

Appendix C – Secondment Agreement

This Agreement is made thisday of 201

BETWEEN

(1)THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY of the Civic Centre, High Road, Wood Green, London, N22 8LE (“LBH”);

(2) THE MAYOR AND BURGESSES OF LONDON BOROUGH OF WALTHAM FOREST of the Town Hall, Forest Road, London E17 (“LBWF”); and

(3)..... of(the “Secondee”).

WHEREAS

- (A) Pursuant to the Local Authority (Goods and Services) Act 1970, LBH can provide professional services to LBWF.
- (B) Pursuant to s. 113 of the Local Government Act 1972, the Boroughs can agree for the services of an officer of LBH to be placed at the disposal of LBWF and for that officer to be treated as an officer of LBWF.
- (C) LBH employs the Secondee as and has appointed him as under s.of Act.
- (D) LBWF has requested, and LBH has agreed, that LBH will provide certainservices to LBWF through the Secondee and that The Secondee may be appointed asfor LBWF.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

Agreement: this agreement;

Boroughs: LBWF and LBH;

Commencement Date:

Confidential Information: any information which has been designated as confidential by either of the Boroughs in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading practices, developments, Intellectual Property Rights, personnel, customers and suppliers of either of the Boroughs, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and any information specifically designated by either of the Boroughs to be commercially sensitive information;

Contract Price: the amount payable by LBWF for the provision of the Services, calculated in accordance with the Secondee’s salary and on costs which shall be detailed in the invoice to be submitted in accordance with clause 5.3 below;

Contractual Hours: 36 hours per Working Week (pro rata) or such other hours as the Secondee is required to work under the Employment Contract;

Employment Contract: the contract of employment in place between the Seconded and LBH at the date of this Agreement (as may be amended from time to time);

Intellectual Property Rights: means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

Parties: the parties to the Agreement and **Party** shall mean any of them;

Products: all data, reports, databases, lists, plans, computer data, information and other documents together with any ideas or concepts which are generated, created, compiled or otherwise provided as part of, or as a result of the Services;

Secondment Period: the period of this Agreement as defined in clause 2.1;

Services: means the services be provided by LBH through the Seconded to fulfil the role

Working Week: Monday to Friday excluding public holidays in England; and

Year: a continuous twelve (12) calendar month period starting on the Commencement Date or any subsequent anniversary thereof.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 The schedules to this Agreement form part of (and are incorporated into) this agreement.

2. COMMENCEMENT AND SECONDMENT PERIOD

- 2.1 The Agreement shall commence from the Commencement Date and shall continue for a period of [twelve (12) calendar months] unless:
 - (a) terminated in accordance with clause 12; or
 - (b) extended by the written agreement of the Parties. Any extension shall be subject to the terms of conditions of this Agreement.
- 2.2 The Agreement shall be subject to a review by the Parties after an initial term of six (6) months. Within [14] calendar days of completion of such review any of the Parties may choose to terminate the Agreement on [30 calendar days] notice.

3. SERVICES

- 3.1 LBH shall provide the Services to LBWF through the Seconded in accordance with the terms and conditions set out in this Agreement.

- 3.2 Subject to clause 3.4, the Secondee will devote on average [18 hours] per Working Week (calculated on a pro-rata basis) (excluding evening meetings) to providing the Services.
- 3.3 The Secondee will devote the remainder of the Contractual Hours working for LBH.
- 3.4 The Secondee will spend approximately half of the Contractual Hours located at each of the Boroughs, however the Parties acknowledge that:
- (a) The Secondee will carry out such work at such time as is necessary according to the priority of needs of both LBWF and LBH; and
- 3.5 such work will be carried out by the Secondee on a basis of need rather than physical location. The Services will be provided by the Secondee with all reasonable skill and care.
- 3.6 For the avoidance of doubt, the provisions of this clause 3 shall be subject to the Secondee's rights under clause 8 (Leave).

4. SECONDEE'S EMPLOYMENT

- 4.1 For the avoidance of doubt, the Secondee shall remain an employee of LBH during the Secondment Period and the Employment Contract shall remain in force during that time.
- 4.2 The Secondee's line manager for day-to-day purposes during the period of secondment whilst working at LBWF will be as nominated by LBWF, and the Employee agrees to accept such control.
- 4.3 LBWF shall provide LBH with such information and assistance as it may reasonably require to carry out its obligations as the Secondee's employer.
- 4.4 The Secondee shall continue to undertake work for LBH in accordance with the Employment Contract, during the Secondment Period.

5. PAYMENTS

- 5.1 LBH shall continue to pay the Secondee's salary and any allowances, provide any benefits due to the Secondee or his dependants, make any payments to third parties in relation to the Secondee and make any deductions that it is required to make from the Secondee's salary and other payments.
- 5.2 In consideration for the performance of the Services LBWF shall pay LBH the Contract Price in accordance with this clause 5
- 5.3 LBH shall submit an invoice to LBWF on a quarterly basis specifying the amount of payment due under this Agreement in relation to the previous quarter and the amount of any VAT due on the payment. Such invoices shall be payable by LBWF within 30 calendar days of receipt of the invoice.
- 5.4 LBWF shall refund the Secondee all reasonable travel, accommodation and other expenses wholly, exclusively and necessarily incurred by the Secondee in the provision of the Services provided that such expenses are evidenced in such manner as LBWF may specify from time to time.

6. PERFORMANCE REVIEWS AND MANAGEMENT

- 6.1 LBH shall continue to deal with any management issues concerning the Secondee during the Secondment Period, where relevant following consultation with LBWF.
- 6.2 LBWF will participate in performance reviews in relation to the Secondee under LBH's performance management scheme.
- 6.3 Performance appraisals will be conducted at 6-month intervals, with supervision sessions held at least quarterly, by the appropriate line manager in accordance with

the 'Employer's' guidelines. Such meetings may be held jointly with an appropriate manager of the 'Employer'

6.4 During the Period of Secondment the Secondee shall carry out all reasonable instructions of the LBWF

6.5 In the event that the Secondee's performance is not satisfactory LBWF shall:

- Draw to the Secondee's attention at an early stage the areas of unsatisfactory performance.
- Provide any support and training necessary to assist the Secondee to improve his/her performance.
- Arrange a meeting between the parties, at which the Secondee will have a right to be accompanied, to consider whether the secondment should continue.

6.6 In the event of misconduct LBWF shall:

- Notify LBH in writing within seven days of the alleged misconduct occurring or being discovered;
- Arrange a meeting between the LBH and LBWF to discuss how best to investigate the alleged misconduct, in accordance with any of LBH's relevant policies;

6.7 Arrange a meeting between the parties, at which the Secondee will have the right to be accompanied, to consider whether the secondment should continue and whether the Secondee should be subject to disciplinary proceedings

6.8 LBWF shall provide any information, documentation, access to its premises and employees and assistance (including but not limited to giving witness evidence) to LBH to deal with any management issues concerning the Secondee whether under LBH's internal procedures or before any court of tribunal. LBH will reimburse the reasonable costs and expenses incurred by LBWF in doing so subject to the prior approval of LBH.

6.9 Each of the Boroughs shall inform the other as soon as reasonably practicable of any other significant matter that may arise during the Secondment Period relating to the Secondee or his employment.

7. CONFLICTS OF INTEREST

7.1 The Secondee shall use reasonable endeavours to identify any actual or potential conflicts of interest between LBWF and LBH as soon as possible.

7.2 The Secondee shall disclose to LBWF and LBH any actual or potential conflicts of interest as soon as he becomes aware of them.

7.3 The Parties agree to adhere to the protocol attached at Schedule 1 in relation to any potential or actual conflicts identified in relation to this Agreement.

8. LEAVE

8.1 The Secondee shall continue to be eligible for sick pay, holiday pay and any absence entitlements in accordance with the Employment Contract. the Secondee shall be subject to LBH's and LBWF's approval and notification procedures.

9. IT SYSTEMS

9.1 The Boroughs will co-operate in facilitating the most economic and efficient use of any computer equipment agreed to be used or shared in connection with the operation of this Agreement and the Seconded agrees to comply with LBWF's Information Technology protocols and policies which shall be provided to the Seconded

10. CONFIDENTIALITY

10.1 Subject to clause 10.3, the Seconded shall treat all Confidential Information belonging to either of the Boroughs which he receives, develops, acquires or obtains as a result of the provision of the Services or work carried out for LBH under his Employment Contract as confidential and shall not disclose any Confidential Information belonging to one Borough to the other Borough.

10.2 For the avoidance of doubt the Seconded accepts that during the period of Secondment he/she may receive Confidential Information concerning either Borough and/or their clients. Subject to clause 10.4 below the Seconded agrees to treat such information as secret and confidential and not to disclose such information without express written permission of the relevant Borough. This shall not include information which is trivial or cannot reasonably be considered to be confidential

10.3 The provisions of clause 10.1 shall not apply to information regarding organisational matters relating to the Boroughs' [insert department being worked in] departments disclosed in order to facilitate better cooperation and potential joint working between the Boroughs.

10.4 Each of the Boroughs agrees that it shall:

- (a) keep any Confidential Information relating to the other Borough that it obtains as a result of the operation of this Agreement secret;
- (b) not use or directly or indirectly disclose any such Confidential Information (or allow it to be used or disclosed), in whole or in part, to any person without the prior written consent of the other Borough;
- (c) use its reasonable endeavours to ensure that no person gets access to the Confidential Information from it, its officers, employees or agents unless authorised to do so; and
- (d) inform the other Borough immediately upon becoming aware, that an unauthorised person has become aware of such Confidential Information.

10.5 Nothing in this Agreement shall prevent any Party from disclosing information:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause); or
- (b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party; or
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (d) which is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure.

11. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP OF DOCUMENTS

- 11.1 All Intellectual Property Rights created by the Seconded in the provision of the Services shall belong to LBWF and LBH hereby assigns to LBWF such Intellectual Property Rights and all other rights capable of subsisting in the Products which are in existence now or which may be created in the future, throughout the world and in perpetuity.
- 11.2 LBWF acknowledges that all other Intellectual Property Rights, including those created in relation to such work as is provided by the Seconded for LBH under his Employment Contract, shall vest in LBH.
- 11.3 All documents, manuals, hardware and software provided for the Seconded's use by LBWF in relation to the provision of the Services, and any data or documents (including copies) produced, maintained or stored on LBWF's computer systems or other electronic equipment (including mobile phones), shall remain the property of LBWF.
- 11.4 Nothing in this Agreement shall prevent the sharing of and exchange of [insert applicable service area] research know-how and precedents developed, created and acquired by the Seconded on behalf of either authority provided that no conflict of interest arises between the Parties in relation to it.

12. TERMINATION

- 12.1 Any Party may terminate this Agreement at any time by giving not less than 3 calendar months' written notice to the other Parties.
- 12.2 LBH may terminate the Agreement with immediate effect without notice or payment in lieu of notice:
- (a) on the termination of the Employment Contract as a result of the Seconded's gross misconduct, resignation or retirement; or
 - (b) if LBWF is guilty of any serious or (after warning) repeated breach of the terms of this Agreement.
- 12.3 LBWF may terminate the Agreement with immediate effect without notice or payment in lieu of notice:
- (a) on the termination of the Employment Contract;
 - (b) if LBH is guilty of any serious or (after warning) repeated breach of the terms of this Agreement; or
 - (c) if the Seconded is guilty of any serious or (after warning) repeated breach of the terms of this Agreement.
- 12.4 Any delay by either of the Boroughs in exercising such right to terminate under this clause 12.2 shall not constitute a waiver of such rights.
- 12.5 For the avoidance of doubt any redundancy compensation due to the Seconded resulting from the termination of this agreement and consequently his employment with LBH shall be the responsibility solely of LBH.

13. EFFECT OF TERMINATION

- 13.1 Where this Agreement is terminated:
- (a) the Parties shall be relieved from further performance of their obligations;
 - (b) any rights and remedies to which any Party becomes entitled or subject before the termination shall remain effective;

- (c) the termination shall not affect any right to damages that the Party serving notice of termination may have in respect of the default giving rise to the termination or any other right to damages which any Party may have in respect of any breach occurring before the termination; and
- (d) notwithstanding the termination of the Agreement, the following clauses shall remain in full force and effect: 1 (Definitions and Interpretation), 10 (Confidentiality), 111 (Intellectual Property Rights), 122 (Termination), 133 (Effects of Termination), 144 (Liability), 15 (Dispute Resolution), 16 (Notices), 17 (Entire Agreement), 18 (Variations and Waiver), 19 (Counterparts), 20 (Contracts (Rights of Third Parties) Act 1999), 21 (Severability), 22 (No Partnership) and 23 (Law and Jurisdiction).

13.2 Upon termination of the Agreement howsoever arising the Seconded shall, upon the request of LBWF:

- (a) deliver to LBWF all documents (including, but not limited to, correspondence, lists of clients or customers, plans, drawings, accounts and other documents of whatsoever nature and all copies thereof, whether on paper, computer disc or otherwise) made, compiled or acquired by him as a result of the provision of the Services and relating to the business or affairs of LBWF or its residents, customers or suppliers and any other property of LBWF which is in their possession, custody, care or control;
- (b) irretrievably delete any information relating to the business of LBWF stored on any magnetic or optical disc or memory and all matter derived from such sources which is in their possession, custody, care or control outside the premises of LBWF; and
- (c) confirm in writing and produce such evidence as is reasonable to prove compliance with his obligations under this clause 133.

14. LIABILITY

- 14.1 LBWF hereby agrees to indemnify and keep indemnified the LBH at a rate of 50%, unless agreed otherwise, in respect of any employment related actions or claims by the Seconded in connection with the Secondment, including but not limited to employment tribunal claims.
- 14.2 LBWF agrees to indemnify and keep indemnified LBH at a rate of 50%, unless agreed otherwise, against any liability which LBH incurs due to any bodily injury or disease sustained by the Seconded during the Period of Secondment and arising out of the Seconded's secondment under this Agreement.
- 14.3 LBWF will also ensure the Seconded is covered by its professional indemnity insurance during the term of the Secondment
- 14.4 LBWF shall take out and maintain in full force with a reputable insurance company for the Secondment Period adequate insurance to cover any loss, injury and damage caused by or to the Seconded in the course of providing the Services.
- 14.5 During the Secondment Period LBWF shall fulfil all duties relating to the Seconded's health, safety and welfare as if it were the Seconded's employer and shall comply with LBH's reasonable requests in connection with its duties in relation to the Seconded. Provided always that LBH shall indemnify LBWF against any claim made by the Seconded the cause of which relates to the Seconded's work for and at LBH
- 14.6 LBWF shall indemnify LBH fully and keep LBH indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by:

- (a) the Seconded in relation to any loss, injury, damage or costs arising out of any act or omission by LBWF or its employees or agents during the Secondment Period; or
- (b) a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Seconded in the course of carrying out the Services.

14.7 LBWF shall indemnify the Seconded fully and keep the Seconded indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by the Seconded in relation to any loss, injury, damage or costs arising out of any act or omission by LBWF or its employees or agents during the Secondment Period, save where the Seconded has contributed either directly or indirectly to such loss.

14.8 LBH shall indemnify LBWF against any claim by an LBWF employee or other party which arises from or relates to the actions or omissions of the Seconded in carrying out his duties at or for LBWF provided always such action or omission was not caused or made at the request of LBWF or an LBWF employee..

15. DISPUTE RESOLUTION

15.1 In the event that any dispute arises between any of the Parties in connection with this Agreement, the Parties in dispute shall, in the first instance, use their reasonable endeavours to resolve it amicably between themselves at a meeting to be held between the Seconded, and[managers?] (as appropriate).

15.2 If the dispute is not resolved between the persons named in clause 15.1, the matter shall be referred to the Chief Executives in respect of the Boroughs (as appropriate).

15.3 Disputes remaining unresolved following such referral as in Clause 15.2 shall, if the Parties agree (and such agreement shall not be unreasonably withheld), be referred to non-binding mediation through the Centre for Effective Dispute Resolution.

15.4 In the event that the Parties do not agree to non-binding mediation pursuant to Clause 15.3 or if the dispute remains unresolved, the dispute shall be referred to the exclusive jurisdiction of the Courts of England pursuant to Clause 233 below.

16. NOTICES

16.1 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 the address first written above for the time being marked for the attention of the relevant Party's Director of Human Resources or equivalent officer. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery; and
- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

16.2 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.

17. ENTIRE AGREEMENT

- 17.1 Each Party on behalf of itself acknowledges and agrees with the other Parties that:
- (a) this Agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Parties and supersedes any previous agreement between them relating to the provision of the Services (which shall be deemed to have been terminated by mutual consent);
 - (b) in entering into this Agreement neither they nor it has relied on any pre-contractual statement; and
 - (c) the only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other party in respect of any pre-contractual statement.
- 17.2 Nothing in this Agreement shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

18. VARIATION AND WAIVER

- 18.1 No modification, variation or amendment to this Agreement shall be effective unless such modification, variation or amendment is in writing and has been signed by or on behalf of all Parties.
- 18.2 No forbearance or delay by any Party in enforcing its respective rights will prejudice or restrict the rights of that Party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

19. COUNTERPARTS

- 19.1 This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

20. THIRD PARTY RIGHTS

- 20.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person other than the Parties shall have any rights under it and it shall not be enforceable by any person other than the Parties.

21. SEVERABILITY

- 21.1 If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

22. NO PARTNERSHIP

- 22.1 Nothing in this Agreement shall be taken as creating a partnership or joint venture between the Parties.

23. GOVERNING LAW AND JURISDICTION

- 23.1 This Agreement shall be governed by and construed in accordance with the law of England.
- 23.2 Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this agreement.

This Agreement has been entered into on the date stated herein

Signed for and on behalf of
**The Mayor and Burgesses of the
London Borough of Haringey**

Signed:
Authorised Officer
Name:

Signed for and on behalf of
**The Mayor and Burgesses of the
London Borough of Waltham Forest**

Signed:
Authorised Officer
Name:

Signed:.....
The Secondee

SCHEDULE 1
CONFLICT OF INTEREST PROTOCOL

1. The purpose of this protocol is to set out how the Parties would deal with any conflicts of interest which may arise as a result of the Agreement.
2. The Parties agree that, in addition to the requirements of this Protocol they will expressly observe and perform their obligations in relation to conflicts of interest under the general law but will specifically comply with the following:-
 - 2.1 In the case of LBH and LBWF any applicable Charter, statutory provision or standing orders.
 - 2.2 In the case of the Seconded his/her contract of employment, any rules of professional conduct that may be applicable to the Seconded's professional body status (if any) and any national or local code of practice applicable to employees of either authority from time to time.
3. LBH and LBWF note the Seconded's interest in the other Party by virtue of the Agreement.
4. The Seconded shall not act as adviser to any decision maker or decision making body of LBH and LBWF in relation to any of the following matters:-
 - 4.1 Any matter arising out of or in connection with the Agreement including its termination or extension;
 - 4.2 Any matter being considered by a decision maker or decision making body of LBH and LBWF which, if approved, could create a significant material benefit or detriment for or to the other Party;
 - 4.3 Any matter in which the Seconded reasonably considers would be a breach of the rules of professional conduct for their professional body if any.

Where the Seconded is prevented from acting as a result of this provision he/she shall make suitable alternative arrangements for the provision of the advice.
5. Where any of the matters referred to in paragraph 4 are being discussed at a Council, cabinet, committee or sub-committee meeting of either authority, the Parties agree that:
 - 5.1 The Seconded shall withdraw from the meeting once the relevant meeting has decided to take a vote and before such a vote is taken; and
 - 5.2 The Chairman of the meeting may in his absolute discretion require the Seconded to withdraw from the meeting while such matter is under consideration and he shall accordingly withdraw for such period.
6. The provisions of this protocol shall continue, so far as they are relevant, notwithstanding that the Agreement has terminated.