

MOTT MACDONALD LIMITED

and

The Coal Authority

SECONDMENT AGREEMENT

(for use where staff are seconded from MML to another employer)

SECONDMENT AGREEMENT

THIS SECONDMENT AGREEMENT made the [] day of [] between Mott MacDonald Limited of Mott MacDonald House, 8-10 Sydenham Road, Croydon, CRO 2EE, United Kingdom (company number 1243967) (hereinafter called "the Employer") and The Coal Authority of 200 Lichfield Lane, Mansfield, NG18 4RG (hereinafter called "the Host Company") (and together "the Parties").

WHEREAS

- i) The Employer agrees to second the Secondee to the Host Company for the Secondment Period in accordance with the terms and conditions set forth herein.
- ii) The Host Company accepts the secondment of the Secondee for the Secondment Period on the terms and conditions set forth herein.

THE SECONDMENT AGREEMENT IS WITNESSES AS FOLLOWS

1. DEFINITIONS

- 1.1 In this Secondment Agreement all words and expressions shall have the same meaning as described below unless otherwise provided or where the context otherwise requires.
 - i) "Employer" means Mott MacDonald Limited, its legal successors and permitted assignees.
 - ii) "Host Company" means The Coal Authority its legal successors and permitted assignees.
 - iii) "Location" means 200 Lichfield Lane, Mansfield, NG18 4RG
 - iv) "Secondee" means Kirsten Marsh
 - v) "Secondment Period" means the period commencing 11 November 2015 to 6th April 2016 as agreed between the Parties.
- 1.2 The headings in this Secondment Agreement shall not be used in its interpretation.
- 1.3 The singular includes the plural, the masculine includes the feminine, and vice-versa where the context requires.

2. SECONDMENT

- 2.1 The Employer shall second the Secondee to the Host Company for the Secondment Period. The Secondee shall possess the experience and competencies specified in Schedule 1.
- 2.2 The Employer shall procure the compliance of the Secondee with the provisions of this Secondment Agreement as may be applicable to the Secondee during the Secondment Period.
- 2.3 The Secondee shall provide its services for and at the request of the Host Company and shall obey and observe all lawful commands and reasonable requirements of the Host Company in connection with this Secondment Agreement. The Secondee shall perform the tasks required by the Host Company which are listed in Schedule 2 - Secondee's Duties.

3. DURING THE SECONDMENT PERIOD

- 3.1 The Secondee shall at all times remain an employee of the Employer and the Employer shall remain liable for and shall maintain any employer's liability or workers compensation insurance as may be required under the applicable law.

- 3.2 If the Location for the Seconded's services is premises controlled by the Employer then the hours of work, holiday leave arrangements and the like without limitation shall be those normally pertaining to the Employer.
- 3.3 If the Location for the Seconded's services is premises controlled by the Host Company then the hours of work, holiday leave arrangements and the like without limitation shall be agreed between the Parties and detailed in Schedule 3.
- 3.4 Without incurring any liability beyond that expressly stated in this Secondment Agreement, whether in contract or in tort, the Employer accepts that the Seconded shall act in the best interests of the Host Company during the Secondment Period.
- 3.5 Not used.
- 3.6 The Host Company will ensure that adequate arrangements exist to ensure the health, safety and welfare of staff on secondments during the period of secondment. The arrangements should be proportionate to the degree of risk and have regard to the employment status of those being seconded.
- 3.7 The Host Company will provide a risk assessment to the Employer to cover the Seconded's activities and carry out and ensure that both the Employer and the Seconded have received adequate information about the risks and control measures in place as well as arrangements for emergencies.
- 3.8 The Host Company will undertake a DSE assessment for the staff member and provide a copy of the assessment to the Employer.
- 3.9 The Host Company will ensure that mandatory information on office safety will be communicated to the Seconded such as Fire and Emergency Arrangements and First Aid provision.
- 3.10 The Host Company will establish that any relevant training (including health and safety and induction), required under the secondment is provided by the host organisation.
- 3.11 The Host Company will provide the Seconded information on how to report accidents and near misses. The Host Company will pass this information onto the Employer.
- 3.12 The Host Company will communicate to the Employer any change of work environment or job role or any other issues that might affect the health and safety of the Seconded.
- 3.13 During the secondment the Employer will maintain regular contact with the Seconded to ensure any issues relating to health and safety are dealt with and will also include the Seconded on any health and safety mailing lists from the Employer to keep them involved and updated on safety issues.

4. REPLACEMENT OF THE SECONDEE

- 4.1 The Parties shall agree whether and to what extent alternative arrangements shall be put in place where
- (a) due to reasons of ill health the Seconded is unable to perform its duties pursuant to this Secondment Agreement;
 - (b) the Seconded leaves the employment of the Employer; or
 - (c) due to circumstances beyond the reasonable control of the Employer the Seconded is not available for the Secondment Period.

4.2 If in the reasonable opinion of the Host Company

- (a) the Seconded fails to exercise reasonable skill and care in the performance of its duties;
- (b) the Seconded does not meet the requisite experience and competencies detailed in Schedule; or
- (c) the Seconded breaches the terms and conditions of this Secondment Agreement

then the Host Company shall notify the Employer of the details of such matter(s).

4.3 If, pursuant to Clauses 4.1 and 4.2, the Parties agree to replace the Seconded then the Employer shall provide a replacement seconded as soon as reasonably practical who shall possess the requisite experience and competencies as detailed in Schedule 1.

5. **VARIATIONS**

No amendment or variation to the terms of this Secondment Agreement shall be valid unless previously agreed in writing between the Employer and the Host Company.

6. **POACHING**

6.1 The Host Company shall not directly or indirectly make any offer of employment to the Seconded or entice the Seconded to leave the employment of the Employer either during the Secondment Period or for a period of one (1) year from the expiry of this Secondment Agreement.

7. **INTELLECTUAL PROPERTY**

7.1 If during the Secondment Period the Seconded makes or discovers or participates in the making or discovery of any invention or improvement upon or addition to an invention which is applicable to the business for the time being carried on by the Host Company the Seconded shall promptly disclose it to the Host Company and it shall be the absolute property of the Host Company.

8. **CONFIDENTIALITY**

8.1 Except with the prior written consent of the other party which shall not be unreasonably withheld, the Parties shall not disclose nor cause or permit their employees to disclose to third parties any matters pertaining to this Secondment Agreement, provided always that the Parties may disclose such matters if required by applicable law or regulation, but only that portion of information which, to the extent permitted by the relevant law or regulatory requirement, is legally required to be furnished. The obligations set forth in this Clause 8.1 shall expire two (2) years after the expiry of this Secondment Agreement.

8.2 The Employer shall inform the Seconded of the obligations stipulated in this Secondment Agreement, and shall ensure that the Seconded has agreed to observe the terms and conditions of this Secondment Agreement including the confidentiality obligations detailed above at Clause 8.1.

9. **LIABILITY**

9.1 The Host Company accepts that the Seconded shall be under the control, direction and supervision of the Host Company during the Secondment Period. Neither the Employer nor the Seconded shall be liable to the Host Company or its employee's for any acts, errors, omissions or negligence by the Seconded arising out of or in connection with the Seconded's services performed for the Host Company during the Secondment Period. Neither the Employer nor the Seconded is deemed to be either a contractor or a consultant of the Host Company.

9.2 Notwithstanding the above the Employer shall indemnify the Host Company for any loss or damage suffered or loss or damage for which the Host Company may become liable arising out of or in connection with any act of fraud by the Seconded.

9.3 The provisions of this Clause 9 shall survive termination or expiry of this Secondment Agreement

10. **PAYMENT**

10.1 The Host Company shall pay the Employer the fee calculated in accordance with Schedule 4 at the intervals contained in said schedule.

10.2 Any hours worked outside any agreed times shall be reimbursed at an hourly rate stated in Schedule 4.

10.3 Payment of an invoice shall become due upon the date of issue of such invoice by the Employer. The final date for payment shall be 28 days after payment becomes due.

10.4 The rate(s) stated in Schedule 4 shall be exclusive of any taxes or duties payable thereon. Such taxes or duties shall be reimbursed by the Host Company to the Employer upon presentation of a valid tax invoice.

11. **TERMINATION**

11.1 This Secondment Agreement shall terminate automatically upon
a) the expiry of the Secondment Period or
b) when the Employer ceases to employ the Seconded, or
c) where either party becomes bankrupt or makes any agreement or composition agreement with its creditors.

Prior to the expiry of this Secondment Agreement either party may terminate this Secondment Agreement upon seven (7) days notice.

11.2 Upon termination of this Secondment Agreement the Employer shall ensure that the Seconded returns to the Host Company all materials provided to the Seconded during the Secondment Period.

11.3 Termination of this Secondment Agreement shall not prejudice or affect the accrued rights, claims or liabilities of either party.

11.4 If a party commits a material breach of this Agreement and despite a notice from the non-defaulting party specifying the breach and requiring its remedy, the defaulting party fails to remedy such breach within 28 days of the notice then the non-defaulting party may give notice to the defaulting party terminating the Agreement with immediate effect.

12. **DISPUTES**

12.1 Any dispute arising out of or relating to this Secondment Agreement shall, in the first instance, be referred to the Managing Director/Chief Executive of each party who shall attempt in good faith to resolve the dispute.

12.2 If the parties fail to resolve the dispute by mutual agreement within fourteen (14) days (or such other time as may be agreed) then the dispute shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the London Court of International Arbitration current at the time of the referral under this clause. Such Rules are deemed to be incorporated by reference into this clause. The law governing the arbitration shall be that of England and Wales, the number of arbitrators shall be one and the seat of the arbitration shall be London, England.

13. **ASSIGNMENT**

- 13.1 This Secondment Agreement may not be assigned by either party without the written consent of the other party.

14. **NOTICES**

- 14.1 Notices under this Secondment Agreement shall be in writing and will take effect from receipt at the principle place of business of the party to whom the notice is addressed or at such other address as shall be advised from time to time. Delivery can be by hand, or by registered letter.

15. **THIRD PARTY RIGHTS**

- 15.1 Notwithstanding any provision to the contrary in this Secondment Agreement, no person or entity shall have any rights in relation to this Secondment Agreement, whether as third parties under the Contracts (Rights of Third Parties) Act 1999 or otherwise, save the Parties to this Secondment Agreement.

16. **ETHICAL CONDUCT OF THE PARTIES**

In the performance of their obligations under or in connection with this Secondment Agreement the parties, their agents and employees shall comply with all applicable laws, rules and regulations including but not limited to the Bribery Act 2010 and where appropriate the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

17. **WHOLE AGREEMENT**

- 17.1 This Secondment Agreement (together with the Schedules 1 - 4 and any documents referred to herein) shall constitute the whole agreement between the Parties and shall supersede any previous agreements or arrangements in respect of the secondment.

18. **LANGUAGE**

- 18.1 The language of this Secondment Agreement shall be English.

19. **LAW**

- 19.1 The law governing the Secondment Agreement shall be the law of England and Wales.

IN WITNESS whereof the parties hereto have caused this Secondment Agreement to be executed under hand the day and year first before written

Signed
by

Signed
by Mott MacDonald Ltd

.....

[insert name of Director]

Director

.....

[insert name of Director]

Divisional Director

SCHEDULE 1 – EXPERIENCE AND COMPETENCIES OF THE SECONDEE

Professional Advisor with Health and Safety qualifications and experience.

SCHEDULE 2 - SECONDEE'S DUTIES and where applicable HOST COMPANY'S DUTIES

Assist the Coal Authority with discharge of Principal Designer duties under the CDM Regulations 2015 as directed by the SHE Team.

SCHEDULE 3 - HOURS OF WORK AND HOLIDAY LEAVE ENTITLEMENT

The standard hours shall be an average of 19 hours per week.

The individual's Mott MacDonald holiday entitlement shall not be altered by the secondment.

SCHEDULE 4 – TERMS OF PAYMENT

Payments for inputs shall be invoiced monthly at an hourly rate of £57.00 + VAT, which is based on a discounted rate from the General Engineering Framework.

Costs of travel from Newcastle to Mansfield and overnight accommodation are rechargeable at cost.

Any travel to sites using the secondee's own car will be recharged at a rate of 45p per mile, or at cost if using public transport.