

**DATED**

**June 28<sup>th</sup> 2013**

**SECONDMENT AGREEMENT**

**between**

**WIKIMEDIA UK**

**AND**

**WICI CYMRU ASSOCIATION**

**THIS AGREEMENT** is dated June 28th 2013

**BETWEEN**

1. (1) Wikimedia UK a charitable company incorporated and registered in England and Wales with charity number 1144513 and company number 06741827 whose registered office is at 4<sup>th</sup> Floor Development House, 56-64 Leonard Street, London, England, EC2A 4LT (**the Employer**).
2. (2) Wici Cymru Association (**the Host**).

**BACKGROUND**

- A. (A) Wikimedia UK employs Robin Owain as Regional Manager.
- B. (B) Wikimedia UK intends to second Robin Owain to Wici Cymru Association in order to provide the 'Living Paths' project services described in (and otherwise fulfil the terms of) the Grant Funding Agreement from the Welsh Government to WikiCymru dated 8<sup>th</sup> April 2013.

**NOW IT IS AGREED HEREBY AS FOLLOWS:**

**1. 1 INTERPRETATION**

1. 1.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

<p><b>a. Confidential Information:</b></p>	<p>b. information relating to the business, products, affairs and finances of the relevant party for the time being confidential to the relevant party and trade secrets including, without limitation, technical data and know-how relating to the business of the relevant party or any of its suppliers, clients, customers, agents, distributors, shareholders or management.</p>
<p><b>c. Employment Contract:</b></p>	<p>d. the terms of employment between the Employer and the Secondee at the date of this agreement, a copy of which are attached, subject to any changes in the Secondee's salary or other benefits in accordance with the Employer's usual procedures from time to time.</p>
<p><b>e. Joint Steering Group</b></p>	<p>f. The parties shall establish a group comprising representatives from both parties and the Welsh Government should they wish for the purposes of overseeing the delivery of the Services by the Secondee</p>
<p><b>g. Management Issues:</b></p>	<p>h. all those matters under the Employment Contract requiring action, investigation and/or decisions by the Employer including in particular (by way of illustration only and without limitation) appraisals and performance issues; pay reviews and the award of other payments and benefits under the Employment Contract; periods of annual, sick or other leave; absence of the Secondee for any other reason; any complaint about the Secondee (whether or not that would be dealt with under the Employer's disciplinary procedure) and any complaint or grievance raised by the Secondee (whether or not that would be dealt with under the Employer's grievance procedure).</p>
<p><b>i. Pre-Contractual Statement:</b></p>	<p>j. any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Secondment under this agreement other than as expressly set out in this agreement.</p>
<p><b>k. Secondee:</b></p>	<p>l. Robin Owain.</p>
<p><b>m. Secondment:</b></p>	<p>n. the secondment of the Secondee by the Employer to the Host on the terms of this agreement.</p>
<p><b>o. Secondment</b></p>	<p>p. the period of this agreement as</p>

<b>Period:</b>	defined in clause 2.2.
<b>q. Services:</b>	r. To deliver the 'Living Paths' project services described in the Grant Funding Agreement from the Welsh Government and WikiCymru, dated 8 <sup>th</sup> April 2013, to fulfil the obligations of the Employer and the Host in relation to the said Grant Funding Agreement and to carry out such activities in relation to the Living Paths project as the Employer and Host may specify through a joint steering committee established for that purpose or otherwise as may be agreed between the parties from time to time including appropriate support for WMUK activities in Wales.
<b>s.</b>	t.

1. 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
2. 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.
3. 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
4. 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
5. 1.6 The schedules to this agreement form part of (and are incorporated into) this agreement.
- 6. 2 SECONDMENT**
7. 2.1 The Employer shall second the Secondee to the Host on an exclusive and full-time basis for the Secondment Period to provide the Services in accordance with the terms of this agreement.
8. 2.2 The Secondment Period shall commence on 1st July 2013 and shall continue until:
  1. 2.2.1 30th June 2014 or any such date as shall be agreed between the parties; or
  2. 2.2.2 terminated by either party giving not less than one month's prior written notice at any time; or
  3. 2.2.3 the funding from the Welsh Government or other sources for the Living Paths project (referred to at clause 1.1 above) ceases, upon which the Employee's Appointment can be terminated by the Employer giving not less than one week's prior written notice or;
  4. 2.2.4 terminated in accordance with clause 12.
9. 2.3 Subject to clause 2.4, for the avoidance of doubt, the Employer's

payments to the Host and to the Living Paths Project (and under the Grant Funding Agreement between the Welsh Government and Robin Owain, dated 8th April 2013) shall be limited to the secondment set out in this clause 2 and to the payments set out in clause 5 of this agreement.

10. 2.4 If the Employer and the Host agree in writing in advance, the Host may authorise further expenditure or allocation of resources (whether with the involvement of the Secondee or not) to support aspects of the Living Paths project not otherwise covered by this agreement or the work of the Secondee.

## **1. 3 SERVICES**

2. 3.1 The Employer shall use its reasonable endeavours to procure that the Secondee shall provide the Services at a location to be agreed by WikiCymru and WMUK after discussion with the employee.
3. 3.2 The Employer shall use its reasonable endeavours to procure that the Secondee shall work such hours as are reasonable and necessary for the proper performance of the Services.
4. 3.3 The Employer shall use its reasonable endeavours to procure that the Secondee shall during the Secondment:
  1. 3.3.1 unless prevented by incapacity, devote the whole of their working time, attention and abilities to the Services except for any work to be done for the Employer under clause 4.6;
  2. 3.3.2 faithfully and diligently serve the Host and use their best endeavours to promote, protect, develop and extend the Host's business;
  3. 3.3.3 not enter into any arrangement on behalf of the Host which is outside the normal course of business or their normal duties or which contains unusual or onerous terms; and
  4. 3.3.4 promptly make such reports to the Chief Executive WMUK on any relevant matters concerning the affairs of the Host and at such times as are reasonably required.

## **5. 4 SECONDEE'S EMPLOYMENT**

5. 4.1 The Employment Contract shall remain in force during the Secondment Period.
6. 4.2 The Employee's Employment Contract provides that the Employer can second the Secondee to the Host to provide the Services in accordance with the terms of this agreement.
7. 4.3 The Host shall not, and shall not require the Secondee to do anything that shall, breach the Employment Contract and shall have no authority to vary the terms of the Employment Contract or make any representations to the Secondee in relation to the terms of the Employment Contract.
8. 4.4 The Host shall provide the Employer with such information and assistance as it may reasonably require to carry out its obligations as the Secondee's employer.

9. 4.5 The Seconded shall be required to undertake reasonable agreed duties in support of the work of WMUK during the Secondment Period.
10. 4.6 Any change in the Employment Contract during the Secondment Period shall be notified to the Host.
11. 4.7 If the Seconded is held to be employed by the Host at any time during the Secondment Period then the Host may dismiss the Seconded and the Employer shall offer the Seconded employment on the terms that applied immediately before that dismissal.
12. 4.8 All documents, manuals, hardware and software provided for the Seconded's use by the Host, and any data or documents (including copies) produced, maintained or stored on the Host's computer systems or other electronic equipment (including mobile phones), remain the property of the Host.

**13. 5 PAYMENTS**

14. 5.1 The Employer shall continue to pay the Seconded's salary and any allowances, provide any benefits due to the Seconded or their dependants, make any payments to third parties in relation to the Seconded and make any deductions that it is required to make from the Seconded's salary and other payments.

**15. 6 MANAGEMENT DURING THE SECONDMENT**

16. 6.1 Subject to any directions given by the said Joint Steering Group, the Host shall have day-to-day control of the Seconded's activities but as soon as reasonably practicable shall refer any Management Issues concerning the Seconded that come to its attention to the Employer.
17. 6.2 The Employer shall continue to deal with any Management Issues concerning the Seconded during the Secondment Period, where relevant following consultation with the Host.
18. 6.3 The Host shall use its reasonable endeavours to provide any information, documentation, access to its premises and employees and assistance (including but not limited to giving witness evidence) to the Employer to deal with any Management Issues concerning the Seconded whether under the Employer's internal procedures or before any court of tribunal.
19. 6.4 Both parties shall inform the other as soon as reasonably practicable of any other significant matter that may arise during the Secondment Period relating to the Seconded or their employment.
20. 6.5 The Host and the Employer shall use their reasonable endeavours to procure that the Seconded shall notify the other if the Seconded identifies any actual or potential conflict of interest between the Host and the Employer during the Secondment Period. For the purposes of this clause, the person to be notified at the Host is [NAME] and at the Employer is the Chief Executive.

**21. 7 LEAVE**

22. 7.1 The Seconded shall continue to be eligible for sick pay, holiday pay and any absence entitlements in accordance with the Employment Contract, and shall remain subject to the Employer's approval and notification procedures.

23. 7.2 The Employer shall consult with the Joint Steering Group before approving any holiday request made by the Seconded and notify the Host of any dates on which the Seconded shall take holiday.
24. 7.3 The Seconded shall notify the Host and the Employer if the Seconded is or shall be absent from work for any reason as soon as reasonably practicable.

**25. 8 DATA PROTECTION**

26. 8.1 The Employer confirms that the Seconded has consented to the Host processing data relating to the Seconded for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Seconded including, as appropriate:
1. 8.1.1 information about the Seconded's physical or mental health or condition in order to monitor sick leave and take decisions as to the Seconded's fitness for work;
  2. 8.1.2 the Seconded's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with the equal opportunities legislation; and
  3. 8.1.3 information relating to any criminal proceedings in which the Seconded has, or is alleged to have, been involved.

**4. 9 CONFIDENTIALITY**

27. 9.1 The Employer shall use its reasonable endeavours to procure that the Seconded shall not:
1. 9.1.1 (except in the proper course of the Services, as required by law or as authorised by the Host) during the Secondment Period or after its termination (howsoever arising) use or communicate to any person, company or other organisation whatsoever (and shall use his best endeavours to prevent the use or communication of) any Confidential Information relating to the Host that he creates, develops, receives or obtains during the Secondment Period. This restriction does not apply to any information that is or comes in the public domain other than through the Seconded's unauthorised disclosure; or
  2. 9.1.2 make (other than for the benefit of the Host) any record (whether on paper, computer memory, disc or otherwise) containing Confidential Information relating to the Host or use such records (or allow them to be used) other than for the benefit of the Host. All such records (and any copies of them) shall be the property of the Host and shall be handed over to Elfed Williams by the Seconded on the termination of this agreement or at the request of the Host at any time during the Secondment Period.
28. 9.2 Nothing in this agreement shall prevent the Seconded from disclosing information that they are entitled to disclose under the Public Interest Disclosure Act 1998, provided that the disclosure is made in accordance with the provisions of that Act and the Seconded has complied with the Employer's policy from time to time in force regarding such disclosures.
29. 9.3 The Employer shall:

1. 9.3.1 keep any Confidential Information relating to the Host that it obtains as a result of the Secondment secret;
  2. 9.3.2 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 Host;
  3. 9.3.3 use its best 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
  4. 9.3.4 inform the Host immediately on becoming aware, or suspecting, that an unauthorised person has become aware of such Confidential Information.
30. 9.4 The Host shall:
1. 9.4.1 keep any Confidential Information relating to the Employer that it obtains as a result of the Secondment secret;
  2. 9.4.2 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 Employer;
  3. 9.4.3 use its best endeavours to ensure that no person gets access to such Confidential Information from it, its officers, employees or agents unless authorised to do so; and
  4. 9.4.4 inform the Employer immediately on becoming aware, or suspecting, that an unauthorised person has become aware of such Confidential Information.

## **5. 10 SUMMARY TERMINATION**

31. 10.1 The Employer may terminate the Secondment with immediate effect without notice or payment in lieu of notice:
1. 10.1.1 on the termination of the Employment Contract as a result of the Seconded's gross misconduct, resignation or retirement;
  2. 10.1.2 if the Host is guilty of any serious or (after warning) repeated breach of the terms of this agreement; or
  3. 10.1.3 if the Host becomes bankrupt or makes any arrangement or composition with or for the benefit of its creditors.

Any delay by the Employer in exercising the right to terminate shall not constitute a waiver of such rights.

1. 10.2 The Host may terminate the Secondment with immediate effect without notice or payment in lieu of notice:
  1. 10.2.1 on the termination of the Employment Contract;
  2. 10.2.2 if the Employer is guilty of any serious or (after warning) repeated breach of the terms of this agreement; or

3. 10.2.3 if the Employer becomes bankrupt or makes any arrangement or composition with or for the benefit of its creditors.

Any delay by the Host in exercising the right to terminate shall not constitute a waiver of such rights.

#### **1. 11 OBLIGATIONS FOLLOWING TERMINATION**

On termination of the Secondment howsoever arising the Employer shall use its reasonable endeavours to procure that the Secondee shall (if the Host so requests):

1. 11.1.1 deliver to the Host 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 them during the Secondment and relating to the business or affairs of the Host or its or their clients, customers or suppliers and any other property of the Host which is in their possession, custody, care or control;
2. 11.1.2 irretrievably delete any information relating to the business of the Host 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 the Host; and
3. 11.1.3 confirm in writing and produce such evidence as is reasonable to prove compliance with their obligations under this clause 13.

#### **4. 12 LIABILITY**

2. 12.1 The Host shall take out and maintain in full force with a reputable insurance company for the Secondment Period adequate insurance cover for any loss, injury and damage caused by or to the Secondee during the Secondment Period.
3. 12.2 During the Secondment Period, the Host shall fulfil all duties relating to the Secondee's health, safety and welfare as if it was their employer and shall comply with the Employer's reasonable requests in connection with the Employer's duties in relation to the Secondee.
4. 12.3 The Host acknowledges that the Employer is not responsible for the way in which the Secondee provides the Services and waives all and any claims that it may have against the Employer arising out of any act or omission of the Secondee during the Secondment Period.
5. 12.4 The Host shall indemnify the Employer fully and keep the Employer indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by:
  1. 12.4.1 the Secondee in relation to any loss, injury, damage or costs arising out of any act or omission by the Host or its employees or agents; or
  2. 12.4.2 a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Secondee during the Secondment Period.
6. 12.5 The Host shall indemnify the Employer fully and keep the Employer



indemnified fully at all times against any claim or demand by the Seconded employee arising out of their employment by the Employer or its termination during the Secondment Period (except for any claim that the Employer has failed to pay the Seconded employee's salary and any allowances, provide any benefits due to the Seconded employee or their dependants, make any payments to third parties in relation to the Seconded employee or make any deductions that it is required to make from the Seconded employee's salary and other payments).

**7. 13 NOTICES**

8. 13.1 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 its registered office for the time being. Any such notice shall be deemed to have been received:

1. 13.1.1 if delivered personally, at the time of delivery; and
2. 13.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

9. 13.2 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.

**10. 14 ENTIRE AGREEMENT AND PREVIOUS CONTRACTS**

Each party acknowledges and agrees with the other party that:

1. 14.1.1 this agreement together with any documents referred to in it constitute the entire agreement and understanding between the Employer and the Host and supersedes any previous agreement between them relating to the Secondment (which shall be deemed to have been terminated by mutual consent);
2. 14.1.2 in entering into this agreement neither they nor it has relied on any Pre-Contractual Statement; and
3. 14.1.3 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.

Nothing in this agreement shall, however, operate to limit or exclude any liability for fraud.

**1. 15 VARIATION AND WAIVER**

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 both parties.

**1. 16 COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts

together shall constitute one and the same instrument.

**1. 17 THIRD PARTY RIGHTS**

2. 17.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement. No person other than the Employer and the Host shall have any rights under it and it shall not be enforceable by any person other than the Employer and the Host.

**3. 18 GOVERNING LAW AND JURISDICTION**

4. 18.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
5. 18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning

Signed by Jon Davies	.....
for and on behalf of Wikimedia UK	Chief Executive
Signed by Elfed Williams	.....
for and on behalf of Wici Cymru	Chair