|  |
| --- |
| Dated 2016 |
| **NORTH SOMERSET COUNCIL**  **AND**  [INSERT] |
| Agreement in relation to the provision of the  Leadership Development Programme |

**Contents**

|  |  |
| --- | --- |
| **Item** | **Page** |

[1 DEFINITIONS AND INTERPRETATION 2](#_Toc444252842)

[2 TERM 7](#_Toc444252843)

[3 EXTENDING THE INITIAL TERM 7](#_Toc444252844)

[4 DUE DILIGENCE AND SUPPLIER'S WARRANTY 7](#_Toc444252845)

[5 SUPPLY OF SERVICES 8](#_Toc444252846)

[6 SERVICE STANDARDS 8](#_Toc444252847)

[7 TRAINING MATERIALS AND TRAINING PORTAL 8](#_Toc444252848)

[8 AUTHORITY'S PREMISES AND ASSETS 8](#_Toc444252849)

[9 PAYMENT 9](#_Toc444252850)

[10 KEY PERSONNEL 10](#_Toc444252851)

[11 OTHER PERSONNEL USED TO PROVIDE THE SERVICES 10](#_Toc444252852)

[12 MEETINGS 11](#_Toc444252853)

[13 VARIATIONS 11](#_Toc444252854)

[14 DISPUTE RESOLUTION 11](#_Toc444252855)

[15 SUB-CONTRACTING AND ASSIGNMENT 12](#_Toc444252856)

[16 INDEMNITIES 12](#_Toc444252857)

[17 LIMITATION OF LIABILITY 12](#_Toc444252858)

[18 INSURANCE 13](#_Toc444252859)

[19 FREEDOM OF INFORMATION 13](#_Toc444252860)

[20 DATA PROTECTION 14](#_Toc444252861)

[21 CONFIDENTIALITY 14](#_Toc444252862)

[22 INTELLECTUAL PROPERTY 15](#_Toc444252863)

[23 TERMINATION FOR BREACH 15](#_Toc444252864)

[24 TERMINATION ON NOTICE 15](#_Toc444252865)

[25 FORCE MAJEURE 16](#_Toc444252866)

[26 PREVENTION OF BRIBERY 16](#_Toc444252867)

[27 CONSEQUENCES OF TERMINATION 17](#_Toc444252868)

[28 WAIVER 18](#_Toc444252869)

[29 RIGHTS AND REMEDIES 18](#_Toc444252870)

[30 SEVERABILITY 18](#_Toc444252871)

[31 PARTNERSHIP OR AGENCY 18](#_Toc444252872)

[32 THIRD PARTY RIGHTS 18](#_Toc444252873)

[33 PUBLICITY 18](#_Toc444252874)

[34 NOTICES 18](#_Toc444252875)

[35 ENTIRE AGREEMENT 19](#_Toc444252876)

[36 COUNTERPARTS 19](#_Toc444252877)

[37 GOVERNING LAW 19](#_Toc444252878)

[38 JURISDICTION 19](#_Toc444252879)

[Schedule 1 – SPECIFICATION 21](#_Toc444252880)

[Schedule 2 - SUPPLIER'S TENDER 22](#_Toc444252881)

[Schedule 3 - CHARGES AND PAYMENT 23](#_Toc444252882)

[Schedule 4 - CONTRACT MANAGEMENT 24](#_Toc444252883)

[Schedule 5 - COMMERCIALLY SENSITIVE INFORMATION 25](#_Toc444252884)

[Schedule 6 - AUTHORITY'S PREMISES AND ASSETS 26](#_Toc444252885)

[Schedule 7 - INSURANCE 27](#_Toc444252886)

**THIS AGREEMENT** is dated 2016

**Parties**

1. NORTH SOMERSET COUNCIL of [ADDRESS] (the Authority); and
2. [INSERT NAME OF PROVIDER incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the Provider).

**BACKGROUND**

1. The Authority is seeking to implement a comprehensive Leadership Development Programme. The focus of the programme is to support people managers to lead change and to develop new skills
2. The Authority sought proposals for the provision of the Services by means of a public tender exercise. The Authority placed a contract notice [REFERENCE] on [DATE] in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of a leadership development programme.
3. The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

**AGREED TERMS**

**PART 1**

1. DEFINITIONS AND INTERPRETATION
   1. The definitions and rules of interpretation in this clause apply in this Agreement.
2. Agreement means this Agreement including all Schedules and appendicies
3. Associated Company means any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.
4. Authorised Representatives means the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 4.
5. Authorised Users means those employees, agents and independent contractors of the Authority who are authorised by the Authority to use the Services including Training Materials and Training Portal
6. Authority Assets means any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services
7. Authority's Premises means the premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Agreement.
8. Bribery Act means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
9. Charges means the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this Agreement, as such charges are set out in Schedule 3.
10. Commencement Date means 1 June 2016
11. Commercially Sensitive Information means the information listed in Schedule 5 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.
12. Contract Year means a period of 12 months, commencing on the Commencement Date
13. Crown means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.
14. Crown Body means any department, office or agency of the Crown.
15. Data Processor means shall have the same meaning as set out in the Data Protection Act 1998.
16. Data Protection Legislation means the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
17. Default Notice is defined in clause 5.2.
18. Delivery Programme means any agreed Supplier-Authority interface where the Supplier is providing the Services at the Authority premises including but not limited to training days and Supplier attendance at the People' Strategy Board
19. Dispute Resolution Procedure means the procedure set out in clause 14.
20. EIRs means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
21. FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
22. Force Majeure means any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.
23. Health and Safety Policy means the health and safety policy of the Authority and/or other relevant Central Government Body as made available to the Supplier on or before the Commencement Date and as subsequently made available to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.
24. Information has the meaning given under section 84 of FOIA.
25. Initial Term means the period commencing on the Commencement Date for a period of 18 months up to and including the 31 December 2017
26. Insolvency Event: where:
    1. the Supplier 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 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
    2. the Supplier 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 the Supplier with one or more other companies or the solvent reconstruction of that other party;
    3. 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;
    4. 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 Supplier (being a company);
    5. the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
    6. the Supplier (being an individual) is the subject of a bankruptcy petition or order;
    7. a creditor or encumbrancer of the Supplier 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;
    8. 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 (a) to (g) (inclusive);
    9. the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
    10. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
27. Intellectual Property means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.
28. Key Personnel means those personnel identified Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 10.
29. Law means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
30. Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.
31. Payment Plan means the plan for payment of the Charges as set out in Schedule 3.
32. Personal Data means shall have the same meaning as set out in the Data Protection Act 1998.
33. Prohibited Act means the following constitute Prohibited Acts:
    1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
       1. induce that person to perform improperly a relevant function or activity; or
       2. reward that person for improper performance of a relevant function or activity;
    2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
    3. committing any offence:
       1. under the Bribery Act;
       2. under legislation or common law concerning fraudulent acts;
       3. defrauding, attempting to defraud or conspiring to defraud the Authority.
    4. any activity, practice or conduct which would constitute one of the offences listed under clause (c), if such activity, practice or conduct had been carried out in the UK.
34. Remediation Notice means a notice served by the Authority in accordance with clause 23.1.1.
35. Replacement Services means any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.
36. Replacement Supplier means any third party supplier of Replacement Services appointed by the Authority from time to time.
37. Request for Information means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
38. Supplier Party means the Supplier's agents and contractors, including each Sub-Contractor.
39. Supplier's Personnel means all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
40. Supplier's Tender means the tender submitted by the Supplier and other associated documentation set out in Schedule 2.
41. Services means the services to be delivered by or on behalf of the Supplier under this Agreement, as more particularly described in Schedule 1.
42. Sub-Contract means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.
43. Sub-Contractor means the contractors or suppliers that enter into a Sub-Contract with the Supplier.
44. Term means the period of the Initial Term as may be varied by:
    1. any extensions to this Agreement which are agreed pursuant to clause 3; or
    2. the earlier termination of this Agreement in accordance with its terms.
45. Termination Date means the date of expiry or termination of this Agreement.
46. Termination Payment Default means is defined in Schedule 3.
47. Training Material means any and all material provided by the Supplier to the Authority for the purpose of the Services
48. Training Portal means any internet portal to which the Authority is provided with access for the purpose of the Service
49. Virus means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
50. Working Day means Monday to Friday, excluding any public holidays in England and Wales.
    1. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
    2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality.
    3. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
    4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
    5. Words in the singular shall include the plural and vice versa.
    6. A reference to one gender shall include a reference to the other genders.
    7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
    8. A reference to **writing** or **written** includes faxes and e-mail.
    9. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
    10. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
    11. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
    12. Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
        1. the clauses of the Agreement;
        2. Schedule 1 to this Agreement;
        3. the remaining schedules to this Agreement

**COMMENCEMENT AND DURATION**

1. TERM

This Agreement shall take effect on the Commencement Date and shall continue for the Term.

1. EXTENDING THE INITIAL TERM
   1. The Authority may extend this Agreement beyond the Initial Term by a further period or periods of up to one year (Extension Period). If the Authority wishes to extend this Agreement, it shall give the Supplier at least 2 months' written notice of such intention before the expiry of the Initial Term or Extension Period.
   2. If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
   3. If the Authority does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and the provisions of clause 27 shall apply.
2. DUE DILIGENCE AND SUPPLIER'S WARRANTY
   1. The Supplier acknowledges and confirms that:
      1. it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
      2. it has received all information requested by it from the Authority pursuant to clause 4.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
      3. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.1.2;
      4. it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
      5. it has entered into this Agreement in reliance on its own due diligence.
   2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
   3. The Supplier:
      1. as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement; and
      2. shall promptly notify the Authority in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services.
   4. The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3.2 save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided.
   5. Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

**THE SERVICES**

1. SUPPLY OF SERVICES
   1. The Supplier shall provide the Services to the Authority including access to the Training Portal with effect from the Service Commencement Date and for the duration of this Agreement in accordance with the provisions of this Agreement.
   2. The Supplier shall provide all Training Materials and access to the Training Portal to the extent necessary to provide the Services including allowing the Authority to search, view, copy make print outs pf the Training Material and from the Training Portal for the purpose of internal Authority training during the period of the Agreement.
   3. The Authority will endeavour to avoid unnecessary cancellation of agreed Delivery Programmes, but reserves the right to amend, postpone or delay the start of a Delivery Programme up to a maximum of 60 days with one month prior notice. Where the Authority provides less than one months' notice to the Supplier to cancel an agreed Delivery Programme then if the Supplier is not reasonably able to agree an alternative date then the Cancellation Charges as set out in in Schedule 3 shall apply.
2. SERVICE STANDARDS
   1. Without prejudice to clause 5.3, the Supplier shall provide the Services:
      1. with reasonable skill and care and in accordance with best practice;
      2. in all respects in accordance with the Authority's policies set out in Schedule 1; and
      3. in accordance with all Applicable Laws.
3. TRAINING MATERIALS AND TRAINING PORTAL
   1. The Supplier hereby grants to the Authority a non-exclusive, non-transferable right to permit the Authority to use the Training Materials and the Training Portal during the Term solely for the Authority's internal operations.
   2. The Supplier warrants that the Authority will not infringe any third party rights by using the Training Portal or Training Material. The Supplier warrants that all necessary licences and permissions have been obtained for the access to and use of the Training Material and Training Portal by the Authority as required for the provision of the Services
   3. The Supplier shall ensure that the Training Portal and any data files supplied to the Authority as part of the Service are Virus free.
   4. The Authority will use the Training Portal only for the purposes of the Services and will not assign or otherwise dispose of its rights in relation to the Training Portal.
   5. The Authority undertakes that the maximum number of Authorised Users that it authorises to access and use the Training Portal shall not exceed [INSERT] [per annum];
   6. Subject to clause 7.7, the Authority may, from time to time during the Term, request additional Authorised Users in excess of the number set out in Clause 7.5. The Supplier shall grant access to the Services and the Training Portal to such additional Authorised Users in accordance with the provisions of this agreement.
   7. If the Authority wishes to increase the number of Authorised Users above that set out in Clause 7,5, the Authority shall notify the Supplier in writing and the relevant fees for such additional Authorised Users as set out in Schedule 3 shall become payable. Such fees shall be pro-rated for the remainder of the Term.
4. AUTHORITY'S PREMISES AND ASSETS
   1. The Authority shall, subject to clause 7 and clause 11, provide the Supplier with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.
   2. The Authority shall provide the Supplier with such accommodation and facilities in the Authority's Premises as is specified in the Specification or which is otherwise agreed by the parties from time to time.
   3. The Supplier shall ensure that:
      1. where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's Authorised Representative's reasonable directions regarding the security of the same;
      2. only those of the Supplier's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
      3. any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this Agreement or by the Authority's Authorised Representative.

**CHARGES AND PAYMENT**

1. PAYMENT
   1. In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Agreement, the Authority shall pay the Charges to the Supplier in accordance with Schedule 3.
   2. The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
   3. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 14. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
   4. Subject to clause 9.3, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement whether before or after any judgment, on a Monthly basis until paid at a rate of interest equal to the Bank of England base rate plus 2% per annum.
   5. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement.
   6. The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Agreement or any other Agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.
   7. If The Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to clause 9.6 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.
   8. The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

**STAFF**

1. KEY PERSONNEL
   1. Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
   2. The Supplier shall not remove or replace any of the Key Personnel unless:
      1. requested to do so by the Authority;
      2. the person is on long-term sick leave;
      3. the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
      4. the person resigns from their employment with the Supplier; or
      5. the Supplier obtains the prior written consent of the Authority.
   3. The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.
   4. The Supplier shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 20 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.
   5. The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
   6. If the Supplier replaces the Key Personnel as a consequence of this clause 10, the cost of effecting such replacement shall be borne by the Supplier.
2. OTHER PERSONNEL USED TO PROVIDE THE SERVICES
   1. At all times, the Supplier shall ensure that:
      1. each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
      2. there is an adequate number of Supplier's Personnel to provide the Services properly;
      3. only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
      4. all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.
   2. The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
   3. The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
   4. The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

**CONTRACT MANAGEMENT**

1. MEETINGS
   1. The Parties shall hold meetings at times and places to be agreed between the Parties. Such meetings shall be held no less than once every Quarter.
   2. The Authority's People Strategy Board will have oversight of the Service and will monitor the progress of the Service.
   3. The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 12.2. including attending People Strategy Board meetings at which the Service is discussed at no additional charge to the Authority.
2. VARIATIONS
   1. Any variations to the Services or any provisions of this Agreement must be agreed by all Parties and recorded in writing and signed by both Parties.
3. DISPUTE RESOLUTION
   1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
      1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
      2. if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and
      3. if the Authority's [SENIOR OFFICER TITLE] and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 20 Working Days after the date of the ADR notice.
   2. The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 37 which clause shall apply at all times.
4. SUB-CONTRACTING AND ASSIGNMENT
   1. Subject to clause 15.2, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Authority.
   2. The Authority shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

**LIABILITY**

1. INDEMNITIES

The Supplier shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or applicable law by the Authority or its Representatives (excluding any Supplier's Personnel).]

* 1. The Supplier shall indemnify the Authority, its officers, directors and employees against any claim that the Services or Training Material or Training Portal infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Authority for any amounts awarded against the Authority in judgment or settlement of such claims, provided that:
     1. the Supplier is given prompt notice of any such claim;
     2. the Authority provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
     3. the Supplier is given sole authority to defend or settle the claim.

1. LIMITATION OF LIABILITY
   1. Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
   2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.
   3. Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
      1. fraud or fraudulent misrepresentation;
      2. death or personal injury caused by its negligence;
      3. breach of any obligation as to title implied by statute; or
      4. any other act or omission, liability for which may not be limited under any applicable law.
2. INSURANCE
   1. The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing appropriate cover for the following liabilities:
      1. public liability insurance with a limit of indemnity;
      2. employer's liability insurance in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
      3. professional indemnity insurance and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the **Required Insurances**) The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

* 1. The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  2. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
  3. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Agreement.

**INFORMATION**

1. FREEDOM OF INFORMATION
   1. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
      2. transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
      4. not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
   2. The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
2. DATA PROTECTION
   1. The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the Agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Agreement.
   2. Notwithstanding the general obligation in clause 20.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
      1. provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
      2. promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 20.2; and
      3. ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.
   3. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
3. CONFIDENTIALITY
   1. Subject to clause 21.2, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
   2. Clause 21.1 shall not apply to any disclosure of information:
      1. required by any applicable law, provided that clause 19.2 shall apply to any disclosures required under the FOIA or the EIRs;
      2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;
      3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 21.1;
      4. by the Authority of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;
      5. to enable a determination to be made under clause 14;
      6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
      7. by the Authority to any other department, office or agency of the Government; and
      8. by the Authority relating to this Agreement and in respect of which the Supplier has given its prior written consent to disclosure.
   3. On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.
4. INTELLECTUAL PROPERTY
   1. In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:
      1. in the course of performing the Services; or
      2. exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

* 1. The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

**TERMINATION**

1. TERMINATION FOR BREACH
   1. The Authority may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:
      1. if the Supplier is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Authority may only terminate this Agreement under this clause 23.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
      2. if there is an Insolvency Event.
      3. if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
      4. if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
   2. The Authority may terminate this Agreement in accordance with the provisions of clause 25 and clause 26.
   3. If this Agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.
   4. The Supplier may terminate this Agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this Agreement shall be deemed to have been withdrawn.
2. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, the Authority may terminate this Agreement at any time by giving one months' written notice to the Supplier.

1. FORCE MAJEURE
   1. Subject to the remaining provisions of this clause 25, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.
   2. In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:
      1. give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
      2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
      3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   3. A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   4. The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.
   5. As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
   6. The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
   7. The Authority may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 20 Working Days.
2. PREVENTION OF BRIBERY
   1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Supplier shall not during the term of this Agreement:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
   3. The Supplier shall during the term of this Agreement:
      1. establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
      2. keep appropriate records of its compliance with its obligations under clause 26.3.1 and make such records available to the Authority on request.
   4. The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 26.1 and/or clause 26.2, or has reason to believe that it has or any of the Supplier's Personnel have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Supplier makes a notification to the Authority pursuant to clause 26.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.
   6. If the Supplier is in Default under clause 26.1 and/or clause 26.2, the Authority may by notice:
      1. require the Supplier to remove from performance of this Agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
      2. immediately terminate this Agreement.
   7. Any notice served by the Authority under clause 26.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).
3. CONSEQUENCES OF TERMINATION
   1. On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason the Supplier shall co-operate fully with the Authority.
   2. On termination of this Agreement the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier's Authorised Representative shall certify full compliance with this clause.
   3. The provisions of clause 16 (Indemnities), clause 18 (Insurance), clause 19 (Freedom of Information), clause 20 (Data Protection), clause 23 (Termination for Breach) and this clause 27 (Consequences of termination) shall survive termination or expiry of this Agreement.

**GENERAL PROVISIONS**

1. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

1. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

1. SEVERABILITY
   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.
   2. If 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.
2. PARTNERSHIP OR AGENCY
   1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party
3. THIRD PARTY RIGHTS
   1. 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.
4. PUBLICITY
   1. The Supplier shall not:
      1. make any press announcements or publicise this Agreement or its contents in any way; or
      2. use the Authority's name or logo in any promotion or marketing or announcement of orders,
   2. except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority.
5. NOTICES
   1. Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:
      1. 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
      2. sent by fax to its main fax number.
   2. Any notice shall be deemed to have been received:
      1. if delivered by hand, on signature of a delivery receipt;
      2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
      3. if sent by fax, at 9.00 am on the next Working Day after transmission.
      4. if sent by electronic mail, at the time of transmission;
   3. 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.
6. ENTIRE AGREEMENT
   1. This Agreement, the schedules and the documents annexed to it or otherwise referred to in it 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.
   2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Agreement.
7. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

1. 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.

1. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have 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.

|  |  |
| --- | --- |
| Signed by **North Somerset Council**  for and on behalf of **[AUTHORITY]** | .......................................  **Director** |

|  |  |
| --- | --- |
| Signed by **[NAME]**  for and on behalf of **[SUPPLIER]** | .......................................  **Director** |

1. – SPECIFICATION
2. - SUPPLIER'S TENDER
3. - CHARGES AND PAYMENT
4. - CONTRACT MANAGEMENT
   * + 1. **AUTHORISED REPRESENTATIVES**
          1. The Authority's initial Authorised Representative: [INSERT DETAILS]
          2. The Supplier's initial Authorised Representative: [INSERT DETAILS]
       2. **KEY PERSONNEL**
          1. [INSERT DETAILS]
       3. **MEETINGS**
          1. Type
          2. Quorum
          3. Frequency
          4. Agenda
          5. .
5. - COMMERCIALLY SENSITIVE INFORMATION

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS COMMERCIALLY SENSITIVE]

1. - AUTHORITY'S PREMISES AND ASSETS

[DETAILS OF AUTHORITY PREMISES TO BE INSERTED ANY AUTHORITY ASSETS]

1. - INSURANCE

[INSERT DETAILS OF REQUIRED INSURANCE]