Dated

XXXX

Consultancy agreement

between

NORTH SOMERSET COUNCIL

and

[CONSULTANT'S NAME]

Contents

Clause

1. Interpretation 1

2. Term of engagement 3

3. Duties 3

4. Fees 4

5. Other activities 5

6. Confidential information 5

7. Data protection and 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

Schedule 13

**THIS AGREEMENT** is dated [DATE]

Parties

1. North Somerset Council of Town Hall, Weston-super-Mare, BS23 1UJ (Council).
2. [INDIVIDUAL NAME] of [ADDRESS] (Consultant).

Agreed terms

# Interpretation

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

Business of the Council**:** The services, functions and activities of the Council in its role as a Local Authority

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 Business or affairs of the Council or its customers, partners and business contacts, and any equipment, keys, 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**:** information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Business of the Council or any of its suppliers, partners, customers, agents, distributors, management or business contacts and including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Engagement**:** the engagement of the Consultant by the Council on the terms of this agreement.

Insurance Policies**:** Public liability insurance cover and Employer Liability insurance both having a minimum level of cover of £5 million. Professional Liability having a minimum cover level of £1 million.

Intellectual Property Rights**:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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.

Invention**:** any invention, idea, discovery, development, improvement or innovation made by the Consultant in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

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].

Services**:** the services provided by the Consultant in a consultancy capacity for the Council as more particularly described in the **Error! Reference source not found.**.

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

Works**:** all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant in the provision of the Services.

## The headings in this agreement are inserted for convenience only and shall not affect its construction.

## A reference to a particular law 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.

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

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

## The Schedule to this agreement forms part of (and is incorporated into) this agreement.

# Term of engagement

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

## The Engagement shall be deemed to have commenced on the Commencement Date and shall continue unless and until terminated:

### as provided by the terms of this agreement; or

### the sign off of the completion of the requirements of the Services.

# Duties

## During the Engagement the Consultant shall:

### provide the Services with all due care, skill and ability and use his best endeavours to promote the interests of the Council;

### and

### 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.

## The Consultant shall use reasonable endeavours to ensure that he is available at all times on reasonable notice to provide such assistance or information as the Council may require.

## Unless he has been 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 reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.

## The Consultant may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

### the Council will not be liable to bear the cost of such functions; and

### at the Council's request the third party shall be required to enter into direct undertakings with the Council, including with regard to confidentiality.

## The consultant shall:

### comply with all applicable laws, regulations 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;

## Breach of clause 3.6 shall be deemed a material breach of this agreement.

# Fees

## The Council shall pay the Consultant such sums as set out in the Consultants proposals following the accepted completion of the Service exclusive of VAT.

## In consideration of the provision of the Services during the Engagement, the Council shall pay each invoice submitted by the Consultant in accordance with clause 4.1 within 14 days of receipt.

## 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 4 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Services.

# Other activities

Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

### such activity does not cause a breach of any of the Consultant's obligations under this agreement;

### the Consultant shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the Business of the Council without the prior written consent of the Council; and

### the Consultant shall give priority to the provision of the Services to the Council over any other business activities undertaken by the Consultant during the course of the Engagement.

# Confidential information

## The Consultant acknowledges that in the course of the Engagement he 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 Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use his 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 Engagement, the Consultant will promptly on request return all and any Council Property in his possession to the Council.

# Data protection and freedom of information

## The Consultant consents to the Council holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Consultant

## The Consultant consents to the Council making such information available to those who provide products or services to the Council such as advisers, regulatory authorities, governmental or quasi governmental organisations.

## The Consultant acknowledges that the Council is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Consultant’s own expense) to enable the Council to comply with these information disclosure requirements.

## The Consultant acknowledges that the Council may be obliged under the Freedom of information Act or the Environmental Information Regulations to disclose Information:

### without consulting with the Consultant; or

### following consultation with the Consultant and having taken its views into account,

provided always the Council shall take reasonable steps, where appropriate, to give the Consultant advanced notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.

# Intellectual property

## The Consultant hereby assigns to the Council all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant holds legal title in these rights and inventions on trust for the Council.

## The Consultant undertakes:

### to notify to the Council in writing full details of any Inventions promptly on their creation;

### to keep confidential details of all Inventions;

### whenever requested to do so by the Council and in any event on the termination of the Engagement, promptly to deliver to the Council all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in his possession, custody or power;

### not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Council; and

### to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Council.

## The Consultant warrants to the Council that:

### he has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;

### he is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and

### the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party.

## The Consultant agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant to the Council during the course of providing the Services. The Consultant shall maintain adequate liability insurance coverage and shall supply a copy of the policy to the Council on request.

## The Consultant waives any moral rights in the Works to which he is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials, infringes the Consultant's moral rights.

## The Consultant acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Consultant in respect of the performance of his obligations under this clause 8.

## The Consultant undertakes, at the expense of the Council, at any time either during or after the Engagement, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Council, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the Council and to defend the Council against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works and the Inventions.

## The Consultant hereby irrevocably appoints the Council to be his attorney to execute and do any such instrument or thing and generally to use his name for the purpose of giving the Council or its nominee the benefit of this clause 8.

# Insurance and liability

## The Consultant shall have personal liability for and shall indemnify the Council for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from 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 Engagement 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 Engagement 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 gross misconduct affecting the Business of the Council; or

### 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 convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or

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

### is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984; 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.

## 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 Engagement 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 his control;

### irretrievably delete any information relating to the Business of the Council stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Council; and

### provide a signed statement that he 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 him an employee, worker, agent or partner of the Council and the Consultant shall not hold himself out as such.

## This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:

### any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;

### any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Substitute against the Council arising out of or in connection with the provision of the Services.

## The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

# Notices

## Notices shall be in writing, and shall be sent to the other party marked for the attention of the person either by post, email 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 and correctly directed emails shall be deemed to have been received after 2 business hours of transmission.

# 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 Engagement (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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



**Requirements of Service**

See Appendix 1- “Conservation Areas Boundary Review, Appraisals and Management Plans Brief”

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