

.....[INSERT DATE]..... 2020

Contract for Services

Relating to the

GBSLEP CYBER SECURITY TRAINING AND SUPPORT

between

The Greater Birmingham & Solihull Local Enterprise Partnership Limited

And

[NAME OF RECIPIENT ORGANISATION]

Contents:	Order Form
	Terms & Conditions
	Schedule 1 – Supplier Response to Tender
	Annex A - Payment Schedule
	Schedule 2 - Specification
	Schedule 3 - Data Sharing Agreement
	Annex A - Authorised Processing
	Annex B - Data Security

## Order Form

<b>1. Contract Reference</b>	<i>[Insert Buyer's contract reference number]</i>
<b>2. Date</b>	<i>[Insert date on which the last party signs]</i>
<b>3. Buyer</b>	<i>[Insert Buyers name and address]</i>
<b>4. Supplier</b>	<i>[Insert Suppliers name registered address (if registered) and registration number (if registered)]</i>
<b>5. The Contract</b>	<p>The Supplier shall supply the deliverables and the Services described below on the terms set out in this Order Form and the attached contract conditions ("<b>Conditions</b>") and <b>Schedule 1 – Suppliers response to Tender, Schedule 2 – Specification, Schedule 3 Data Processing Agreement and Annex A and Annex B – Data Processing and Security</b></p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>

<b>6. Deliverables</b>	<b>Services</b> GBSSLEP Cyber Security Training and Support  [To be performed at <b>[Insert description of premises (including whether they are the Buyer's premises, the Supplier's premises and/or a third party's premises and in each case the address)].</b> ]
<b>7. Specification</b>	The specification of the Deliverables and the Services is as set out <b>[in Schedule 1 – Annex A / the Supplier's tender dated [Insert date]].</b>
<b>8. Term</b>	<p>The Term shall commence on <b>[Insert the start date of the contract]</b></p> <p>and the Expiry Date shall be <b>[Insert the date on which the contract will end unless extended or subject to early termination]</b>, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.</p> <p>The Buyer may extend the Contract for a period of up to 3 years by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.</p>
<b>9. Charges</b>	The Charges for the Deliverables shall be as set out <b>in Schedule 1 – Annex A/ the Supplier's tender</b> dated <b>[Insert date]</b> .
<b>10. Payment</b>	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to: <b>[Insert address]</b>.</p> <p>Within <b>[10]</b> Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to <b>[Insert email address]</b></p> <p>or by telephone <b>[Insert telephone number]</b></p>

	between [Dates and Times available]								
<b>11. Buyer Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be  <b>[Insert Contract Manager name and contact details]</b></p> <p>or, in their absence,  <b>[Insert secondary name and contact details]</b>.</p>								
<b>12. Address notices</b> for	<table border="0"> <tr> <td><b>Buyer:</b></td><td><b>Supplier:</b></td></tr> <tr> <td><b>[insert name and address of Buyer]</b></td><td><b>[insert name and address of Supplier]</b></td></tr> <tr> <td>Attention: <b>[insert title]</b></td><td>Attention: <b>[insert title]</b></td></tr> <tr> <td>Email: <b>[insert email address]</b></td><td>Email: <b>[insert email address]</b></td></tr> </table>	<b>Buyer:</b>	<b>Supplier:</b>	<b>[insert name and address of Buyer]</b>	<b>[insert name and address of Supplier]</b>	Attention: <b>[insert title]</b>	Attention: <b>[insert title]</b>	Email: <b>[insert email address]</b>	Email: <b>[insert email address]</b>
<b>Buyer:</b>	<b>Supplier:</b>								
<b>[insert name and address of Buyer]</b>	<b>[insert name and address of Supplier]</b>								
Attention: <b>[insert title]</b>	Attention: <b>[insert title]</b>								
Email: <b>[insert email address]</b>	Email: <b>[insert email address]</b>								
<b>13. Key Personnel</b>	<table border="0"> <tr> <td><b>Buyer:</b></td><td><b>Supplier:</b></td></tr> <tr> <td><b>[insert name and address of Buyer]</b></td><td><b>[insert name and address of Supplier]</b></td></tr> <tr> <td>Attention: <b>[insert title]</b></td><td>Attention: <b>[insert title]</b></td></tr> <tr> <td>Email: <b>[insert email address]</b></td><td>Email: <b>[insert email address]</b></td></tr> </table>	<b>Buyer:</b>	<b>Supplier:</b>	<b>[insert name and address of Buyer]</b>	<b>[insert name and address of Supplier]</b>	Attention: <b>[insert title]</b>	Attention: <b>[insert title]</b>	Email: <b>[insert email address]</b>	Email: <b>[insert email address]</b>
<b>Buyer:</b>	<b>Supplier:</b>								
<b>[insert name and address of Buyer]</b>	<b>[insert name and address of Supplier]</b>								
Attention: <b>[insert title]</b>	Attention: <b>[insert title]</b>								
Email: <b>[insert email address]</b>	Email: <b>[insert email address]</b>								
<b>14. Procedures and Policies</b>	<p>For the purposes of the Contract the [Staff Vetting Procedures/data security requirements/equality and diversity policy/ [and] environmental policy [is/are] [specify where to be found]].</p> <p>The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "<b>Relevant Conviction</b>"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.</p>								

Signed for and on behalf of the <b>Supplier</b>	Signed for and on behalf of the <b>Buyer</b>
Name: [Insert name] [Insert job title]	Name: [Insert name] [Insert job title]
Date:	Date:
Signature:	Signature:

# Terms & Conditions

## 1. Definitions used in the Contract

In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>" Government Body</b>	means a publicly funded body or contracting authority
<b>"Charges"</b>	means the charges for the Deliverables as specified in the Order Form;
<b>"Confidential Information"</b>	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
<b>"Contract"</b>	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form, these terms and conditions and Annexes;
<b>"Controller"</b>	has the meaning given to it in the GDPR or any replacement Data Protection Legislation as amended;
<b>"Buyer"</b>	means the person identified in the letterhead of the Order Form;
<b>"Date of Delivery"</b>	means that date by which the Deliverables must be delivered to the Buyer, as specified in the Order Form;
<b>"Buyer Cause"</b>	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
<b>"Data Protection Legislation"</b>	Means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the

<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>"Data Protection Officer"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Data Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deliver"</b>	means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed in accordance with Clause [ ]. Delivered and Delivery shall be construed accordingly;
<b>"Existing IPR"</b>	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>"Expiry Date"</b>	means the date for expiry of the Contract as set out in the Order Form;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the willful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679) or any such replacement Data Protection Legislation in force in the UK from time to time;

<b>"Goods"</b>	means the goods to be supplied by the Supplier to the Buyer under the Contract;
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Supplier Data"</b>	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Insolvency Event"</b>	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
<b>"Key Personnel"</b>	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680);
<b>"New IPR"</b>	all and any intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>"Order Form"</b>	means the letter from the Buyer to the Supplier printed above these terms and conditions;
<b>"Party"</b>	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Personal Data Breach"</b>	has the meaning given to it in the Data Protection Legislation;



<b>"Processor"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Purchase Order Number"</b>	means the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>"Request for Information"</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
<b>"Services"</b>	means the services to be supplied by the Supplier to the Buyer under the Contract;
<b>"Specification"</b>	means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
<b>"Staff"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
<b>"Staff Vetting Procedures"</b>	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
<b>"Supplier"</b>	means the person named as Supplier in the Order Form;
<b>"Term"</b>	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause [ ] or terminated in accordance with the terms and conditions of the Contract;
<b>"US-EU Privacy Shield Register"</b>	a list of companies maintained by the United States of America Department for Commerce that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: <a href="https://www.privacyshield.gov/list">https://www.privacyshield.gov/list</a> ;

---

<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
--------------	--

<b>"Workers"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policynote-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policynote-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
<b>"Working Day"</b>	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## **2. Understanding the Contract**

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
- 2.7 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

## **3. How the Contract works**

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## **4. What needs to be delivered**

### **4.1 All Deliverables**

- (a) The Supplier must provide Deliverables: (i) in accordance with the Specification and the Suppliers Tender; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.
- (b) The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

## **4.2 Services clauses**

- (a) Late delivery of the Services will be a default of the Contract.
- (b) The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (c) If relevant The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (g) On completion of the Services and where relevant, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- (i) The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **5. Pricing and payments**

- 5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 5.2 All Charges:
  - (a) exclude VAT, which is payable on provision of a valid VAT invoice;
  - (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
  - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
  - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

## **6. The Buyer's obligations to the Supplier**

- 6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
- (a) the Buyer cannot terminate the Contract under clause 11;
  - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
  - (c) the Supplier is entitled to additional time needed to deliver the Deliverables;
  - (d) the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
  - (b) demonstrates that the failure only happened because of the Buyer Cause;
  - (c) mitigated the impact of the Buyer Cause.

## **7. Record keeping and reporting**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for **[LEP retention date or current ERDF document retention Date]** after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
  - (b) propose corrective action;
  - (c) provide a deadline for completing the corrective action.
- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
  - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

## **8. Supplier staff**

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
  - (b) be vetted using Good Industry Practice and in accordance with the [instructions issued by the Buyer in the Order Form] [Staff Vetting Procedures];
  - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
  - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

## **9. Rights and protection**

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract;
  - (b) the Contract is executed by its authorised representative;
  - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
  - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
  - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
  - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
  - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
- (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
  - (b) non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **10. Intellectual Property Rights (IPRs)**

- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it and its sub-licensees to both:
- (a) receive and use the Deliverables;
  - (b) use the New IPR.
- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
- 10.3 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- (a) obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party intellectual property rights;
  - (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

## **11. Ending the contract**

- 11.1 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.
- 11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.
- 11.3 Ending the Contract without a reason**
- The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated clause 11.5(b) to 11.5(g) applies.

#### **11.4 When the Buyer can end the Contract**

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
  - (i) there's a Supplier Insolvency Event;
  - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
  - (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
  - (v) if the Buyer discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
  - (vi) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
  - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(b) to 11.5(g) applies.

#### **11.5 What happens if the Contract ends**

Where the Buyer terminates the Contract under clause 11.4(a) all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Supplier Data except where required to retain copies by law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (f) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement;
- (g) the following clauses survive the termination of the Contract: [3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35] and any clauses which are expressly or by implication intended to continue.

#### **11.6 When the Supplier can end the Contract**

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 11.6(a):



- (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
- (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
- (iii) clauses 11.5(d) to 11.5(g) apply.

#### **11.7 Partially ending and suspending the Contract**

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 24) any necessary variation required by clause 11.7, but the Supplier may not either:
  - (i) reject the variation;
  - (ii) increase the Charges, except where the right to partial termination is under clause 11.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

### **12. How much you can be held responsible for**

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
  - (a) any indirect losses;
  - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
  - (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
  - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
  - (c) any liability that cannot be excluded or limited by law.
- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.2, 14.26(e) or 30.2(b).
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

### **13. Obeying the law**

- 13.1 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
  - (b) support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
  - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
  - (d) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable law to do with the Contract.
- 13.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32
- 13.4 "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

### **14. Data protection**

- 14.1 The Buyer is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.
- 14.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with this Contract.
- 14.3 The Supplier must not remove any ownership or security notices in or relating to the Supplier Data.
- 14.4 The Supplier must make accessible back-ups of all Supplier Data, stored in an agreed off-site location and send the Buyer copies every six Months or at such intervals agreed by the parties from time to time.
- 14.5 The Supplier must ensure that any Supplier system holding any Supplier Data, including back-up data, is a secure system that complies with the security requirements specified by the Buyer.
- 14.6 If at any time the Supplier suspects or has reason to believe that the Supplier Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 14.7 If the Supplier Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- (a) tell the Supplier to restore or get restored Supplier Data as soon as practical but no later than five Working Days from the date that the Buyer receives

- notice, or the Supplier finds out about the issue, whichever is earlier;
- (b) restore the Supplier Data itself or using a third party.
- 14.8 The Supplier must pay each Party's reasonable costs of complying with clause 14.7 unless the Buyer is at fault.
- 14.9 Only the Buyer can decide what processing of Personal Data a Supplier can do under the Contract and must specify it for the Contract using the template in Annex A to Schedule 4 of this Contract (*Authorised Processing*).
- 14.10 The Supplier must only process Personal Data if authorised to do so in the Annex to Schedule 4 (*Authorised Processing*) by the Buyer. Any further written instructions relating to the processing of Personal Data are incorporated Schedule 4 and its Annexes of this Contract
- 14.11 The Supplier must give all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- (a) a systematic description of the expected processing and its purpose;
  - (b) the necessity and proportionality of the processing operations;
  - (c) the risks to the rights and freedoms of Data Subjects;
  - (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 14.12 The Supplier must notify the Buyer immediately if it thinks the Buyer's instructions breach the Data Protection Legislation.
- 14.13 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Buyer.
- 14.14 If lawful to notify the Buyer, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 14.15 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Supplier's duties under this clause 11;
  - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
  - (c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by the Buyer or as otherwise allowed by the Contract;
  - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 14.16 The Supplier must not transfer Personal Data outside of the EU unless all of the following are true:
- (a) it has obtained prior written consent of the Buyer;
  - (b) the Buyer has decided that there are appropriate safeguards (in accordance with Article 46 of the GDPR or in line with any replacement Data Protection Legislation as amended);
  - (c) the Data Subject has enforceable rights and effective legal remedies when transferred;
  - (d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  - (e) where the Supplier is not bound by Data Protection Legislation it must use its

- best endeavours to help the Buyer meet its own obligations under Data Protection Legislation; and
- (f) the Supplier complies with the Buyer's reasonable prior instructions about the processing of the Personal Data.
- 14.17 The Supplier must notify the Buyer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
  - (f) becomes aware of a Data Loss Event.
- 14.18 Any requirement to notify under clause 14.17 includes the provision of further information to the Buyer in stages as details become available.
- 14.19 The Supplier must promptly provide the Buyer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.17. This includes giving the Buyer:
- (a) full details and copies of the complaint, communication or request;
  - (b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
  - (c) any Personal Data it holds in relation to a Data Subject on request;
  - (d) assistance that it requests following any Data Loss Event;
  - (e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.
- 14.20 The Supplier must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Buyer determines that the processing:
- (a) is not occasional;
  - (b) includes special categories of data as referred to in Article 9(1) of the GDPR or the relevant section of any replacement Data Protection Legislation as amended or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR or the relevant section of any replacement Data Protection Legislation as amended;
  - (c) is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.21 The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give the Buyer their contact details.
- 14.22 Before allowing any Subprocessor to process any Personal Data, the Supplier must:
- (a) notify the Buyer in writing of the intended Subprocessor and processing;
  - (b) obtain the written consent of the Buyer;
  - (c) enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor;
  - (d) provide the Buyer with any information about the Subprocessor that the Buyer

reasonably requires.

- 14.23 The Supplier remains fully liable for all acts or omissions of any Subprocessor.
- 14.24 At any time the Buyer can, with 30 Working Days notice to the Supplier, change this clause 14 to:
- (a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42 or the relevant section of any replacement Data Protection Legislation as amended;
  - (b) ensure it complies with guidance issued by the Information Commissioner's Office.
- 14.25 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.
- 14.26 The Supplier:
- (a) must provide the Buyer with all Supplier Data in an agreed open format within 10 Working Days of a written request;
  - (b) must have documented processes to guarantee prompt availability of Supplier Data if the Supplier stops trading;
  - (c) must securely destroy all Storage Media that has held Supplier Data at the end of life of that media using Good Industry Practice;
  - (d) securely erase all Supplier Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it;
  - (e) indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause 14 and any Data Protection Legislation.

## **15. What you must keep confidential**

- 15.1 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
  - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
  - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 15.2 In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
  - (c) if the information was given to it by a third party without obligation of confidentiality;
  - (d) if the information was in the public domain at the time of the disclosure;
  - (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
  - (f) to its auditors or for the purposes of regulatory requirements;
  - (g) on a confidential basis, to its professional advisers on a need-to-know basis;
  - (h) to the Serious Fraud Office where the recipient Party has reasonable grounds

to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

- 15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 15.4 The Buyer may disclose Confidential Information in any of the following cases:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - (b) on a confidential basis to any Government Body, any successor body to a Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - (d) where requested by Parliament;
  - (e) under clauses 5.7 and 16.
- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Information which is exempt from disclosure by clause 16 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

## **16. When you can share information**

- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- (a) comply with any Freedom of Information Act (FOIA) request;
  - (b) comply with any Environmental Information Regulations (EIR) request.
- 16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

## **17. Invalid parts of the contract**

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

## **18. No other terms apply**

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

## **19. Other people's rights in a contract**

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **20. Circumstances beyond your control**

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- (a) provides written notice to the other Party;
  - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 20.3 Where a Party terminates under clause 20.2:
- (a) each party must cover its own losses;
  - (b) clause 11.5(b) to 11.5(g) applies.

## **21. Relationships created by the contract**

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **22. Giving up contract rights**

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

## **23. Transferring responsibilities**

- 23.1 The Supplier cannot assign the Contract without the Buyer's written consent.
- 23.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 23.3 When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 23.4 The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- (a) their name;
  - (b) the scope of their appointment;
  - (c) the duration of their appointment.

## **24. Changing the contract**

- 24.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.
- 24.2 The Buyer reserves the right in accordance with the Public Contract Regulations 2015, to extend the contract period (for a further [3 years plus 3 years]), and to vary the specification activities and value of this contract to include but not limited to further industry groups, geographies, training packages/resources/materials or timeframes

## **25. How to communicate about the contract**

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 25.2 Notices to the Buyer or Supplier must be sent to their address in the Order Form.
- 25.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **26. Preventing fraud, bribery and corruption**

- 26.1 The Supplier shall not:
- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
  - (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 26.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 26.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 26.3 If the Supplier or the Staff engages in conduct prohibited by clause 26.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
  - (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

## **27. Equality, diversity and human rights**

- 27.1 The Supplier must follow all applicable equality law when they perform their



obligations under the Contract, including:

- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
- (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

27.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

## **28. Health and safety**

28.1 The Supplier must perform its obligations meeting the requirements of:

- (a) all applicable law regarding health and safety;
- (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.

28.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.

## **29. Environment**

29.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

29.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## **30. Tax**

30.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

30.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
- (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

30.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- (a) the Buyer may, at any time during the term of the Contract, request that the

Worker provides information which demonstrates they comply with clause 30.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

Sample Draft

- (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 30.2 or confirms that the Worker is not complying with those requirements;
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

### **31. Conflict of interest**

- 31.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.
- 31.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 31.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

### **32. Reporting a breach of the contract**

- 32.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 13.1, or clauses 26 to 31.
- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 32.1.

### **33. Resolving disputes**

- 33.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 33.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 33.3 to 33.5.
- 33.3 Unless the Buyer refers the dispute to arbitration using clause 33.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
  - (a) determine the dispute;
  - (b) grant interim remedies;
  - (c) grant any other provisional or protective relief.

- 33.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 33.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 33.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 33.4.
- 33.6 The Supplier cannot suspend the performance of the Contract during any dispute.

#### **34. Which law applies**

This Contract and any issues arising out of, or connected to it, are governed by the: Data processing agreement (controller-to-processor) (within EEA) (GDPR and DPA 2018) (UK) set out at Schedule 4 of this Contract.

SCHEDULE 1 – RESPONSE TO TENDER (TBC)

SCHEDULE 2 – SPECIFICATION (TBC)

Sample Draft

**SCHEDULE 3**

**DATED**

-----

**DATA PROCESSING AGREEMENT**

between

**The Greater Birmingham & Solihull Local Enterprise Partnership**

and

**[PARTY 2]**

# CONTENTS

---

## CLAUSE

1. Definitions and Interpretation .....	2
2. Personal data types and processing purposes .....	4
3. Supplier's obligations .....	4
4. Supplier's employees .....	5
5. Security .....	5
6. Personal data breach .....	5
7. Cross-border transfers of personal data .....	7
8. Subcontractors .....	7
9. Complaints, data subject requests and third-party rights .....	8
10. Term and termination .....	8
11. Data return and destruction .....	9
12. Records .....	9
13. Audit .....	9
14. Warranties .....	11
15. Indemnification .....	11
16. Notice .....	11

## ANNEX

ANNEX A Personal Data processing purposes and details .....	13
ANNEX B Security measures .....	14

## SCHEDULE 1

## SCHEDULE 4

This agreement is dated [DATE]

### PARTIES

- (1) The Greater Birmingham and Solihull Local Enterprise Partnership Ltd incorporated and registered in England and Wales with company number 07635395 whose registered office is at Birmingham Business Hub, Ground Floor, Baskerville House, Centenary Square, Broad Street, Birmingham, B1 2ND (**Buyer**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

### BACKGROUND

- (A) The Buyer and the Supplier entered into a contract for the supply of the GBSLEP Growth Hub Peer Networks Program (**Master Agreement**) that may require the Supplier to process Personal Data on behalf of the Buyer.
- (B) This Personal Data Processing Agreement (**Agreement**) sets out the additional terms, requirements and conditions on which the Supplier will process Personal Data when providing services under the Master Agreement. This Agreement contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679) for contracts between controllers and processors.

### AGREED TERMS

#### 1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this Agreement.

##### 1.1 Definitions:

**Authorised Persons:** the persons or categories of persons that the Buyer authorises to give the Supplier personal data processing instructions as identified in [AUTHORISED PERSON DESCRIPTION].

**Business Purposes:** the services described in the Master Agreement or any other purpose specifically identified in Annex ANNEX A.

**Data Subject:** an individual who is the subject of Personal Data.

**Personal Data:** means any information relating to an identified or identifiable natural person that is processed by the Supplier as a result of, or in connection with, the provision of the services under the Master Agreement; an identifiable natural person is one who can be identified, directly or indirectly, in



particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**Processing, processes, process:** either any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define processing, processes or process. It includes any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties.

**Controller and Processor:** as defined in the Data Protection Legislation.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Personal Data Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

- 1.2 This Agreement is subject to the terms of the Master Agreement and is incorporated into the Master Agreement. Interpretations and defined terms set forth in the Master Agreement apply to the interpretation of this Agreement.
- 1.3 The Annexes form part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annexes.
- 1.4 A reference to writing or written includes faxes and email.
- 1.5 In the case of conflict or ambiguity between:
  - (a) any provision contained in the body of this Agreement and any provision contained in the Annexes, the provision in the body of this Agreement will prevail;
  - (b) the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the Annexes, the provision contained in the Annexes will prevail; and
  - (c) any of the provisions of this Agreement and the provisions of the Master Agreement, the provisions of this Agreement will prevail.

## **2. Personal data types and processing purposes**

- 2.1 The Buyer and the Supplier acknowledge that for the purpose of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor.
- 2.2 The Buyer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to the Supplier.
- 2.3 Annex **ANNEX A** describes the subject matter, duration, nature and purpose of processing and the Personal Data categories and Data Subject types in respect of which the Supplier may process to fulfil the Business Purposes of the Master Agreement.

## **3. Supplier's obligations**

- 3.1 The Supplier will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Buyer's written instructions [from Authorised Persons]. The Supplier will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Supplier must promptly notify the Buyer if, in its opinion, the Buyer's instruction would not comply with the Data Protection Legislation.
- 3.2 The Supplier must promptly comply with any Buyer request or instruction [from Authorised Persons] requiring the Supplier to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 The Supplier will maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless the Buyer or this Agreement specifically authorises the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires the Supplier to process or disclose Personal Data, the Supplier must first inform the Buyer of the legal or regulatory requirement and give the Buyer an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- 3.4 The Supplier will reasonably assist the Buyer with meeting the Buyer's compliance obligations under the Data Protection Legislation, taking into account the nature of the Supplier's processing and the information available to the Supplier, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation.
- 3.5 The Supplier must promptly notify the Buyer of any changes to Data Protection Legislation that may adversely affect the Supplier's performance of the Master Agreement.
- 3.6 [The Supplier will only collect Personal Data for the Buyer using a notice or method that the Buyer specifically pre-approves in writing, which contains an approved data privacy notice informing the Data Subject of the Buyer's identity [and its appointed data protection representative], the purpose or purposes for which their Personal Data will be processed, and any other information that, having regard to the specific circumstances of the collection and expected processing, is required to enable fair

processing. The Supplier will not modify or alter the notice in any way without the Buyer's prior written consent.]

#### **4. Supplier's employees**

4.1 The Supplier will ensure that all employees:

- (a) are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;
- (b) have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and
- (c) are aware both of the Supplier's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement.

4.2 [The Supplier will take reasonable steps to ensure the reliability, integrity and trustworthiness of [and conduct background checks consistent with applicable law on] all of the Supplier's employees with access to the Personal Data.]

#### **5. Security**

5.1 The Supplier must at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data including, but not limited to, the security measures set out in Annex **ANNEX B**. [The Supplier must document those measures in writing and periodically review them to ensure they remain current and complete, at least annually.]

5.2 The Supplier must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- (d) a process for regularly testing, assessing and evaluating the effectiveness of security measures.

#### **6. Personal data breach**

6.1 The Supplier will promptly and without undue delay notify the Buyer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such Personal Data at its own expense.

6.2 The Supplier will [immediately OR within [NUMBER] hours] and without undue delay notify the Buyer if it becomes aware of:

- (a) any accidental, unauthorised or unlawful processing of the Personal Data; or
- (b) any Personal Data Breach.

6.3 Where the Supplier becomes aware of (a) and/or (b) above, it shall, without undue delay, also provide the Buyer with the following information:

- (a) description of the nature of (a) and/or (b), including the categories and approximate number of both Data Subjects and Personal Data records concerned;
- (b) the likely consequences; and
- (c) description of the measures taken or proposed to be taken to address (a) and/or (b), including measures to mitigate its possible adverse effects.

6.4 Immediately following any unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. The Supplier will reasonably co-operate with the Buyer in the Buyer's handling of the matter, including:

- (a) assisting with any investigation;
- (b) providing the Buyer with physical access to any facilities and operations affected;
- (c) facilitating interviews with the Supplier's employees, former employees and others involved in the matter;
- (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Buyer; and
- (e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or unlawful Personal Data processing.

6.5 The Supplier will not inform any third party of any Personal Data Breach without first obtaining the Buyer's prior written consent, except when required to do so by law.

6.6 The Supplier agrees that the Buyer has the sole right to determine:

- (a) whether to provide notice of the Personal Data Breach to any Data Subjects, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the Buyer's discretion, including the contents and delivery method of the notice; and
- (b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

6.7 The Supplier will cover all reasonable expenses associated with the performance of the obligations under Clause 6.2 and Clause 6.4 unless the matter arose from the Buyer's specific instructions, negligence, wilful default or breach of this Agreement, in which case the Buyer will cover all reasonable expenses.

6.8 The Supplier will also reimburse the Buyer for actual reasonable expenses that the Buyer incurs when responding to a Personal Data Breach to the extent that the Supplier caused such a Personal Data Breach, including all costs of notice and any remedy as set out in Clause 6.6.

## **7. Cross-border transfers of personal data**

7.1 The Supplier (or any subcontractor) must not transfer or otherwise process Personal Data outside the European Economic Area without obtaining the Buyer's prior written consent.

## **8. Subcontractors**

8.1 The Supplier may not authorise any third party or subcontractor to process the Personal Data.

**OR**

8.2 The Supplier may only authorise a third party (subcontractor) to process the Personal Data if:

- (a) the Buyer provides prior written consent prior to the appointment of each subcontractor OR is provided with an opportunity to object to the appointment of each subcontractor within [NUMBER days] after the Supplier supplies the Buyer with full details regarding such subcontractor;
- (b) the Supplier enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Buyer's written request, provides the Buyer with copies of such contracts;
- (c) the Supplier maintains control over all Personal Data it entrusts to the subcontractor; and
- (d) the subcontractor's contract terminates automatically on termination of this Agreement for any reason.

8.3 Those subcontractors approved as at the commencement of this Agreement are as set out in Annex ANNEX A. The Supplier must list all approved subcontractors in Annex A and include any subcontractor's name and location and contact information for the person responsible for privacy and data protection compliance.

8.4 Where the subcontractor fails to fulfil its obligations under such written agreement, the Supplier remains fully liable to the Buyer for the subcontractor's performance of its agreement obligations.

8.5 The Parties consider the Supplier to control any Personal Data controlled by or in the possession of its subcontractors.

8.6 On the Buyer's written request, the Supplier will audit a subcontractor's compliance with its obligations regarding the Buyer's Personal Data and provide the Buyer with the audit results.

## 9. Complaints, data subject requests and third-party rights

- 9.1 The Supplier must, at no additional cost, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Buyer as the Buyer may reasonably require, to enable the Buyer to comply with:
- (a) the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
  - (b) information or assessment notices served on the Buyer by any supervisory authority under the Data Protection Legislation.
- 9.2 The Supplier must notify the Buyer immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
- 9.3 The Supplier must notify the Buyer within [NUMBER] working days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Legislation.
- 9.4 The Supplier will give the Buyer its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.
- 9.5 The Supplier must not disclose the Personal Data to any Data Subject or to a third party other than at the Buyer's request or instruction, as provided for in this Agreement or as required by law.

## 10. Term and termination

- 10.1 This Agreement will remain in full force and effect so long as:
- (a) the Master Agreement remains in effect; or
  - (b) the Supplier retains any Personal Data related to the Master Agreement in its possession or control (**Term**).
- 10.2 Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Master Agreement in order to protect Personal Data will remain in full force and effect.
- 10.3 The Supplier's failure to comply with the terms of this Agreement is a material breach of the Master Agreement. In such event, the Buyer may terminate [the Master Agreement **OR** any part of the Master Agreement authorising the processing of Personal Data] effective immediately on written notice to the Supplier without further liability or obligation.
- 10.4 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Master Agreement obligations, the parties will suspend the processing of Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data processing into

compliance with the Data Protection Legislation [within [PERIOD]], they may terminate the Master Agreement on written notice to the other party.

## **11. Data return and destruction**

- 11.1 At the Buyer's request, the Supplier will give the Buyer a copy of or access to all or part of the Buyer's Personal Data in its possession or control in the format and on the media reasonably specified by the Buyer.
- 11.2 On termination of the Master Agreement for any reason or expiry of its term, the Supplier will securely delete or destroy or, if directed in writing by the Buyer, return and not retain, all or any Personal Data related to this Agreement in its possession or control, [except for one copy that it may retain and use for [TIME PERIOD] for audit purposes only].
- 11.3 If any law, regulation, or government or regulatory body requires the Supplier to retain any documents or materials that the Supplier would otherwise be required to return or destroy, it will notify the Buyer in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.
- 11.4 The Supplier will certify in writing that it has destroyed the Personal Data within [NUMBER] days after it completes the destruction.

## **12. Records**

- 12.1 The Supplier will keep detailed, accurate and up-to-date written records regarding any processing of Personal Data it carries out for the Buyer, including but not limited to, the access, control and security of the Personal Data, approved subcontractors and affiliates, the processing purposes, categories of processing, any approved transfers of personal data to a third country and related safeguards, and a general description of the technical and organisational security measures referred to in Clause 5.1 (Records).
- 12.2 The Supplier will ensure that the Records are sufficient to enable the Buyer to verify the Supplier's compliance with its obligations under this Agreement and the Supplier will provide the Buyer with copies of the Records upon request.
- 12.3 The Buyer and the Supplier must review the information listed in the Annexes to this Agreement [once a year **OR** [FREQUENCY]] to confirm its current accuracy and update it when required to reflect current practices.

## **13. Audit**

- 13.1 The Supplier will permit the Buyer and its third-party representatives to audit the Supplier's compliance with its Agreement obligations, on at least [NUMBER] days' notice, during the Term. The Supplier will give the Buyer and its third-party representatives all necessary assistance to conduct such audits. The assistance may include, but is not limited to:

- (a) physical access to, remote electronic access to, and copies of the Records and any other information held at the Supplier's premises or on systems storing Personal Data;
- (b) access to and meetings with any of the Supplier's personnel reasonably necessary to provide all explanations and perform the audit effectively; and
- (c) inspection of all Records and the infrastructure, electronic data or systems, facilities, equipment or application software used to store, process or transport Personal Data.

13.2 The notice requirements in Clause 13.1 will not apply if the Buyer reasonably believes that a Personal Data Breach occurred or is occurring, or the Supplier is in breach of any of its obligations under this Agreement or any Data Protection Legislation.

13.3 If a Personal Data Breach occurs or is occurring, or the Supplier becomes aware of a breach of any of its obligations under this Agreement or any Data Protection Legislation, the Supplier will:

- (a) [promptly **OR** within [NUMBER] days of the triggering event], conduct its own audit to determine the cause;
- (b) produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
- (c) provide the Buyer with a copy of the written audit report; and
- (d) remedy any deficiencies identified by the audit within [NUMBER] days.

13.4 At the Buyer's written request, the Supplier will:

- (a) conduct an information security audit before it first begins processing any Personal Data and repeat that audit on an [annual **OR** [FREQUENCY]] basis;
- (b) produce a written report that includes detailed plans to remedy any security deficiencies identified by the audit;
- (c) provide the Buyer with a copy of the written audit report; and
- (d) remedy any deficiencies identified by the audit within [DAYS] days.

**OR**

13.5 At least [FREQUENCY] a year, the Supplier will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.

13.6 On the Buyer's written request, the Supplier will make all of the relevant audit reports available to the Buyer for review, including as applicable: [The Supplier's latest Payment Card Industry (PCI) Compliance Report, ][WebTrust, ][SysTrust, ][Statement on Standards for Attestation Engagements No. 16 audit reports for Reporting on Controls at a Service Organisation, ][ reports relating to its ISO/IEC 27001 certification][ and [OTHER AUDIT REPORTS]]. [The Buyer will treat such audit reports as the Supplier's confidential information under this Agreement.]



- 13.7 The Supplier will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Supplier's management.

#### **14. Warranties**

- 14.1 The Supplier warrants and represents that:

- (a) its employees, subcontractors, agents and any other person or persons accessing Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation relating to the Personal Data;
- (b) it and anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;
- (c) it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Master Agreement's contracted services; and
- (d) considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data, and ensure a level of security appropriate to:
  - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
  - (ii) the nature of the Personal Data protected; and
  - (iii) comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in Clause 5.1.

- 14.2 The Buyer warrants and represents that the Supplier's expected use of the Personal Data for the Business Purposes and as specifically instructed by the Buyer will comply with the Data Protection Legislation.

#### **15. Indemnification**

- 15.1 The Supplier agrees to indemnify, keep indemnified and defend at its own expense the Buyer against all costs, claims, damages or expenses incurred by the Buyer or for which the Buyer may become liable due to any failure by the Supplier or its employees, subcontractors or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation.
- 15.2 Any limitation of liability set forth in the Master Agreement will not apply to this Agreement's indemnity or reimbursement obligations.]

#### **16. Notice**

- 16.1 Any notice [or other communication] given to a party under or in connection with this Agreement must be in writing and delivered to:

For the Buyer: [BUYER DATA PRIVACY CONTACT]

For the Supplier: [SUPPLIER DATA PRIVACY CONTACT]

16.2 Clause 16.1 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 [A notice given under this agreement is not valid if sent by email].

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

Signed by [NAME OF DIRECTOR]	
for and on behalf of [NAME OF <b>Buyer</b> ]	Director
Signed by [NAME OF DIRECTOR]	
for and on behalf of [NAME OF <b>Supplier</b> ]	Director

**ANNEX A      Personal Data processing purposes and details (Authorised Processing)**

<b>Contract:</b>	<b>GBSLEP Growth Hub Peer Networks Contract</b>
<b>Date:</b>	
<b>Description of Authorised Processing</b>	<b>Details</b>
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	

## ANNEX B Security measures

:

Question	Response
Are you registered with Information Commissioners Office as a Data Controller?	
How do you ensure that all of your employees and/or contractors who process personal data are subject to confidentiality obligations?	
What physical measures do you take to comply with the security requirements of GDPR or any applicable replacement legislation?	
Do you hold any Industry Standard Certification in Relation to Data Security?	
Who is your Data Protection Officer, what are their contact details and what are their specific responsibilities?	
What is your schedule for reviewing and updating your policies for processing data?	
Where does your organization store the digital personal information that you may be managing on our behalf? If it is stored with a third-party, please identify them and where data is stored (including whether this is within the European Economic Area).	
What is your process for Staff Training on Data Protection and Data Security and how frequently is this undertaken, and the content reviewed?	
What processes and methods are you using to properly anonymise and encrypt personal data within your organisation?	
Please describe your processes for detecting and communicating data breaches.	
What tools are in place to manage the identification, tracking, and destruction of personal data associated with an individual?	
What would your process be for destruction of the data collected for the purposes of a contract such as the one proposed in this tender?	
In the last 24 months have you: <ul style="list-style-type: none"> <li>Experienced security breaches (Actual, Suspected or Attempted)</li> <li>Received any complaints (upheld or outstanding) from the ICO</li> <li>Been subject or anticipate being subject to any ICO enforcement action</li> <li>Been the subject of any ICO audits – of a compulsory or voluntary nature</li> </ul>	