***MEMORANDUM OF UNDERSTANDING / SECONDMENT AGREEMENT TEMPLATE***

***Instructions for users***

*This document is a template only and must not be relied upon as legal advice.*

*This document outlines* ***suggested*** *terms and conditions that users can consider for mobility secondment arrangements, including as a Memorandum of Understanding (MOU) or as a Secondment Agreement or Contract.*

*These suggested terms and conditions are not exhaustive and users will need to consider the needs of their own organisation, the other party and the secondee.*

*Users should therefore carefully consider all of the specific circumstances of the secondment, legal obligations, risks and business needs as well as any relevant internal policies and procedures within their organisation when considering using this template. These may include certain employment conditions of the secondee, including enterprise agreements or other terms and conditions of employment, security requirements, insurance policies,*

*Organisations should carefully consider whether an MOU (which is generally not intended to be legally binding), or a Secondment Agreement or Contract (which are generally intended to be legally binding) is appropriate.*

*Users of this template should:*

* *carefully consider whether each of the suggested terms suit your particular needs and circumstances in each case;*
* *consult with their own organisation’s relevant corporate teams, including human resources and legal teams, when considering using this template or seeking to tailor the template for use by your organisation;*
* *read this document in conjunction with the mobility guidance material published by the Australian Public Service Commission; and*
* *fill in the relevant highlighted fields (including choosing relevant options that suit your needs), delete all drafting notes/unused clauses and options and carefully check clause references and use of terminology for consistency throughout before finalisation.*

**[MEMORANDUM OF UNDERSTANDING / SECONDMENT AGREEMENT] - SECONDMENT OF [Name]**

This [Memorandum of Understanding (“**MOU”**) / Secondment Agreement] is made on the [Insert date signed by the last party] between the following parties (the “**Parties**”):

* [Enter name] (the “**Secondee**”);
* [Host organisation name, ABN (where applicable) and address] (the “**Host organisation**”); and
* [Home organisation name, ABN (where applicable) and address] (the “**Home organisation**”).

**RECITALS**

1. The Home organisation has agreed to second the Secondee to the Host organisation to achieve work objectives (the "**Secondment**") as set out in Attachment A.
2. The Parties agree that the Secondment will operate on the terms and conditions set out in this [MOU/Secondment Agreement].

**THE PARTIES AGREE AS FOLLOWS**:

* 1. **Secondment description**
     1. The Secondee will be assigned a position in the Host organisation.
     2. The Secondee will be working for the Host organisation in a [full time/part time] arrangement [enter details if applicable].
  2. During the Secondment, the Secondee will perform the duties/functions assigned by the Host organisation relating to the role of [position description] under the supervision of [Host organisation manager name].

1. **Term of Secondment**
   1. The term of the Secondment will be from dates [Date to Date] (the "**Term**")**.**
   2. At the conclusion of the Term the Secondee will return to the Home organisation.
   3. Any extension or variation to the Secondment (including to the Term) must be agreed, in writing, between all Parties prior to the expiration of the original Term.
2. **Employment Status**
   1. The Secondee remains an employee of the Home organisation throughout the Term and subject to their employment conditions with the Home organisation (the "**Employment Conditions**"). Theseinclude, but are not limited to, relevant enterprise agreements or other relevant employment instruments (however described), hours of work, relevant policies and code of conduct**.**
   2. Any variation to the Secondee's Employment Conditions during the Term will be negotiated between the Secondee and the Home organisation, and, to the extent that any variation may affect the Secondment, the Host organisation.
   3. The Parties acknowledge that during the Term the Secondee will be bound by the APS Code of Conduct set out in section 13 of the *Public Service Act 1999* (Cth) (the “**APS Code of Conduct**”). [The Parties acknowledge that during the Term the Secondee will also be bound by the [insert relevant additional code of conduct/behavioural code] set out in [insert relevant source].

*Note clause 3.3: users should consider whether, in their particular circumstances, additional codes of conduct or behavioural codes may also apply to the Secondee. For example, certain non-APS agencies, state or territory governments and private sector entities may have their own code of conduct/equivalent behavioural codes that also apply and may need to be reflected in this clause. Users should carefully consider whether this clause reflects their needs. Users should also ensure this clause is consistent with clauses 15.1.3 and 16.1.3.*

1. **Remuneration and associated costs**
   1. The Home organisation will remain responsible for the payment of the Secondee's salary, associated entitlements, any agreed allowances, superannuation and other associated costs for the Term of the Secondment. The Secondee's remuneration will remain at their existing level, unless otherwise agreed.
   2. The Home organisation will not seek recovery of costs from the Host organisation for the costs specified in clause 4.1.   
        
      OR

The Host organisation will reimburse the Home organisation, [at the end of the Term/on a quarterly basis], for [insert percentage, capped amount, etc] for the Secondee's [salary, superannuation and other employment costs specified in clause 4.1], which must be approved in advance in accordance with the Home organisation’s policies and procedures. At the [completion of the Secondment/end of the quarter] the Home organisation will send a correctly rendered invoice to the Host organisation by email to [Host organisation’s payroll email].

*Note - clause 4.2: users should carefully consider whether they wish for the Home organisation to bear the full remuneration costs or whether the Home organisation will recover some or all of those costs from the Host organisation, for example whether certain reasonable out of pocket expenses will be reimbursed by the Host organisation. Where the Host organisation is to reimburse the Home organisation for certain costs, users will need to consider clearly identifying each specific cost that is to be reimbursed. Users should also consider whether any particular invoicing processes and procedures apply. Consider including a summary table to display any special arrangements.*

* 1. Where the Secondee is required to undertake travel on behalf of the Host organisation, the Host organisation will directly pay any travel costs associated with the Secondment, in line with the Host organisation's travel policies and any relevant Employment Conditions of the Secondee, including, but not limited to: transportation, travel allowances, accommodation, meal costs and travel expenditure limits. The Host organisation will not seek recovery of costs from the Home organisation or Secondee for these costs.

*Note - clause 4.3: users should note that some employees may have Employment Conditions relevant to the travel allowance and other related costs that may apply. Users should consider these issues when considering whether these clauses are suitable for your needs.*

* 1. The contact details for payroll and other related matters at the Home organisation are:

|  |  |
| --- | --- |
| **Position:** |  |
| **Address:** |  |
| **Ph:** |  |
| **E-mail:** |  |

* 1. The contact details for payroll and other related matters at the Host organisation are:

|  |  |
| --- | --- |
| **Position:** |  |
| **Address:** |  |
| **Ph:** |  |
| **E-mail:** |  |

# Leave entitlements and notification

* 1. During the Term, the Secondee will be eligible to utilise any accrued leave entitlements accrued under the Employment Conditions, subject to approval from the Home organisation and the operational requirements and approval of Host organisation (such approval is not to be unreasonably withheld). The Home organisation will be responsible for administering any leave taken by the Secondee.
  2. During the Term, the Secondee's leave entitlements will continue to accrue in accordance with the Employment Conditions.

# Performance Management and Salary Advancement

* 1. The Secondee will continue to undertake performance reviews and related performance-based salary advancement and performance pay as per Employment Conditions with the Home organisation.
  2. The Home organisation may seek comment from the Host, and the Host may provide information to assist the Home organisation, when the Home organisation is determining performance ratings for the Secondee during the Secondment.

# Training and Development

* 1. The Secondee and the Host organisation will address any training needs in relation to the work objectives and all costs associated with training activities undertaken during the Term will be met by the Host organisation unless otherwise agreed with the Home organisation.

*Note - clause 7.1: users should consider whether, in their particular circumstances, certain training and developments costs will be borne by the Home organisation, for example, to maintain any qualifications required by the Secondee’s usual role in the Home agency. Invoicing arrangements may also need to be considered.*

# Applying for positions

* 1. Both the Host organisation and the Home organisation recognise that the Secondee is entitled to apply for positions in either organisation, or externally, during the Term of the Secondment.
  2. If the Secondee chooses to apply for any positions with the Host organisation during the Term, they would do so as an employee of their Home organisation.
  3. If the Secondee is a successful applicant for another position, the Secondee will notify both the Host organisation and the Home organisation in writing as soon as the Secondee is advised of their successful application and in accordance with any notice requirements applying to the Secondee under their Employment Conditions.

# Confidentiality and conflicts of interest

* 1. For the purposes of this [MOU/Secondment Agreement], “**Confidential Information**” means information that:
     1. is by its nature confidential;
     2. is designated by a Party as confidential; or
     3. a Party knows, or ought to know, is confidential, and includes the information relating to the business, operations, products, affairs or finances of a Party, trade secrets, technical data relating to the operations of a Party or any of its suppliers, clients, agents, distributors or stakeholders.
  2. The Parties will not disclose any Confidential Information of any of the other Parties without the express written agreement of the relevant Party.
  3. The Secondee has a responsibility to consider the impact their personal interests or Home organisation's interests may have on their duties with the Host organisation and identify and declare immediately to both the Host and Home organisation if a conflict of interest (whether actual, perceived or potential) may exist.
  4. Where a potential conflict of interest is identified, the Parties will manage the conflict appropriately in accordance with relevant conflict of interest policies and procedures.

*Note - clause 9: users should consider whether they have any confidentiality/non-disclosure or conflict of interest policies that should be directly referenced in the document, including particular notification, declaration or reporting requirements that may apply.*

1. **Security**
   1. During the Term, the Secondee must abide by the security requirements of both the Host organisation and the Home organisation. If there are apparent conflicts between those requirements, they will be identified and resolved in writing by all Parties; and, if unresolved, the requirements of the Host organisation will prevail.
   2. The Host organisation will ensure that the Secondee is made aware of any particular security requirements that apply in relation to the Secondment.
   3. The [Host/Home] organisation will bear the costs associated with any security clearances required.

*Note - clause 10: users should consider whether, they have any particular security needs and whether they wish to include a clause that addresses whether the Home or Host organisation will bear any costs related to obtaining/maintaining relevant security clearances. This may also impact on clauses 16.1.5 and 17.1.5 which deal with the responsibilities of the Home/Host organisations with respect to security clearances.*

1. **Intellectual Property**
   1. Unless otherwise agreed in writing between the Host organisation and the Home organisation, all work produced by the Secondee for, or under the direction or control of the Host organisation during the Term of the Secondment, and intellectual property rights in that work, vests in the Host organisation.
   2. Subject to clauses 9 and 11.1, nothing in this clause will have the effect of preventing the Secondee from presenting on their experiences during the Secondment when they return to the Home organisation, or using the knowledge acquired by the work objectives to improve the operations of the Home organisation, provided, at all times, that Confidential Information of the Host organisation cannot be used in any such presentation (unless express written agreement from the Host organisation has been granted).

*Note - clause 11: users should consider whether they have any particular intellectual property needs or policies that should be incorporated, including any licencing requirements that should be reflected. Users should also consider whether they need to address the Secondee’s moral rights within this provision.*

1. **Insurance**
   1. During the Term of the Secondment, the Home organisation will continue to carry worker's compensation coverage for any compensable illness, injury or disease sustained by the Secondee in accordance with the provisions of the *Safety, Rehabilitation and Compensation Act 1988* and any other relevant laws*.*
   2. The Host organisation will maintain professional and public liability insurance cover for, and in respect of, the Secondee.
   3. Each Party must, if requested by the other Party, promptly provide evidence of compliance with its insurance obligations under clause 12.

*Note - clause 12: users should carefully consider their insurance requirements which may change depending on the relevant laws that may apply to them and the other Parties to this arrangement, their existing insurance policies, and the particular circumstances and risks of the Secondment.*

1. **Workplace Health and Safety** 
   1. The Host organisation must provide a safe working environment in accordance with the *Work Health and Safety Act 2011* (Cth)(the **"WHS Act**"), and any relevant codes of practice or other work health and safety laws.
   2. The Host organisation will have the primary duty of care in relation to the Secondee while the Secondee is on Host organisation premises or whilst undertaking work elsewhere for the Host organisation, in accordance with the WHS Act. However, the Home organisation retains overall responsibility under the WHS Act for the Secondee and should provide the Secondee with information about their WHS Act responsibilities to both the Host organisation and the Home organisation whilst on Secondment.
   3. [The Secondee or the Home organisation may seek contribution from the Host organisation for the costs associated with any compensable illness, injury or disease sustained by the Secondee, where the Secondee’s compensable illness, injury or disease is due in any way to the fault of the Host organisation or it’s personnel, employees, agents, contractors, suppliers or stakeholders.]

*Note - clause 13.3: users should consider whether they wish to include a contribution clause.*

* 1. The Parties will cooperate and consult in relation to relevant work health and safety matters, including but not limited to reporting relevant incidents and investigations under relevant work health and safety laws.
  2. The Host organisation will provide local work health and safety and wellbeing procedures that support a healthy and safe work environment for the Secondee and provide assurance to Home organisation.
  3. The Host organisation will provide the Secondee with reasonable workplace adjustments including air quality, lighting, provision of appropriate equipment and workstation to meet work health and safety obligations. Other work health and safety costs will be agreed in consultation with the Home organisation [insert details if applicable].
  4. The Host organisation will provide local case management support of any compensable illness, injury or disease where requested to do so by the Home organisation.

*Note - clause 13: users should consider whether, in their particular circumstances, other relevant work health and safety laws and obligations apply. This may change depending on the type of organisation involved and the jurisdictions in which they operate, which may affect the application of relevant laws. Users should also carefully consider whether these suggested clauses meet your needs.*

1. **Dispute Resolution**
   1. In the event of a dispute arising out of this [MOU/Secondment Agreement] or otherwise in relation to the Secondment, the Parties will first try to resolve the dispute by negotiation at the workplace level, between the Secondee's immediate Host organisation manager and the Home organisation manager.
   2. If negotiations at the workplace level do not achieve a prompt resolution, the matter will be referred to the [Chief Operating Officers and/or insert details of relevant senior officer titles] of each respective organisation for resolution.
   3. [If negotiations under clauses 14.1 and 14.2 do not resolve the dispute within [insert period of time], the Parties agree to resolve the dispute by mediation.]

*Note – clause 14: users should consider whether this clause is suitable for your purposes, including what level of escalation is appropriate for your organisation at each stage of a dispute. You may also wish to consider including a more detailed dispute resolution clause that also deals with whether the matter will revert to mediation if an agreement is not reached.*

1. **Secondee Obligations and Responsibilities**
   1. In addition to obligations and responsibilities of the Secondee set out in this [MOU/Secondment Agreement], the Secondee is also required to:
      1. follow all reasonable and lawful directions of the Host organisation;
      2. act in accordance with all relevant laws (statutes, regulations and by-laws) relating to their Secondment with the Host organisation, including any applicable health and safety legislation; and
      3. during the Term, abide by the requirements set out in the APS Code of Conduct, APS Values, APS Employment Principles[/other relevant codes of conduct], and the policies, procedures and practices of both the Host organisation and the Home organisation. If there are apparent differences between the latter requirements, they will be identified and resolved in writing by all Parties; and, if unresolved, the requirements of the [Host/Home] organisation will prevail.

*Note - clause 15.1.3: users should consider whether, in their particular circumstances, additional codes of conduct or other relevant behavioural codes apply to the Secondee. For example, certain non-APS agencies, state or territory governments and private sector entities may have their own code of conduct/equivalent behavioural codes that also apply and may need to be reflected in this clause. Users should carefully consider whether this clause reflects their needs. Users should also ensure this clause is consistent with clause 3.3 and clause 16.1.3.*

* 1. The Secondee is responsible for:
     1. completing all personal learning and work objectives identified;
     2. taking appropriate steps to ensure their own health, safety and wellbeing and to avoid harm to others, including bringing any health, safety and wellbeing issues in the workplace to the Host organisation's attention;
     3. keeping in touch with the Home organisation on a regular basis; and
     4. identifying changed expectations before returning to the Home organisation.

1. **Host organisation Responsibilities**
   1. In addition to obligations and responsibilities of the Host organisation set out in this [MOU/Secondment Agreement], the Host organisation will also be responsible for:
      1. the general induction for the Secondee into the Host organisation's business, the orientation of the Secondee into the Host organisation's work environment, and providing the Secondee with the resources needed to perform the work objectives;
      2. supervising the work of the Secondee and accepting professional responsibility for that work;
      3. ensuring that any performance management issues or suspected breaches of the APS Code of Conduct[/other relevant codes of conduct] by the Secondee are notified to the Home organisation as soon as practicable;

*Note - clause 16.1.3: users should consider whether, in their particular circumstances, additional codes of conduct or other relevant behavioural codes apply to the Secondee. For example, certain non-APS agencies, state or territory governments and private sector entities may have their own code of conduct/equivalent behavioural codes that also apply and may need to be reflected in this clause. Users should carefully consider whether this clause reflects their needs. Users should also ensure this clause is consistent with clause 3.3 and clause 15.1.3.*

* + 1. agreeing with the Secondee clear performance expectations and processes for performance feedback to the Secondee and their manager and for recording and assessing their development;
    2. arranging any new security clearances required for the Secondee;

*Note – clause 16.1.5: users should consider whether this clause reflects their needs, consistent with clause 10.3 and clause 17.1.5.*

* + 1. identifying appropriate learning opportunities for the Secondee;
    2. discussing any concerns or difficulties related to the Secondment with the Secondee, and where necessary, the Home organisation, as soon as they arise; and
    3. providing and maintaining a safe working environment that meets the requirements of the *Work Health and Safety Act 2011* (Cth)*, Work Health and Safety Regulations 2011* (Cth)*,* and any relevant codes of practice and other relevant work health and safety laws and obligations.

1. **Home organisation Responsibilities**
   1. In addition to obligations and responsibilities of the Home organisation set out in this [MOU/Secondment Agreement], the Home organisation will also be responsible for:
      1. notifying the Host organisation of any changes to the circumstances of the Secondee, including any disciplinary action or other matters that could impact on the Secondment;
      2. notifying the Host organisation of any special needs that the Secondee may have in carrying out their duties effectively and safely (including any work health and safety requirements);
      3. warranting that, at the expiration of the Term, the Secondee will return to their substantive position within the Home organisation, unless otherwise agreed in writing between the Parties;
      4. keeping the Secondee briefed on work-related activities and events occurring at the Home organisation during the Secondment (e.g. by extending invitations to meetings, providing information on internal policies, business planning process and social events etc.). This will include, where possible, continuing the Secondee's access to the Home organisation's email facilities;
      5. [where relevant, facilitating the maintenance of the Secondee’s security clearances in relation to their employment by the Home organisation;] and

*Note – clause 17.1.5: users should consider whether this clause reflects their needs, consistent with clause 10.3 and clause 16.1.5.*

* + 1. keeping in touch with the Secondee on a regular basis.

1. **Termination**
   1. Any of the Parties may terminate the Secondment by giving the other Parties at least 10 business days' written notice or as otherwise agreed in writing between the Parties.
2. **Signatories**
   1. I have read and understood the [MOU/Secondment Agreement] and accept the terms and conditions as stated:

|  |  |  |
| --- | --- | --- |
| Secondee Signature  [Insert Secondee name]  Date: | Home organisation Representative or Authorised Person Signature  [Insert name and position]  Date: | Host organisation Representative or Authorised Person Signature  [Insert name and position]  Date: |

Attachment A: Work Objectives

The Mobility Plan [link] can be attached or a similar document that outlines the specific details of the Position description, performance expectations, etc.