

Agreement Between Consulting AM Ltd (CAM) and Adventure Beyond Ltd (AB)

1. Background

- 1.1. This agreement is made between Consulting AM Ltd (CAM), a company registered in England and Wales with company number 06776872 and registered address of Glanafon, Moylegrove, SA43 3BW and Adventure Beyond Ltd (AB), a company registered in England and Wales with company number 04203576 and registered address of Nant y Popty Farm, Coed y Bryn, Llandysul, SA44 5LQ.**
- 1.2. Joint Bid: CAM and AB jointly submitted a bid for a grant to fund the project known as "Coastal Connections," aimed at redeveloping a disused bus garage site in Moylegrove, (the "Property"), Pembrokeshire into a community outdoor activities hub and offering some free guided activities to schoolchildren and GP referred adults. The bid shared responsibilities evenly, with both parties contributing £50,000 in match funding and CAM responsible for overall project management and the building while AB was responsible for the provision of outdoor activities.**
- 1.3. Council terms: The bid was successful, and the grant was awarded by Pembrokeshire County Council (PCC). As a condition of the grant, PCC stipulated that the contract for the grant must be between PCC and CAM alone, as the lead bidder. PCC further required that CAM enter into an agreement with AB, binding AB to all terms to which CAM is bound under the grant agreement. This agreement is to formalise that arrangement and set out the terms of the partnership between CAM and AB in relation to the Coastal Connections project.**
- 1.4. Challenges Arising from Council Decision: The decision by PCC to exclusively contract with CAM, despite the joint bid and intended shared responsibility with AB, presents distinct operational and legal challenges. This arrangement necessitates CAM's sole legal interaction with PCC, placing CAM in a potentially complex position of mediating and managing any disputes that fundamentally involve AB's responsibilities in the project. Additionally, the stipulations require that CAM independently acquire the Property which diverges from the original intent of joint ownership, thereby altering the dynamics of property control and project management.**
 - 1.4.1. CAM's Risk of Dual-Front Litigation: In this arrangement, CAM is exposed to the risk of facing complex legal challenges on two fronts – addressing disputes with both PCC and AB. This situation could lead to increased legal complexities and costs, requiring careful navigation to balance obligations and responsibilities towards both the Council and AB.**

1.4.2. AB's Position and financial rights: AB secures a legal or equitable charge entitling it to 50% of the net (after any tax on sale) value of the property through this agreement. This arrangement ensures AB's entitlement to a proportionate share of the property's value. While AB does not hold direct legal or beneficial ownership, the legal or equitable charge effectively acknowledges its significant stake in, and financial interest in, the property.

1.5. Purpose of This Agreement: This agreement is crafted to actively mitigate these challenges, ensuring a balanced and equitable partnership between CAM and AB. It aims to provide a framework that respects the constraints imposed by PCC's decision, while facilitating operational harmony and fair risk and benefit sharing between the parties.

2. Property Ownership and Financial Contributions

2.1. CAM is currently in the process of acquiring the property known as "Land lying to the east of Glandy, Moylegrove, Cardigan SA43 3BW" (the Property), with Title Reference CYM760044. The agreed sale price for the Property is £145,000. This acquisition is in accordance with the terms of the Grant Agreement awarded by Pembrokeshire County Council for the Coastal Connections project. CAM has engaged solicitors for this purpose and exchanged contracts on 30 November 2023, paying a deposit of £14,500 from its own funds.

2.2. Background and Intent: Although AB is not a direct signatory to the Grant Agreement with Pembrokeshire County Council dated 23 November 2023, it acknowledges that the grant was initially pursued as a joint bid with CAM, with the intention of both parties being signatories. The Council's decision to contract solely with CAM as the lead party necessitates that CAM assume all obligations under the Grant Agreement initially. However, in keeping with the original intent of joint responsibility and benefit from the Grant Agreement on a 50:50 basis, AB recognises the necessity of acting in a manner that aligns with the terms and spirit of the Grant Agreement and hereby makes a binding commitment to consistently act in accordance with it.

2.3. Financial Contribution: As part of this commitment, AB agrees to pay CAM the sum of £50,000 by or before 8 December 2023. This payment represents AB's share of match funding, essential for enabling CAM to complete the acquisition of the Property on 11 December 2023.

2.4. Supporting Compliance: AB commits to facilitating CAM's compliance with the Grant Agreement. This includes undertaking all necessary actions and refraining from any actions that would hinder or impede CAM's ability to fulfil its obligations. Specifically, AB shall

adhere to the financial, operational, and reporting requirements indirectly applicable due to its involvement in the Coastal Connections project.

2.5. Objective of Compliance: Through these commitments, AB aims to ensure the successful execution and compliance of the Coastal Connections project in accordance with the Council's requirements.

2.6. Conditional Beneficial Ownership: In the event that AB fails to act in accordance with the terms and spirit of the Grant Agreement, thereby impeding CAM's ability to fulfil its obligations, AB's beneficial ownership in the Property shall be subject to adjustment.

2.7. Mechanism for Adjustment of Beneficial Ownership:

2.7.1.Trigger for Adjustment: The adjustment mechanism will be activated if AB fails to comply with its obligations under the Grant Agreement, as outlined in clause 2.6. This non-compliance must be substantial and demonstrably impact CAM's ability to fulfil its obligations under the Grant Agreement or lead to financial penalties, costs, or losses for CAM.

2.7.2.Independent Valuation:

2.7.2.1. Initial Selection Process: Upon CAM's identification of non-compliance necessitating valuation, CAM shall, within 14 days of notifying AB of the non-compliance propose a list of three independent valuers.

2.7.2.2. Selection of Valuer: AB will then select one valuer from this list within 7 days of receiving the proposals. The selected valuer's decision shall be final and binding on both parties.

2.7.2.3. Expertise and Impartiality: All proposed valuers must be accredited professionals with demonstrable experience in contract breach and property valuation and must not have any prior business relationship with either CAM or AB to ensure impartiality.

2.7.3.Valuation Criteria: The valuer will consider factors such as the extent of non-compliance, the direct financial impact on CAM (including any penalties or costs incurred), and any potential devaluation of the property or project as a result of the non-compliance.

2.7.4.Calculation of Adjustment: Based on this assessment, the valuer will determine the proportionate reduction in AB's beneficial ownership. This calculation will aim to equate the financial impact of non-compliance with a corresponding value of the property.

- 2.7.5.Implementation of Adjustment:** Following the valuation, the legal or equitable charge will be amended to reflect the new level of AB's beneficial ownership. This amendment will be executed as promptly as possible.
- 2.7.6.Notification and Dispute Resolution:** CAM will notify AB of the intended adjustment and provide a copy of the valuer's report. If AB disputes the findings, they may invoke the dispute resolution process outlined in clause 6.2 of this agreement.
- 2.7.7.Review and Finalisation:** The adjustment will be subject to review and finalisation as per the dispute resolution process. Once finalised, the adjustment in the Declaration of Trust becomes binding.
- 2.8. Formal Recognition of Beneficial Ownership:** Upon execution of this agreement and receipt of the £50,000 payment from AB, AB's legal or equitable charge will be recognised as equivalent to a 50% financial interest in the Property. This interest is conditional upon AB fulfilling the obligations as outlined in this clause 2. Failure to meet these conditions will result in a reduction of AB's beneficial interest as detailed in the Declaration of Trust.
- 2.9. Reinstatement of Beneficial Ownership:**
- 2.9.1.Initial Reduction:** In the event of a reduction in AB's beneficial interest due to non-compliance, as outlined in clause 2.6 and 2.7, the legal or equitable charge will reflect this adjusted interest.
- 2.9.2.Opportunity for Rectification:** AB shall be granted a period of 3 months from the date of any adjustment to rectify the non-compliance.
- 2.9.3.Assessment of Rectification:** At the end of this period, an independent assessment will be conducted to determine if AB has satisfactorily rectified the non-compliance issues. This assessment will be carried out by an independent party agreed upon by both CAM and AB.
- 2.9.4.Criteria for Reinstatement:** Reinstatement of AB's original beneficial interest is contingent upon a positive assessment of their rectification efforts. The criteria for this assessment will be based on the original terms of the Grant Agreement and any additional conditions agreed upon by CAM and AB.
- 2.9.5.Mechanism for Reinstatement:** If AB successfully rectifies the non-compliance, the legal or equitable charge will be amended to reinstate AB's beneficial interest to the original level prior to the reduction. This amendment will be executed as promptly as possible following the positive assessment.

2.9.6.Finality of Adjustment: If AB fails to rectify the non-compliance within the stipulated period, the adjustment in beneficial interest becomes final, and no further claims for reinstatement can be made under this clause.

3. Sale of Property

3.1. Procedure for Mutual Sale Post-December 31st, 2024:

3.1.1.Initiation of Sale Process: After December 31st 2024, either party may propose the sale of the Property by providing written notice to the other party. Upon receipt of such notice, both parties shall have a period of 30 days to agree mutually to proceed with the sale.

3.1.2.Appointment of Agent: If both parties agree to sell the Property, they shall jointly appoint a reputable estate agent to handle the sale. The agent shall be instructed to market the Property at a fair market value, agreed upon by both parties based on an independent valuation.

3.1.3.Independent Valuation: To determine the fair market value, an independent valuer shall be appointed, agreed upon by both parties. The valuer's determination of the market value shall be binding.

3.1.4.Marketing and Sale Process: The appointed agent will market the Property for sale. Both parties agree to cooperate fully with the agent to facilitate the sale, including providing necessary access, information, and support as required.

3.1.5.Acceptance of Offer: Any offers received shall be promptly communicated to both parties. A sale may only proceed with the written consent of both parties. If an offer is accepted, both parties shall instruct their respective solicitors to complete the sale process.

3.1.6.Distribution of Proceeds: Upon completion of the sale, the net (after any tax incurred on sale and payable by CAM) proceeds shall be divided equally between CAM and AB or as adjusted in accordance with the adjustment mechanism set out above..

3.2. In the event one party wishes to sell their interest in the Property and the other does not, the following mechanism will apply to determine fair market value:

3.2.1.An independent valuer, agreed upon by both parties, will be appointed to determine the fair market value of the Property.

3.2.2.The party wishing to retain their interest in the Property shall pay the departing party such share of the determined market value that fairly takes account of any actual or implied tax liability on sale and any adjustment in the share of ownership within 30 days.

4. Indemnification Post-Sale

- 4.1. Scope of Indemnification:** Following the sale or division of the Property, AB shall indemnify CAM against any and all liabilities, losses, claims, or damages arising from AB's failure to fulfil its obligations under the Grant Agreement. This indemnification includes, but is not limited to, any financial penalties, legal costs, or other expenses incurred by CAM.
- 4.2. Ongoing Obligations:** The sale or division of the Property does not absolve AB of its responsibilities under the Grant Agreement. AB remains liable for the fulfilment of all such obligations as if the Property were still jointly owned by CAM and AB.
- 4.3. Mechanism for Indemnification:** In the event that CAM incurs any costs or liabilities due to AB's failure to fulfil its obligations under the Grant Agreement post-sale, AB agrees to promptly reimburse CAM upon presentation of relevant proof of such expenses.

5. Risk Mitigation and Dispute Resolution

- 5.1.** In recognition of the potential for CAM to face dual-front disputes, this agreement includes specific provisions to mitigate such risks. In the event of a dispute arising from the Grant Agreement or related obligations, AB agrees to fully cooperate with CAM in resolving the matter, including joint legal strategy and sharing of legal costs, where appropriate.
- 5.2. Dispute Resolution:** Any disputes arising between CAM and AB regarding the interpretation or execution of this agreement shall be resolved through mediation before resorting to litigation. This approach aims to minimise the risk of protracted legal disputes and associated costs.

6. General Provisions

6.1. Governing Law:

- 6.1.1.** This agreement shall be governed by and construed in accordance with the laws of England and Wales. Both parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any disputes or claims that may arise out of or in connection with this agreement.

6.2. Dispute Resolution:

- 6.2.1.** In the event of any dispute arising out of or in connection with this agreement, the parties shall first seek resolution through amicable negotiations. If the dispute cannot be resolved through negotiation within thirty (30) days, the parties agree to submit the dispute to mediation. If mediation is unsuccessful, the dispute shall be finally resolved by arbitration under the rules of the London Court of International Arbitration (LCIA), which rules are deemed to be incorporated by reference into this clause.

6.3. Amendment and Termination:

6.3.1. This agreement may only be amended, modified, or supplemented by an agreement in writing signed by both parties. The agreement may be terminated at any time by an agreement in writing signed by both parties. If not otherwise terminated this agreement will terminate on 31 December 2034.

6.4. Notices:

6.4.1. Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, or by email, to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered, a notice sent by pre-paid first-class post or other next working day delivery service shall be deemed to have been received at 9.00 am on the second business day after posting, and a notice sent by email shall be deemed to have been received at 9.00 am on the next business day after sending.

6.5. Entire Agreement:

6.5.1. 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. Each party acknowledges 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.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

For Consulting AM Ltd (CAM):



Signature: _____

Name: [REDACTED]

Title: [REDACTED]

Date: 7 November 2023 _____

For Adventure Beyond Ltd (AB):

Signature: _____

Name: _____

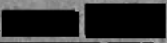
Title: _____

Date: _____ 7 December 2023 _____

For Adventure Beyond Ltd (AB):

Signature:

A large black rectangular box redacting the signature.

Name: 

Title: 

Date: 11 7 December 2023

