

**TRAINING SERVICES (BESPOKE)  
GENERAL TERMS AND CONDITIONS**

**1 Interpretation**

1.1 The following definitions and rules of interpretation apply in this Agreement and in these terms and conditions (the “**Conditions**”):

“**Agreement**” means the agreement between the IET and the Training Provider for the supply of the Services by the Training Provider, which comprises the applicable Order Form, these Conditions and any attached Schedules which, when read together, constitute one and the same agreement.

“**Applicable Law**” means all laws, rules, regulations, codes of practice, research governance or ethical guidelines or requirements of regulatory authorities, as amended from time to time, which are applicable to the provision of the Services.

“**Cancellation Charges**” means the following:

(a) cancellation charges applicable to each online Public Course and In-House Course:

<b>Date of cancellation</b>	<b>Cancellation charges due</b>
10 calendar days or more, from the relevant Delivery Date	0% of the Fee.
Between 9 and 6 calendar days, from the relevant Delivery Date	50% of the Fee.
5 calendar days and less, from relevant Delivery Date	100 % the Fee.

(b) cancellation charges applicable to each in-person Public Course and In-House Course:

<b>Date of cancellation</b>	<b>Cancellation charges due</b>
20 calendar days or more, from the relevant Delivery Date	0% of the Fee.
Between 19 and 10 calendar days, from the relevant Delivery Date	50% of the Fee.
9 calendar days and less, from relevant Delivery Date	100 % the Fee.

“**Client**” means a corporate client of the IET and any clients of that corporate client.

“**Client Materials**” means any Client materials to be used in connection with developing the In-House Course and In-House Training Materials in accordance with that Client’s requirements.

“**Commencement Date**” means the date as set out in the applicable Order Form.

“**Confidential Information**” means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including the terms and conditions of this Agreement (and any agreement entered into in connection with this Agreement) and information which relates to the business, affairs, finances, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, suppliers and customers of the IET or the Training Provider (as the case may be) or, in each case, any member of the Group to which the relevant party belongs.

In respect of the IET, its Confidential Information shall include the IET Materials and the Client Materials.

“**Course**” means the course as specified in the applicable Order Form.

“**Data Protection Legislation**” means all applicable laws and regulations relating to the protection of personal data and the privacy of individuals as may be amended, extended, re-enacted or replaced from time to time, including, (where applicable):

- (a) UK GDPR; the Data Protection Act 2018 (“**DPA 2018**”) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; or
- (b) EU GDPR

along with the guidance and codes of practice issued by the UK's Information Commissioner, EU Commission or other relevant regulatory authority (as applicable to a party).

“**Deemed Employment**” means an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies.

“**Deliverables**” means the output of the Services as listed in the applicable Order Form to be delivered by the Training Provider to the IET in relation to the Services which may include the Course, the Training Materials, any In-House Course and In-House Training Materials.

“**Delivery Date(s)**” means the delivery date(s) for providing the Services as set out in the applicable Order Form.

“**Delivery Location(s)**” means the delivery location(s) for providing the Services in-person as set out in the applicable Order Form.

“**Delivery Schedule**” means the delivery schedule for providing the Services as set out in the applicable Order Form which may comprise the type of course (i.e. Public Course or In-house Course), the Delivery Date(s), the Delivery Location(s) and the Delivery Style.

“**Delivery Style**” means either delivery of the Services in-person or online, as set out in the applicable Order Form.

“**Development Fee**” means the development fee set out in the applicable Order Form.

“**EU GDPR**” means the General Data Protection Regulation ((EU) 2016/679).

“**Expenses**” means those expenses that the Training Provider reasonably incurs in connection with delivering an In-House Course or Public Course at a Delivery Location and which have been specifically pre-approved by the IET in writing. Expenses may include: travel, accommodation and sustenance.

“**Fees**” means the fees as set out in the applicable Order Form which are payable by the IET to the Training Provider for the provision of the Services, and which shall be paid in accordance with clause 5 (Fees and payment), and which may include a “**Development Fee**”, a “**Public Course Fee**”, and an “**In-House Course Fee**”.

“**Force Majeure Event**” means an unforeseeable act, omission, event, accident or other circumstance that is:

- (a) beyond the reasonable control of a party; and
- (b) not attributable to any wilful act, neglect or failure to take reasonable preventative action by that party,

and which affects that party's performance of its obligations under this Agreement. Things such as strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, epidemic, pandemic or other spread of infectious disease or the imposition of any measures to prevent the spread of disease, nuclear, chemical or biological contamination, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm may be Force Majeure Events.

**"GHGs"** means the natural and anthropogenic gases which trap thermal radiation in the Earth's atmosphere and are specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), as may be amended from time to time.

**"Good Industry Practice"** means standards, practices, methods and procedures conforming to Applicable Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would be expected from a leading individual, organisation or company within the relevant industry or business sector and in accordance with any relevant industry codes of practice.

**"Group"** means in relation to a party: i) that party; ii) any subsidiary or holding company from time to time of that party; iii) any subsidiary from time to time of a holding company of that party; and iv) any subsidiary from time to time of a subsidiary of that party.

**"IET"** means the IET entity as identified on the Order Form, being either: i) the Institution of Engineering and Technology, a charity registered in England and Wales and in Scotland with charity numbers 211014 and SC038698 respectively, whose registered address is at Savoy Place, London, WC2R 0BL, UK; or ii) IET Services Ltd, a company registered in England and Wales with company registration number 00909719, whose registered address is at Savoy Place, London, WC2R 0BL, UK.

**"IET Branding"** means the trademarks, trade names or logos, in all cases, whether registered or unregistered owned by the IET and/or its licensors.

**"IET Materials"** means all documents, information, data, items and materials in any form (whether owned by the IET or a third party), which are provided by the IET to the Training Provider in connection with the Services and the preparation of the Training Materials and any relevant In-House Training Materials.

**"IET Obligations"** means the IET's obligations as set out in the applicable Order Form.

**"In-House Course"** means the Course which has been specifically adapted for a Client and attended by that Client's employees only. An In-House Course is delivered in English only and may be delivered in the UK and/or abroad.

**"In-House Course Fee"** means the fee for the delivery of an In-House Course, as set out in the applicable Order Form.

**"In-House Training Materials"** means the Training Materials specifically adapted for an In-House Course.

**"Intellectual Property Rights"** means any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Order Form"** means the form describing the Services and setting out the specific commercial terms applicable to such Services.

**"Public Course"** means a Course that is delivered in the UK and attended by members of the general public.

“**Public Course Fee**” means the fee for the delivery of a Public Course, as set out in the applicable Order Form.

“**Services**” means the services set out in the applicable Order Form to be delivered by the Training Provider.

“**Tax Authority**” means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect tax in the United Kingdom or elsewhere.

“**Term**” has the meaning given to it in the applicable Order Form.

“**Training Materials**” means the Course training materials (for example IET publications, presentation slides, handouts, and any template spreadsheets).

“**Training Provider’s Personnel**” means any person employed or engaged by the Training Provider and involved in the provision of the Services.

“**UK GDPR**” has the meaning given to it in Section 3(10) (as supplemented by Section 205(4)) of the Data Protection Act 2018 (as amended).

“**VAT**” means value added tax or any equivalent tax chargeable in the United Kingdom (or elsewhere).

“**Working Day**” means a day, other than a Saturday, Sunday or public holiday in England and Wales.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.3 Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.5 Any requirement for a party to use its “**reasonable endeavours**” shall be interpreted as a requirement for that party to use its reasonable and commercially prudent endeavours.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10 A reference to writing or written includes email but excludes fax.
- 1.11 A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 The following clauses only apply where the Training Provider is either: i) acting in a personal capacity



as a self-employed individual; or ii) a personal services company: clause 4.2.4 (Supply of Services), clause 15.3 (Termination) and clause 17 (Status).

## **2 Commencement and duration**

2.1 This Agreement shall come into force on the Commencement Date and, subject to earlier termination in accordance with its terms, shall continue in full force and effect until the expiry of the Term.

## **3 Non-exclusivity**

3.1 Notwithstanding the parties entering into this Agreement, it is acknowledged and agreed that any and all Services provided to the IET are provided on a non-exclusive basis and the Training Provider acknowledges and agrees that nothing shall restrict or prevent the IET from procuring training services (including services that are substantially similar to the Services) from other third party providers.

## **4 Supply of Services**

4.1 The Training Provider shall:

4.1.1 deliver the Public Course or the In-House Course (as applicable) in accordance with the Delivery Schedule, and (at the IET's instructions) distribute the Training Materials or the In-House Training Materials (as applicable) to delegates;

4.1.2 comply with any reasonable requests of the IET and (where applicable) a Client; and

4.1.3 ensure that it follows all health and safety instructions at the Delivery Locations as communicated to it.

4.2 The Training Provider warrants that the Services shall:

4.2.1 be provided using reasonable skill and care;

4.2.2 be performed and supplied in accordance with Good Industry Practice;

4.2.3 comply with all Applicable Laws and any Mandatory Policies; and

4.2.4 be performed using personnel of required skill, experience and qualifications.

4.3 The IET:

4.3.1 reserves the right to change any of the Delivery Locations set out in any Order Form before the scheduled Delivery Date of the relevant Public Course or In-House Course by providing prior written notice to the Training Provider.

4.3.2 agrees to carry out the IET Obligations in a timely manner and with reasonable care and skill.

4.4 Where the Training Provider is developing a Course, the IET may require the Training Provider to, and when required by the IET the Training Provider shall:

4.4.1 attend an initial meeting (which may take place virtually) with the IET in order to understand the development work required to prepare the Course and (if applicable) the Training Materials;

4.4.2 provide a written scope of the development work and an estimate of the number of development days required in order to prepare the Course and (if applicable) the Training Materials;

4.4.3 upon written confirmation from the IET that the scope of the development work and number



of development days are agreed, proceed with the preparation of the Course and (if applicable) the Training Materials accordingly; and

- 4.4.4 provide a draft of the Course and (if applicable) the Training Materials for consideration by the IET. Where necessary, the Training Provider will incorporate any reasonable changes required by the IET. The draft and the revisions will be delivered by the Training Provider on the dates specified in the Delivery Schedule.
- 4.5 Where the Training Provider is developing an In-House Course, the IET may require the Training Provider to, and when required by the IET the Training Provider shall:
  - 4.5.1 attend initial meeting (which may take place virtually) with the IET and the Client in order to understand the development work required to prepare the In-House Course and In-House Training Materials for the Client;
  - 4.5.2 provide a written scope of the development work and an estimate of the number of development days required in order to prepare the In-House Course and In-House Training Materials;
  - 4.5.3 upon written confirmation from the IET that the scope of the development work and number of development days is agreed, proceed with the preparation of the In-House Course and the In-House Training Materials accordingly; and
  - 4.5.4 provide a draft of the In-House Course and In-House Training Materials for consideration by the IET and the Client. Where necessary, the Training Provider will incorporate any reasonable changes required by the IET and/or the Client. The draft and any revisions will be delivered by the Training Provider on the dates specified in the Delivery Schedule.
- 4.6 If the Training Provider fails to: (i) supply the Services in accordance with the Delivery Dates; and/or (ii) complete any development works (draft and any revisions) by the Delivery Dates set, without prejudice to the rights at clause 15 (Termination), the IET may terminate this Agreement by serving notice in writing on the Training Provider to this effect and recover from the Training Provider all losses, damages, costs and expenses incurred by the IET arising from the Training Provider's default.
- 4.7 The Training Provider shall not be liable for any delay in or failure of performance of its obligations under this Agreement to the extent it is caused by the IET's failure to complete the IET Obligations.
- 4.8 During the Term and for a period of 12 months after the Term, the Training Provider will not contact any Client to whom it has been introduced in connection with the Services in order to secure work directly from that Client which is the same as or similar to the Services.

## **5 Fees and payment**

- 5.1 In consideration of the provision of the Services by the Training Provider and the licences granted to the IET in pursuance of clause 7 (Intellectual property), the IET will, in accordance with this clause 5 (Fees and payment) and subject to the terms of this Agreement, pay to the Training Provider:
  - 5.1.1 the Development Fee for either: i) all development days actually performed by the Training Provider; and/or ii) all hours of content actually produced by the Training Provider;
  - 5.1.2 the Public Course Fee for each Public Course delivered by the Training Provider;
  - 5.1.3 the In-House Course Fee for each In-House Course delivered by the Training Provider;
  - 5.1.4 any other agreed Fees set out in the applicable Order Form (and not listed in this clause 5.1 (Fees and payment)) payable for the provision of any other Services; and
  - 5.1.5 subject to the production of such receipts and other evidence as the IET may reasonably

provided that (where the Training Provider is either acting in a personal capacity as a self-employed individual or a personal services company), if the IET is required by law to make any deductions from the Fees for income tax and national insurance contributions, it will pay the Fees to the Training Provider less any such deductions.

- 5.2 The Fees are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the IET following delivery of a valid VAT invoice.
- 5.3 The Training Provider shall submit its invoices in Pounds Sterling (GBP) for:
- 5.3.1 the In-House Course Fee or Public Course Fee (as applicable) and any Expenses within 20 Working Days of the relevant Delivery Date;
  - 5.3.2 the Development Fee within 20 Working Days of the IET confirming in writing that the Training Provider has completed the development work to the IET's satisfaction;
  - 5.3.3 any other agreed Fees (as referenced in clause 5.1.4 (Fees and payment) within 20 Working Days of the completion of those Services to the IET's satisfaction (acting reasonably);
- plus a valid VAT invoice (if applicable) to the IET and each invoice shall include all supporting information reasonably required by the IET.
- 5.4 The IET shall pay each undisputed invoice submitted to it by the Training Provider in Pounds Sterling (GBP), in full and in cleared funds, within 30 days of the date of the invoice, to a bank account nominated in writing by the Training Provider.
- 5.5 For the avoidance of doubt, each party shall be responsible for payment of its own taxes, howsoever arising.

## **6 Cancellation**

- 6.1 If the IET wishes to cancel an In-House Course and/or Public Course (that is scheduled to be delivered by the Training Provider) where there has been no fault by the Training Provider, written notice must be given to the Training Provider. The Cancellation Charges will apply and the Training Provider may invoice the IET accordingly.

## **7 Intellectual property**

- 7.1 In relation to the IET Materials and the Client Materials:
- 7.1.1 the IET and its licensors (including the Client) shall retain ownership of all Intellectual Property Rights in the IET Materials and the Client Materials (as applicable);
  - 7.1.2 the IET grants to the Training Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use and copy the IET Materials to the limited extent as is reasonably necessary for the following purposes only:
    - (i) preparing and, as necessary, updating the Course and Training Materials;
    - (ii) tailoring the Course and Training Materials in line with a Client's requirements so as to develop and produce an In-House Course and In-House Training Materials;
    - (iii) delivering a Public Course and/or In-House Course in accordance with the terms of this Agreement; and
    - (iv) distributing to delegates the Training Materials and/or the In-House Training Materials;



providing that any extracts of the IET Materials contained in the Deliverables remain unaltered and are clearly referenced;

7.1.3 the IET grants to the Training Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use and copy the Client Materials to the limited extent as is reasonably necessary for the following purposes only:

- (i) tailoring the Course and Training Materials in line with the Client's requirements so as to develop and produce an In-House Course and In-House Training Materials; and
- (ii) delivering the In-House Course; and
- (iii) distributing to delegates the In-House Training Materials,

providing that any extracts of the Client Materials remain unaltered.

7.2 Subject to clause 7.1 (Intellectual property), in relation to the Deliverables:

7.2.1 the Training Provider and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the IET Materials and the Client Materials;

7.2.2 subject to clause 7.4 (Intellectual property), the Training Provider grants to the IET, or shall procure the direct grant to the IET of, a fully paid-up, worldwide, exclusive, sub-licensable, royalty-free, perpetual and irrevocable licence to use the Deliverables (excluding the IET Materials and the Client Materials) for the purpose of receiving and using the Services and the Deliverables in its business including but not limited to the right to use, copy, reproduce, publish, distribute (in print and/or digitally) or otherwise exploit the Training Materials and In-House Training Materials, and the IET may sub-licence the rights granted in clause 7.2.2 (Intellectual property) to its Group, Clients and customers.

7.3 The sub-licence referred to in clause 7.2.2 (Intellectual property) shall entitle IET's customers (including a Client's delegates) to use the Training Materials and the In-House Training Materials together with any knowledge, skills and techniques acquired from attending the Public Course and/or the In-House Course for the purposes for which they were provided, including, in the course of their employment, providing that the IET's and the Training Provider's respective Intellectual Property Rights are not infringed by the IET's customers at any time.

7.4 Subject to the Training Provider complying in full with clause 7.7 (Intellectual property), the licence referred to in clause 7.2.2 (Intellectual property) shall not restrict the Training Provider from using any Intellectual Property Rights in the Deliverables (excluding the IET Materials and the Client Materials) owned by the Training Provider before the date of this Agreement which have not been specifically developed by the Training Provider for the purposes of providing the Services under this Agreement.

7.5 The Training Provider warrants that the Deliverables (save in respect of any extracts taken from the IET Materials and/or the Client Materials):

7.5.1 are, subject to clause 7.6 (Intellectual property), the Training Provider's original work and that no substantial part of it has been copied from any other work or material;

7.5.2 do not include any information or opinions which are inaccurate, misleading, offensive, illegal or which might bring the IET's name into disrepute, or if acted on, cause damage or loss;

7.5.3 do not infringe any third party's Intellectual Property Rights; and

7.5.4 are not subject of any complaint, claim or legal action.

7.6 The Training Provider warrants that:





- 7.6.1 where the Deliverables contain third party material, it has obtained written permission from that third party to use that material as contemplated in the Agreement. The Training Provider shall provide the IET with copies of such permissions on request; and
- 7.6.2 it has the power to grant the licences as set out in this clause 7 (Intellectual property) and has not granted or assigned any rights to any third party or entered into any agreement which affects its ability to grant such licences.
- 7.7 The Training Provider will not, under any circumstances:
- 7.7.1 use the IET Materials and the Client Materials (or any part thereof) provided to the Training Provider with another Client, course or otherwise; or
- 7.7.2 deliver and/or use any Course, any In-House Course, any Training Materials or any In-House Training Materials developed in accordance with the IET's or any Client's requirements (or any part thereof) in connection with another Client, course or otherwise.
- 7.8 Save as set out in the Agreement or otherwise expressly agreed in writing by the parties, no rights of either party are assigned, transferred or licenced.
- 7.9 The Training Provider shall not use any IET Branding without the prior written consent of the IET and where any such consent is given, the Training Provider shall only be entitled to use the IET Branding during the Term to the extent needed to provide the Services, and subject to any branding guidelines issued to the Training Provider.

## **8 Confidentiality**

- 8.1 Each party undertakes that it shall not disclose to any person any Confidential Information of the other party or of any member of the Group to which the other party belongs, except as permitted by clause 8.2 (Confidentiality).
- 8.2 Each party may disclose, only to such extent as is necessary, the other party's Confidential Information:
- 8.2.1 to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 8 (Confidentiality); and
- 8.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 8.4 The provisions of this clause 8 (Confidentiality) shall survive for a period of 3 years from termination or expiry of this Agreement.

## **9 Publicity**

- 9.1 Save as set out in this Agreement, neither party shall use the name of the other party or any trade name or trademark used by the other party or refer to the other party in any other way in any press release, promotional literature, publications or advertising material, including any website, "blogs", social media or other online services, without the prior written consent of the other party.

## **10 Data protection**

10.1 The parties will comply with all applicable Data Protection Legislation in the performance of their obligations under this Agreement.

10.2 Without limiting the generality of clause 10.1 (Data protection), the parties agree that if, in the performance of its obligations this Agreement, the Training Provider is acting as a Processor (or Sub-Processor) of Personal Data ('Processor', 'Sub-Processor' and 'Personal Data' as defined in Schedule 1 (Data Protection)) on behalf of the IET, the provisions of Schedule 1(Data Protection) shall apply.

## **11 Warranties**

11.1 The Training Provider undertakes, warrants and represents on an ongoing basis that it has, and will continue to hold, all rights, permissions, consents, licences, authorities and regulatory approvals necessary to provide the Services under the terms of this Agreement.

## **12 Indemnities**

12.1 The Training Provider shall indemnify and keep indemnified the IET against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable legal costs and all other reasonable professional costs and expenses) suffered or incurred by the IET arising out of or in connection with:

12.1.1 any claim made against the IET for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the IET's receipt or use of the Services and/or the Deliverables ("**IPR Claim**");

12.1.2 any claim made against the IET by a third party arising out of or in connection with the provision of the Services and the Deliverables, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance this of Agreement by the Training Provider, its employees, agents or sub-contractors;

12.1.3 any claim made against the IET for a breach of any Applicable Laws resulting from any act or omission of the Training Provider.

12.2 The indemnity in clause 12.1 (Indemnities) shall not cover the IET to the extent that a claim under it results from the IET's negligence or wilful misconduct.

12.3 If a payment due from the Training Provider under this clause 12 (Indemnities) is subject to tax (whether by way of direct assessment or withholding at its source), the IET shall be entitled to receive from the Training Provider such amounts as shall ensure that the net receipt, after tax, to the IET in respect of the payment is the same as it would have been were the payment not subject to tax.

12.4 Without prejudice to clause 12.1 (Indemnities), if any IPR Claim is made, the Training Provider will either obtain a licence in respect of the infringing material, or where that is not viable, modify or replace the infringing part.

12.5 Nothing in this clause shall restrict or limit the IET's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

## **13 Insurance**

13.1 The Training Provider shall maintain in force, with a reputable insurance company, such policies of insurance (including professional indemnity insurance and public liability insurance) to cover the liabilities that may arise under or in connection with this Agreement, and shall produce to the IET on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **14 Limitation of liability**

- 14.1 References to 'liability' or 'liable' in this clause 14 (Limitation of liability) include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.2 **Prohibited limitations or exclusions.** Nothing shall:
- 14.2.1 limit or exclude a party's liability under this Agreement for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors, or for fraud or fraudulent misrepresentation or in any other circumstances where liability may not be limited under any Applicable Law;
  - 14.2.2 limit the Training Provider's liability under this Agreement in respect of the indemnities at clause 17.4 (Status) and at paragraph 2.4 of Schedule 1 (Data Protection).
- 14.3 **Heads of loss.** Subject to clause 14.2 (Prohibited limitations or exclusions), neither party shall be liable to the other for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.
- 14.4 **IET's general liability cap.** Subject to clause 14.2 (Prohibited limitations or exclusions) and clause 14.3 (Heads of loss), the total aggregate liability of the IET to the Training Provider under this Agreement shall not exceed the total Fees paid or payable by the IET under this Agreement.
- 14.5 **Training Provider's enhanced liability cap.** Subject to clause 14.2 (Prohibited limitations or exclusions) and clause 14.3 (Heads of loss), the total aggregate liability of the Training Provider to the IET under this Agreement in respect of the indemnities at clause 12 (Indemnities) shall not exceed the amount set out in the applicable Order Form.
- 14.6 **Training Provider's general liability cap.** Subject to clause 14.2 (Prohibited limitations or exclusions) and clause 14.3 (Heads of loss), the total aggregate liability of the Training Provider to the IET under or in connection with this Agreement shall not exceed the total Fees paid or payable by the IET this Agreement.

## 15 Termination

- 15.1 Without affecting any other right or remedy available to it, either the IET or the Training Provider may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 15.1.1 the other party fails to pay any undisputed sum due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
  - 15.1.2 the other party commits a material breach of any other term of this Agreement and that breach is not capable of remedy or, if remediable, the party having committed the breach fails to remedy that breach within a period of 10 days after being notified in writing to do so; or
  - 15.1.3 any consents, approvals, permits, licences or authorisation held by the other party are revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled; or
  - 15.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this has been placed in jeopardy; or
  - 15.1.5 an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the court to make a winding-up or



bankruptcy order or the other party takes or suffers any similar or analogous action (in any jurisdiction) in consequence of debt; or

15.1.6 the other party ceases, or threatens to cease, to carry on business.

15.2 Without affecting any other right or remedy available to the IET and without prejudice to clause 4.6 (Supply of Services), the IET may terminate this Agreement with immediate effect by giving written notice to the Training Provider if the Training Provider (acting in a personal capacity as a self-employed individual) is unable to perform any of the Services on the Delivery Dates and/or in accordance with the Delivery Schedule due to an illness, lack of capacity or otherwise.

15.3 Without affecting any other right or remedy available to it, the IET may terminate this Agreement with immediate effect if the engagement of the Training Provider by the IET is determined by the IET or HM Revenue & Customs to be Deemed Employment.

## **16 Consequence of termination**

16.1 On termination (for any reason) or expiry of this Agreement:

16.1.1 the IET shall, without undue delay, pay to the Training Provider all of the Training Provider's outstanding undisputed invoices and, in respect of Services supplied but for which no invoice has been submitted, the Training Provider may submit an invoice, which shall be payable as soon as practicable on receipt of the same from the Training Provider provided such invoice is undisputed;

16.1.2 each party shall, within a reasonable time, return to the other party or (at the other party's option as notified in writing) destroy, all of that other party's property (including any equipment, materials including any IET Materials and Client Materials from the Training Provider to the IET, information (whether Confidential Information or otherwise)) and data (including any Personal Data) in its possession or control (unless otherwise agreed between the parties). If either party fails to meet its obligations under this clause 16.1.3 (Consequence of termination), the other party may enter the defaulting party's premises and take possession of them. Until they have been returned or repossessed, each party shall be solely responsible for the safe keeping of the other party's property;

16.1.3 any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect; and

16.1.4 the accrued rights and liabilities of the parties as at termination shall not be affected including the licence granted to the IET pursuant to clause 7.2.2 (Intellectual property).

## **17 Status**

17.1 The relationship of the Training Provider to the IET will be that of independent contractor and nothing in this Agreement shall render it (nor, if applicable, any Training Provider's Personnel) an employee, worker, agent or partner of the IET and the Training Provider shall not (and shall procure that none of the Training Provider's Personnel, if applicable, shall) hold itself out as such.

17.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly, the Training Provider shall (and shall procure that any Training Provider's Personnel, if applicable, shall):

17.2.1 co-operate fully and promptly with any request by the IET relating to any matter arising in connection with the Training Provider's or the IET's tax compliance procedures to the extent that it relates or may relate to the arrangements contemplated this Agreement including this clause 17 (Status);

17.2.2 promptly provide such information as the IET shall require from time to time: (a) to enable the



IET to determine whether the provision of the Services under or in connection with this Agreement is or will be Deemed Employment and to make any necessary status determinations as may be required by law; and (b) in order to comply with any obligation on the IET to deduct tax or national insurance contributions from the Fees due under clause 5 (Fees and payment);

- 17.2.3 promptly inform the IET of any material change to any information or documentation previously provided in compliance with this clause 17 (Status);
  - 17.2.4 promptly provide any other information or documentation that it considers (or ought to reasonably consider) to be materially relevant to enable the IET to make any determinations and to comply with any of its legal obligations referred to in clause 17.2.2 (Status);
  - 17.2.5 authorise, request or procure the disclosure of information from the relevant Tax Authority to the IET as the IET may request in the event of an enquiry by such a Tax Authority relating to or in connection with the arrangements contemplated by this Agreement including this clause 17 (Status);
  - 17.2.6 indemnify the IET for and in respect of any and all liability, assessment or claim (including interest, fines, penalties, costs and expenses) incurred, paid or payable by the IET as a result of any failure by the Training Provider to provide information, or failure to provide complete, accurate and up-to-date information, as may be requested by the IET for the purposes set out in this clause 17.2 (Status), where such recovery is not prohibited by law.
- 17.3 The Training Provider shall be fully responsible for and shall indemnify the IET or any member of its Group for and in respect of the following:
- 17.3.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Training Provider (or any Training Provider's Personnel, if applicable) in respect of the Services, where such recovery is not prohibited by law. The Training Provider shall further indemnify the IET against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the IET in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
  - 17.3.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Training Provider (or its subcontractors or substitutes or any Training Provider's Personnel, in each case, as applicable) against the IET arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the IET,

provided always that the indemnity in clause 17.3.1 (Status) does not apply to any income tax or National Insurance contributions deducted by the IET if: (a) the provision of Services under or in connection with this Agreement is determined by the IET to be Deemed Employment; and (b) the IET makes the deductions from the Fees under clause 5 (Fees and payment) of this Agreement prior to payment to the Training Provider.

- 17.4 The Training Provider warrants that it is not nor will it prior to the cessation of this Agreement, become a Managed Service Company (within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003). The Training Provider shall indemnify the IET from and against any costs, liabilities or expenses arising (whether directly or indirectly) out of, or in connection with, any breach of the warranty in this clause 17.4 (Status) or any determination or finding that the Training Provider is a Managed Service Company, where such recovery is not prohibited by law.

## 18 **Force majeure**

- 18.1 Neither party shall be in breach of this Agreement if it is prevented from or delayed in carrying on its business and/or material obligations hereunder by a Force Majeure Event provided that:



- 18.1.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- 18.1.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- 18.1.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

## **19 Compliance with Applicable Laws and policies**

- 19.1 In performing its obligations under this Agreement, the Training Provider shall comply with all Applicable Laws and any reasonable and relevant policies and procedures notified to it by the IET from time to time.
- 19.2 The Training Provider shall:
  - 19.2.1 comply with all applicable laws and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (“**Relevant Requirements**”) and shall not do or omit to do or permit anything to be done which is an offence or which may be deemed to be an offence under the Relevant Requirements;
  - 19.2.2 not engage in any activity, practice or conduct which would constitute either: (i) a UK tax evasion facilitation offence under section 45 of the Criminal Finances Act 2017; or (ii) a foreign tax evasion facilitation offence under section 46 of the Criminal Finances Act 2017;
  - 19.2.3 comply with all applicable anti-slavery and human trafficking laws and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and shall ensure that it does not discriminate within the meaning of applicable laws relating to diversity, equality, non-discrimination and human rights; and
  - 19.2.4 perform its obligations under this Agreement in an environmentally conscious manner and reduce, to the fullest extent possible, the emissions of GHGs that arise as a consequence of the performance of this Agreement.
- 19.3 Without prejudice to any other rights or remedies which the IET may have, any breach of this clause 19 (Compliance with Applicable Laws and policies) shall be deemed an irredeemable material breach of this Agreement for the purposes of clause 15.1.2 (Termination by the IET for material default).

## **20 Assignment and other dealings**

- 20.1 Subject to clause 20.2 (Assignment and other dealings), neither party shall, without the prior written consent of the other party, assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 20.2 The IET may, upon written notice to the Training Provider, assign or otherwise transfer any or all of its rights or sub-contract any or all of its obligations under this Agreement to any member of its Group.

## **21 Notices**

- 21.1 Notice given under this Agreement shall be in writing, sent for the attention of, and addressed to, the relevant representative set out in the applicable Order Form (or such other address or person as the relevant party may notify to the other party) and shall be delivered:
  - 21.1.1 personally, in which case the notice will be deemed to have been received at the time of delivery;



- 21.1.2 by pre-paid, first-class post if the notice is being sent to an address within the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the second (2nd) normal working day in the country specified in the recipient's address for notices after the date of posting;
- 21.1.3 by international standard post if being sent to an address outside the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the seventh (7th) normal working day in the country specified in the recipient's address for notices after the date of posting; or
- 21.1.4 by email to the relevant email address specified in the applicable Order Form (or such other email address as the relevant party may notify to the other party), in which case, the notice will be deemed to have been received at the time of transmission, or if this time falls outside of normal working hours, when normal working hours resume, in each case provided that no out of office auto-reply or error message is received by the sender in response within one hour after transmission of the notice.
- 21.2 For the purposes of clause 21.1.4 (Notice), "normal working hours" means the hours between 09:00 to 17:00 in the United Kingdom (or such other country as has been specified by the receiving party) on a Working Day (or any day other than a Saturday, Sunday or public holiday in the country specified by the receiving party, if other than the United Kingdom).
- 21.3 To prove service of notice under clauses 21.1.1 (Notice) to 21.1.3 (Notice), it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

## **22** Miscellaneous

- 22.1 **Further assurance:** Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 22.2 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.3 **Variation:** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 22.4 **Waiver:** A waiver of any right or remedy under this Agreement or by Applicable Law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any such right or remedy shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 22.5 **Severance:** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 22.6 **Counterparts:** This Agreement may be executed in counterparts, each of which when executed shall constitute a duplicate original, but all counterparts shall together constitute one agreement. Where this Agreement is executed in counterparts, following execution each party must promptly deliver the counterpart it has executed to the other party. Transmission of an executed counterpart of this Agreement by email in PDF, JPEG or other agreed format shall take effect as delivery of an executed counterpart of this Agreement.
- 22.7 **No partnership or agency:** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

- 22.8 **Third party rights:** Unless it expressly states otherwise, this Agreement does not give rise to any rights for a third party to enforce any term of this Agreement.
- 22.9 **Governing law:** This Agreement and any dispute arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the laws of England and Wales.
- 22.10 **Mediation:** If any dispute arises in connection with this Agreement, the parties agree to attempt to resolve the dispute between the parties in the first instance. If the dispute remains unresolved 30 days after one party notified the other of such dispute, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 22.11 **Jurisdiction:** Subject to clause 22.10, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement or its subject matter or formation.
- 22.12 **Language:** This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language version shall prevail.





## 1 Definitions

1.1 For the purposes of this Schedule 1 (Data Protection), the following definitions apply:

“**Appendix**” means the appendix to the Order Form which sets out the details of the Processing;

“**Controller**” has the same meaning as defined in GDPR;

“**Data Subject**” has the same meaning as defined in GDPR;

“**DPA**” means the UK Data Protection Act 2018;

“**GDPR**” means either the UK GDPR and/or EU GDPR as applicable to the Processing undertaken in relation to this Agreement;

“**Personal Data**” means any and all “personal data” (as defined in GDPR) that is Processed under this Agreement;

“**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, corruption, loss, alteration, unauthorised disclosure of, unauthorised access, attempted access (physical or otherwise) or access to, Personal Data transmitted, stored or otherwise processed;

“**Processor**” has the same meaning as defined in GDPR, and “**Process**”, “**Processing**” and “**Processed**” shall be construed accordingly;

“**Sub-Processor**” means a third party engaged by the Processor or the Sub-Processor (as applicable) for carrying out processing activities in respect of the Personal Data on behalf of the Processor or the Sub-Processor who has engaged such Sub-Processor;

“**Supervisory Authority**” means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the applicable jurisdiction; and

“**Third Country**” means a country or territory outside (a) the UK (where UK GDPR applies); or (b) the European Economic Area (where EU GDPR applies).

## 2 The IET is Controller and Training Provider is Processor

2.1 The parties acknowledge and agree that for the purpose of the Data Protection Legislation:

2.1.1 where the Training Provider is providing Public Courses, the IET is the Controller and the Training Provider is a Processor of Personal Data; and/or

2.1.2 where the Training Provider is providing In-house Courses, the IET is a Processor and the Training Provider is a Sub-Processor of Personal Data.

2.2 Details of the subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects whose Personal Data is being Processed in connection with the Services are set out in the Appendix.

2.3 Without prejudice to the generality of clause 10.1 (Data protection) of the Agreement, the Training Provider shall:

2.3.1 Process the Personal Data only to the extent, and in such manner, as is necessary for the purpose of carrying out its duties under this Agreement and in accordance with the IET’s written instructions and this paragraph 2 (unless otherwise required by Applicable Laws);



- 2.3.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
- 2.3.3 ensure it has taken all reasonable steps to ensure the reliability and integrity of any employees or other persons authorised to Process the Personal Data, including by ensuring that any such persons are subject to:
- (i) appropriate obligations of confidentiality, and
  - (ii) adequate training in the use, protection and handling of personal data;
- 2.3.4 not engage any Sub-Processor to carry out its Processing obligations this Agreement without obtaining the prior written consent of the IET and, where such consent is given, subject to the Training Provider procuring by way of a written contract that such Sub-Processor will, at all times during the engagement, be subject to data Processing obligations equivalent to those set out in this paragraph 2. The IET reserves the right during the Term of this Agreement to request evidence from the Training Provider to support compliance with this paragraph 2.3.4 and the Training Provider shall provide such evidence within 3 Working Days;
- 2.3.5 at the request of the IET, assist and co-operate with the IET to ensure the IET's compliance with its obligations under the Data Protection Legislation with respect to:
- (i) carrying out and/or reviewing data protection impact assessments where necessary in accordance with GDPR; and
  - (ii) implementing such technical and organisational measures to enable the IET to respond to requests from Data Subjects exercising their rights under the Data Protection Legislation, which shall include but not be limited to: (i) providing Personal Data and details of the Processing of Personal Data to the IET in response to Data Subjects' exercising their rights of access; and (ii) deleting and/or rectifying Personal Data in response to a request from a Data Subject;
- 2.3.6 not Process or otherwise transfer any Personal Data to any Third Country without prior written consent from the IET and, where such consent is given, (whether in the Appendix or separately), the Training Provider shall comply with the following conditions:
- (i) provide appropriate safeguards in relation to the transfer;
  - (ii) ensure the Data Subject has enforceable rights and effective legal remedies;
  - (iii) comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) comply with reasonable instructions notified to it in advance by the IET with respect to the Processing of the Personal Data.
- 2.3.7 notify the IET as soon as reasonably practicable:
- (i) if it becomes aware that in following the instructions of the IET, it shall be breaching the Data Protection Legislation;
  - (ii) on receipt of notice of any complaint made to a Supervisory Authority or any finding by a Supervisory Authority in relation to its Processing of Personal Data, whether it is Personal Data being Processed under this Agreement or otherwise;



- (iii) if the Training Provider believes it is required under Applicable Laws to Process the Personal Data other than in accordance with the IET's instructions, in which case the Training Provider shall provide the IET with details of such legal obligation, unless the law prohibits such information on important grounds of public interest;

(and in any event within 3 days) of:

- (iv) a request received by the Training Provider or a Sub-Processor from a Data Subject for access to that person's Personal Data; and
- (v) a complaint or request received by the Training Provider or a Sub-Processor from a Data Subject relating to the IET's obligations under the Data Protection Legislation;

and the Training Provider shall provide the IET with full co-operation and assistance in relation to any such complaint or request including where the complaint or request was received by the Training Provider, a Sub-Processor or the IET.

2.3.8 notify the IET promptly (and in any event within 48 hours) of becoming aware of any actual, suspected or threatened Personal Data Breach of any component of the Personal Data and;

- (i) ensure that such notice includes details of the nature of the breach, including the categories and approximate number of Data Subjects and records concerned and the remediation measures being taken to mitigate and contain the breach; and
- (ii) provide prompt assistance as requested by the IET following the notification of an actual, suspected or threatened Personal Data Breach referred to in paragraph 2.3.8.

2.3.9 in the event of a notification under paragraph 2.3.8, not notify the Data Subject or any third party unless such disclosure is required by Data Protection Legislation or other law or is otherwise approved by the IET.

2.3.10 maintain accurate written records of the Processing it carries out in connection with this Agreement and on request by the IET, make available all information necessary to demonstrate the Training Provider's compliance under Data Protection Legislation and the terms of this Agreement and shall ensure that its Sub-Processors maintain records that meet the requirements of this paragraph and make available the same.

2.3.11 allow for and contribute to audits, including inspections, by the IET (or its authorised representative) in relation to the Processing of the IET's Personal Data by the Training Provider and its Sub-Processors to support the Training Provider in their compliance with this paragraph and the Training Provider shall procure contribution to such audits from its Sub-Processors as required.

2.4 The Training Provider shall indemnify and keep indemnified the IET against all Personal Data losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable legal costs and all other reasonable professional costs and expenses) suffered or incurred by, awarded against or agreed to be paid by, the IET arising from a breach by the Training Provider (or any Sub-Processor) of:

2.4.1 its data protection obligations this Agreement; and/or

2.4.2 the Training Provider (or any Sub-Processor) acting outside or contrary to the lawful instruction of the IET.

The provisions of this paragraph 2.4 shall survive termination of this Agreement.

2.5 On termination this Agreement, the Training Provider (or any Sub-Processor) shall, except to the extent it is required to retain a copy by law, stop Processing the Personal Data and return and/or destroy it at the request of the IET. The Training Provider shall, upon request from the IET, return the Personal Data

in an open machine-readable format, via a secure agreed route at no cost to the IET and the Training Provider shall provide confirmation of destruction of any other copies including details of the date, time and method of destruction.