

# Revolution

## Impellus Leadership Licences

### Delivering the efficient, productive organisation

Service Provider: Impellus Ltd of Faulkner House, Victoria Street, St Albans. AL1 3SE

Client: .....

Commencement Date: ..... 20.....

#### Whereby

Impellus hereby provides ongoing management development through training, qualifications and support to your licenced delegates for a fixed monthly payment.

#### Definitions

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

##### **Impellus, We, Us, Our**

The named Service Provider above.

##### **Client, You, Your**

The named Client, above.

##### **Agreement**

This agreement as entered into with full authority by Impellus and the Client on the Commencement Date.

##### **Commencement Date**

The date the Contract comes into existence as detailed below under the section headed "Basis of Contract".

##### **Contract**

The contract between You and Us for the relevant Licences and consequential supply of Services in accordance with this Agreement.

##### **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures**

As defined in the Data Protection Legislation

##### **Data Protection Legislation**

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

other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.

##### **Delegate**

An individual to whom you have provided a Licence under the terms of this Agreement.

##### **Eligible course**

Open training courses scheduled within our standard training schedule with availability which can be booked within the timescales prescribed by the Client's Licences for the applicable Delegate.

##### **Full Licence**

A Licence which can be used to book Eligible Courses at any time.

##### **Impellus Website**

www.impellus.com and any privately accessible areas accessible from there such as the Impellus Business Centre.

##### **In-house Service**

The following services may be booked by you, subject to Our availability, to be delivered on your premises in the forms agreed on any individual basis; Myers Briggs team assessment day, qualification support days and organisational analysis consultancy days. The number of days of In-house Services available to You is provided for on Your Order Form

##### **Licence**

Such Full Licence and/or Late Licence that the Client has purchased pursuant to the terms of this Agreement that allows the provision of the Services to a specific Delegate.

##### **Late Licence**

A licence which can be used to book Eligible Courses that are coming up in the next ten working days (as defined from time to time on the Impellus Website) only.

##### **Order Form**

Your online order completed via the Impellus Website for the provision of the requested Licences and consequent supply of Services, as set out Our written acceptance of Your online order.

##### **Registration, Registered**

The process and result of booking a Delegate with a Licence onto an Eligible Course or onto In-house Services.

##### **Services**

The Eligible Courses, In-house Services, qualifications (Awards and bespoke Client qualifications where ordered, specified and operational) and support available to You and the applicable Delegates under the terms of this Agreement.

##### **Term**

The period of this Agreement (either 24, 30 or 36 calendar months) as prescribed on the Order Form starting on the Commencement Date.

##### **Terms and Conditions**

Our terms and conditions available from the Impellus Website and as updated from time to time.

Clause and paragraph headings shall not affect the interpretation of this Agreement.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

This Agreement shall be binding on, and ensure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

A reference to writing or written includes fax and email.

Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

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.

#### **Addenda**

The Contract shall consist of the following documents and, in the event that there is any inconsistency between any of the provisions of the documents, the document higher in the list shall take precedence (with this Agreement taking precedence over all of them):

- This Agreement;
- The Impellus Terms and Conditions;
- Your Order Form;
- Payment Instruction; and
- Our Privacy Policy.

#### **Basis of Contract**

The Order constitutes an offer by You to purchase the requested Licences and consequential supply of Services in accordance with this Agreement.

The Order shall only be deemed to be accepted when this Agreement is fully executed by both parties or We issue written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

Any descriptive matter or advertising issued by US and any illustrations or descriptions of the Services contained in Our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

This Agreement and our standard Terms and Conditions (as updated from time to time) apply to the Contract to the exclusion of any other terms that You may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

#### **Making Registrations**

Each Delegate with a Licence may use any of the Eligible courses advertised by Impellus according to availability.

Registrations can be made howsoever you wish although are not confirmed until you have email notification from Us. Registration timings must be in line with Licence type (See Full Licence and Late Licence definitions).

All Registrations made must be completed in line with our standard Terms and Conditions which are those detailed on the Impellus Website from time to time. Please note that where such terms are contravened separate charges may apply.

#### **Delivering qualifications**

You may choose to request qualifications to Delegates holding Full Licences in line with your Order. Support, marking and the awarding of qualifications is only available during the term of this Agreement. Delegates may take on any available qualifications as offered from time to time although may only do one qualification at a time. Impellus will allow each qualification submission to be marked up to twice by any relevant marking body if required. If a qualification is not successfully passed on the second marking, or for whatever reason falls out of any terms imposed by a marking body, then Our currently available and quoted price for the equivalent qualification pack will be levied, above and in addition to the Licence Fees payable under this Agreement in order to continue the relevant assessment.

#### **Course availability commitment**

Impellus commits to deliver a minimum of 175 Eligible Courses per calendar year. These will be advertised on the Impellus Website and will be spread by course type and location according to Impellus anticipated demand. Eligible Courses added to the schedule will be advertised immediately by Us.

#### **Chartering Eligible Courses**

Licences may be configured to allow the chartering of Eligible Courses. This is whereby You hold Licences with the ability to charter and request that We add a course to our schedule which suits You and Your Delegates (**Chartered**). A minimum number of Delegates with Licences (which are not suspended) must be Registered under our advertised Terms and Conditions for such a Registration.

Impellus will use all reasonable endeavours to meet such a requirement although You agree that not all requests to charter Eligible Courses can be met by Impellus for commercial reasons.

When an Eligible Course is Chartered by Impellus, We will endeavour to fill the remaining course places to delegates from other organisations.

#### **Your Obligations**

In order to allow Us to perform the Services, where applicable, You shall:

- ensure that the terms of the Order are complete and accurate;
- co-operate with Us in all matters relating to the Services;
- where relevant, provide Us, and Our employees, trainers, agents, consultants and subcontractors, with access to Your premises, office accommodation and other facilities as reasonably required by Us to provide the Services;
- provide Us with such information and materials as We may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- where relevant, prepare Your premises for the supply of the Services;
- comply with all applicable laws, including health and safety laws;
- keep all materials, equipment, documents and other property that belongs to Us (**Our Materials**) at Your premises in safe custody at its own risk, until returned to Us, and not dispose of or use Our Materials other than in accordance with Our written instructions or authorisation.

If Our performance of any of Our obligations under the Contract is prevented or delayed by any act or omission by You and/or any Delegate or failure by You and/or any Delegate to perform any relevant obligation (**Customer Default**):

- without limiting or affecting any other right or remedy available to it, We shall have the right to suspend performance of the Services until You remedy the Customer Default, and to rely on the Customer Default to relieve Us from the performance of any of Our obligations in each case to the extent the Customer Default prevents or delays Our performance of any of Our obligations;
- We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Our failure or delay to perform any of Our obligations as set out in this section; and
- You shall reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from the Customer Default.

### Suspended Licences

If Impellus suspend a licence no Services can be provided to the Delegate(s) whose Licence(s) is/are suspended and no Registrations can be made for the same. This also means that future Registrations You have made for that Delegate may be cancelled by Impellus. If this action subsequently causes breaches of existing Registration terms then You may become additionally liable for such charges.

Nothing about Impellus suspending Licences allows you any recourse to withhold or offset any payment to us.

Licences may be suspended individually or together due to if the terms of this Agreement are broken or if We experience any Delegate behavioural issue which We reasonably believe may be detrimental to our ongoing business activities or other clients and also in accordance with Our general Terms and Conditions.

Without affecting any other right or remedy available, We may suspend the supply of Services, Registrations and Licences under the Contract or any other contract between us if You fail to pay any amount due under the Contract on the due date for payment, You become subject to any of the insolvency related events listed below in the section headed "End of Term", or We reasonably believes that You are about to become subject to any of those insolvency related events.

### Licences and Licence transfers

Each Licence is attributed to one named Delegate.

Impellus requires a photo of each Delegate for identification purposes prior to their first Eligible Course or In-house Service which we will keep on file in line with the terms of our current Privacy Notice and policies. This can be provided via LinkedIn, by email or taken by us on the Delegate's first interaction with our Services. It is your responsibility to ensure that each Delegate is aware of this. The photo must, in our opinion, be clear enough to reasonably identify the Delegate.

Registrations must be made for, and kept by, Delegates holding the Licence only. Any breach of this is considered a material breach and will result in all Licences granted to You being suspended by Us and Us invoicing you in full for the Services used by You and/or the Delegate or unapproved party in breach of this Agreement. Suspension of Your Licences will only be lifted once all payments due by You to Us are made in cleared funds.

Licences may be transferred to other Delegates under the following circumstances only:

1. A Delegate with a Licence has left your employment
2. A Delegate with a Licence has been signed off work for a period in excess of six months
3. A Delegate with a Licence continues in their employment with you but their role AND domicile is outside of the UK

Otherwise, Licences cannot be transferred to any other employee or back to previous Delegates under this Agreement.

Proof of the reason must be provided by You to Us in the format We reasonably require. By way of example only this could be a copy of a Delegate's P45 on leaving your organisation.

If Impellus reasonably believes that you cannot substantiate a transfer on the grounds above We may not allow the proposed transfer which You agree is reasonable under the spirit and terms of this Agreement.

Licence numbers cannot be amended on this Agreement, a supplementary Order and agreement would be needed.

### Payments

You will pay the monthly payments as detailed in the Order Form by the means agreed as provided for in this Agreement and/or Our standard Terms and Conditions plus VAT at the prevailing rate. Your first payment is due on or before the Commencement Date and thereafter monthly in advance.

We will periodically provide payment schedules which will also act as your VAT invoices.

Should any payment due to Us be missed We may suspend all Your licences until such point as all and any outstanding payments are settled. All future payments will still fall due as agreed.

If You fail to make a payment due to Us under the Contract by the due date, then, without limiting Our remedies, You shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this section will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

### Data Protection

Both parties will comply with all applicable requirements of the Data Protection Legislation. This section is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this section, Applicable Laws means (for so long as and to the extent that they apply to Us) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

The parties acknowledge that for the purposes of the Data Protection Legislation, You are the controller and We are the processor.

Without prejudice to the generality of the above, You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Us for the duration and purposes of the Contract.

Without prejudice to the generality of the above, We shall, in relation to any personal data processed in connection with the performance by Us of Our obligations under the Contract:

- process that personal data only on the documented written instructions of You unless We are required by Applicable Laws to otherwise process that personal data. Where We rely on Applicable Laws as the basis for processing personal data, We shall promptly notify You of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Us from notifying Us;
- ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to

the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- not transfer any personal data outside of the European Economic Area unless We have Your prior written consent and the following conditions are fulfilled:

- (a) there are appropriate safeguards in relation to the transfer;
- (b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (c) We comply with Our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (d) We comply with reasonable instructions notified to Us in advance by You with respect to the processing of the personal data;

- assist You, at Your cost, in responding to any request from a data subject and in ensuring compliance with Your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- notify You without undue delay on becoming aware of a personal data breach;
- at Your written direction, delete or return personal data and copies thereof to You on termination of the Contract unless required by Applicable Law to store the personal data; and
- maintain complete and accurate records and information to demonstrate its compliance with this section and immediately inform You if, in Our opinion, an instruction infringes the Data Protection Legislation.

Either party may, at any time on not less than 30 days' notice, revise this section headed "Data Protection" by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

#### **Limitation of Liability – PLEASE ENSURE THAT YOU READ THIS SECTION CAREFULLY**

The restrictions on liability in this section apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- death or personal injury caused by negligence;
- fraud or fraudulent misrepresentation; and
- breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

Subject to the previous paragraph, Our total liability to You shall not exceed the Licence Fees paid by You in cleared funds in the preceding 12 calendar months.

This paragraph sets out the types of loss that are wholly excluded by the parties:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

Unless You notify Us that You intend to make a claim in respect of an event within the notice period, We shall have no liability for that event. The notice period for an event shall start on the day on which You became, or ought reasonably to have become, aware of You having grounds to make a claim in respect of the event and shall expire 6 calendar months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

This section headed "Limitation of Liability" shall survive termination of the Contract.

#### **Transfer of Agreement**

The Client may not transfer this Agreement without the express permission of Impellus and must inform Us of any major changes in shareholding, voting rights or ownership which may reasonably impact the commercial operation of this Agreement.

#### **End of Term**

This Agreement terminates at the end of the Term. No Registrations can be made on dates after the end of the Term.

Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 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 the Contract has been placed in jeopardy.

Without affecting any other right or remedy available to Us, We may also terminate the Contract with immediate effect by giving written notice to You if You fail to pay any amount due under the Contract on the due date for payment.

**Liquidated Damages**

You acknowledge and agree that as the Contract is for a fixed term as stipulated within the Order Form (either 24, 30 or 36 calendar months) where You are in breach of the terms of the Contract and the provisions of the section above, headed "End of Term" apply, You shall be liable to and shall pay to Us, as liquidated damages, the Licence Fees for the unexpired element of the Term. By way of example only, if the Term is 24 calendar months and You have contracted for 5 Full Licences with a licence fee of £49 per calendar month per Licence we are contractually due £245 per calendar month and would expect to receive £5,880 over the Term. In the event that, in breach, you terminate the Contract in month 12 You shall be required to pay, as liquidated damages, the sum of £2,940 in relation to the remaining unexpired 12 calendar months of the original Term.

You shall pay these liquidated damages on demand.

You confirm that these liquidated damages are reasonable and proportionate to protect Our legitimate interest in performance and the discounted rates provided pursuant to the agreed fixed term nature of the Contract.

**Consequences of Termination**

On termination of the Contract (whether by termination or expiry) You shall immediately pay to Us all of Our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt;

Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

**Force Majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a Force Majeure Event).

**General**

We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

Subject to the section above, headed "Licence and Licence Transfers", You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- sent by fax to its main fax number or sent by email to the address notified by each party, to the other, from time to time.

Any notice or communication shall be deemed to have been received:

- if delivered by hand, on signature of a delivery receipt;
- if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this paragraph, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

This section 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.

Severance. If any provision or part-provision of the Contract 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 section shall not affect the validity and enforceability of the rest of the Contract.

Waiver. A waiver of any right or remedy under the Contract or by 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 right or remedy provided under the Contract 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

Entire agreement. The Contract 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.

Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

Variation. Except as set out in this Agreement, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

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

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

Signed .....

For and on behalf of the Client

Signed .....

For and on behalf of Impellus