Dated 20[ ]

Consultancy Agreement

between

NORTH SOMERSET COUNCIL

and

[ ]

Contents

Clause

1. Definition and Interpretation 1

2. Term of Appointment 3

3. Due Diligence and Contractor's Warranty 3

4. Duties and obligations 4

5. Fees 5

6. Confidential information 5

7. Freedom of Information 5

8. Intellectual property 6

9. Insurance and liability 8

10. Termination 9

11. Obligations on termination 9

12. Status 10

13. Notices 10

14. Entire agreement 11

15. Variation 11

16. Counterparts 11

17. Third party rights 11

18. Governing law and jurisdiction 12

Schedule 1: The Specification

Schedule 2: Fees and Fee Schedule

**THIS AGREEMENT** is dated [DATE]

Parties

1. **North Somerset Council** of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ (**'the Council'**).
2. [ ] [(registered with company number [ ] whose registered office is at [ ] ('**the** Consultant').

Background

The Council wishes to enter into a contract for the supply of consultancy services and through a competitive process has selected the Consultant to provide consultancy services to the Council and the Consultant is willing and able to provide those services to the Council in accordance with the terms and conditions of this Agreement.

Agreed terms

# Definitions and Interpretation

## The following definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

Agreement: this agreement including its schedules and appendices

Appointment: the appointment of the Consultant by the Council on the terms of this Agreement

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business or any other day that the Council is not open for normal business

Capacity**:** as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date**:** [DATE OF COMMENCEMENT OF ENGAGEMENT]

Council Property**:** all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Council and/or its affairs, its customers, contractors, partners and business contacts, and any equipment, hardware or software provided for the Consultant's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the Council or the Consultant's computer systems or other electronic equipment during the Engagement.

Confidential Information**:** all confidential information, whether written or oral (however recorded or preserved), provided by the Council to the Consultant in connection with this Agreement, including but not limited to (a) any information known by the Consultant to be confidential; (b) is marked as, or stated to be, confidential; (c) ought reasonably to be considered by the Consultant to be confidential; (d) any information that the Consultant creates, develops, receives or obtains in connection with the Engagement

Fees: the fees which shall become due and payable by the Council to the Consultant for the Services in accordance with Schedule of Fees

EIRs: 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 law.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such law.

Good Industry Practice: the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from an appropriately qualified and experienced consultant with appropriate skill and experience of working and delivering services of a similar scope, type, nature and complexity to the Services.

Information: has the meaning given under section 84 of the FOIA.

Insurance Policies**:**

public liability insurance cover with a limit of indemnity of not less than £5m (Five Million Pounds) in relation to any one claim or series of claims;

employer liability insurance with a limit of indemnity of not less than £5m (Five Million Pounds) or in accordance with any legal requirement for the time being in force (whichever is the greater) in relation to any one claim or series of claims;

Intellectual Property Rights**:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, such rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Milestones: key events and stages for the Project and delivery of the Services as set out in the Specification.

Milestone Dates: the dates by which the relevant Milestones must be achieved, as set out in the Specification.

Outputs: the specific targets and objectives set out in the Specification

Party: the Council or the Consultant (as appropriate) and "Parties" shall mean both of them

Pre-Contractual Statement**:** any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement [or any documents referred to in it].

Project: the project identified within the Appointment

Requests for Information: has the meaning set out in the FOIA or the EIRs as relevant.

Schedule of Fees: the Fees detailed in the Appointment, including the timing and frequency of payment of the Fees

Services**:** the services provided by the Consultant in a consultancy capacity for the Council as more particularly described in the Specification.

Specification: the specification for the Services as set out in Schedule 1.

Termination Date**:** the date of termination of this Agreement, however arising.

## Clause, schedule and paragraph headings are for convenience or reference only and shall not affect the interpretation of this Agreement.

## References to clauses and schedules are to the clauses and schedules of this Agreement and reference to paragraphs are to paragraphs of the relevant schedule.

## 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.

## Except where the context otherwise requires, words in the singular shall include the plural and vice versa.

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

## A reference to any enactment includes reference to that enactment as amended, extended or re-enacted from time to time and to any subordinate legislation or byelaw made under that enactment.

## The words "include, "includes", "including", and "included" shall be understood as meaning without limitation by the words which follow those words.

## A reference in this Agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

## A reference to **writing** or **written** excludes faxes and e-mail.

## Any obligation on a Party not to do or omit to do anything shall include an obligation not to allow or agree that thing to be done or omitted to be done.

# Term of Appointment

## The Council shall engage the Consultant and the Consultant shall provide the Services on the terms of this Agreement.

## The Appointment shall commence on the Commencement Date and shall continue unless and until terminated:

### The sign off of the completion of the requirements of the Services; or

### The earlier termination of this Agreement in accordance with its terms.

# Due Diligence and Consultant's Warranty

## The Consultant acknowledges and confirms that:

### The Council has delivered or made available to the Consultant all the information and documents that the Consultant considers necessary or relevant relating to the Project and the Services and for the performance of its obligations under this Agreement;

### It has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the date of this Agreement) of all relevant details relating to the performance of its obligations under this Agreement;

### It has entered into this Agreement in reliance on its own due diligence;

### It shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement due to any misinterpretation or misunderstanding by the Consultant of any fact relating to the Services;

### save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Consultant by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law;

### as at the date of this Agreement it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services provided to the Council under this Agreement.

## The Consultant:

### warrants and represents that all information and statements made by it as part of the tender process, including without limitation the tender submitted by the Consultant, or response to the selection questionnaire, remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the date of this Agreement; and

### shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services.

## Nothing in this clause 3 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

# Duties and Obligations

## During the Appointment the Consultant shall provide the Services:

### with all due care, skill and ability;

### in accordance with the Specification;

### to achieve the Outputs and Milestones by the relevant Milestone Date;

### in accordance with Good Industry Practice; and

### in full compliance with all applicable laws.

## There shall be no variation to the Services provided under the Appointment unless previously agreed in writing by the Parties. Any variation which affects the Fees for the Services shall be charged in accordance with the day rates provided within the Schedule of Fees

## During the Appointment the Consultant shall promptly give to the Council all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services.

## At all times the Consultant shall use reasonable endeavours to ensure that there is a sufficient number of personnel available to provide such assistance or information as the Council may require.

## Unless specifically authorised to do so by the Council in writing, the Consultant shall not:

### have any authority to incur any expenditure in the name of or for the account of the Council; or

### hold himself out as having authority to bind the Council.

## The consultant shall:

### comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

### comply with the Council's Anti-bribery and Anti-corruption policies from time to time in force;

### promptly report to the Council any request for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this Agreement

## Breach of clause 4.5 shall be deemed a material breach of this Agreement.

# Fees

## In consideration of the full and proper performance of the Services by the Consultant, the Council shall pay the Consultant the Fees, exclusive of VAT, in accordance with the Schedule of Fees.

## The Fees shall become chargeable as detailed in the Schedule of Fees. The Consultant shall invoice the Council for payment of the Fees in accordance with the Schedule of Fees and the Council shall pay any sums properly due and payable and undisputed against each invoice within 30 days of receipt.

## Within 10 Business Days of the Commencement Date, the Council shall notify the Consultant in writing of a purchase order number. The Consultant shall ensure that each invoice includes details of that purchase order number together with details (name and telephone number) of the Council contact. All invoices shall be sent to Council in electronic format to the address/es stated within the purchase order

## The Consultant acknowledges and agrees that it shall be liable for any ongoing costs of providing the Services to meet the Milestones and Outputs by the Milestone Dates

## The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council at any time.

## Payment in full or in part of the fees claimed under clause 5 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Services.

## The Fees are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Consultant shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Consultant under this Agreement.

## The Consultant shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Agreement in accordance with clause 10 Termination.

## The Council reserves the right to withhold payment of the Fees, or a proportionate part of the Fees, without interest accruing, where the Consultant has failed to perform the Services in accordance with this Agreement and any invoice for payment of such Fees shall not be paid until and until the Service is provided or provided in accordance with this Agreement.

## Each Party shall pay interest at the rate of 3% above the base rate of Barclays Bank Plc from time to time in force on any sums due under this Agreement. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount.

## The consultant shall maintain complete and accurate records of, and supporting documentation for, all sums which may be chargeable to the Council pursuant to this Agreement. Such records shall be retained for inspection by the Council for six years from the end of the Termination Date.

# Confidential information

## The Consultant acknowledges that in the course of the Appointment it will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 6.

## The Consultant shall not (except in the proper course of his duties) either during the Appointment or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

### any use or disclosure authorised by the Council or required by law; or

### any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.

## At any stage during the Appointment, the Consultant will promptly on request return all and any Council Property in his possession to the Council.

# Freedom of Information

## The Consultant acknowledges that the Council is subject to the requirements of the FOIA and EIRS and shall

### at its own cost, assist and co-operate with the Council to enable the Council to comply with its obligations under the FOIA and EIRS in a timely manner;

### transfer to the Council Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Business Days of receipt;

### provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within five Business Days (or such other period as the Council may reasonably specify) of the request for such information;

### not respond directly to a Request for Information unless authorised in writing to do so by the Council.

## The Consultant acknowledges that the Council may be required under the FOIA and the EIRS to disclose Information concerning the Consultant, the Project or the Services (including Confidential Information and commercially sensitive information) without consulting or obtaining consent from the Consultant. In these circumstances the Council shall, in accordance with any relevant guidance, issues under the FOIA, take reasonable steps, where appropriate, to give the Consultant advance notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.

## Notwithstanding any other provision in this Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Consultant, the Project or the Services is exempt from disclosure in accordance with FOIA and / or EIRs.

# Intellectual Property

## All Intellectual Property Rights created by the Consultant:

### in the course of performing the Services; or

### exclusively for the purpose of the Project or of performing the Services

### shall vest in the Council on creation.

## The Consultant shall provide to the Council copies of all surveys, documents, drawings, reports and such other documents prepared or developed by or on behalf of the Consultant in the provision of the Services, including copies of all materials relied up or referred to in documentation in an agreed electronic format (and/or such other form as the Authority may reasonably determine).

## The Consultant shall not in connection with the Services do anything which infringes any patent, patent right, copyright, data right or any other Intellectual Property Right.

## The Consultant shall indemnify the Council against all claims, demands, actions, costs and expenses (including legal costs and disbursements on 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 Rights by the availability of the Project or the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions. The Consultant shall maintain adequate liability insurance coverage and shall supply a copy of the policy to the Council on request.

## Whenever requested to do so by the Council and in any event on the termination of the Appointment, promptly to deliver to the Council all materials, work or records in relation to the Project and / or the Services, including any back-up media.

# Insurance and Liability

## The Consultant shall indemnify and keep indemnified the Council against all actions, proceedings, costs (including reasonable legal costs), claims, demands, liabilities, damages, losses and expenses whatsoever arising from any breach by the Consultant or its personnel of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Appointment full and comprehensive Insurance Policies.

## The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.

## The Consultant shall on request supply to the Council copies of such Insurance Policies and evidence that the relevant premiums have been paid.

## The Consultant shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Council without delay.

# Termination

## Notwithstanding the provisions of clause 2.2, the Council may terminate the Appointment with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time the Consultant:

### commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council; or

### is in the reasonable opinion of the Council negligent or incompetent in the performance of the Services; or

### commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Consultant or the Council into disrepute or is materially adverse to the interests of the Council; or

### commits any breach of the Council's anti-corruption and bribery policy; or

### commits any offence under the Bribery Act 2010; or

### suffers an Insolvency Event.

## An Insolvency Event is where:

### the Consultant 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

### the Consultant 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;

### the Consultant files a petition, or gives notice, or passes a resolution, or makes an order for or in connection with the winding up of the Provider (being a company);

### the Consultant makes an application 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 Provider’s business (being a company);

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

### a person becomes entitled to appoint a receiver over the assets of the Consultant or a receiver is appointed over the assets of the Consultant;

### a creditor or encumbrancer of the Consultant 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 Contractor's assets and such attachment or process is not discharged within 14 days;

### any event occurs, or proceeding is taken, with respect to the Contractor 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);

### the Consultant suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## The Consultant may terminate this Agreement by giving 30 days' written notice to the Council if the Council has not paid any undisputed sums within 40 Business Days of them falling due. If the Council pays any undisputed sums in the 30 days' notice period, the Consultant notice to terminate this Agreement shall be deemed to have been withdrawn.

## The rights of the Council under clause 10.1 are without prejudice to any other rights that it might have at law to terminate the Appointment or to accept any breach of this Agreement on the part of the Consultant as having brought the Agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

# Obligations on Termination

On the Termination Date the Consultant shall:

### immediately deliver to the Council all Council Property in his possession or under its control;

### Subject to the Council's data retention guidelines, irretrievably delete any information relating to the Project and/or the Services stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its possession or under its control. For the avoidance of doubt the contact details of business contacts made during the Appointment are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and

### provide a signed statement that it has complied fully with his obligations under this clause 11.

# Status

## The relationship of the Consultant to the Council will be that of independent contractor and nothing in this Agreement shall render the Consultant or its personnel employees, workers, agents or partners of the Council and the Consultant and its personnel shall not hold itself or themselves out as such.

## The Consultant is responsible for the employment and conditions of service of its personnel including income and other taxes, national insurance contributions or levies of any kind.

# Notices

## Notices shall be in writing and shall be sent to the other Party marked for the attention of the person either by post or served in person. Notices may be sent by first-class mail. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting.

# Entire Agreement

Each Party on behalf of itself acknowledges and agrees with the other Party that:

### this Agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Consultant and the Council and supersedes any previous arrangement, understanding or agreement between them relating to the Appointment (which shall be deemed to have been terminated by mutual consent);

### in entering into this Agreement neither Party has relied on any Pre-Contractual Statement; and

### each Party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this Agreement shall, however, limit or exclude any liability for fraud.

# Variation

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

# Counterparts

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

# 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.

## The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

# Governing Law and Jurisdiction

## 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 English law.

## The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

|  |  |
| --- | --- |
| Signed on Behalf of North Somerset Council | .......................................  (Signature)  (Name ……………………………..  Position …………………………… |
| Signed by Supplier | .......................................  (Signature)  (Name …………………………….. |

**SCHEDULE 1**

**THE SPECIFICATION**

**SCHEDULE 2**

**FEES AND FEE SCHEDULE**