

SECONDMENT AGREEMENT

(S 39 of the *Public Sector Employment and Management Act 1993* (NT))

PARTIES

- BETWEEN:** The employer of the Employee named at Item 1 (“the Employer”)
AND: The organisation hosting the Employee named at Item 2 (“the Host”)
AND: The person named at Item 3 (“the Employee”)

AGREED TERMS

1. Interpretation

In this document, a reference to an **Item** is to an Item in the **Schedule** attached to this document.

2. Secondment

- (a) The Host requires a person to carry out the duties and functions of the role described at **Item 4** (“**the Role**”) and the relevant Chief Executive Officer has agreed pursuant to s 39 of the *Public Sector Employment and Management Act 1993* (NT) (“**the Act**”) to the secondment of the Employee to the Host for the purpose of the Role (“**the Secondment**”).
- (b) The parties agree that the Secondment:
- (i) is in pursuance of the purpose and objectives of the Partnership Agreement between the Northern Territory Government and Charles Darwin University 2017 - 2024 dated 9 June 2020;
 - (ii) is in pursuance of the Northern Territory Public Sector’s “Broadening Our Horizons – Avenues for Career Mobility” policy and the “Framework for NT Public Sector/NGO Secondment Program”; and
 - (iii) will operate on the terms and conditions set out in this document, including any additional requirements specified at **Item 9** (which will take precedence to the extent of any inconsistency with the terms and conditions).

3. Term of Secondment

- (a) The Secondment commences on and expires on the dates specified in **Item 5**, subject to any earlier termination or extension in accordance with this document (“**the Term**”).
- (b) Notwithstanding clause 3(a) and with reference to s 39(3) of the Act, the Term will not exceed 3 years.

4. Employment Status of Employee

- (a) During the Term:
- (i) the Employee will remain the employee of the Employer at all times and no employment relationship will exist between the Host and the Employee;

- (ii) the Employer will retain the administration and management of the Employee's employment conditions and entitlements;
 - (iii) the Employer will pay the Employee's wages and any other payments or contributions required by law ("**Remuneration**") and shall make all appropriate taxation deductions required to be made;
 - (iv) the Employee's entitlements with the Employer will continue to accrue;
 - (v) subject to clauses 5(c)(iii) and 6(c), the Employer will retain overall control and direction of the Employee;
 - (vi) the Host will have no responsibility for, and must not pay to the Employee, Remuneration or other benefits ordinarily paid by an employer to an employee under an employment contract, law or industrial instrument;
 - (vii) the Host must not create or incur an Employee entitlement or cost for which the Employer may be liable, such as overtime, time off in lieu, meal or travel allowances, or the like; and
 - (viii) the Host will be responsible for its expenses incurred in connection with the Secondment.
- (b) Except where expressly authorised by the Host in writing, neither the Employer nor the Employee shall have any authority to, and shall not bind the Host to any agreements, or otherwise hold itself, or themselves out to be an agent of the Host, or deal as an agent of the Host.

5. **Employee's Obligations**

During the Term, the Employee:

- (a) will perform the duties of the Role in accordance with the duty statement or job description set out at **Attachment A** to this document ("**the Duties**"), substantially at the location specified in **Item 6**;
- (b) must not perform, and the Host must not require the Employee to perform, activities or duties outside the scope of the Duties;
- (c) must:
 - (i) perform the Duties to the best of their ability;
 - (ii) conduct themselves in an appropriate professional manner for the Host industry;
 - (iii) comply with all reasonable and lawful directions of the Host;
 - (iv) comply with all applicable practices, policies and procedures of the Host as if they were an employee of the Host; and
 - (v) not engage in any activity or role that conflicts or is likely to conflict with the interests of the Host or the Employer and must immediately notify the other parties if such a conflict or a potential conflict arises, in which case the Host and the Employer will agree on how to avoid, manage or resolve the conflict or potential conflict; and

- (d) warrants they hold and will maintain the qualifications and accreditations (if any) required for the Role.

6. The Host's Obligations

During the Term, the Host must:

- (a) provide the Employee with appropriate and timely induction and training for its workplace practices, policies and procedures;
- (b) outline to the Employee its reasonable expectations in relation to the Duties and the performance standards applicable to them;
- (c) be responsible for the day to day direction, management and supervision of the Employee in respect of the Role;
- (d) ensure that any changes to the Duties, or the location at which the Duties will be performed, are notified to, and approved in writing by, the other parties prior to such changes taking effect;
- (e) provide and maintain a safe and hazard free workplace for the Employee to meet the Host's obligations as a "person conducting a business or undertaking" under the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) or otherwise at law;
- (f) on reasonable notice, allow the Employer access to inspect its workplace at which the Employee is performing its Duties and its applicable practices, policies and procedures for workplace health and safety purposes, and implement, at its own cost, any reasonable requests by the Employer to remedy any safety hazards or risks from a workplace health and safety perspective identified by the Employer from such inspection;
- (g) ensure that any performance or conduct issues in relation to the Employee or breach of discipline by the Employee is notified to the Employer as soon as practicable for action in accordance with the Employer's practices, policies and procedures; and
- (h) maintain adequate insurance cover for the Employee in connection with the Secondment, including for the purposes of any indemnity. For the purpose of this clause 6(h), the parties acknowledge that the Northern Territory of Australia self-insures for its risks and liabilities under this document.

7. Secondment Fee

- (a) Subject to clause 7(e), the Host must pay the Employer the amount set out at **Item 7 ("the Fee")** in equal monthly instalments, within 30 calendar days of receipt of a tax compliant invoice from the Employer.
- (b) Unless otherwise specified in **Item 7**, the Fee and all other consideration for any supply made under this document is exclusive of any GST, within the meaning this term has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), imposed on the supply.
- (c) If one party (the supplier) makes a taxable supply to another party (the recipient) under this document, on receipt of a tax compliant invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- (d) No party may claim or retain from another party any amount in relation to a supply made under this document for which the first party can obtain an input tax credit or decreasing adjustment.
- (e) The parties acknowledge that the Fee has been calculated with regard to the Remuneration, which may increase from time to time during the Term by virtue of the Employee's employment conditions. The Employer will notify the Host in writing as soon as practicable in advance of any increase in the Remuneration and the Fee will increase proportionately from the date the Remuneration increases.

8. Employee Leave Entitlements

- (a) The Employee will continue to accrue leave entitlements with the Employer during the Term and the parties agree that the Employee may access their leave entitlements during the Term provided that:
 - (i) the Employee obtains the Host's approval prior to applying to the Employer for leave; and
 - (ii) the Employee applies for, and the Employer grants approval of, such leave, or in the case of personal leave, the Employee meets the notice and evidence requirements of the *Fair Work Act 2009* (Cth) .
- (b) The Host must maintain an accurate and contemporaneous record of all the Employee's leave during the Term and provide the Employer with the record on the Employer's request or the expiry or earlier termination of the Secondment.

9. Confidentiality and Privacy

- (a) A party must not, without the prior written consent of the other parties, disclose any of the substantive terms or conditions of this document to any third party.
- (b) The Employee must observe the privacy requirements and maintain the confidentiality of both the Employer's and the Host's confidential information. The Employee must only disclose the confidential information of the Employer to the Host and its officers, employees or agents with the prior written consent of the Employer and on a need to know basis. The Employee must only disclose the confidential information of the Host to the Employer and its officers, employees or agents with the prior written consent of the Host and on a need to know basis.
- (c) A party must promptly notify the other parties of any suspected or actual breach of privacy or unauthorised use, copying or disclosure of another party's confidential information.
- (d) The Employee consents to the Employee's personal information being shared between the Employer and the Host for the purpose of facilitating and administering the Secondment and complying with the terms and conditions of this document.

10. Intellectual Property

- (a) Unless specified otherwise in Item 8, all documents, drawings, designs or other material created by the Employee in the course of the Duties for the purposes of the Secondment in which copyright or other intellectual property rights subsist, will vest in the Host.

- (b) Clause 10(a) does not limit any benefit that will or may be derived by the Employer from the Employee's personal development of knowledge, skills and expertise during the course of the Secondment.

11. Liability

- (a) The Employer will retain workers compensation liability for any compensable injury or illness sustained by the Employee in the course of the Secondment.
- (b) Subject to the provisions of this document, the Host will be responsible for the Employee during the Term and the Host agrees it will not make any claim against:
 - (i) the Employer in relation to any of the Employee's acts or omissions in the course of the Secondment; or
 - (ii) the Employee, except where the claim is based on the Employee's fraud, serious and wilful, or gross, misconduct, or deliberate breach of duty to either the Employer or the Host.
- (c) The Host must indemnify and keep indemnified the Employer from and against all claims, demands, losses, suits, actions, damages, costs and expenses including reasonable legal costs ("**loss**") incurred by the Employer or its officers, employees or agents arising out of or in connection with the Employee's negligent acts or omissions in the course of the Secondment.
- (d) The indemnity at clause 11(c) is:
 - (i) reduced to the extent that any negligent or wilful act or omission of the Employer caused or contributed to the loss; and
 - (ii) does not apply where the Host is the public service within the meaning of the Act.

12. Dispute Resolution

- (a) If a dispute arises between the Employer and the Host as to any matter or thing arising out of the Secondment, an attempt will be made to resolve the dispute by negotiation at the relevant officer level.
- (b) If the Employer and the Host are unable to resolve the dispute by negotiation in accordance with clause 12(a) within 14 days of the dispute arising, or such longer period as agreed between the Employer and the Host, the dispute will be referred to the Chief Executive Officers of those parties for resolution.
- (c) If the Chief Executive Officers are unable to resolve the dispute in accordance with clause 12(b) within 30 days of the dispute arising, or such longer period as agreed between the Employer and the Host, the Employer and the Host may agree to refer the dispute to a neutral third party for mediation.
- (d) The Employer and the Host will bear their own costs of complying with this clause 12 and will bear equally the cost of any third party engaged under clause 12(c).

13. Termination

- (a) The Secondment may be terminated:
 - (i) by the agreement in writing of all of the parties;

- (ii) immediately by the Host providing notice in writing to the other parties if there are any reasonable performance or conduct issues in relation to the Employee or breach of discipline by the Employee which either cannot be remedied or the Employer has failed to adequately address in a timely manner after they have been notified to the Employer by the Host in accordance with clause 6(g);
 - (iii) by the Employer or Host providing notice in writing to the other parties where the Host and the Employer cannot agree on how to avoid, manage or resolve the conflict or potential conflict within a reasonable period.
 - (iv) by the Employer or Host providing notice in writing to the other parties, where the Employer or Host is a government, to allow for machinery of government changes or policy changes, which termination will take effect as at the date specified in the notice; or
 - (v) immediately by a party providing notice in writing to the other parties where another party breaches any obligations under this document and fails to remedy the breach within 7 days of receiving a notice in writing from the terminating party requesting it to do so.
- (b) If the Employer terminates the Employee's employment or the Employee resigns their employment, then the Employer will notify the Host in writing as soon as practicable and the Secondment will terminate as at the date the termination or resignation takes effect.

14. Actions on expiry or termination of the Secondment

- (a) At the expiry or earlier termination of the Secondment, the Employee must return any property, equipment and information of the Host and must delete the Host's information and data from any personal devices used in the Secondment.

15. Notices

- (a) All notices, approvals and consents required or permitted to be given under this document must be in writing and served:
- (i) personally;
 - (ii) by pre-paid certified post; or
 - (iii) by email,
- and addressed to the address of the party set out in the Schedule or to such other address as a party may have substituted for it by written notice to the other parties.
- (b) A notice, approval or consent is deemed to be given by the sender and received by the addressee, if:
- (i) delivered personally, when delivered to the addressee;
 - (ii) sent by mail, on the third business day from and including the date of posting; or
 - (iii) sent by email, at 9.00am on the following business day in the place of receipt, provided that the sender has not received an automated message advising that the email is undelivered or the recipient is out of the office.

16. General

- (a) Compliance with laws: The parties must comply with all laws in force in the Northern Territory or otherwise applicable to them from time to time.
- (b) Entire Agreement: This document terminates and supersedes all previous written and oral agreements between the parties and constitutes the entire agreement between the parties with respect to its subject matter.
- (c) Variations: This document may only be varied in writing signed by each of the parties.
- (d) Assignment: A party must not assign, transfer or otherwise deal with this document or any right under this document without the prior written consent of the other parties.
- (e) Survival: The provisions of this document relating to confidentiality and privacy (clause 9), intellectual property (clause 10), liability (clause 11), dispute resolution (clause 12), actions on the expiry or termination of the Secondment (clause 14), payment of any outstanding instalment of the Fee (clause 7) and any other provision which expressly or by implication from its nature is intended to continue will continue to apply after the Term.
- (f) Severability: If a court determines that a word, phrase, sentence, paragraph or provision in this document is unenforceable, illegal or void then it will be severed and the other provisions of this document will remain operative.
- (g) Relationship: Nothing in this document will be construed so as to constitute a relationship of partnership, employer and employee, or joint venture between the Employer and the Host, or between the Host and the Employee, and it is the intention of the parties that any such relationships are expressly denied.
- (h) Jurisdiction and Proper Law: This document is governed by and construed in accordance with the laws of the Northern Territory and the parties submit to the jurisdiction of the courts of the Northern Territory at Darwin.
- (i) Counterparts: This document may be executed by the parties in counterparts and will become effective when all counterparts have been signed and delivered to the other parties.
- (j) Electronic execution: This document must be executed in paper form and must not be signed electronically.

SIGNING

Executed by the parties as a Deed:

SIGNED SEALED AND DELIVERED by on)
behalf of the **NORTHERN TERRITORY OF**)
AUSTRALIA pursuant to a delegation under)
the *Contracts Act 1978* (NT) in the presence)
of:)
)

.....
Signature

Name:

Date:

.....
Signature of Witness

.....
Name of Witness

SIGNED SEALED AND DELIVERED)
THE COMMON SEAL of CHARLES)
DARWIN UNIVERSITY was affixed in the)
presence of:)

.....
Signature of Witness

.....
Name of Witness

.....
...
Signature of Vice Chancellor

.....
Name

Date:

SCHEDULE

ITEM	DETAILS
Item 1 Employer (Parties)	Name: ABN: Contact person and position: Address: Postal address: Telephone: Email:
Item 2 Host (Parties)	Name: ABN: Contact person and position: Address: Postal address: Telephone: Email:
Item 3 Employee (Parties)	Name: Residential address: Postal address: Telephone: Email:
Item 4 Role (clause 2(a))	<i>[insert here a general description of the role or position, including whether it is full time or part-time. The full details or particulars of the position and duties and/or job description should appear at Attachment A]</i>
Item 5 Term (clause 3(a))	Commencement Date: <i>[insert the date on which the Secondment will commence]</i> Expiry Date: <i>[insert the date on which the Secondment will end]</i>
Item 6 Location (clause 5(a))	<i>[Set out here the location(s) where the Employee will undertake the Duties]</i>
Item 7 Secondment Fee (clause 7)	\$ <i>[insert amount]</i> , exclusive of GST <i>[or delete and insert 'NIL' if no fee will apply]</i> . <i>[Set out here any method or manner of payment that differs from that set out in clause 7]</i>

Item 8 Intellectual Property	<i>[Set out here alternative intellectual property arrangements if required (having regard to the nature and purpose of the secondment) OR state 'Not applicable'.]</i>
Item 9 Additional requirements	<i>[insert here any additional requirements not already set out in the terms, this Schedule or Attachment A, e.g. criminal history check, working with children clearance, specific qualifications or accreditations, working hours, or split of working hours between the host and the employer. Where special conditions are required (e.g. changes to the Agreed Terms, such as liability, risk or intellectual property provisions) seek legal drafting assistance – Note no change may be made to the employee's employment status.]</i>

ATTACHMENT A DUTIES

[Insert details of the position and duties and/or job description]