

DATED

PROFESSIONAL APPOINTMENT

relating to the delivery of

CMI Level 5 Diploma in Management and Leadership

between

Kettering Borough Council

and

[Consultant]

This agreement is dated [DATE]

Parties

- (1) Kettering Borough Council of Municipal Offices, Bowling Green Road, Kettering, NN15 7QX (**Client**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Consultant**)

BACKGROUND

- (A) The Client wishes to appoint the Consultant on the terms of this agreement.

Agreed terms

1. Interpretation

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

1.1 Definitions:

Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Day: a day other than a Saturday, Sunday or public holiday in [England] when banks in [London] are open for business.

Client's Representative: Kettering Training Services Business Manager who may be replaced from time to time under clause 6.

Commencement Date: [XXXX] March 2020

Consultant's Representative: shall mean [XXXX] who may be replaced from time to time under clause 6.

End Date: [XXXX] September 2020

Fee: the fee detailed in the Pricing Breakdown.

Insolvent: a party is insolvent if:

- a) it 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];

b) it 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 any of its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party];

c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up (being a company) [other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction];

d) 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 it (being a company);

e) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed an administrative receiver;

f) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; or

g) being an individual, it is the subject of a bankruptcy petition or order;

h) a creditor or encumbrancer of it 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 its assets and such attachment or process is not discharged within [ten] Business Days;

i) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (h) above (inclusive); or

j) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Pricing Breakdown: the pricing breakdown detailed in the Tender Response.

Programme: the programme agreed by the Consultant and the Client, setting out key dates and time periods for the delivery of the Services as detailed in the Tender Response.

Prohibited Act: the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- b) 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;
- c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Required Standard: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services.

Services: the Services detailed in Schedule 1.

Tender Response: the Consultants tender response detailed in Schedule 2.

VAT: value added tax imposed by the Value Added Tax Act 1994, or any similar tax in addition to or replacing it from time to time.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 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].
- 1.4 The Schedules form 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.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.8 Any reference to a party's **consent** or **approval** being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10 A reference to **writing** or **written** includes fax.
- 1.11 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 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.

2. Appointment and Term

- 2.1 The Client appoints the Consultant to carry out the Services, subject to the terms of this agreement.
- 2.2 This agreement takes effect from the Commencement Date and shall continue until the End Date.

3. Consultant's obligations

- 3.1 The Consultant warrants and undertakes that it shall comply with the terms of this agreement.
- 3.2 The Consultant warrants and undertakes that it shall exercise the Required Standard when performing the Services.

4. Co-operation and co-ordination

- 4.1 The Consultant shall:
- (a) co-operate with the Client;
 - (b) comply with the reasonable instructions of the Client; and

- (c) notify the Client if its performance of the Services is delayed, or is likely to be delayed, setting out the cause of the delay and its likely duration.

5. Records

- 5.1 The Consultant shall maintain records of all time spent by its personnel in performing the Services.
- 5.2 Upon the Client's written request, the Consultant shall allow the Client (or its representative) to inspect the records referred to in clause 5.1 and provide such copies as the Client requests. The Client's right to inspect and demand copies shall continue after the Consultant's engagement under this agreement has concluded or terminated.

6. Representatives and personnel

- 6.1 The Client's Representative or any replacement notified to the Consultant by the Client from time to time shall have full authority to act on the Client's behalf in connection with this agreement
- 6.2 The Consultant's Representative or any replacement notified to the Client by the Consultant from time to time shall have full authority to act on the Consultant's behalf in connection with this agreement.

7. Remuneration

- 7.1 In consideration for the delivery of the Services, the Client shall pay the Fee in accordance with the Pricing Breakdown.
- 7.2 The Client shall pay the Consultant any VAT properly chargeable on the Services. Any amount expressed as payable to the Consultant under this agreement is exclusive of VAT unless stated otherwise.

8. Payment

- 8.1 The Fee shall be paid in instalments in accordance with the Pricing Schedule.
- 8.2 The Consultant shall submit to the Client an invoice for each instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice.

- 8.3 The Client shall pay the Consultant any sums due under such an invoice no later than 30 days from the date on which the Client has determined that the invoice is valid and undisputed.

9. Termination

- 9.1 The Client may terminate the Consultant's engagement under this agreement at any time by giving ten Business Days' notice in writing to the Consultant.
- 9.2 Either party may immediately terminate the Consultant's engagement under this agreement by giving written notice to the other party if:
- (a) the other party is in material breach of its obligations under this agreement and fails to remedy that breach within ten Business Days of receiving written notice requiring it to do so; or
 - (b) the other party becomes Insolvent.

10. Consequences of termination

- 10.1 On termination in accordance with clause 9 the Client shall pay the Consultant any amount properly due for payment under this agreement at the date of termination.

11. Prevention of Bribery

- 11.1 The Consultant represent and warrants that it has not and shall not for the duration of the agreement:
- (a) commit a Prohibited Act;
 - (b) be the subject to an investigation or enquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act;
 - (c) be listed by any government department or agency as being disbarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 11.2 If the Consultant is in default under this clause, the Client may immediately terminate this agreement.

12. Assignment

- 12.1 The Consultant may not assign or transfer its obligations under this agreement to any other person.
- 12.2 The Consultant shall not sub-contract the performance of any of the Services without the Client's prior written consent. The Consultant shall be responsible for any services it sub-contracts to a third party as if it had performed those services itself.

13. Confidentiality

- 13.1 Each party undertakes that it shall not at any time during this agreement, and for a period of [five] years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out the party's obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - (b) as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.

- 13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

14. Professional indemnity insurance

- 14.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £2,000,000.00 for any one occurrence or series of occurrences arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the completion of the Services provided that such insurance is available at commercially reasonable rates.

14.2 The Consultant shall immediately inform the Client if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates so that the Consultant and the Client can discuss how best to protect the respective positions of the Client and the Consultant.

14.3 Whenever the Client reasonably requests, the Consultant shall send the Client evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Client, an original letter from the Consultant's insurers or brokers confirming:

- (a) the Consultant's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.

15. Disputes

15.1 Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.

16. Notices

16.1 A notice given to a party under or in connection with this agreement:

- (a) shall be in writing;
shall be signed by or on behalf of the party giving it;
- (b) shall be sent to the party for the attention of the contact and at the address listed in clause 15.2;
- (c) shall be sent by a method listed in clause 15.2; and
- (d) is deemed received as set out in clause 15.2 if prepared and sent in accordance with this clause.

16.2 The parties' addresses and contacts are as set out in this table:

| Party | Contact | Address |
|--------------|-------------------------------------|---|
| Client | Dorothy Burows, Business Manager | Municipal Offices, Bowling Green Road, Kettering, NN15 7QX |
| Consultant | [POSITION OF CONTACT] | [ADDRESS] |

16.3 A party may change its details given in the table in clause 15.2 by giving notice in writing.

16.4 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied:

| Delivery method | Delivery date and time |
|--|---|
| 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 or at the time recorded by the delivery service. |

16.5 For the purpose of clause 15.4 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.

16.6 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.

17. Third Party Rights

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.

18. Entire agreement

18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party agrees that in entering into this agreement 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 this agreement.

18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

18.4 Nothing in this clause shall limit or exclude any liability for fraud.

19. 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.

20. 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 is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 Services

To provide CMI Level 5 Diploma in Management and Leadership qualifications to the Council

To complete CMI candidate registration for all candidates

To provide knowledge delivery sessions for 13 Council staff

- that cover a diverse and broad range of qualification units that relate to the requirements of higher level Apprenticeship Standards and allows Council staff to develop sufficiently in order to deliver these qualifications at a later date
- that are delivered in block format between March 2020 and June 2020

To design and provide bespoke comprehensive and holistic assignment briefs for candidates that enable them to embed knowledge and develop reflective working practices

To provide differentiated opportunities within sessions and assignments that meet the needs and working roles of the candidates

To provide learning resources for candidates and provide guidance on accessing CMI e-learning platform

To provide access for tutor support for candidates between delivery blocks

To agree assignment submission deadlines that work for both candidates and Council staff

To mark assignments within agreed timescales

To provide meaningful feedback to candidates that allows their personal knowledge and skills development

To complete CMI candidate certification for all candidates with a September 2020 recommended completion for Council staff

Schedule 2 Tender Response