**sERVICE aGREEMENT OF sPECIALIST sUPPORT UNder Building Better SOMERSET Framework**

**between**

**THE PLUSS ORGANISATION CIC**

**and**

**[insert provider name]**

**specialist provider**

THIS AGREEMENT is made on XXX 2023

BETWEEN

**“Pluss”**: The Pluss Organisation CIC, a company incorporated in England and with the registered number 05171613 whose registered office is at 75/77 Main Road, Hockley, Essex, SS5 4RG

and

**“Provider”**: XXXXXX

(each “Party” and together the “Parties”).

**Recitals:**

1. Somerset Council, with funding from the UK Government through the UK Shared Prosperity Fund has awarded Pluss a grant to deliver the Building Better Somerset project across Somerset, in an agreement dated XXXXXX
2. Pluss wish to bring in specialist providers to deliver services that will help participants to overcome personal barriers to progression. As these services will be specific to the participants’ needs, and sporadic in terms of the service requirements, to ensure a full coverage of services, Pluss is engaging specialist providers to be on the Opportunities Framework as part of the Building Better Somerset Contract.
3. The Provider is in the business of providing the Services listed in Appendix 1 and is willing and able to provide its services to Pluss for the period contemplated by this Agreement;
4. Pluss has offered and the Provider has accepted engagement, on the terms set out in this Agreement, to provide services to Pluss as set out in Appendix 1.

**IT IS THEREFORE AGREED** as follows**:**

1. **Commencement and term:**
	1. This Agreement shall be deemed to commence on XXXX 2023 (“the Commencement Date”) and shall continue in full force until 31st March 2024 or until terminated in accordance with Paragraph 12 of this Agreement.
2. **Interpretation**
	1. In this Agreement the expressions set out below have the definitions following them:

**“Agreement”** means the terms and conditions set out herein, and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Parties.

**“Data Protection Legislation”** means any applicable Law relating to the processing, privacy, and use of Personal Data including the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and/or the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (“GDPR”), and/or any corresponding or equivalent national laws or regulations;

**“Confidential Information”** means all information or data (including oral and visual data and all information and data recorded in writing or in any other medium or by any other method) relating to a party including but not limited to any information relating to a party’s operations, processes, plans, intentions, product information, know how, design rights, trade secrets, software, market opportunities, customers, Providers and business affairs;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under that 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 in relation to this Agreement.

**“Force Majeure”** means any cause or circumstance beyond a party’s control which cannot reasonably be prevented by the taking of steps which could reasonably be expected to be taken;

**“Parties”** means Pluss and the Provider;

**“Party”** means Pluss or the Provider;

**“Personal Data”** shall have the same meaning as set out in the GDPR or replacement legislation

**“Price”** means the price of the charge for the Services;

**“Services”** means all services (including any part of them), management, personnel, training, research and reporting as described in the Appendix 1;

**“Specification”** includes any plans, drawings, data or other information relating to the Services.

**“Provider”** means the entity responsible for providing the Services as stated in Appendix 1;

**“Works”** means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, invention, idea, discovery, development, improvement or innovation and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by Provider in the provision of the Services.

* 1. **In this Agreement:**

2.2.1 referencesto a party include references to its successors and assigns (legal and equitable) which will be deemed to be a party to this Agreement;

* + 1. references to a party means any party to this Agreement and references to a third party means any person who is not a party to this Agreement;
		2. references to a person means any individual, body corporate, unincorporated association or body (including joint venture or partnership), government, public, local or municipal authority or international organisation;
		3. references to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and any subordinate legislation made from time to time under that statute or statutory provision;
		4. references to any document being in an agreed form are to that document in the form signed by or on behalf of the parties for identification;

2.2.6 references to recitals, clauses and schedules are to recitals, clauses and schedules of this Agreement unless otherwise specified;

* + 1. the Appendices form part of this Agreement;
		2. if there is any conflict between any of the provisions of this Agreement and those contained in the Proposal for the provision of the Services to Pluss and/or the Provider Terms and Conditions the provisions of this Agreement shall prevail;
		3. if there is any conflict between any of the provisions of this Agreement the conflict shall be resolved in the following order of priority:

(a) the clauses of this Agreement;

(b) any Appendix contained within this Agreement;

(c) the recitals of this Agreement;

* + 1. any undertaking by a party not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
		2. “holding company”, “subsidiary” and “wholly-owned subsidiary” have the meanings given to them by section 736 of the Companies Act 1985;
		3. a company is an “associated company” of another company if that other company holds 20% or more of the voting rights exercisable at general meetings of the first company, on all, or substantially all, matters;
		4. “control” has the meaning given by section 840 of the Income and Corporation Taxes Act 1988;
		5. the headings are used for ease of reference only and shall not affect the interpretation of this Agreement;
		6. words in the singular shall include the plural and vice versa and words in the masculine shall include the feminine and vice versa; and
		7. where any general words are used in this Agreement, the interpretation of such words shall not be limited by reference to the subject matter in the context of which they are used.
	1. A person who is not a party to this Agreement has no right under The Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
1. **Basis of Purchase**
	1. This Agreement shall apply to the exclusion of any other terms and conditions which the Provider has sought to or subsequently seeks to impose on Pluss.
	2. No variation to this Agreement shall be binding unless agreed in writing between the authorised representatives of each of the Parties.
2. **Specification**
	1. The Provider shall comply with all applicable regulations and/or other legal requirements concerning the performance of the Services.
3. **Price and Payment**
	1. The Price of the Services shall be as stated in Appendix 1 and unless stated otherwise, shall be inclusive of all charges including Value Added Tax (where that is irrecoverable from HMRC)
	2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of Pluss in writing.
	3. The Provider shall submit invoices after the Services have been delivered for one or more participant(s) referred to them by Pluss Building Better Somerset staff.
	4. The Provider's official invoice should be sent promptly to Pluss, to the address advised by the Pluss manager, and unless otherwise instructed, and must show:
* Pluss’s purchase order number;
* an Invoice number;
* a full description of the Services;
* full details of prices; and
* any discount allowed.
	1. Value Added Tax, where applicable, shall be shown separately on all invoices.
	2. The Provider shall issue all invoices for the Price of the Services within three months of the charges becoming due. If the Provider fails to issue an invoice within three months of the charges becoming due, Pluss may send a written final request for the invoice. If the Provider fails to issue the invoice within one month of the date of the letter making a final request for the invoice, the invoice shall become invalid and Pluss shall not be under any obligation to pay the charges.  Furthermore, the Provider shall indemnify Pluss against any claims that may be raised to Pluss for payment of any invoices that are not raised within six months of the charges becoming due.
1. **Provider Obligations**
	1. The Services shall be performed in accordance with the specification detailed in Appendix 1 and/or as amended from time to time and shall comply at all times with;
		1. All requirements imposed as part of the agreement between Somerset Council and Pluss in relation to the Building Better Somerset Requirements including, for the avoidance of doubt, Branding Requirements
		2. Data Protection Legislation
		3. Confidentiality provisions as set out in this Agreement
		4. All applicable laws and legislation
	2. The Provider shall carry out the provision of Services in an expert and diligent manner using all reasonable care and attention in accordance with good industry standard and to promptly and faithfully comply with and observe any and all lawful and proper requests which may be made Pluss (or by such other person or persons as they may nominate from time to time under this Agreement) and: -
		1. in case of illness, accident, absence on leave or any other reason preventing the performance of the Services by any of its staff, the Provider shall immediately upon becoming aware of such an event, notify Pluss of such illness, accident, absence on leave or other reason;
		2. without charge to Pluss correct any defective work carried out as part of or comprising the Services;
		3. use its reasonable endeavours to ensure that the provision of the Services does not infringe any third party’s Intellectual Property Rights or copyright and hereby indemnifies and keeps Pluss indemnified against any infringement of any third-party rights in such that may occur;
		4. will not perform any act likely to prejudice the operation of Pluss’s systems or the efficiency of Pluss’s business and in particular, not to install on Pluss's computer equipment and/or systems any equipment, software or electronic files or anything else that are not authorised in advance by Pluss; and
		5. ensure that any employees and/or staff (and/or consultants and/or sub-contractors where applicable) meet and continue to comply with all relevant legislative requirements necessary to enable each and every one of them to deliver the Services to the standard set out above. This will include, (but in no-way be limited to) ensuring that the relevant individuals are entitled to work within the United Kingdom and that they satisfy any and all relevant checks as to their suitability to deliver the Services such as appropriate security vetting and Safeguarding check

6.3 If the Services are not performed on the due date then (unless the reason for such delay is for reasons outside the Provider’s reasonable control), without prejudice to any other remedy, Pluss shall be entitled to deduct from the Price or, if Pluss has already paid the Price, to claim from the Provider an amount equal to the additional costs directly incurred (and reasonably evidenced) by Pluss as a result of the delay.

6.4 Since the Provider is likely to obtain in the course of providing the Services Confidential Information of Pluss and personal knowledge of and influence over Pluss’s clients, the Provider agrees that neither it nor any of its employees, staff, consultants and/or sub-contractors shall during the period of this Agreement and for twelve months after its termination directly or indirectly:

* + 1. interfere or seek to interfere in any contract between Pluss and any third party; and/or
		2. solicit or seek to solicit any person, firm or company to terminate or alter any contractual relationship between them and Pluss; and/or
		3. discourage any person, firm or company from entering into contractual relations with Pluss; and/or
		4. make any disparaging remarks about Pluss and/or any of its directors or managers; and/or
		5. approach, employ (other than by way of a genuine response to a recruitment advertisement) or solicit any person who has during the previous 12 months been an employee of or Provider to Pluss without the prior written approval of Pluss.
	1. The Provider shall:
		1. ensure that all Staff, are employed on the condition that they are permitted to work in the UK, are suitably employed to deliver the services and;
		2. notify Pluss immediately if an employee is not permitted to work in the UK

**7. Assignment and Sub-Contracting**

7.1 Neither party may assign nor sub-contract any of its rights or obligations under this Agreement without the other’s prior written consent, which shall not be unreasonably withheld, except to a subsidiary or holding company of it.

7.2 This clause 7 shall survive the expiry or termination of this Agreement and shall continue in force and effect.

**8. Quality Assurance**

* 1. The Provider shall operate a self-regulatory system of quality assurance and quality measures relating to the Agreement in addition to any quality requirements in Appendix 1 which ensures that the Services are provided in accordance with the requirements of the Agreement and the Provider shall check that information, data or software supplied pursuant to the Agreement is fit for the purpose for which Pluss intends to use it.
	2. The Provider shall ensure that it is compliant with and delivers the Services in accordance with and in a manner that is reflective of the principle and legal requirements as set out in Appendix 2 – Statutory Obligations and Corporate Social Responsibility

**9. Document Retention**

9.1 All documentation produced for the Services shall be retained by the Provider for the duration of the Services and may only be disposed of with prior written approval by Pluss. The Provider shall send copies of the documentation to Pluss upon written request.

9.2 Subject to Clause 9.1 and 9.3, within 30 working days of date of termination or expiry, the Provider shall return or destroy any data or information, save that it may keep one copy of such data or information for a period as is necessary for such compliance

9.3 Pluss will provide the Provider with instructions for the return of all documentation related to the Services and the Provider must comply with such instructions which may be revised by Pluss from time to time.

**10. Warranties and Liability**

* 1. The Provider will maintain professional indemnity and public liability insurance in each case with a reputable insurance company providing a minimum cover of £1million pounds. (One million pounds) and shall provide evidence of such upon request by Pluss.
	2. With exception to liability for death or personal injury, the liability of both Parties under this Agreement shall be limited to the Price of the Services and exclude any loss of profits, indirect losses or consequential losses, except for claims for which liability cannot be limited by law.
	3. The Provider confirms that the Provider or any person associated with it or the delivery of the Services;
		1. has not been convicted of any offence involving slavery and trafficking; or
		2. has not been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

**11. Force Majeure**

11.1 Subject to clauses 11.2 and 11.3, if a Force Majeure Event occurs which prevents or delays the performance of either party’s obligations under this Agreement:

11.1.1 the obligations of the party whose performance is prevented or delayed shall be suspended during the period that the Force Majeure Event continues; and

11.1.2 that party shall perform its obligations as soon as practicable following the termination of the Force Majeure Event.

11.2 Clause 11.1 does not apply unless the party claiming to benefit from that clause:

11.2.1 notifies the other of the Force Majeure Event and its consequences as soon as possible after it occurs;

11.2.2 promptly provides the other with any further information which the other requests about the Force Majeure Event or its consequences;

11.2.3 promptly takes any steps (except steps involving significant additional costs) which the other reasonably requires in order to reduce the other’s losses or risk of losses including bringing the Force Majeure Event to a close or finding a solution by which this Agreement may be performed despite the continuation of the Force Majeure Event.

11.3 If the Force Majeure Event continues for more than 30 consecutive days either party may terminate this Agreement immediately by written notice on the other. If this Agreement is terminated under this clause the Provider shall be entitled to be paid a reasonable sum for all work performed before the date of termination (after deduction of any sums already paid by Pluss to the Provider).

**12. Termination**

12.1 Pluss shall be entitled to terminate this Agreement with immediate effect where Somerset Council terminates the Building Better Somerset grant agreement with Pluss for whatever reason.

12.2 Either party shall be entitled to terminate this Agreement without liability to the other by giving notice to other Party at any time if:

* The other Party makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
* a receiver is appointed, of any of the property or assets of the other Party; or
* the other Party ceases, or threatens to cease to carry on business; or
* either Party reasonably believes that any of the events mentioned above is about to occur in relation to other Party and notifies that Party immediately.

12.3 Either Party may terminate this Agreement at will on giving one months’ notice in advance at any stage during the term of this Agreement, unless otherwise terminated in accordance with Clause 12.1.

12.4 Upon such Termination by either party, the Provider shall return to Pluss any unspent monies that remain. For the avoidance of doubt the Provider will provide all those services paid for by Pluss up until the date of effect of such Termination, unless otherwise agreed.

**13. Intellectual Property Rights**

* 1. Where the performance of the Services directly results in the production of any new work(s) entitled to protection under the Copyright, Designs and Patents Act 1988, The Copyright (Computer Programs) Regulations 1992 or any amendment or addition thereto, the Provider shall grant to Pluss a worldwide, exclusive, irrevocable, fully paid up, royalty free licence to use, display and create derivative works and to sub-licence others to do the same, and otherwise deal in such work(s) in perpetuity.
	2. All pre-existing Intellectual Property Rights in the Services shall vest solely in the Provider and the Provider hereunder provides Pluss with a non-exclusive licence to use (and provide its consultants and / contractors such rights) the Services in the United Kingdom during the Term of this Agreement.
	3. The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services

**14. Publicity and Branding**

* 1. The Provider shall follow the UK Shared Prosperity Fund branding guidelines for any publicity materials and publications produced in connection with the project. To ensure compliance, the Provider must seek Pluss’s approval and sign-off prior to the release of any publicity or publications being issued.

**15. Data protection/Confidentiality**

* 1. The Parties shall each comply with their obligations with respect to Personal Data as set out in the Data Protection Legislation, and for the purposes of the Data Protection Legislation the Provider and Pluss shall be Data Processors and Somerset Council the Data Controller.
	2. Pluss may provide Personal Data to the Provider together with such other information as may reasonably be required in order for the Provider to provide the Services.
	3. The Provider undertakes and warrants that it shall:

(a) process the Personal Data only in accordance with the Data Protection Legislation and the terms of this Agreement;

(b) process the Personal Data strictly in accordance with Pluss’s lawful instructions as communicated to Provider in writing from time to time

(c) ensure that only Provider personnel who may be required to assist it in meeting its obligations under this Agreement shall have access to the Personal Data; and

(d) have in place and shall maintain appropriate operational and technological processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the Personal Data.

* 1. The Provider shall not disclose the Personal Data to any third party, other than those engaged in provision of the Service or as required by operation of law.
	2. The Provider will assist Pluss with all information requests which may be received from Data Subjects and use reasonable endeavours to enable Pluss to comply with such requests.
	3. The Provider will notify Pluss of any Personal Data loss or breaches, within 48 hours of discovering or becoming aware of any such breach. The Provider will assist with Pluss’s investigation of the incident and implementation of any corrective action as agreed by both parties.
	4. Neither party will disclose or use or cause to be disclosed or used, at any time during or subsequent to this Agreement, any secret or confidential information of the either party or any of its clients or companies or any other non-public information relating to the business, financial or other affairs of the other party acquired by it or its employees and/or staff and/or consultants and/or sub-contractors except as required by law.
	5. All notes, computer disks and tapes, memoranda, correspondence, records, documents and other tangible items made, used or held by the receiving party in the course of providing Services under this Agreement will be and remain at all times the property of the disclosing party. At any time, whether prior to or upon the termination or expiration of this Agreement, the receiving party shall deliver to the disclosing party all such tangible items which are in its possession or under its control relating to the disclosing party, its business affairs, companies and/or the Services and they may not make or retain copies.

**16. Security**

16.1 Pluss is engaged in a number of different types of business with different Government departments and private businesses and is therefore required to adhere to stringent Security requirements. Pluss will advise the Provider from time to time of such security requirements and any changes to those requirements and the Provider shall abide by those requirements at all times during the provision of Services hereunder.

**17. Safeguarding**

17.1 The Provider hereby undertakes and warrants that it will comply with all legislation relating to the protection of children and vulnerable adults and will at all times operate in accordance with Pluss’s safeguarding policy, a copy of which is available to the Provider upon request. In addition, the Provider may be notified in writing of Pluss’s requirement for the Provider to provide evidence of having completed a successful DBS check prior to beginning the provision of Services under this Agreement.

# Right to Audit

18.1 Pluss and/or its representatives shall have the right, at its own expense, to conduct an audit of the systems, processes, relevant books, records and accounts of the Provider related to the delivery of the Services. Any audit will be conducted during normal business hours upon giving reasonable notice of the intent to conduct such an audit. In the event of such audit, the Provider shall comply with the reasonable requests of Pluss and its representatives and provide access to all systems, processes, books, records, accounts and relevant staff necessary to the audit.

**19. General**

* 1. The Provider hereby warrants and undertakes that they or its staff:
		1. have not been convicted or investigated or prosecuted in an act of bribery or corruption, are not being investigated in such and agree to abide by all laws regarding the prevention of bribery and corruption (such as the UK Bribery Act 2010).
		2. 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
		3. 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 Provider shall not issue any publicity material for the services without first gaining permission from Pluss to ensure compliance with requirements.
	3. The Provider shall ensure that it obtains value for money in procurement of any goods or services paid for in the Price. The Provider shall comply with the procurement regulations
	4. Any notice required or permitted to be given by either Party to the other Party under this Agreement shall be in writing addressed to that other Party.
	5. No waiver by either Party of any breach of the Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.
	6. If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.
	7. Neither Party shall issue any press release or make any public statement concerning Pluss, its employees, agents, councillors, and / or the Services without the prior written consent of the other.
	8. Signature of this Agreement will be deemed to bind both Parties to this Agreement and no Services shall be performed by the Provider, its employees, agents or representatives, except in accordance therewith.
	9. This Agreement and the Appendices contained within constitute the entire understanding between the Parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.
	10. Unless explicitly stated otherwise herein, this Agreement does not confer any right enforceable against the Parties under the Contracts (Rights of Third Parties) Act 1999.
	11. The Agreement is to be governed according to the laws of England and the Parties agree to submit to the exclusive jurisdiction of the English courts.

**IN WITNESS** thereof this Agreement has been executed on the date first before written by the undersigned persons who are duly authorised by the respective party

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Print) (Print)

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of Pluss For and on behalf of the PROVIDER

**Appendix 1**

Insert Rate Card from the Provider

**Appendix 2**

**Statutory obligations and corporate social responsibility**

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