

**DATED XXXXXXXXXXXX**

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**BBO PROJECTS**

**COLLABORATION AGREEMENT**

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between

**SELNET LIMITED**

and

**DELIVERY PARTNERS**



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**THIS AGREEMENT** is dated 1<sup>st</sup> August 2016

## **PARTIES**

- (1) SELNET Limited incorporated and registered in England and Wales with company number [05671228] whose registered office is at [Unit G14, Preston Technology Centre, Marsh Lane, Preston. PR1 8UQ] (**SELNET**).
- (2) The **DELIVERY PARTNERS** whose details are set out in Schedule 1 (**Delivery Partners**).

## **BACKGROUND**

- (A) Selnet has applied in the form of the Bid (as defined below) for Funding (as defined below) in relation to the Project (as defined below) and is solely responsible as the lead partner to deliver the Project in accordance with the terms and conditions of the Funding.
- (B) The parties to this agreement wish to establish a framework to govern their respective rights and obligations in relation to the Project in respect of which they wish to co-operate.
- (C) This agreement sets out the terms and conditions upon which the parties have agreed that the Project will take place.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Adherence Agreement:** an agreement for each Party in the form set out in Schedule 3 specifying the contribution the Party will make and the associated funding allocated to the costs of that contribution.

**Bid:** the Building better Opportunities Stage Two Bid submitted by the parties to The Big Lottery Fund in relation to the Project as annexed to this agreement as Annexure 1.

**Funding:** the funding awarded by the Fund in relation to the Project.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**Charges:** the charges payable by a Party to the other in relation to Inputs to the Project (if any), as set out in each case in an Adherence Agreement.

**Commencement Date:** has the meaning set out in clause 2.1.

**control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls**, **controlled** and the expression **change of control** shall be construed accordingly.

**Delivery Partner:** one of the Delivery Partners.

**ESF:** European Social Fund

**Fund:** the Big Lottery Fund, a non-departmental public body of the United Kingdom government.

**Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Group Company:** in relation to a company, any member of its Group.

**Holding Company:** has the meaning given in clause 1.7.

**Input:** in relation to a Party, the services, resources, manpower or other tangibles or intangibles that such Party provides in accordance with this agreement in relation to the Project, as set out in the Bid and that Party's Adherence Agreement.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

**Parties:** Selnet and the Delivery Partners (and **Party** shall mean any one of them).

**Project:** the project agreed by the parties, in relation to which the parties will collaborate in accordance with this agreement, as further described in the Bid.

**Project Period:** subject to earlier termination in accordance with this agreement, the period from the start date to the end date for the Project, as set out in the Bid.

**Subsidiary:** has the meaning given in clause 1.7.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 The Schedule forms part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this **agreement** includes the Schedules.
- 1.4 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 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 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 A reference to any **Party** shall include that Party's personal representatives, successors and permitted assigns.
- 1.11 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.12 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.13 A reference to **writing** or **written** includes fax but not e-mail.
- 1.14 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.15 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.16 A reference to **this agreement** or to **any other agreement or document referred to in this agreement** is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

- 1.17 Where any statement is qualified by the expression **so far as a Party is aware** or **to a Party's knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.18 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.
- 1.19 Where there is a conflict between the Bid and any of:
- (a) the terms and conditions of this agreement, or
  - (b) an Adherence Agreement
- the provisions of the Bid shall prevail to the extent of the inconsistency.
- 1.20 Where there is a conflict between an Adherence Agreement and the general provisions of this agreement the provisions of the Adherence Agreement shall prevail to the extent of the inconsistency.
- 1.21 Where there is a conflict between this agreement or an Adherence Agreement and the Bid (which includes the provisions applicable to the Funding) the terms of the Bid shall prevail to the extent of the inconsistency.
- 1.22 Any reference to this agreement terminating shall, where the context requires, include a reference to this agreement terminating by expiry.

## **2. COMMENCEMENT AND DURATION**

- 2.1 This agreement shall commence on the date when it has been signed by all the Partners.
- 2.2 This agreement shall continue, unless terminated earlier in accordance with this agreement, until the end of the Project Period when it shall terminate automatically without notice save for those provisions expressly or by necessary implication intended to have effect after that date.

## **3. COLLABORATION AND CO-OPERATION**

- 3.1 The parties shall co-operate in relation to delivery of the Project in the manner set out in the Partner Involvement Summary annexed to this agreement as Annexure 2.
- 3.2 The Partners shall collaborate in relation to the matters set out in this agreement for the delivery, management, monitoring and funding of the Project.
- 3.3 Each Delivery Partner undertakes to Selnet and to the other Delivery Partners to perform the obligations set out in the Adherence Agreement relating to it as such

Adherence Agreement may be varied during the Project Period in accordance with the terms of this agreement.

#### **4. EXISTING ARRANGEMENTS**

- 4.1 Nothing in this agreement shall restrict either Party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this agreement.
- 4.2 However, as the Partners will be working together in relation to the Project where each Party may have access to information or Intellectual Property Rights of the others, each Party acknowledges that the other Partners will need to protect such information and Intellectual Property Rights in accordance with clause 9 and clause 12.

#### **5. ADHERENCE AGREEMENTS**

- 5.1 Each Party shall in relation to the obligations allocated to it in an Adherence Agreement:
- (a) perform such obligations, including by providing the Inputs in accordance with timeframes or milestones (if any) specified in the Adherence Agreement;
  - (b) use reasonable care and skill in performing such obligations;
  - (c) comply with all laws applicable to it;
  - (d) obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations;
  - (e) ensure that the Inputs it provides conform with descriptions and specifications (if any) set out in the applicable parts of the Bid and the Adherence Agreement; and
  - (f) if on another Party's premises, comply with that Party's health and safety and site regulations made known to it.
- 5.2 Each Party shall ensure that it uses employees or agents in performing its obligations under an Adherence Agreement who are suitably qualified and experienced.

#### **6. CUSTOMERS**

- 6.1 Each Party agrees that it has no right to bind the other Partners in contract or otherwise in relation to any clients of any Party, and it shall not represent that it has such right.
- 6.2 Nothing in this agreement constitutes one Party a partner, employer, employee or agent of the other Party in relation to either Party's customers.

- 6.3 No Party may provide to any of its customers any information, or make any representation, relating to another Party's products or services, unless that information or representation is approved in writing by that Party for use in those circumstances.

## **7. INFORMATION FLOW AND PROJECT MANAGEMENT**

- 7.1 To enable the Partners to maximise the benefits of their collaboration, each Party shall:

- (a) engage the others in planning discussions in relation to the Project from time to time where Inputs are required to be co-ordinated;
- (b) keep the other Partners informed about its own progress in relation to the Project by reporting to Selnet in such form and at such frequency as Selnet may consider appropriate from time to time and collaborating with meetings of the Project Management Group and/or Strategic Management Board as may be required by Selnet from time to time in accordance with Schedule 2; and
- (c) facilitate regular discussions between appropriate members of its personnel and those of the other Partners in relation to the Project, including in relation to:
  - (i) performance and issues of concern in relation to the Project;
  - (ii) new developments and resource requirements;
  - (iii) compliance with deadlines; and
  - (iv) such other matters as may be agreed between the parties from time to time.

- 7.2 Each Party shall:

- (a) supply to the others Partners information and assistance reasonably requested by them relating to the Project as is necessary to enable them to perform their own obligations in relation to the Project; and
- (b) review documentation, including draft specifications or service descriptions or other technical documentation, for use when performing its obligations in relation to the Project (if any), as soon as reasonably practicable at the request of another Party, and notify it of any errors or incorrect assumptions made in any such documents so far as it is aware.

## **8. RECOVERY OF COSTS**

- 8.1 Except as provided for in clause 8.2, each Party shall:

- (a) comply with the terms of this clause 8 in relation to payments from Selnet from the Funding;
- (b) not be entitled to charge another Party for the provision of anything (including Inputs) it provides in connection with the Project and this agreement; and
- (c) be otherwise responsible for its own costs incurred in connection with the Project and this agreement, including all Inputs it provides.



8.2 If an Adherence Agreement provides that a Party is responsible for paying another Party any Charges, such Charges shall be invoiced and paid for in accordance with the terms of that Adherence Agreement.

### 8.3 Payment of Grant

- (a) Selnet shall pay the Funding to each party as provided for in its Adherence Agreement in quarterly instalments in advance (or otherwise as received from the Fund) subject to the necessary funds being available when payment falls due. Each Party agrees and accepts that payments of the Funding can only be made to the extent that Selnet has available funds.
- (b) No Funding shall be paid unless and until Selnet is satisfied that such payment will be used for proper expenditure in the delivery of the Project.
- (c) The amount of the allocated Funding shall not be increased in the event of any overspend by a Party in its delivery of the Project.
- (d) The Funding received by Selnet from the Fund shall be paid into a separate bank account in the name of Selnet BBO which must be an ordinary business bank account.
- (e) Selnet shall not transfer any part of the Funding to bank accounts which are not ordinary business accounts within the clearing bank system.
- (f) Each Party shall promptly repay to Selnet any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attaching to the Funding have been complied with.

### 8.4 Use of Grant

- (a) The Funding shall be used by the Recipient for the delivery of the Project in accordance with the agreed budget set out in the Bid. For the avoidance of doubt, the amount of the Funding that a Party may spend on any item of expenditure shall not exceed the corresponding sum of money listed in its Adherence Agreement without the prior written agreement of Selnet after consultation with the Strategic Management Board.
- (b) Where a Party has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in the Adherence Agreement for that Party together with a clear description of what that funding shall be used for.
- (c) No Party shall use the Funding to:
  - (i) make any payment to members of its Governing Body;
  - (ii) purchase buildings or land;

- (iii) pay for any expenditure commitments of the Party entered into before the Commencement Date; or
- (iv) pay for, subsidise or promote any activity other than those required as Inputs for the Project and directly associated costs

unless this has been approved in writing by Selnet after consultation with the Strategic Management Board.

- (d) No Party shall spend any part of the Funding on the delivery of the Project after the Project Period unless this has been approved in writing by Selnet after consultation with the Strategic Management Board.
- (e) Should any part of the Funding remain unspent at the end of the Project Period, each Party shall so far as it is able shall ensure that any unspent monies are returned to Selnet to be dealt with as determined by the terms of the Funding.
- (f) Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by a Party to deliver the Project must be managed and paid for by the relevant Party using the other resources of the Party. There will be no additional funding available from Selnet for this purpose and the Funding may not be used for this purpose.
- (g) Each Party shall act in accordance with all guidance and rules relating to equality, diversity, sustainability or other objectives relating to the application of Funding as promulgated from time to time.

#### 8.5 Accounts and records

- (a) The Funding shall be shown in the Parties' accounts as a restricted fund and shall not be included under general funds.
- (b) Each Party shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Funding monies received by it.
- (c) Each Party shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funding for a period of at least ten (10) years following receipt of any Funding monies to which they relate or for such other period as the Fund may from time to time require. Selnet shall have the right to review, at its reasonable request, any Party's accounts and records that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records. Access to the premises of all Parties will be required by the funders for up to 10 years from the end of the grant period for review of related documents.
- (d) Each Party shall comply and facilitate Selnet's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns including requirements imposed under the Funding terms.

## 8.6 Monitoring and reporting

- (a) Each Party shall closely monitor the delivery and success of the Project throughout the Project Period to ensure that the aims and objectives of the Project are being met and that this agreement is being adhered to.
- (b) Each Party shall provide Selnet with a financial report and an operational report on its use of the Funding and delivery of the Project every quarter and in such formats and including such data as Selnet may reasonably require from time to time. Each Party shall provide Selnet with each report within three months of the last day of the quarter to which it relates.
- (c) Where a party has obtained funding from a third party for its delivery of part of the Project, it shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- (d) Each Party shall on request provide Selnet with such further information, explanations and documents as Selnet may reasonably require in order for it to establish that the Funding has been used properly in accordance with this agreement.
- (e) Each Party shall permit any person authorised by Selnet such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Party's fulfilment of the conditions of this agreement and shall, if so required, provide appropriate oral or written explanations from them.
- (f) Each Party shall permit any person authorised by Selnet for the purpose to visit the party once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, Selnet considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.
- (g) Each Party shall provide Selnet with a final report on completion of the Project Period which shall confirm whether the Project has been successfully and properly completed.
- (h) Each Party shall as required by Selnet participate in, collaborate with and provide evidence for use in any evaluation exercise in relation to the Project.

## 8.7 Acknowledgment and publicity

- (a) Each party shall acknowledge the Funding in its annual report and accounts, including an acknowledgement of Selnet as the source of the Funding.
- (b) Each party shall adhere to branding guidelines issued by ESF and the Fund, which are subject to change and will be circulated to partners by Selnet.
- (c) Each Party shall not publish any material referring to the Project or the Funding without the prior written agreement of Selnet. Each Party shall acknowledge the Funding in any materials that refer to the Project and in any written or spoken

public presentations about the Project. Such acknowledgements (where appropriate or as requested by Selnet) shall include the materials, logos and other information specified for the purpose by Selnet from time to time. Each Party shall act in accordance with all branding guidelines associated with receipt of Funding as promulgated from time to time.

- (d) Each Party agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by Selnet.
- (e) Each Party shall comply with all reasonable requests from Selnet to facilitate visits, provide reports, statistics, photographs and case studies that will assist Selnet in its promotional and fundraising activities relating to the Project.

#### 8.8 Withholding, suspending and repayment of Grant

- (a) Selnet's intention is that the Funding will be paid to the Parties in full. However, without prejudice to Selnet's other rights and remedies, Selnet may at its discretion after consultation with the Strategic Management Board withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding if:
  - (i) the Funding is terminated or suspended;
  - (ii) a Party uses the Funding for purposes other than those for which it was awarded;
  - (iii) the delivery of the Project by a Party does not start within 3 (three) months of the Commencement Date and the Party has failed to provide a reasonable explanation for the delay;
  - (iv) the Party has not made satisfactory progress with the delivery of the Project;
  - (v) the Party is delivering the Project in a negligent manner;
  - (vi) the Party obtains duplicate funding from a third party for the Project;
  - (vii) the Party obtains funding from a third party which, in the reasonable opinion of Management Board, undertakes activities that are likely to bring the reputation of the Project or Selnet into disrepute;
  - (viii) the Party provides Selnet with any materially misleading or inaccurate information;
  - (ix) any member of the governing body, employee or volunteer of the Party has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of Selnet after consultation with the Strategic Management Board, bring or are likely to bring the Project or Selnet's name or reputation into disrepute;
  - (x) the Party ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or

dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);

- (xi) the Party becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
  - (xii) the Party fails to comply with any of the terms and conditions set out in this agreement or its Adherence Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.
- (b) Should the Party be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this agreement or its Adherence Agreement it will notify Selnet as soon as possible so that, if possible, and without creating any legal obligation, Selnet will have an opportunity to provide assistance in resolving the problem or to take action to protect Selnet and the Funding monies.

## **9. CONFIDENTIALITY**

9.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives or advisers (together its **Representatives**) to the other Party and that Party's Representatives whether before or after the date of this agreement in connection with the Project, including information which:

- (a) relates to the existence and terms of this agreement;
- (b) would be regarded as confidential by a reasonable business person, relating to:
  - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing Party (or of any member of the Group of companies to which the disclosing Party belongs); and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (or of any member of the Group of companies to which the disclosing Party belongs);
- (c) is developed by the parties in the course of carrying out this agreement and the Project; or
- (d) is specified as confidential in an Adherence Agreement.

9.2 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this clause); or
- (b) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party; or
- (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; or
- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

9.3 Each Party shall keep each other Party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement in relation to the Focus and a Project (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third Party, except as expressly permitted by this clause.

9.4 A Party may disclose another Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a Party to this agreement,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.

9.5 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.5, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

- 9.6 A Party may, provided that it has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other Party of such disclosure.
- 9.7 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this agreement are granted to the other Party, or to be implied from this agreement.
- 9.8 On termination of this agreement, unless such things are needed by it to perform its obligations under an Adherence Agreement (and only until the end of such time), each Party shall in relation to each other Party:
- (a) return to the originating Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - (b) erase all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
  - (c) certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient Party.
- 9.9 Except as expressly stated in this agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information.
- 9.10 The provisions of this clause 9 shall continue to apply after termination of this agreement in accordance with clause 21.

## **10. ANNOUNCEMENTS**

- 10.1 Subject to clause 10.2, no Party shall make, or permit any person to make, any public announcement, communication or circular (**announcement**) concerning this agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed). The parties shall consult together on the timing, contents and manner of release of any announcement.
- 10.2 Announcements Permitted

- (a) Where an announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the Party required to make the announcement shall promptly notify the other Party. The Party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.
- (b) Selnet may make such announcements as are anticipated in the Bid or in any Adherence Agreement.

## **11. DATA PROTECTION**

- 11.1 Each Party shall ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, without limitation, the Data Protection Act 1998.
- 11.2 Without prejudice to the generality of clause 11.1 each Party shall comply with the Data Sharing Protocol (GDPR update 2018) applicable to the Project as set out at Schedule 5.

## **12. INTELLECTUAL PROPERTY**

- 12.1 This agreement does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights developed or created by a Party pursuant to a Project shall be owned by that Party (**Created IPR**).
- 12.2 Each Party grants to the other Parties a non-exclusive, personal, royalty-free licence during the applicable Project Period to use its Created IPR in relation to a Project to the extent necessary for the other Party to carry out its obligations in relation to that Project.
- 12.3 At the end of the applicable Project Period, a Party licensed to use Created IPR under clause 12.2 shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the other Party save where and to the extent necessary to perform ongoing obligations arising from its Inputs or Adherence Agreement.
- 12.4 Each Party shall immediately give written notice to the other Party of any actual, threatened or suspected infringement of any Party's Intellectual Property Rights (including Created IPR) used in connection with a Project of which it becomes aware.

## **13. EMPLOYEES AND NON-SOLICITATION**

- 13.1 A Party shall not, without the prior written consent of the other Party affected, at any time during the Project Period, solicit or entice away from that other Party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of that Party in relation to the Project.



## 14. ANTI-BRIBERY

14.1 Each Party shall in relation to this agreement and the Project:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 14.1(b), and will enforce them where appropriate;
- (d) promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this agreement;
- (e) immediately notify the other Party (in writing) if a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in it and warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the Commencement Date);
- (f) within 3 months of the Commencement Date, and annually thereafter, certify to the other Party in writing signed by one of its officers, compliance with this clause 14 by it and all persons associated with it under clause 14.2. Each Party shall provide such supporting evidence of compliance as the other Party may reasonably request.

14.2 Each Party shall ensure that any person associated with it who is performing obligations in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that Party in this clause 14 (**Relevant Terms**). Such Party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other Party for any breach by such persons of any of the Relevant Terms.

14.3 Breach of this clause 14 shall be deemed a material breach under clause 19.2.

14.4 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 14, a person associated with a Party includes but is not limited to any subcontractor of that Party.

## 15. WARRANTIES

### 15.1 Each Party warrants that:

- (a) it has full power and authority to carry out the actions contemplated under this agreement including the Bid and Adherence Agreement and may do so without any infringement of its constitutional documents; and
- (b) its entry into and performance under the terms of this agreement will not infringe the Intellectual Property Rights of any third party or cause it to be in breach of any obligations to a third party; and
- (c) subject to clause 9.9, so far as it is aware, all information, data and materials provided by it under this agreement will be accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party.

### 15.2 Except as expressly provided in this agreement, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated by this agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this agreement.

## 16. INDEMNITY

### 16.1 In this clause, a reference to an **indemnified Party** shall include that Party's subsidiaries, and the provisions of this clause shall be for the benefit of that Party and each such subsidiary, and shall be enforceable by each such subsidiary, in addition to the Party.

### 16.2 Each Party (**indemnifying Party**) shall indemnify each other Party (**indemnified Party**) 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 legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with any claim made against the indemnified Party for actual or alleged infringement of a third Party's Intellectual Property Rights arising out of or in connection with::

- (a) the indemnified Party's use in accordance with this agreement of Intellectual Property Rights licensed to it by the indemnifying Party under clause 12.2; or
- (b) the receipt or use by any person including the indemnified Party of Inputs or other items or services provided by the indemnifying Party in relation to the Project.

### 16.3 This indemnity shall not cover the indemnified Party to the extent that a claim under it results from the indemnified Party's negligence or wilful misconduct.

16.4 Liability under this indemnity is conditional on the indemnified Party discharging the following obligations. If any third Party makes a claim, or notifies an intention to make a claim, against the indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the indemnified Party shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the indemnifying Party, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed), provided that the indemnified Party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the indemnifying Party, but without obtaining the indemnifying Party's consent) if the indemnified Party reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
- (c) give the indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the indemnified Party, so as to enable the indemnifying Party and its professional advisers to examine them and to take copies (at the indemnifying Party's expense) for the purpose of assessing the Claim; and
- (d) subject to the indemnifying Party providing security to the indemnified Party to the indemnified Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the indemnifying Party may reasonably request to avoid, dispute, compromise or defend the Claim.

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

16.6 Nothing in this clause shall restrict or limit the indemnified Party'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.

## **17. INSURANCE**

During the term of this agreement and for a period of 7 years thereafter, each Party shall maintain in force, with a reputable insurance company policies of insurance against the risks specified and to the values set out in the applicable Adherence

Agreement and shall, on Selnets request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

## **18. LIMITATION AND EXCLUSION OF LIABILITY**

- 18.1 Nothing in this agreement shall limit or exclude a Party's liability:
- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) for breach of any obligation as to title or quiet possession implied by statute; or
  - (d) for any other act, omission, or liability which may not be limited or excluded by law;
  - (e) under the indemnity in clause 16.
- 18.2 Subject to clause 18.1, neither Party shall have any liability to any other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for
- (a) any loss of profit, or
  - (b) for any indirect or consequential loss arising under or in connection with the agreement.
- 18.3 Subject to clause 18.1 a Party's total liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the amount of Funding allocated to it in its Adherence Agreement as varied from time to time in accordance with this agreement PROVIDED THAT in the event of termination of an Adherence Agreement the applicable value shall be that allocated to the Adherence Agreement immediately before its termination.
- 18.4 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 18 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted in accordance with clause 26.
- ## **19. TERMINATION OR ALTERATION OF ADHERENCE AGREEMENT**
- 19.1 The grounds and procedures for terminating or altering the scope of an Adherence Agreement shall be as set out in this clause provided that termination of a Party's Adherence Agreement shall require a decision of the board of Directors of Selnets taken after consultation with the Strategic Management Board.

19.2 For the purposes of this clause **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which would otherwise derive from:

- (a) the defaulting Party's Inputs; or
- (b) any of the obligations set out in clause 5.1,  
over a three-month period during the Project Period. In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

19.3 Selnet may terminate or by notice with immediate effect reduce the scope of a Party's Adherence Agreement:

- (a) if the other Party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (b) if the other Party commits a material breach of any term of this agreement or its Adherence Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 90 days after being notified in writing to do so (**Improvement Notice**);
- (c) if the other Party repeatedly breaches any of the terms of this agreement or its Adherence Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement or its Adherence Agreement;
- (d) if the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) if the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party];
- (f) if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party where that process is compatible with continued participation in the Project;
- (g) if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);

- (h) if the holder of a qualifying floating charge over the assets of that other Party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) if a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (j) if a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
- (k) if any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 19.3(d) to clause 19.3(j) (inclusive);
- (l) if the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (m) if any warranty given by the other Party in clause 15 of this agreement is found to be untrue or misleading;
- (n) if the other party is not capable of continued lawful participation in the Project; or
- (o) in accordance with clause 22 (Force Majeure).

19.4 A Party may terminate its Adherence Agreement on giving not less than one month's written notice to Selnet as agent for the other Parties.

19.5 Termination of an Adherence Agreement in accordance with this clause shall have the effect that:

- (a) the terminated Adherence Agreement shall be severed from the agreement, which shall otherwise remain in full force and effect; and
- (b) the provisions of clause 21 shall otherwise apply (*mutatis mutandis*) in relation to the Adherence Agreement.

19.6 Selnet may, after consultation with the Strategic Management Board, amend the terms of one or more Adherence Agreements to change the allocation of the Funding and the requirements for Inputs (which may for the avoidance of doubt be an increase or a decrease) where to do so is conducive to the effective delivery of the Project as a proportionate response to demand for some Inputs being more or less than expected or as a result of one or more Adherence Agreements being terminated.

## **20. TERMINATION OF ENTIRE AGREEMENT**

20.1 Without affecting any other right or remedy available to it, the board of directors of Selnet may after consultation with the Strategic Management Board terminate this

agreement and all Adherence Agreements with immediate effect by giving written notice to all other Parties if:

- (a) the Funding ceases, is withdrawn or becomes repayable to an extent considered incompatible with continued delivery of the Project;
- (b) continued delivery of the project would be unlawful.

## **21. CONSEQUENCES OF TERMINATION**

21.1 On termination of this agreement, the following clauses shall continue in force:

- (a) Clause 1 (Interpretation);
- (b) Clause 8 (Recovery of Costs);
- (c) Clause 9 (Confidentiality) [(subject to clause 9.10)];
- (d) Clause 11 (Data protection);
- (e) Clause 12 (Intellectual property);
- (f) Clause 13 (Employees and non-solicitation);
- (g) Clause 15.1(b) and clause 15.2 (Warranties);
- (h) Clause 16 (Indemnity);
- (i) Clause 17 (Insurance);
- (j) Clause 18 (Limitation and exclusion of liability);
- (k) Clause 19.5 (Termination of a Project);
- (l) Clause 21 (Consequences of termination);
- (m) Clause 22 (Force majeure);
- (n) Clause 25 (Notices);
- (o) Clause 26 (Severance);
- (p) Clause 27 (No partnership or agency);
- (q) Clause 28 (Rights and remedies);
- ;
- (r) Clause 29 (Waiver);
- (s) Clause 32 (Third Party rights);
- (t) Clause 35 (Entire agreement);
- (u) Clause 36 (Mediation);
- (v) Clause 37 (Governing law);
- (w) Clause 38 (Jurisdiction).

- 21.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 21.3 On termination of this agreement in relation to a Party this agreement shall continue in effect between the remaining Parties.
- 21.4 On termination of this agreement in relation to it, unless such things are needed by it to perform its obligations under an Adherence Agreement (and only until the end of such time), each Party shall as soon as reasonably practicable after termination of this agreement:
- (a) return or destroy (as directed in writing by each other Party) any documents, handbooks, or other information or data provided to it by that other Party for the purposes of this agreement. If reasonably required by the other Party, it shall provide written evidence (in the form of a letter signed by it no later than 7 days after termination of this agreement) that these have been destroyed and that it has not retained any copies of them; and
  - (b) return all of each other Party's equipment and materials, failing which, the other Party may enter the relevant premises and take possession of them. Until these are returned or repossessed, that Party shall be solely responsible for their safe-keeping.

## **22. FORCE MAJEURE**

No Party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days, the board of directors of Selnet may after consultation with the Strategic Management Board terminate the affected Party's Adherence Agreement by giving 30 days' written notice to the affected Party.

## **23. ASSIGNMENT AND OTHER DEALINGS**

- 23.1 Subject to clause 23.2, no Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of Selnet to be given or withheld after consultation with the Strategic Management Board.
- 23.2 A Party may assign or subcontract any or all of its rights and obligations under this agreement and its Adherence Agreement provided that any such assignment:



- (a) is compatible with Regulation 72 of the Public Contracts Regulations 2015 and
- (b) is compatible with Funding rules and conditions and
- (c) is approved by Selnet after consultation with the Strategic Management Board.

## **24. VARIATION**

- 24.1 Save as provided for in clause 24.3 no variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 24.2 Save as provided for in clause 24.3 no variation of an Adherence Agreement shall be effective unless it is in writing and signed by the affected Party and Selnet as agent for the other Parties.
- 24.3 Variations and terminations permitted by clause 19 and clause 22 may take place in accordance with the terms of those clauses.

## **25. NOTICES**

- 25.1 A notice given to a Party under or in connection with this agreement shall be in writing and sent to the Party at the address or to the fax number given in this agreement or as otherwise notified in writing to each other Party.
- 25.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt [or at the time the notice is left at the address].
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the second Business Day after posting.
Fax.	At the time of transmission.

- 25.3 For the purpose of clause 25.2 and calculating deemed receipt:
  - (a) all references to time are to local time in the place of deemed receipt; and
  - (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

25.4 This clause 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.

25.5 A notice given under this agreement is not valid if sent by e-mail.

## **26. SEVERANCE**

26.1 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. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

26.2 If one Party gives notice to the others of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **27. NO PARTNERSHIP OR AGENCY**

27.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership 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 except as expressly provided.

27.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **28. RIGHTS AND REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **29. WAIVER**

29.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

29.2 A failure or delay to exercise any right or remedy provided under this agreement or by law 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. No single or partial

exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**30. LANGUAGE**

- 30.1 This agreement is drafted in the English language. If this agreement is translated into any other language, the English language version shall prevail.

**31. COUNTERPARTS**

- 31.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 31.2 Transmission of the executed signature page of a counterpart of this agreement by (a) fax or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 31.3 No counterpart shall be effective until each Party has executed at least one counterpart.

**32. THIRD PARTY RIGHTS**

- 32.1 Except as expressly provided elsewhere in this agreement, a person who is not a Party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third Party which exists, or is available, apart from that Act.
- 32.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

**33. FURTHER ASSURANCE**

At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

**34. COSTS**

Each Party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement and any documents referred to in it.

**35. ENTIRE AGREEMENT**

- 35.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 35.2 Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. No Party shall have any claim for innocent or negligent misrepresentation based on any statement in this agreement.

**36. MEDIATION**

- 36.1 If any dispute arises in connection with this agreement, the affected Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the affected Parties, the mediator will be nominated by CEDR. To initiate the mediation an affected Party must give notice in writing (**ADR notice**) to each other Party to the dispute and to Selnet as agent for the other Parties requesting a mediation. A copy of the request should be sent to CEDR.
- 36.2 The mediation will start not later than 14 days after the date of the ADR notice.
- 36.3 Affected Parties may seek alternative remedies on an interim basis before or during mediation where and to the extent necessary to protect or preserve rights or assets pending the outcome of mediation or any other dispute resolution process following it.

**37. GOVERNING LAW**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**38. JURISDICTION**

Each Party irrevocably agrees that, subject to clause 36, the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

The following documents are intended to be included in the agreement particulars as part of the Collaboration Agreement:

- A. Partner financial and output allocations sheet - this will be used as a **performance monitoring tool**. (Schedule 1)
- B. Project Handbook (Schedule 2)

NB: Big Lottery Fund (BLF) and European Social Fund (ESF) branding and publicity guidelines and ESF eligibility guidelines will be provided for each partner and detailed in the Handbook. Partners are required to ensure activity delivered under this agreement are fully compliant.

- C. Data Sharing documents (Schedule 4):
  - Data Sharing Protocol (Update GDPR 2018)
  - Data Protection Procedure (Update GDPR 2018)
  - Information Sharing Agreement (Update GDPR 2018)

## **Schedule 1 –**

**‘Partner financial and output allocations sheet’ to be used as a performance monitoring tool.**

Excel spreadsheet – all partners funding allocations and deliverables

## **Schedule 2**

### **Project Handbook**

Electronic document - <http://bbolancs.org.uk/>

## Schedule 3

### Form of Adherence Agreement (each Partner)

#### Part 1. This Adherence Agreement is dated xx xxxx xx and made between:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx incorporated and registered in England and Wales with company number xxxxxxxxxxxx whose registered office is at xxxxxxxxxxxxxxxxxxxx

and

SELNET LIMITED incorporated and registered in England and Wales with company number **05671228** whose registered office is at **F28 PTMC March Lane Preston Lancashire PR1 8UQ** acting as agent for the other parties to the agreement (as defined below) (**Selnet**).

#### Part 2. Background

(A) The Party is a party to a collaboration agreement dated xxxxxxxxxxxx (**agreement**), allowing it and others to collaborate on the Project as defined in the agreement.

(B) In connection with the agreement, the Party has agreed to the obligations in this Adherence Agreement.

#### Part 3. Project provisions

The parties agree that:

##### 1. DESCRIPTION OF PROJECT

The project aims to improve work readiness and employability of the (project client group) in the Lancashire Area.

It will support participants by taking a holistic approach to overcome their individual barriers to employability. (insert project detail)

The project will be delivered across Lancashire and will include Blackburn with Darwen, Blackpool and Burnley, Pendle, Hyndburn and Preston, Lancaster, West Lancashire and Wyre, South Ribble, Fylde, Rossendale and Ribble Valley.

Project activities will include:

Insert (project description)

##### 2. INPUTS

The parties shall each provide the following Inputs in relation to the Project, in accordance with the following timeframes (if any):

Input

Insert (Tender response details )

Timeframe      xx xxxx xxx to 31<sup>st</sup> December 2019



### 3. OUTPUTS

These include the number of: Referrals you bring to the project, participants you support, results you achieve and the Outcomes that happen as a result of this activity.

(Tender response doc)

Performance will be monitored based indicators detailed at **Schedule 1**.

(All partner details)

### 4. COSTS

The Funding allocated to the Party's Inputs is as follows:

Staff Costs	Indirect Costs	Other Direct Costs	Total funding Allocation

## Part 4. Additional Terms

### 1 INSURANCE

Pursuant to clause 17 of the agreement the Party shall keep in place the following insurances:

<i>Type</i>	<i>Insured Events</i>	<i>Level of Cover</i>
Professional Indemnity	(partners giving advice)	£1m
Public Liability		£5m
Employer's Liability		£10m
[Other?]		

2 **Funding shall be shown in the Parties' accounts as a restricted fund and shall not be included under general funds and maintain records of all transactions affecting that account.**

[FOR SELNET]

## **Schedule 4 Project Data Sharing Protocol**

**SELNET LTD**

**OVERALL DATA SHARING PROTOCOL V3/ BUILDING BETTER OPPORTUNITIES 2018/GDPR UPDATE**

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## 1. Introduction

- 1.1 This document is an Information Sharing Protocol (for the purpose of this protocol, the terms data and information are synonymous). The aim of this document is to facilitate sharing of all personal, sensitive and non-personal data between the delivery partners of the **Building Better Opportunities** project.
- 1.2 Organisations involved in providing services to the public have a legal responsibility to ensure that their use of personal data is lawful, properly controlled and that an individual's rights are respected. This balance between the need to share personal data to provide quality service and protection of confidentiality is often a difficult one to achieve.
- 1.3 The legal situation regarding the protection and use of personal data can be unclear. This situation may lead to information not being readily available to those who have a genuine need to know in order for them to do their job properly.
- 1.4 There are fewer constraints on the sharing of non-personal data, that is data which either does not identify a living individual or when combined with other information that is in or may come into the organisation's possession will not identify a living individual.
- 1.5 Each partner to this protocol should ensure that all of their staff who are affected by it are
  - aware of its contents and
  - the obligations it and any **Information Sharing Agreements** (ISA) which are created between the organisation signed up to it bring to them.
- 1.6 Each partner should also ensure that revisions to the protocol and ISA raised in it are signed in good time, which should be before any sharing takes place.

## 39. 2. SCOPE

40.

- 2.1 THIS OVERARCHING PROTOCOL SETS OUT THE PRINCIPLES FOR INFORMATION SHARING BETWEEN PARTNER ORGANISATIONS.
- 2.2 This protocol sets out the rules that all people working for or with the Partner Organisations must follow when using and sharing information.
- 2.3 This protocol applies to all information shared by Partner Organisations. Sharing is **not** restricted solely to information classified as Personal Data by the Data Protection Act 1998, the General Data Protection Regulation (GDPR) 2018 and forth coming Data Protection Act 2018. This includes the following information:
  - a) All information processed by the organisations including electronically (e.g. computer systems, CCTV, Audio etc), or in manual records;
  - b) Anonymised, including aggregated data. The considerations, though less stringent, must take into account factors such as commercial or business,

sensitive data, and the effect of many data sets being applied.

- 2.4 The specific purpose for use and sharing information will be defined in the Information Agreements that will be specific to the Partner Organisations sharing information.

#### 41. **3. AIMS AND OBJECTIVES**

- 3.1 The aim of this protocol is to provide a framework for the Partner Organisations and to establish and regulate working practices between Partner Organisations. The protocol also provides guidance to ensure the secure transfer of information, and that information shared is for justifiable legal purposes (see 6.3 and 11.5).

- 3.2 These aims include:

- a. To guide Partner Organisations on how to share personal information lawfully.
- b. To explain the security and confidentiality laws and principles of information sharing.
- c. To increase awareness and understanding of the key issues.
- d. To emphasise the need to develop and use Information Sharing Agreements.
- e. To support a process that will monitor and review all information flows.
- f. To encourage flows of information.
- g. To protect the Partner Organisations from accusations of wrongful use of personal data.
- h. To identify the legal basis for information sharing.

- 3.3 By becoming a Partner to this Protocol, Partner Organisations are making a commitment to:

- a. Apply the Information Commissioner's Code of Practice's 'Fair Processing' and 'Best Practices' Standards;
- b. Adhere to or demonstrate a commitment to achieving the appropriate compliance with the Data Protection Act 1998; [the General Data Protection Regulation \(GDPR\) 2018 and forth coming Data Protection Act 2018](#).
- c. Develop local Information Sharing Agreements (ISA) that specify transaction details.

- 3.4 **Partner Organisations are expected to promote staff awareness** of the major requirements of Information Sharing. This will be supported by the production of appropriate guidelines where required that will be made available to all staff via the Partners' Intranet sites and/or via other communication media.

#### 42. **4. THE LEGAL FRAMEWORK**

- 4.1 The principal legislation concerning the protection and use of personal information is listed below and further explained in:

- Human Rights Act 1998 (article 8)
- The Freedom of Information Act 2000

- Data Protection Act 1998
- [The General Data Protection Regulation \(GDPR\) 2018 and forth coming Data Protection Act 2018.](#)
- The Common Law Duty of Confidence
- Computer Misuse Act
- Civil Contingencies Act 2004

4.2 Other legislation may be relevant when sharing specific information.

4.3 As part of each ISA, Partner Organisations should identify how they will meet its legal obligations and the legal basis (legislation and appropriate section(s)) under which information may be shared.

## 43. **5. INFORMATION COVERED BY THIS PROTOCOL**

5.1 All Information, including personal data and sensitive personal data as defined in the Data Protection Act 1998 (DPA), [the General Data Protection Regulation \(GDPR\) 2018 and forth coming DPA 2018.](#)

In order to reduce the risks of DPA compliance and security breaches where possible anonymised data should be used.

### **5.2 Personal Data**

5.2.1 The term 'personal data' refers to **any** data held as either manual or electronic records, or records held by means of audio and/or visual technology, about an individual who can be personally identified from that data.

5.2.2 The term is further defined in the DPA as:

- Data relating to a living individual who can be identified from those data;
- or*
- Any other information which is in the possession of or is likely to come into the possession of the data controller (person or organisation collecting that information).

5.2.3 The DPA also defines certain classes of personal information as 'sensitive data' where additional conditions must be met for that information to be used and disclosed lawfully.

5.2.4 An individual may consider certain information about themselves to be particularly private and may request other data items to be kept especially confidential e.g. any use of a pseudonym where their true identity needs to be withheld to protect them.

### **5.3 Anonymised Data**

- 5.3.1 Organisations should ensure anonymised data, especially when combined with other information from different agencies, **does not** identify an individual, either directly or by summation.
- 5.3.2 Anonymised data about an individual can be shared without consent (subject to certain restrictions regarding health/social care records), in a form where the identity of the individual cannot be recognised i.e. when:
- Reference to any data item that could lead to an individual being identified has been removed;
  - The data cannot be combined with any data sources held by a Partner to produce personal identifiable data.

## 44. **6. RESPONSIBILITIES WHEN SHARING INFORMATION**

### **6.1 General**

Each Partner Organisation is responsible for ensuring that their organisational and security measures protect the lawful use of information shared under this Protocol.

- 6.1.1 Partner Organisations will ensure a reasonable level of security for supplied information, personal or non-personal, and process the information accordingly.
- 6.1.2 Partner Organisations accept responsibility for independently or jointly auditing compliance with the Information Sharing Agreements in which they are involved within reasonable time-scales.
- 6.1.3 Every organisation should consider making it a condition of employment that employees will abide by their rules and policies in relation to the protection and use of confidential information. This condition should be written into employment contracts and any failure by an individual to follow the policy should be dealt with in accordance with that organisation's disciplinary procedures.
- 6.1.4 Every organisation should ensure that their contracts with external service providers include a condition that they abide by their rules and policies in relation to the protection and use of confidential information.
- 6.1.5 The Partner Organisation originally supplying the information should be notified of any breach of confidentiality or incident involving a risk or breach of the security of information.
- 6.1.6 Partner Organisations should have a written policy for retention and disposal of information.
- 6.1.7 Partner Organisations must be aware that a data subject may withdraw consent to processing (i.e. Section 10 DPA) of their personal information. In this case processing can only continue where an applicable Data Protection Act Schedule 2, and if relevant Schedule 3, purpose applies.
- 6.1.8 [In terms of ESF the lawful basis as far as individuals' rights are concerned means that ESF participants cannot claim the following rights in terms of ESF personal data:](#)

- right to erasure (“right to be forgotten”)
- right to portability of their data

## 6.2 Personal Data

Personal data should only be shared for a specific lawful purpose or where appropriate consent has been obtained.

- 6.2.1 Staff should only be given access to personal data where there is a legal right, in order for them to perform their duties in connection with the services they are there to deliver.
- 6.2.3 This agreement does not give licence for unrestricted access to information another Partner Organisation may hold. It sets out the parameters for the safe and secure sharing of information for a justifiable **need to know** purpose.
- 6.2.4 Each signatory organisation this ISA is responsible for ensuring every member of its staff is aware and complies with the obligation to protect confidentiality and a duty to disclose information only to those who have a right to see it.
- 6.2.5 Each signatory organisation should ensure that any of its staff accessing information under this ISA is trained and fully aware of their responsibilities to maintain the security and confidentiality of personal information.
- 6.2.6 Each signatory organisation should ensure that any of its staff accessing information under this ISA to follow the procedures and standards that have been agreed and incorporated within this Information Sharing Protocol and any associated Information Sharing Agreements.
- 6.2.7 Each Partner Organisation will share information in compliance with the principles set out at section 4 and any other obligations detailed in both the ISP and relevant ISA.
- 6.2.8 Personal data shall not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the data subject in relation to the processing of personal data.

## 6.3 Non-Personal Data

- 6.3.1 Partner Organisations should not assume the non-personal information is not sensitive and can be freely shared. This may not be the case and the partner from whom the information originated from should be contacted before any further sharing takes place.

## 45. 7. RESTRICTIONS ON USE OF INFORMATION SHARED

- 7.1 All shared information, personal or otherwise, must only be used for the purpose(s) specified at the time of disclosure(s) as defined in the relevant Information Sharing Agreement unless obliged under statute or regulation, or under the instructions of a court or as agreed elsewhere. Therefore, any further uses made of this data will not be lawful or covered by this ISA.

- 7.2 Restrictions may also apply to any further use of non-personal information, such as commercial sensitivity or prejudice to others caused by the information's release, and this should be considered when considering secondary use for non-personal information. If in doubt the information's original owner should be consulted.
- 7.3 Additional Statutory restrictions apply to the disclosure of certain information for example Criminal Records, HIV and AIDS, Assisted Conception and Abortion, Child Protection etc. Information about these will be included in the relevant ISA.

**46. 8. CONSENT - APPLIES TO PERSONAL DATA ONLY**

- 8.1 Consent is not the only means by which personal data can be disclosed. Under the Data Protection Act in order to disclose personal data at least one condition in schedule two must be met. In order to disclose sensitive personal data at least one condition in both schedules two and three must be met.
- 8.2 Where a Partner Organisation has a statutory obligation to disclose personal data then the consent of the data subject is not required; but the data subject should be informed that such an obligation exists.
- 8.3 If a Partner Organisation decides not to disclose some or all of the personal data, the requesting authority must be informed. For example, the Partner Organisation may be relying on a lawful exemption from disclosure or on the inability to obtain consent from the data subject.
- 8.4 Consent has to be signified by some communication between the organisation and the Data Subject. If the Data Subject does not respond this cannot be assumed as implied consent. When using sensitive data, explicit consent must be obtained subject to any existing exemptions. In such cases the data subject's consent must be clear and cover items such as the specific details of processing, the data to be processed and the purpose for processing.
- 8.6 Specific procedures will apply where the data subject is either not considered able to give informed consent itself because of either the data subject's age (Gillick Competency) or where the data subject has a condition which means the data subject does not have the capacity to give informed consent. In these circumstances the relevant policy of the Partner Organisation should be referred to.

**47. 9. INDEMNITY**

- 9.1 Each partner organisation will keep each of the other partners fully indemnified against any and all costs, expenses and claims arising out of any breach of this agreement and in particular, but without limitation, the unauthorised or unlawful access, loss, theft, use, destruction or disclosure by the offending partner or its sub-contractors, employees, agents or any other person within the control of the offending partner of any personal data obtained in connection with this agreement.



**48. 10. SECURITY**

- 10.1 It is assumed that each Partner Organisation has achieved or will be working towards ISO 27001, the International Standard for Information Security Management, compliance or a similar level of compatible security. Partner Organisations should ensure that the minimum standards of security, that they require, are agreed with Partner Organisations with whom their information will be shared and included in the ISA. This should take account of the security classification of the information.
- 10.2 It is accepted that not all Partners will have security classification in place.
- 10.3 Each partner signing this protocol and any individual signing the confidentiality agreement, agrees to adhere to the agreed standards of security. If there is a security breach in which information received from another party under this ISA is compromised, the originator will be notified at the earliest opportunity via the post holder identified at 3.2 of the ISA, who must forward details to the Information Security Section.
- 10.4 Where a partner has regular, specific security requirements, for example a corporate policy, either these or, if available, a hypertext link to the protocol should be included. This should help to avoid reviewing standards agreed previously when each new ISA is set up.
- 10.5 Security requirements will not be included in individual Information Sharing Agreements except where they are unique to that Agreement. This will ensure requirements are kept current, as notified, and avoid errors arising from having more than one copy of a Partner's standard requirements.

**49. 11. INFORMATION QUALITY**

- 11.1 Information quality needs to be of a standard fit for the purpose information is to be used for, including being complete, accurate and as up to date as required for the purposes for which it is being shared. Without this any decision made on the information may be flawed and inappropriate actions may result. Partner Organisations are expected to ensure that the Personal Data and Sensitive Personal Data that it holds is processed in accordance with DPA principles: this includes ensuring that the Data is accurate, complete and up-to-date and is not kept any longer than is necessary.
- 11.2 Where Partner Organisations share information under this Protocol it is expected that Partner Organisations will either have an Information Quality Strategy and the supporting processes and procedures in place or be formally working towards this.
- 11.3 All Partner Organisations are expected to give undertakings that information meets a reasonable quality level for the proposed purposes for which it is being shared and be able to evidence this.
- 11.4 It is expected that all partner organisations will have or be working towards an organisational Information Quality Strategy. In generating and maintaining this policy due regard should be paid to the Information Quality Assurance Strategy.

- 11.5 Poor quality data risks suspension of payment as the European Commission place high store on the quality of data. Both the Selnet and the deliver partners have responsibility for delivering data according to the specifications. Information must be accurate, comparable and coherent.

**50. 12. TRAINING**

- 12.1 All Partner Organisations staff processing information shared under this Protocol and its associated ISA are expected to be trained to a level that enables them to undertake their duties confidently, efficiently and lawfully. This is an obligation on each Partner Organisation and responsibility for it cannot be assigned to another organisation, although delivery of training can with that third party's consent.
- 12.2 To minimise the costs associated with training and to ensure that all staff participating in activities based on information shared under a specific ISA it is strongly advised that partners collaborate in the development and delivery of training. Obligations and costs arising out of such collaborative working should be clearly identified in the ISA.
- 12.3 For the avoidance of doubt, where collaborative training is not adopted this should be stated in the ISA.

**51. 13. INDIVIDUAL RESPONSIBILITIES**

- 13.1 Every individual working for the organisations listed in this Collaboration Agreement is personally responsible for the safekeeping of any information they obtain, handle, use and disclose.
- 13.2 Every individual should know how to obtain, use and share information they legitimately need to do their job.
- 13.3 Every individual has an obligation to request proof of identity or takes steps to validate the authorisation of another before disclosing any information requested under this protocol and associated ISA's.
- 13.4 Every individual should uphold the general principles of confidentiality, follow the guide-lines set out in this Protocol and seek advice when necessary.
- 13.5 Every individual should be aware that any violation of privacy or breach of confidentiality is unlawful and a disciplinary matter that could lead to their dismissal. Criminal proceedings might also be brought against that individual.

**52. 14. GENERAL PRINCIPLES**

- 14.1 The principles outlined in this protocol are recommended good standards of practice or legal requirements that should be adhered to by all Partner Organisations.

- 14.2 This protocol sets the core standards applicable to all Partner Organisations and should form the basis of all Information Sharing Agreements established to secure the flow of personal information.
- 14.3 This protocol should be used in conjunction with local service level agreements, contracts or any other formal agreements that exist between the Partner Organisations.
- 14.4 All parties signed up to this protocol are responsible for ensuring that organisational measures are in place to protect the security and integrity of personal information and that their staff are properly trained to understand their responsibilities and comply with the law.
- 14.5 This protocol has been written to set out clear and consistent principles that satisfy the requirements of the law that all staff must follow when using and sharing personal information.
- 14.6 The specific purpose for use and sharing information will be defined in the Information Sharing Agreements that will be specific to the Partner Organisations sharing information.

## **53. 15. REVIEW ARRANGEMENTS**

- 15.1 This overarching agreement will be formally reviewed annually.
- 15.2 Any of the signatories can request an extraordinary review at any time where a joint discussion or decision is necessary to address local service developments.

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**ANNEXURE 1**  
**THE BID/ BBO – Executive Summary.**

Detail relevant to specific project