the right to impose restrictions as set out in the Business Appointment Rules which will be provided to the Secondee.

16. Political activities

16.1. The Secondee acknowledges and agrees that by participating in the secondment, they will be working within an impartial public body for which maintenance of public trust is paramount. Accordingly the Secondee will be precluded from assuming any publicly visible role, whether paid or unpaid, in the following national political activities. Specifically, this means that the Secondee cannot:

- 16.1.1. be adopted as a UK parliamentary candidate;
- 16.1.2. hold, in party organisations, posts impinging wholly or mainly on party politics in the national field;
- 16.1.3. make public statements, to include on social media, (not including private conversation incidentally held in public) which concern matters of national political controversy;
- 16.1.4. express views on such matters in letters to the press or in books, articles or leaflets;
- 16.1.5. canvass on behalf of a UK Parliamentary candidate or political party; and
- 16.1.6. if working closely with UK Ministers of Parliament, take an active part in local government.

For the avoidance of doubt, nothing in this clause 16 is intended to prevent or otherwise restrict the Secondee from engaging in the democratic process by way of voting or engaging with elected representatives in a strictly private capacity, provided that at all times the Secondee does not hold themselves out (either directly or indirectly) as speaking on behalf of the ICO.

17. Assignment

17.1. Neither party may assign or transfer any of its obligations under this agreement without the prior written consent of the other parties.

18. Entire Agreement

18.1. This agreement constitutes the entire agreement between the parties relating to the secondment and supersedes and replaces any and all prior agreements, understandings or arrangements between the parties, whether oral or in writing, with respect to the same.

19. Third Party Rights

19.1. This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by any other person. 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.

20. Governing Law and Jurisdiction

20.1. This agreement, and any disputes or claims arising out of or in connection with it, its subject matter or formation, or the relationship between the Parties (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

20.2. The Parties irrevocably agree that the Courts of England shall have exclusive jurisdiction to settle any such dispute or claim.

20.3. The ICO is a public authority for the purposes of the Freedom of Information Act 2000. Nothing in this agreement can be taken as excluding the statutory obligations under that Act.

21. Contact points

The contact points at the ICO will be as follows:

HR Contact:

Line Manager:

Address:

Telephone:

Email:

The contact points at Employer will be as follows:

HR Contact:

Line Manager

Address

Telephone:

Email:

Signed on behalf the Information Commissioner's Office

Name:

Position:

Signature:

Dated:

Signed on behalf of

Name:

Position:

Signature:

Dated:

APPENDIX**Data Sharing Schedule**

Description	Details
Purpose for which personal data is being shared	For the purpose of managing the secondment agreement.
Categories of personal data	Personal identifiers of the Secondee, personal details related to HR related issues and details of performance under the secondment.
Potential recipients and reasons for access	HR personnel of both ICO and the Employer, Line managers of Secondee both at the Employer and ICO. For purposes connected solely with the secondment agreement.
Data sharing process	To be shared via email, reports meetings and other forms of communication for purposes solely associated with performance of services under the secondment agreement.
Any deletion requirements	The personal data will only be retained for the relevant period under the ICO and the Employer respective retention policies in respect of such Personal Data.
Details of the decision to share	Taken by service area in both ICO and the Employer where decision taken to engage/approve engagement of Secondee for the required purposes under the secondment agreement.