**DATED 2024**

**THE COUNCIL OF THE**

**BOROUGH OF LUTON**

**- and -**

**[INSERT NAME OF PROVIDER]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**CONTRACT**

in respect of the provision of certain Consultancy Services in connection with

BT1718 / DN723286 Luton Council Economy Strategy Report

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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| **Date of this Agreement**  This is the date on which the parties first become contractually bound to this Agreement | * The execution date of the parties indicated below, or * If the parties indicate different dates, on the later date. |

**Parties**

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|  | **Name** | **Address for Formal Notices**  **(or as communicated from time to time)** |
| **Council** | Luton Borough Council | c/- Inclusive Economy, Town Hall, George Street, Luton, LU1 2BQ |
| **Consultancy** | Indicate on award. Include any company number or equivalent | Indicate on award |

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| Background to this Agreement |  |
| Why the Council wishes to enter this Agreement | The Council requires an economy and growth strategy to align with the Council’s 2040 vision and to provide a framework for how best to deliver growth for the borough that will be inclusive and sustainable over 7 years. |
| How the Council awarded this Agreement to the Consultancy | * As a result of a public procurement exercise intended to be compliant with relevant Law and the constitution of the Council. * In the course of the above exercise, the Consultancy has offered to provide the Services on the terms of this Agreement. |

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| The agreement between the parties Each party agrees as follows, to be legally binding on them |  |
| Appointment and acceptance | * The Council appoints the Consultancy to provide the Services. * The Consultancy accepts that appointment. |
| The terms and conditions of this Agreement comprise all of the following  * As amended from time to time according to this Agreement * The paragraphs listed below take priority in the order they are listed to the extent of any inconsistencies between them **except** to the extent otherwise indicated |  |
| The Specification | The Specification. |
| Schedules etc. | Any and all schedules, annexures or anything similar to this referred to in and/or attached to this Agreement which are not described elsewhere in this paragraph 2.2. |
| Cover pages | These pages before the execution paragraphs. |
| Schedule 1 | The terms and conditions of this Agreement indicated in schedule 1. |
| Other documents | Each other document, website identified by a link, or anything similar to any of these to which all of the following apply   * It is cross-referenced in any document listed elsewhere in this paragraph 2.2. * Another relevant part of this Agreement indicates it is incorporated into this Agreement. * It (or in the case of a website, the relevant link) has been communicated between the parties. |
| Tender | * The Tender. * The Council may decide at its discretion from time to time that any part of Tender is to override any other paragraphs in the list in this paragraph 2.2. |
| How this Agreement must be executed to be valid | * In one or more counterparts, with each party executing at least one counterpart. * A single counterpart or a set of counterparts of this Agreement constitutes the original of this Agreement for all purposes. |

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| Executed by the parties (or on their behalf by their respective authorised representatives) as an agreement on the respective dates indicated below |

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|  | **The Council** | **The Consultancy** |
| Signature |  |  |
| Date of signature |  |  |
| Name of signatory (print) |  |  |
| Title or role of signatory (print) |  |  |

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| Schedule 1 – terms and conditions |

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| What the Council requires |

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| Description of the Services |  |
| Description of the Services which the Consultancy must provide under this Agreement | Completion of all of the deliverables indicated in the Specification according to this Agreement. |

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| When deliverables are completed |  |
| When each deliverable is considered to be completed for the purposes of this Agreement | When either of the following applies:   * It has been approved by the Council according to this section 4; * It is deemed to have been approved by the Council according to paragraph 4.5. |
| Due date by which the Consultancy must submit each deliverable for consideration by the Council | **First deliverable:** First draft to be presented by 15th September 2024; Final report by 15.10.24  **Second deliverable:** First draft to be submitted by 28.10.24; final report by 29.11.24  **Third deliverable:** First draft to be submitted by 28.10.24; final report by 29.11.24 |
| Basis (including any specific grounds) on which the Council may reject a relevant draft deliverable which the Consultancy has submitted for approval | Only if the deliverable does not meet the requirements of this Agreement (e.g. the draft deliverable does not properly answer the required questions, does not follow the required methodology). |
| Right of the Consultancy to resubmit a deliverable if it is rejected by the Council according to this section 4 | The Consultancy may do so. The Council is not required to consider a resubmission issued after the deadline indicated in paragraph 9.2. |
| Deemed approval of a deliverable | The Council shall be deemed to have approved a particular deliverable if the Council has not done any of the following:   * Rejected the deliverable, or * Raised genuine queries in relation to the deliverable, or * Genuinely sought further information or clarifications in relation to the deliverable   After more than **30 days** from the date when the Consultancy properly submitted that deliverable to the Council for its approval according to this section 4. |
| Consequences of approval (including deemed approval) of a particular deliverable by the Council | Approval or deemed approval by the Council shall not in itself:   * Relieve the Consultancy of its liability in connection with this Agreement in relation to that deliverable; and/or * Affect the rights and remedies of the Council and/or any other person in relation to the deliverable. |

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| Duty of care issues |

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| Duty of care |  |
| To whom the Consultancy owes a contractual duty of care under this Agreement | * Only to the Council. * To nobody else. |

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| How the Consultancy is to provide the Services |

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| The Consultancy’s methods |  |
| Methods or techniques (or anything similar to any of these) with which the Consultancy must comply in providing the Services | As indicated in Tender and in the Specification. |

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| General standards |  |
| The Consultancy must carry out its obligations under this Agreement according to the following standards as a minimumIf there is any inconsistency between any of these, the Consultancy must (as a minimum) meet the most stringent requirement described below |  |
| The Specification, Tender | According to any specific standards indicated in the Specification and/or in Tender. |
| Standards of a skilled person | According to the standard of skill, care, diligence, judgement and foresight which would reasonably be expected from an appropriately skilled, diligent and experienced person on the assumption that person is engaged   * In similar circumstances to those to which this Agreement relates; and * To carry out similar activities to those to which this Agreement relates. |
| Law | * In any case, in compliance with the standards and other requirements of relevant Law applying to the relevant activities. * This is a paramount obligation and overrides anything to the contrary elsewhere in this Agreement. |

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| Duration of activities |

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| Commencement of the Services |  |
| When the Consultancy must commence providing the Services under this Agreement | Promptly after this Agreement is executed. |

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| Completion deadline |  |
| Deadline (i.e. date, time etc.) by which the Consultancy must complete the Services under this Agreement | As previously indicated |
| Strict deadline for the completion of the Services (i.e. date, time etc.) It is a Termination Default Event of the Consultancy if the Services are not completed by that deadline. | All deliverables must be completed by 5pm on Friday 14th March 2025. |

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| About the Contract End |  |
| When is the Contract End of this Agreement | On the earlier of the following:   * The completion of the provision of the Services and the Council’s payment of Charges which the Council is liable to pay the Consultancy under this Agreement; * Its earlier termination according to this Agreement. |
| Consequences of a Contract End | * The rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties in connection with this Agreement (as relevant, to which the Contract End relates) shall discontinue. * **Exception:** to the extent indicated in paragraph 10.4. |
| If the Contract End only applies to part of this Agreement | Paragraph 10.2 only applies to that part and not to the rest of this Agreement. |
| Continuing rights, obligations etc.:The following rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties to this Agreement (and/or those of any third parties with rights under this Agreement) shall continue until they are completed, until they expire, or indefinitely, as relevant according to this Agreement  * Even if after the relevant Contract End * These are to be read independently |  |
| Already arisen, accrued | Those in connection with this Agreement which had already arisen or accrued on or before the Contract End. |
| Relating to certain events or circumstances | Those which relate to events or circumstances   * Which are connected with this Agreement; and * Which occurred on or before the date of the Contract End. |
| Interest | Any interest accruing on any liabilities in connection with this Agreement which relate to events or circumstances which had already occurred or arisen on or before the date of the Contract End. |
| Continuing nature | Those in connection with this Agreement which are expressed (or which are reasonably implied) in this Agreement to continue after the date of the Contract End. |

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| Financial arrangements |

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| The Charges |  |
| Amount or calculation of the Charges which the Council is liable to pay the Consultancy in consideration for the Consultancy carrying out its obligations under this Agreement To be subject to the rest of this Agreement | As indicated in the Tender. |
| About the Charges described in this section 11 | * The Charges **exclude** VAT or anything similar, unless otherwise clearly indicated. * The Charges are otherwise **all-inclusive** of the Consultancy’s costs in providing the Services, except to the extent otherwise * Agreed in writing by the Council at its discretion; and/or * Clearly indicated elsewhere in this Agreement. |

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| Claiming and making payments |

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| Invoicing by the Consultancy |  |
| Whether the Consultancy must submit invoices to the Council to trigger a liability of the Council to pay Charges described in section 11 | The Consultancy must do so according to this section 12. |
| When the Consultancy may issue invoices to the Council If the Consultancy issues an invoice earlier than permitted, the Council is not required to recognise that invoice for any purpose until the first day the Consultancy may have issued that invoice according to this paragraph 12.2 | * **On approval or deemed approval of the first deliverable:** 1/3 of the total Charges. * **On approval or deemed approval of the second deliverable:** 1/3 of the total Charges. * **On approval or deemed approval of the third deliverable:** 1/3 of the total Charges. |
| Deadline by which the Consultancy must issue a particular invoice | * No later than **60 days** after the date on which the Consultancy was first entitled to issue that invoice according to paragraph 12.2. * **If the Consultancy first issues a particular invoice after the relevant deadline:** the Council shall not be liable to pay that invoice, even if the Consultancy has satisfactorily met its obligations to which the invoice relates. This is because such delay is likely to cause difficulties for the Council in verifying the validity and accuracy of the invoice * **Exceptions where the above consequences do not apply to an invoice which the Consultancy’s submits after the relevant deadline:** (if any of the following applies to the delay in issuing the invoice): * The Council specifically requested that delay, in writing. * The Council has approved an extension to the deadline in writing (not to be unreasonably withheld where delays are substantially outside the Consultancy’s reasonable control). * The Council substantially caused the delay. |
| Formal requirements which the Consultancy must ensure its invoice meets (e.g. formats, accompanying documentation etc.) | * As instructed by the Council from time to time, acting reasonably. * The Council shall not be required to recognise the invoice if the invoice does not properly meet those requirements in place at the time. * If the Council has not raised any issues of non-compliance with such requirements with the Consultancy’s Representative (in writing) after more than **14 days** after the invoice has been issued (if issued by the relevant deadline of that invoice indicated in paragraph 12.3) that invoice shall be deemed to have met the relevant formal requirements from the date on which the Consultancy submitted it to the Council. |
| How and to where must the Consultancy send its invoices | * As instructed by the Council from time to time, acting reasonably. * The Council shall not be obliged to recognise any invoice if and for as long as the Consultancy has sent that invoice inconsistently with those instructions. |

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| Payment of Charges |  |
| Due date by which the Council must pay the Consultancy the Charges as indicated in an invoice which the Consultancy has submitted to the Council according to section 12 (subject to this Agreement) | **30 days** from the date on which the Council receives the invoice which the Consultancy submits in accordance with this Agreement (see in particular, section 12). |
| Whether the Council may (according to section 14) delay payment of Charges otherwise due according to this section 13 | The Council may do so. |
| How the Council must make payments of Charges to the Consultancy to discharge its liability to pay the Charges | By BACS into the Consultancy’s bank account as it communicates in writing to the Council from time to time. |

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| Right to delay payment |  |
| Actions which the Council may take (but is not obliged to take) if and for as long as any of the circumstances in paragraph 14.2 applies at the time | The Council may delay any payment which the Council is otherwise liable to pay the Consultancy under this Agreement, even if after the due date for payment. |
| The Council may take any of the actions described in paragraph 14.1 **if and for as long** as any of the following circumstances applies at the time |  |
| Overdue report, output etc. | * Any specific report, output, deliverable, proposal, plan, draft plan or anything similar to any of these which the Consultancy is required to provide the Council and/or its Affiliate under this Agreement **remains overdue at the time.** * **Exception:** if the Consultancy is delayed in doing so substantially and directly due to any Force Majeure Event described in section 40. |
| Remedying Material Breach | The Consultancy has still not yet properly remedied (to the reasonable satisfaction of the Council and/or its Affiliate) a Material Breach of this Agreement after the Council and/or its Affiliate has requested the Consultancy to do so, according to, and for the purposes of paragraph 46.2. |
| Removal of Personnel | The Consultancy has still not yet properly complied with any request for the removal of Personnel which the Council and/or its Affiliate has properly made according to section 25. |

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| Interest on late payment |  |
| Interest which accrues on overdue liabilities owed between the Council and the Consultancy  * In connection with this Agreement * Whether arising in tort, contract or otherwise * Regardless of which of them is the debtor or creditor * Unless otherwise indicated elsewhere in this Agreement | The relevant debtor shall be liable to pay interest to the relevant creditor as follows (in addition to the relevant principal):   * **At the following rate:** 4% per year above the Bank of England base rate at the time. If the Bank of England base rate falls below zero percent, for this purpose the base rate shall be deemed to be zero percent; * To compound monthly from the due date until payment, whether before or after judgement.   **Exception:** to the extent and for as long as the liability is subject to a genuine dispute which the debtor is using reasonable and genuine efforts to attempt to resolve. |

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| Set off |  |
| The rules in relation to the rights of set off, counterclaim, deduction (or anything similar to any of these) of either party as the **‘Set Off Creditor’** against the other party as the **‘Set Off Debtor’** |  |
| Liabilities from which the Set Off Creditor may deduct the liabilities described in paragraph (b) | Any liability to which all of the following apply   * It is owed by the Set Off Creditor and/or its Affiliate to the Set Off Debtor and/or its Affiliate in connection with this Agreement. * Regardless of whether that liability arises in tort, contract or otherwise. |
| Liabilities which the Set Off Creditor may deduct from the liabilities described in paragraph (a) | * Any overdue liability owed by the Set Off Debtor and/or its Affiliate to the Set Off Creditor and/or its Affiliate. * Regardless of whether that liability is connected with this Agreement. * Regardless of whether that liability arises in tort, contract or otherwise. * Including any unliquidated liability as estimated by the Set Off Creditor acting reasonably and in good faith. |
| Exceptions in relation to liabilities described in paragraph (a) or in paragraph (b) | Paragraph (a) and paragraph (b) do not apply to any liability which is alleged to be owed by any person to the extent that liability is subject to a genuine dispute which that person is using reasonable and genuine efforts to attempt to resolve. |
| Whether anything in this section 16 limits the rights and remedies of the Set Off Creditor | * No. * However, this section 16 fully indicates the Set Off Creditor’s rights of set off, counterclaim, deduction or anything similar in connection with this Agreement. |
| Obligation of the Set Off Creditor to communicate its intention to exercise its rights of set off, counterclaim, deduction or anything similar under this section 16 | * The Set Off Creditor must do so not less than **7 days** before exercising such rights. * The Set Off Creditor must communicate its intention to do so in writing to the Representative of the Set Off Debtor. * The formalities in section 52 are not necessary in relation to this communication. |

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| Suspension by the Consultancy for non-payment |  |
| Right of the Consultancy to suspend providing any of the Services as a result of overdue liabilities owed to the Consultancy by the Council(whether or not those liabilities are connected with this Agreement) | * The Consultancy may not do so for this reason alone. * The only rights and remedies of the Consultancy in relation to an overdue liability are as follows, if applicable: * To recover the relevant liability; and/or * To claim interest as relevant (according to section 15 if the liability relates to this Agreement); and/or * To exercise relevant termination rights (if any) if non-payment results in a Termination Default Event of the Council (see section 47). |

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| The Consultancy’s lien |  |
| The Consultancy’s lien rights over property of the Council in connection with this Agreement | These rights are waived to the fullest extent permitted by Law. |

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| About the parties |

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| The Consultancy as expert |  |
| Whether the Council relies on the Consultancy as a subject matter expert (yes/no) If yes, describe the field in which the Consultancy is a subject matter expert | The Council relies on the expertise of the Consultancy, being an expertise in the field relevant to the Council’s requirements. |

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| Factual promises of the Consultancy |  |
| The Consultancy warrants and represents the Council that each of the following (to be read independently) is materially true and materially correct at the date of this Agreement   * Excluding any exceptions sufficiently disclosed by the Consultancy to the Council in writing before the relevant date when the factual promise applies * In addition to other factual promises of the Consultancy indicated elsewhere in this Agreement |  |
| About the Consultancy generally |  |
| Claims made by the Consultancy | The claims the Consultancy has made about itself and/or about its subcontractors or the respective Personnel of the Consultancy and/or its subcontractors in the Tender are,   * Materially true; and * Not reasonably likely to be misleading (whether by omission or otherwise) to a reasonable person   To the best of the Consultancy’s knowledge having made reasonably necessary inquiries. |
| No changes to the Consultancy since Tender | * There have been no significant changes to the circumstances of the Consultancy and/or those of any subcontractor identified in the Tender compared to those disclosed in the Tender. * For this purpose, a significant change is one which would (on reasonable view) significantly and unfavourably affect the ability of the Consultancy to meet its obligations under this Agreement. |
| Not negligently or deliberately withheld information | There is no reasonably significant information about the Consultancy, its Personnel and/or its subcontractors to which all of the following apply   * The Consultancy has negligently or deliberately withheld that information from the Council; and * If that information had been sufficiently disclosed, it would be reasonably likely to have significantly affected the decision of the Council (acting reasonably in the circumstances) to enter into this Agreement on the relevant terms. |
| Non-routine investigations, claims | The Consultancy is not   * Under any non-routine investigation by any law enforcement or regulatory body for any serious matter; and/or * Subject to any Claims or disputes or other actions   Which are reasonably likely to result in any of the following   * The Consultancy being significantly and unfavourably affected in its ability to properly carry out its obligations under this Agreement. * Serious, unjustified and unfavourable publicity being brought to the Council and/or to its Affiliates. |
| Financial status of the Consultancy |  |
| Able to pay liabilities | The Consultancy is able to pay its liabilities (taking into account its contingent and prospective liabilities) when they fall due. |
| Various orders, resolutions, appointments etc. (if the Consultancy is a company or other entity other than an individual) | All of the following apply:   * The Consultancy is not subject to any outstanding order from a court (or equivalent) or resolution requiring it to be dissolved, wound up or the equivalent. * No liquidator, provisional liquidator, trustee, administrator, controller, receiver, or receiver and manager (or the equivalent to any of these in any other relevant jurisdiction) is currently appointed in relation to the Consultancy and/or its assets. * The Consultancy has no reasonable grounds to believe that any of the above is imminent. |
| Promised Subcontractors |  |
| All of the following apply in relation to each Promised Subcontractor indicated in paragraph 30.1 or that subcontractor’s replacement (as in place at the time when the relevant factual promise is given) |  |
| Contracts in place | The Consultancy has all reasonably necessary contractual arrangements in place to ensure that Promised Subcontractor is bound to carry out all of the relevant activities described in paragraph 30.1 in connection with the provision of the Services. |
| Investigations | The Consultancy is not aware (and has no reason to be aware having made reasonably necessary checks) that the Promised Subcontractor is under any non-routine investigation by any regulatory or law enforcement body   * For any serious matter * That is (on a reasonable view) likely to materially and unfavourably affect the Promised Subcontractor’s ability to carry out its relevant activities described in paragraph 30.1 in connection with the provision of the Services. |
| No changes in circumstances | * There have been no significant changes to the circumstances of the Promised Subcontractor in place at the time compared to the circumstances disclosed in writing to the Council when its approval of the Promised Subcontractor was first sought by the Consultancy (whether in Tender or otherwise). * This only applies to any such changes that on a reasonable view would significantly and unfavourably affect the Promised Subcontractor’s ability to carry out its relevant activities described in paragraph 30.1 in connection with the provision of the Services. |
| No circumstances preventing involvement | The Consultancy is not aware (and has no reason to be aware having made reasonable checks) of any circumstances preventing the Promised Subcontractor from carrying out its relevant activities described in paragraph 30.1 in connection with the provision of the Services in a proper way, and without unnecessary disruption. |
| Ability to carry out obligations |  |
| Sufficient systems, resources | The Consultancy has (whether directly or through permitted subcontractors) the necessary and sufficient systems, Personnel and other resources to carry out its obligations under this Agreement in a proper and punctual manner. |
| Due diligence | The Consultancy has satisfied itself (whether by making investigations, gathering information, seeking advice or taking any such other action it regards as sufficient) of all of the following   * That the Consultancy is able to carry out its obligations under this Agreement as follows: * As required in this Agreement; and * Without imposing charges or seeking reimbursement from the Council beyond the Consultancy’s entitlements which are clearly indicated in this Agreement. * The Consultancy understands the risks it faces in entering into this Agreement and in carrying out its obligations under it. |
| Third-party consents, regulatory approvals etc. | The Consultancy has obtained all necessary third-party consents, regulatory approvals or anything similar to enable it to do all of the following   * To enter into this Agreement. * To carry out its obligations under it according to this Agreement. |
| No breaches etc. | By entering into this Agreement and by carrying out its obligations under it, the Consultancy will not breach or infringe **any** of the following (to the best of its knowledge having made reasonably necessary inquiries)   * The Law. * Any duty which the Consultancy then owes a third-party (whether arising under tort, contract, statute, or otherwise). * The property rights (including rights in connection with Intellectual Property) of any third-party. |
| Competitive procedure |  |
| In any **competitive procedure** in which the Consultancy was awarded this Agreement, the Consultancy has **not** done any of the following: |  |
| Collusion | Colluded with (or engaged in any other anti-competitive conduct with) any other actual or potential tenderer. |
| Canvassing | Engaged in any canvassing activity with any Personnel of the Council and/or its Affiliates. |
| Corrupt Act | Done any act in relation to that competitive procedure that would breach paragraph 56.1 in relation to Corrupt Acts if that act were done after this Agreement is entered. |

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| Intellectual Property |

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| Intellectual Property – general statement |  |
| General statement regarding Intellectual Property | Except to the extent   * Clearly indicated elsewhere in this Agreement; or * Otherwise separately agreed between the parties in writing   A party to this Agreement and/or its Affiliate shall not (as a result of entering and/or exercising any rights and/or carrying out any obligations under this Agreement) acquire any right or interest in the separately acquired or separately developed Intellectual Property of the other party to this Agreement and/or its Affiliates or their respective third-party licensors. |
| Interpretation of any license over Intellectual Property granted by a party under this Agreement (except to the extent otherwise clearly indicated) | All rights which are not expressly granted by the licensor under that licence are reserved to the relevant licensor. |

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| Each party’s ownership of Arising Intellectual Property |  |
| Who owns Arising Intellectual Property as between the Council and the Consultancy | The Council or the Consultancy (or the relevant party’s contractors, other clients or third-party licensors) shall own whatever Arising Intellectual Property is created, developed or anything similar by that party or its own separate Personnel, its separate contractors or its other separate agents as a result of activities connected with this Agreement. |
| Licence to the Council |  |
| Licence for the benefit of the Council and its Affiliates |  |
| Who grants the licence (the licensor under this paragraph 22.2) | The Consultancy |
| To whom the licence is granted (each of them is the licensee under this paragraph 22.2) | * To the Council; and * Its Affiliates from time to time. |
| The Intellectual Property over which the licence is granted | * Any and all Arising Intellectual Property which is to belong to the Consultancy (and/or its respective third-party clients, contractors, licensors or anything similar) under paragraph 22.1; and * Any and all relevant Consultancy Background Intellectual Property of the Consultancy (and/or of its third-party contractors, licensors or anything similar) over which any Arising Intellectual Property (whether belonging to the Consultancy or the Council) depends. |
| Commencement of the licence | Immediately when the relevant Arising Intellectual Property Intellectual Property arising from the provision of the Services is first created, developed (or similar). |
| Main terms of the licence | It shall be a non-exclusive, worldwide, perpetual, royalty-free licence. |
| Permitted use of the licensed Intellectual Property | * The licensee may use that Intellectual Property in any manner (including modifying, adapting, enhancing, copying, loading, executing, interpreting, storing, transmitting, displaying, reverse compiling, decoding and translating it). * The licensee may only do so to enable it to properly enjoy the benefit of the Services. |
| Prohibited use of licensed Intellectual Property for which any licensee must not use the licenced Intellectual Property, even if otherwise permitted elsewhere in this licence | The Council must not use (or cause or assist or instruct anyone else to use) that Intellectual Property for any of the following activities:   * For unlawful activities. * For any activities which (on a reasonable view) compete with the Consultancy according to its business activities at the time when the arising Intellectual Property was created, developed or anything similar. * For activities which bring (or which create an unreasonable risk of bringing) significant, unjustified and unfavourable publicity to the Consultancy and/or its Affiliates. * For activities which damage the goodwill attaching to the licensed Intellectual Property. |
| Right of the licensee to assign or sub-licence this licence | The licensee may not do so without the prior written consent of the Consultancy, not to be unreasonably withheld. |
| General obligations of the Council if its Affiliate is a licensee | The Council must accept any breach of this licence by its Affiliate as if it were the Council’s own breach. |
| If any of the relevant Intellectual Property to which this licence relates belongs to the Consultancy’s third-party contractors, licensors or anything similar | The Consultancy must use reasonable efforts at its own cost to obtain a licence on these terms from that person in relation to that Intellectual Property. |

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| Personnel issues |

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| General obligations in relation to the Consultancy’s Personnel |  |
| The Consultancy’s general obligations in relation to its (and its subcontractor’s) Personnel engaged in connection with the provision of the Services |  |
| Sufficient Personnel | The Consultancy must ensure it and its relevant subcontractors have (between them) a sufficient number of Personnel to meet the Consultancy’s obligations under this Agreement. |
| Suitable | The Consultancy must ensure its Personnel are reasonably suitable for the tasks allocated to them in connection with the Consultancy’s obligations under this Agreement, having regard to their personal and professional characteristics (e.g. experience, qualifications, training etc.). |
| Directions | The Consultancy must give appropriate directions to ensure each of its Personnel carries out his/her relevant activities in connection with the provision of the Services in a competent, timely, professional, safe, ethical, courteous and lawful manner. |
| Levels of authority | The Consultancy must ensure its Personnel have been given levels of authority to bind the Consultancy which are appropriate to the relevant individual’s activities in connection with the provision of the Services. |
| Support | The Consultancy must provide its Personnel with such instructions, supervision, equipment, training and other resources and support that are appropriate and reasonably necessary to the relevant individual’s activities in connection with the provision of the Services. |
| Policies | * The Consultancy must have in place HR policies which meet or exceed standards reasonably expected of comparable firms or organisations. * The Consultancy must promptly provide the Council with copies of such policies on request (to be made reasonably and in good faith). |
| Not to cause breach | The Consultancy must not give its Personnel directions or assistance that would cause the Consultancy to breach its obligations under this Agreement. |
| Subcontractors | * The Consultancy must properly exercise its available rights and powers (whether under contract or otherwise) to ensure subcontractors which are significantly involved in activities in connection with the provision of the Services comply with this section 23 in relation to their own relevant Personnel engaged for such purposes. * This obligation does not apply where the subcontractor only takes a minor role in connection with those activities. |

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| Modern slavery and trafficking |  |
| The Consultancy must comply with all of the following obligations in connection with the provision of the Services regarding modern slavery and trafficking |  |
| Comply with Law | The Consultancy must comply with relevant Law, including the Modern Slavery Act 2015. |
| Supply chain | The Consultancy must use reasonable efforts (at its own cost and to the extent it is within its reasonable powers to do so) to ensure its supply chain used in connection with the provision of the Services complies with the rest of this paragraph 24.1. |
| Breaches of paragraph 24.1 by the Consultancy which are to be a Termination Default Event of the Consultancy | * Any breach of the Modern Slavery Act 2015 (or any reasonable equivalent Law applicable to the Consultancy or its Affiliate at the time) by the Consultancy and/or its Affiliate. * This applies even if the breach is minor. |
| Keep informed | The Consultancy must keep the Council informed in a proper and timely manner if the Consultancy becomes aware of any incident involving slavery and/or trafficking in connection with the provision of the Services.   * Within the Consultancy’s own organisation, and/or * Within the Consultancy’s supply chain. |

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| Removal of the Consultancy’s Personnel |  |
| Obligation to remove |  |
| The Consultancy’s obligation | The Consultancy must remove any of its (or its subcontractor’s) Personnel from involvement in the provision of the Services promptly on request of the Council according to this section 25. |
| When the Council may request removal of relevant Personnel | * Only with reasonable grounds. * See paragraph 25.3 for examples of reasonable grounds. |
| Examples of reasonable grounds for requiring removal of Personnel under this section 25 (where relevant and not to exclude other reasonable grounds that may apply, and to be read independently) |  |
| Incompetence | The individual has demonstrated serious incompetence in his/her allocated tasks in connection with the provision of the Services. |
| Misconduct | The individual’s serious misconduct in his/her activities in connection with the provision of the Services. |
| Corrupt Acts | * The individual carries out any Corrupt Act described in paragraph 56.1 in connection with the provision of the Services; and/or * Directs and/or assists another person to do so. |
| Person of ill repute | **All** of the following   * The individual is, or has become, a person of such serious ill repute * Whether or not in connection with the provision of the Services * To such an extent that a reasonable person would not expect **any** of the following * The individual to be involved in the provision of the Services; and/or * The individual to be associated with the Council generally. |
| Obligations of the Council before requesting removal of Personnel under this section 25 | The Council must do the following:   * Reasonably consult with the Consultancy, and * Give the Consultancy a reasonable opportunity to remedy or otherwise deal with the matter.   The above obligations of the Council do not apply where it is reasonable for the Council to require immediate removal of the individual. |
| Liability in relation to removal |  |
| Whether the Consultancy’s removal of any Personnel on the request of the Council under this section 25 in itself relieves the Consultancy of its obligations under this Agreement | No. |
| Liability of the Council for any Losses incurred by the Consultancy in connection with any third party Claim made or threatened against the Consultancy as a result of any request of the Council under this section 25 | The liability of the Council for any such Losses is excluded to the fullest extent permitted by Law, |
| Reinstatement |  |
| The Consultancy’s right to reinstate Personnel who have been removed under this section 25 | The Consultancy must not reinstate (or permit a relevant subcontractor to reinstate) the individual to become involved in the provision of the Services again without the prior written consent of the Council, given according to paragraph 25.8. |
| The Council’s consent for the purpose of paragraph 25.7 is to be given as follows: |  |
| Where the Council is not to unreasonably withhold consent to the reinstatement of an individual | * **If removal is for competence-related issues:** the individual is allocated to activities better suited to his/her abilities; and/or * **In any case:** the Council is satisfied (acting reasonably) that appropriate corrective action has been taken (where reasonably possible). |
| Otherwise | The Council’s consent is at its discretion. |

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| Key Personnel |  |
| Definition of ‘Key Personnel’ | * Each current Key Personnel indicated in paragraph 26.2; or * Each replacement appointed according to this Agreement (particularly this section 26) from time to time to have the involvement, role etc. with the provision of the Services as indicated in paragraph 26.2.   **If there are 2 or more individuals described in paragraph 26.2:** reference in this Agreement to a Key Personnel is reference to each of them. |
| Indicate the current Key Personnel of the Consultancy whom the Consultancy must use in certain activities connected with the Services |  |
| **Involvement, required role etc. in connection with the Services** | **Current named individual** |
| As indicated in Tender in relation to the overall supervision of the Services | As indicated in Tender. |
| The Consultancy must do all of the following in relation to each Key Personnel in place at the time |  |
| Contracts in place | The Consultancy must ensure it has appropriate contracts in place to ensure the Key Personnel can have the relevant involvement, role etc. as required in paragraph 26.2. |
| Directions | The Consultancy must give the Key Personnel appropriate directions to ensure he/she gives appropriate time and attention to his/her involvement, role etc. described in paragraph 26.2. |
| Absence | The Consultancy must ensure suitable cover for the Key Personnel’s duties during the Key Personnel’s genuine and reasonable absences from work (e.g. illness, disability, jury service, maternity or paternity leave, genuine holidays, bereavement etc.). |
| Not to terminate | The Consultancy must not terminate either of the following while the Consultancy is required to provide any of the Services under this Agreement:   * **If the Key Personnel’s contract is with the Consultancy directly (e.g. he/she is an employee, officer, worker or direct contractor of the Consultancy):** the Consultancy’s contract with the Key Personnel, except due to his/her serious default. * **If the Key Personnel’s contract is NOT with the Consultancy directly (e.g. he/she is an employee, officer, worker or direct contractor of a direct or indirect subcontractor of the Consultancy):** the Consultancy’s contract with the Key Personnel’s employer (or a relevant subcontractor higher in the supply chain if relevant), except due to its serious default. |
| Right of the Consultancy to remove the Key Personnel from his/her required involvement in the provision of the Services whilst he/she still remains an employee, officer, worker or direct contractor of the Consultancy | * Only with the written consent of the Council. * The Council must not withhold that consent where the removal of the Key Personnel is made for good reasons. See paragraph 26.5 for examples. * In any case, the Council may withhold that consent until it is satisfied (acting reasonably) with arrangements regarding a replacement. |
| Examples of good reasons for the Consultancy to remove the Key Personnel under paragraph 26.4 whilst he/she still remains an employee, officer, worker or direct contractor of the Consultancy (any of the following, not an exhaustive list) | * The removal is for genuine purposes relating to the career development of the individual (e.g. a genuine promotion). * The individual has made a genuine request to be relocated to another location (e.g. another part of the country, another country) where his/her continued involvement in the provision of the Services is not reasonably practicable. * Serious illness, maternity, or other factors affecting the individual where his/her continued involvement in the provision of the Services is not reasonably practicable. |
| The Consultancy must replace the Key Personnel from time to time but only if any of the following applies |  |
| Removal | The Consultancy removes the Key Personnel under paragraph 26.4. |
| If the Key Personnel is directly contracted by the Consultancy E.g. he/she is an employee, officer, worker or direct contractor of the Consultancy | The Consultancy’s contract with the Key Personnel ends for any reason other than due to termination by the Consultancy without the Key Personnel’s serious default (e.g. due to the Key Personnel’s death, resignation or retirement, dismissal for serious default). |
| If the Key Personnel is NOT directly contracted by the ConsultancyE.g. . he/she is an employee, officer, worker or direct contractor of a direct or indirect subcontractor | * The Consultancy’s contract with the Key Personnel’s employer ends for any reason; or * The Key Personnel’s contract with his/her employer ends for any reason. |
| Requested removal | The Council has required the removal of the Key Personnel from his/her activities in connection with the provision of the Services according to section 25. |
| Absence | Either of the following:   * If the Key Personnel is absent from his/her duties in relation to the provision of the Services for any reason (e.g. illness) for a continuous period of **30 days**; or * If the Key Personnel (or his/her employer, if he/she is employed by a direct or indirect subcontractor of the Consultancy) has indicated that the Key Personnel expects to be absent during the term of this Agreement for a continuous period of **30 days** for any reason (e.g. illness, maternity etc.), in which case the Consultancy must replace the Key Personnel when his/her anticipated absence commences. |
| Approval rights of the Council in connection with the appointment of any replacement Key Personnel from time to time | The Council must accept a replacement proposed by the Consultancy unless   * The Council has reasonable grounds to object to the proposed replacement; and * The Council has raised the objection no later than the later of the following: * **If the Council has NOT requested the cooperation described below after more than 7 days after the proposed replacement was first communicated by the Consultancy to the Council:** **7 days** after the date of that communication. * **If the Council has requested the cooperation described below 7 days or less after the proposed replacement was first communicated by the Consultancy to the Council:** **7 days** after the last date on which the Consultancy provided that cooperation.   The Consultancy must provide the Council with reasonable cooperation in relation to the proposed replacement (e.g. providing CVs, allowing an interview) if reasonably requested by the Council to enable the Council to determine whether or not to object to the appointment. |
| Consequence if  * The Consultancy is required to replace a Key Personnel under paragraph 26.6; and * The Consultancy has not proposed a replacement (other than those in relation to whom the Council has objected under paragraph 26.7) within a certain period | It shall be a Termination Default Event if and for as long as the Consultancy has not proposed a replacement more than **30 days** after the Consultancy was first required to replace the relevant individual under paragraph 26.6. |
| **Keeping informed:** the Consultancy must keep the Council informed promptly on the Consultancy first becoming aware of any of the following in relation to the Key Personnel at the time |  |
| Anticipated temporary absence | The Consultancy becoming aware of any significant anticipated temporary absence of the Key Personnel from his/her requirement involvement in the provision of the Services for any reason (e.g. illness, maternity etc.). |
| Termination notice | * Any notice given by or to the Key Personnel to terminate his/her contract with the Consultancy or (if he/she is engaged by a subcontractor) his/her contract with that subcontractor. * **If the Key Personnel has his/her contract with a direct or indirect subcontractor of the Personnel:** any such termination notice given between the Consultancy (or any relevant subcontractor higher in the supply chain, if relevant) and the relevant subcontractor with whom the Key Personnel has his/her contract (but only insofar as the termination affects this Agreement). |
| Death, disability | The death or total and permanent disability of the Key Personnel. |

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| TUPE |

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| No transfers of employment |  |
| Whether the employment of any individual is expected transfer under the Transfer of Undertakings (Protection of Employment) Regulations (2006) in connection with any service provision change on the commencement or cessation of any part of the provision of the Services | No given that this is a new service (i.e. no previous service provider) and a short term project (TUPE not expected on the cessation of the Services). |

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| Subcontracting |

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| Liability for the acts of subcontractors |  |
| Liability of the Consultancy for the acts or failures to act by any subcontractor directly or indirectly appointed by the Consultancy in connection any part of the provision of the Services | * The parties must regard any act (or failure to act) by any such subcontractor in connection with any part of the provision of the Services as if it were the Consultancy’s own act or failure to act if the Consultancy were responsible for those activities directly. * This does not limit any person’s rights and remedies against the subcontractor directly. |

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| Paying subcontractors |  |
| Subcontractors to which the obligations of the Consultancy in this section 29 apply | Each subcontractor appointed directly by the Consultancy in connection with the provision of the Services. |
| The Consultancy’s obligations |  |
| Main obligations | * The Consultancy must pay each subcontractor described in paragraph 29.1 the charges, fees or the similar which the Consultancy is liable to pay the subcontractor under the relevant subcontract by the deadline in paragraph 29.3. * The Consultancy is only required to do so insofar as those charges, fees or anything similar relate to the subcontractor’s activities connected with the provision of the Services (and not to unrelated dealings between the Consultancy and the subcontractor). |
| Deadline by which the Consultancy must pay the subcontractor those charges | The earlier of the following after the Consultancy’s receipt of a relevant invoice from the subcontractor:   * **30 days**; or * Such shorter period if any according to the payment terms in the relevant subcontract. |
| Requirements of the subcontractor’s invoice for the purposes of paragraph 29.3 | The Consultancy’s obligations under paragraph 29.2 only apply to invoices of the subcontractor to the Consultancy which are   * Valid having regard to the terms of the subcontract; and * Not subject to a genuine dispute which the Consultancy is using reasonable and genuine efforts to attempt to resolve in a timely way. |

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| Promised Subcontractors |  |
| Each current subcontractor which the Consultancy must engage in connection with particular activities in connection with the provision of the Services Each of them is a current **‘Promised Subcontractor’** |  |
| **Name of current Promised Subcontractor** | **Brief description of required activities of the Promised Subcontractor for as long as those activities remain part of the provision of the Services** |
| As indicated in Tender. | As indicated in Tender. |
| The Consultancy requires the prior written consent of the Council before doing any of the following in relation to a Promised Subcontractor in place from time to time The Council must not unreasonably withhold that consent) |  |
| Extending deadline | Extending the deadline described in paragraph 30.3. |
| Terminating subcontract | Terminating the Consultancy’s contract with the Promised Subcontractor insofar as termination affects the activities for which the Consultancy must engage the Promised Subcontractor under paragraph 30.1. |
| Replacement | Appointing a replacement Promised Subcontractor from time to time for the relevant activities described in paragraph 30.1. |
| The Consultancy carrying out activities | The Consultancy itself carrying out the relevant activities of the Promised Subcontractor as described in paragraph 30.1. |
| If a Promised Subcontractor discontinues any of its required activities described in paragraph 30.1 for any reason (e.g. termination of the relevant subcontract), the deadline by which the Consultancy must have suitable alternative arrangements in place E.g. to have found a replacement, to have taken on the responsibility for the relevant activities itself | Either   * **30 days** from the discontinuation of the relevant Promised Subcontractor; or * Such later deadline permitted in writing by the Council (acting reasonably).   This is subject to the consent of the Council descried in paragraph 30.2.  The Consultancy must give the Council enough time to properly consider the Consultancy’s proposed alternative arrangements to ensure those arrangements can be in place before this deadline. |
| Consequences if the Consultancy fails to have suitable alternative arrangements in place by the deadline in paragraph 30.3 | * It shall be a Termination Default Event of the Consultancy. * This does not limit the Council’s rights and remedies. |

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| Subcontracting – no consent |  |
| Whether the consent of the Council is required if the Consultancy wishes to appoint any subcontractors to carry out any activities in connection with the provision of the Services (whether directly appointed by the Consultancy or indirectly by any intermediary subcontractor) | Not required. |
| Exception to paragraph 31.1 | In relation to the replacement of any Promised Subcontractor in relation to any activity reserved for Promised Subcontractors in paragraph 30.1. |

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| Confidentiality |  |
| What is ‘Confidential Information’ |  |
| Each of the following is Confidential Information of the Council and/or its Affiliates respectively as a ‘Discloser’ (to be read independently) |  |
| Business activities | Information relevant to the Discloser’s business activities generally, including for example   * The Discloser’s operations, business strategies, plans, financial arrangements, financial information and third-party disputes * The Discloser’s Personnel and human resources activities generally * The Discloser’s services * The Discloser’s data, including personal data in relation to which it is the data controller or data processor for the purposes of the Data Protection Legislation * Details relating to the Discloser’s customers, clients or anything similar * Information relating to any other person to whom the Recipient knows (or reasonably ought to know) the Discloser owes a duty of confidentiality (whether under contract, by Law or otherwise) |
| Dispute resolution | Disclosures made by the Discloser in the course of any dispute resolution procedure described in section 53. |
| What is Confidential Information of the Consultancy as a ‘Discloser’ Each of the following, to be read independently |  |
| Charges | * The Consultancy’s Charges from time to time according to section 11. * But only to the extent the Charges have been uniquely determined by the Consultancy or privately negotiated between the parties for the purposes of this Agreement (e.g. they are not set by the Council, they are not publicly-available etc.). |
| Tender | The contents of a genuinely confidential nature in Tender to the extent those contents are not repeated elsewhere in this paragraph 32.2. |
| Intellectual Property | The Consultancy’s Intellectual Property   * Which it has separately developed; and * Which is not held in any format to enable it to be known to the public generally without the Discloser and/or its Affiliate requiring acceptance of confidentiality obligations to the Discloser and/or its Affiliate by the relevant member of the public. |
| Subcontractor, Personnel | Any information relating to   * Any subcontractor appointed directly or indirectly by the Consultancy in connection with the provision of the Services; and/or * Any Personnel of the Consultancy or its subcontractors;   Which the Consultancy and/or its agents have disclosed that information in writing to the Council and/or its other agents in connection with the provision of the Services. |
| Monitoring | Information of a confidential nature   * About the Consultancy and/or its Affiliates and/or its subcontractors (e.g. its financial condition, any significant incident, any prospective internal changes, its costs, Personnel information etc.) * Given or made available to the Recipient from time to time * In connection with this Agreement   Whether in providing regular reports, at meetings, in the course of any inspection, audit or anything similar conducted by or on behalf of the Recipient, or otherwise. |
| Dispute resolution | Disclosures made by the Discloser in the course of any dispute resolution procedure described in section 53. |
| Rules regarding how the information must be disclosed etc. to be considered a relevant Discloser’s Confidential Information |  |
| How the information must be disclosed or made or available to the relevant Recipient | * In any manner or in any medium (e.g. in writing, verbally, by observation at the relevant Discloser’s premises, contained in any device or material etc.). * But only in activities reasonably connected with the provision of the Services. |
| Whether the information must be labelled as ‘confidential’ (yes/no) | Not required. |
| By whom must the information be disclosed or made available (according to this paragraph 32.3 | It may be disclosed or made available by or on behalf of the relevant Discloser to the relevant Recipient (and/or anyone else acting on its behalf). |
| A piece of information of a relevant Discloser is not in any case Confidential Information of a relevant Discloser if any of the following applies to that piece of information at the time |  |
| In public | * The piece of information is at the time held in any format to enable it to be known to the public generally without the Discloser and/or its Affiliate requiring acceptance of confidentiality obligations to the Discloser and/or its Affiliate by the relevant member of the public. * **Exception:** if it has first entered the public domain as a result of any breach of a duty of confidentiality owed by the relevant Recipient under this Agreement. |
| Independently acquired | * The relevant Recipient and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third-party in circumstances unconnected with this Agreement. * **Exception:** where the Recipient knows or has reasonable grounds to suspect that the third-party is in breach of confidentiality obligations owed to the Discloser and/or its Affiliate. |
| Trivial | The information is of a trivial nature. |
| Confidentiality obligations |  |
| The relevant Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the relevant Discloser in the possession of the Recipient from time to time These obligations continue for the period indicated in paragraph 32.6 |  |
| Non-disclosure (except to the extent permitted in in paragraph 32.7) | The Recipient   * Must keep that Confidential Information strictly in confidence, and * Must not disclose it or make it available to third parties. |
| Not to copy, use | * The Recipient must not copy, modify, reverse engineer or otherwise use that Confidential Information for any purpose other than for legitimate purposes connected with the provision of the Services. * As examples of the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser. |
| **Storage:** the Recipient (where it is the Consultancy) must store the Confidential Information as follows: |  |
| Reasonable standard | To a reasonable standard of security. |
| Comparable | In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality. |
| Period of the Recipient’s obligations in paragraph 32.5 in relation to each piece of the Discloser’s Confidential Information | * **3 years** from the Contract End of this Agreement; or * Such longer or shorter period required by Law in relation to that piece of Confidential Information; or * In any case, when the piece of Confidential Information ceases to be ‘Confidential Information’ of the Discloser according to paragraph 32.4. |
| Exceptions to obligations |  |
| **Permitted disclosures:** the Recipient is permitted to disclose or make available any Confidential Information of the Discloser  * Only in at least one of the following circumstances * Regardless of paragraph 32.5(a) |  |
| Consent | With the prior written consent of the Discloser, subject to the Recipient’s compliance with any conditions attached to that consent. |
| Disclosures to any of the following Subject to paragraph 32.8 |  |
| Personnel | To the genuine existing or prospective Personnel of the Recipient and/or its Affiliates. |
| Advisors etc. | To the Recipient’s genuine existing or prospective advisers, contractors, consultants, agents, insurers, funders, shareholders or other investors, or purchasers of the business of, and/or shares in, the Recipient, auditors and banks. |
| Public body | Any public body authorised to review this Agreement. |
| Assignment, novation | Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of this Agreement. |
| Relevant Disputes | Relevant third parties engaged for the purpose of resolving Relevant Disputes under section 53. |
| Third parties with rights | Any third-party described in paragraph 57.2 with rights, powers or benefits (or similar to these) under this Agreement for the purpose of advising the third-party of such rights, powers or benefits (or similar to these). |
| Required by Law Subject to paragraph 32.9 | To the extent the Recipient is required to disclose or make available the Confidential Information by Law to any of the following (for example):   * A court or anything similar body. * A regulatory body. * A stock exchange. * **If the Recipient is the Council in carrying out its normal public functions:** a genuine public auditor, the UK Parliament or other genuine public body, or as required under any FOI Act (as defined in section 33). * A law enforcement body. |
| All of the following rules apply to the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person under paragraph 32.7(b) |  |
| Need to know | The Recipient may only disclose (or make available) that Confidential Information to that person   * In good faith; and * Only on a strict ‘need to know’ basis. |
| Treating unauthorised disclosures etc. | * The parties must regard any unauthorised disclosure or other misuse of such Confidential Information by any such person as if it were the Recipient’s own act. * This does not in itself limit the Discloser’s rights against that person. |
| Separate confidentiality agreement | * The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms. * The Recipient is only obliged to do so if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances. |
| The Recipient must comply with all of the following if it is compelled by Law to disclose or make available any Confidential Information of the Discloser for the purposes of paragraph 32.7(c) |  |
| Inform | The Recipient must inform the Discloser of the circumstances   * With sufficient detail and accuracy and * Promptly on becoming aware of the obligation to make the compelled disclosure. |
| Make person aware | The Recipient must make the person compelling the disclosures aware of the duty of confidentiality owed to the Discloser in relation to the relevant information. |
| Assist the Discloser to challenge | * The Recipient must provide the Discloser with reasonable and timely assistance on the Discloser’s request if the Discloser wishes to challenge the compelled disclosure. * The Discloser must reimburse the Recipient for the Recipient’s reasonable and sufficiently evidenced costs in providing that assistance. |
| Keep to minimum | The Recipient must keep such disclosures to the minimum it is compelled to disclose or make available. |
| Exceptions to the rest of this paragraph 32.9 | * The rest of this paragraph 32.9 does not apply If disclosure is required under any FOI Act. * This is covered in section 33. |
| Reporting to police etc. | Nothing in this Agreement prevents any person disclosing any Confidential Information of a relevant Discloser in connection with the genuine reporting of any breach of the Law of any person (including the Discloser) to the police and/or or to other relevant law enforcement bodies. |
| Providing references | Nothing in this Agreement prevents the Council disclosing (fairly, in good faith and with material accuracy) any information relating to the performance of the Consultancy in connection with the provision of the Services in connection with any genuine request for a reference by another prospective or existing customer or client of the Consultancy. |

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| Freedom of information |  |
| What are the **FOI Acts** for the purposes of this section 33 | The Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. |
| The extent to which the Consultancy considers any of its information to be ‘commercially sensitive’ for the purposes of any FOI Act | * To the extent indicated by the Consultancy to the Council in writing from time to time. * This is for indicative purposes only. It is not binding on the Council. |
| Consequences if the Council receives a request for information under any FOI Act involving information of the Consultancy in relation to this Agreement (all of the following to the extent relevant) |  |
| Rights of the Council | The Council may make its own determination according to Law as to whether or not to provide that information to the person making the request. |
| Extent to which the Council is required to consult etc. | The Council is not obliged under this Agreement to consult the Consultancy or anyone else in relation to that request for information. |
| Consequence if the Council does consult the Consultancy and/or anyone else | The Council is not obliged under this Agreement to have regard to the views of the Consultancy and/or anyone else. |
| To what this paragraph 33.3 is subject | It is subject to the Council complying with the Department of Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 to the extent that compliance is permissible and reasonably possible. |

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| Announcements and publicity |  |
| Restrictions on the Consultancy making announcements and/or giving itself publicity in connection with this Agreement E.g. press releases, public circulars, interviews etc. | * The Consultancy must not do so without the prior written consent of the Council. * The Council must not unreasonably withhold that consent. |
| Restrictions on the Consultancy and/or its Affiliate using any reference to the Council and/or its Affiliates (including use of its logos or other branding) in the publicity materials of the Consultancy and/or its Affiliate | * The Consultancy must not do so without the prior written consent of the Council. * The Council must not unreasonably withhold that consent. |
| Other | * The Consultancy must not assist or instruct another person to do any act that would breach this section 34 if that act were done by the Consultancy directly. * If the Consultancy’s Affiliate and/or any Personnel of the Consultancy or its Affiliate does any such act, the onus will lie with the Consultancy to prove it was not done with the Consultancy’s instruction and/or assistance. |

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| Data protection |  |
| Status of each party from time to time regarding any personal data in its possession or control in connection with this Agreement | * Each party is to determine the purposes for which that personal data will be held and used. * Therefore, each party is to be a ‘controller’ (and not a ‘processor’ for the other party) in its own right in relation to that personal data for the purposes of the Data Protection Legislation. |
| General obligations of each party in relation to personal data in its possession or control in connection with the provision of the Services in relation to which it is a controller | * Each party must comply with relevant Law (particularly any Data Protection Legislation) in relation to the holding and processing of that personal data. * This is a paramount obligation. Nothing elsewhere in this Agreement overrides this obligation. |
| Interpretation | The definitions in the Data Protection Act 2018 apply to this section 35 and to this Agreement unless otherwise indicated in this Agreement. |

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| Exclusivity |

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| Exclusivity obligations |  |
| Whether either party is obliged under this Agreement to deal with the other party on an exclusive basis | No. |

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| Contract monitoring |

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| Reporting obligations |  |
| Regular reports which the Consultancy must supply the Council Indicate for each regular report   * The content required * The frequency with which the Consultancy must supply it to the Council * The due date by which the Consultancy must supply it to the Council * Any other requirement | As indicated in the Specification. |
| Circumstances where the Consultancy must provide the Council with further reports in addition to the regular reports indicated in paragraph 37.1 | The Consultancy must provide such additional reports if requested in writing to do so by the Council.  The Consultancy must do so by any deadlines set by the Council which are reasonable in the circumstances.  The Council may only make such request for such additional reports acting reasonably and proportionately, and giving the Consultancy advance warning which is reasonable in the circumstances, and only where any of the following applies   * There has been a Material Breach of this Agreement by the Consultancy, even if it has been remedied. * The Consultancy has persistently failed to meet any one or more of its specific obligations under this Agreement. |
| Format requirements of reports required under this section 37 | As directed by the Council from time to time, acting reasonably. |
| How the Consultancy must provide reports required under this section 37 to the Council | By e-mail to the Council’s Representative, or as the Council otherwise reasonably instructs. |
| General obligations of the Consultancy in relation to reports it is required to send under this section 37 | The Consultancy must ensure required reports are:   * Materially accurate; and * Not materially misleading (or reasonably likely to materially mislead) due to any inaccuracies or omissions. |

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| Keeping informed |  |
| Events or circumstances on which the Consultancy must keep the Representative of the Council informed under this section 38   * In writing where reasonably possible * In a proper and timely manner when the Consultancy first becomes aware of the matter * The Consultancy must keep the Representative (or other appropriate Personnel of the Council) informed in a proper and timely manner of significant progress of events as they occur in relation to the relevant matter * This is in addition to any other specific obligations under this Agreement to inform the Council on a particular matter |  |
| Unable to meet obligations | The Consultancy being unable to significantly meet its obligations in connection with the provision of the Services. |
| Any event or circumstance (e.g. accident or other incident) relating to activities of the Consultancy or its subcontractors in connection with the provision of the Services which cause, or creating an unreasonable risk of causing any of the following |  |
| Harm to individuals | Death or serious personal injury or other serious harm to any human being where the Consultancy knows (or reasonably ought to know) that human being is owed a duty of care by the Council, including any employee of the Council. |
| Breach Law | The Council breaching any Law. |
| Duty of care | The Council breaching any duty of care it owes to any third-party (whether under tort, contract, statute or otherwise) where the Consultancy knows (or reasonably ought to know) about the duty of care owed to that person. |
| Infringing property rights | The Council infringing any property rights (including any Intellectual Property rights) of any third-party where the Consultancy knows (or reasonably ought to know) of that consequence. |
| Adverse publicity | The event or circumstance affects the Consultancy, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with the provision of the Services where (if that event or circumstance were publicly known), it would create an unreasonable risk of serious, unjustified and unfavourable publicity to the Council and/or its Affiliates due to its association with the Consultancy. |
| Winding up | Any order of a court (or equivalent) being made or any resolution being passed requiring the Consultancy to be dissolved and/or wound up. |
| Appointments | The appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Consultancy and/or its assets. |
| Stock exchange notices | If the shares of the Consultancy are listed on a stock exchange, any profit warnings in relation to the Consultancy which are issued to that stock exchange. |
| Conflict | Any conflict of interest between the Consultancy (and/or its Affiliates and/or their Personnel) and the Council and/or its Affiliates. |
| Investigations, prosecutions, disputes | Any   * Non-routine third-party investigation (e.g. by the police, a regulatory body), and/or * Prosecution (or anything similar) and/or * Third-party dispute affecting the Consultancy and/or its subcontractors that is (on a reasonable view) likely to significantly and unfavourably affect the Consultancy’s ability to carry out its obligations under this Agreement. |
| Corrupt Acts | Any breach by the Consultancy of paragraph 56.1. |
| Representative | Changes to the Consultancy’s Representative from time to time. |
| In relation to Promised Subcontractors | Any notice of termination given by or to any Promised Subcontractor (in place from time to time according to section 30) insofar as its termination affects any part of the provision of the Services. |

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| Issues outside the Consultancy’s control |

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| Council Assistance |  |
| The following are the assistance which the Council is to provide the Consultancy to enable the Consultancy to meet its obligations under this Agreement Each of them is **‘Council Assistance’** | As indicated in the Specification and the Tender. |
| About resources NOT to be provided by the Council as Council Assistance | The Consultancy must provide or otherwise obtain all of the necessary resources (e.g. labour, materials, equipment, consumables, data, Intellectual Property etc.) necessary to provide the Services according to this Agreement which is not otherwise provided by the Council as Council Assistance under paragraph 39.1. |

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| Force majeure |  |
| Definition of ‘Force Majeure Events’ |  |
| Each of following is an ‘Force Majeure Event’ for the purposes of this Agreement  * Only to the extent each of them is genuinely outside the Consultancy’s reasonable control; and * Only to the extent each of them directly and substantially disrupts the Consultancy’s ability to meet its affected obligations under this Agreement without imposing significant additional cost to the Consultancy and/or without imposing significant risk of harm to relevant Personnel and/or property loss or damage to the Consultancy and/or its agents * These are to be read independently |  |
| Council Assistance failure | Failure by the Council to provide any Council Assistance indicated in section 39 according to any specific requirements indicated in section 39. |
| Required by Law | The Consultancy is required by Law to suspend any activities it is required to carry out under this Agreement. |
| As required by the Council | * The Council requires the Consultancy to suspend the affected obligations, even if the Consultancy is willing and able to carry them out. * The Council must have reasonable grounds to impose this requirement. |
| Force Majeure Events – suspension of activity |  |
| Whether the Consultancy is obliged to suspend or simply permitted to suspend activities connected with this Agreement as a result of relevant Force Majeure Events | * The Consultancy is obliged to suspend the activity if it is required to do so by Law under paragraph 40.1(b) and/or by the Council under paragraph 40.1(c). * Otherwise, the Consultancy is simply permitted (but not obliged) to do so but only to the extent the relevant Force Majeure Event substantially and directly disrupts the relevant activities. |
| Obligation to communicate | The Consultancy must communicate its intention to suspend carrying out such activities as follows   * To the Council’s Representative or (in any emergency) other suitable Personnel of the Council; and * Indicating in sufficient detail the following: * The nature of the Force Majeure Event * The activities to be suspended * Any estimate of the duration of the suspension, if possible * The Consultancy must provide this communication in writing if reasonably possible. |
| Whether the Consultancy must communicate the matter under paragraph 40.3 if the Council has required the suspension under paragraph 40.1(c) | Not required. |
| Steps to suspend due to Council Assistance failure | if the Consultancy wants to suspend its relevant activities under this section 40 if the Force Majeure Event is any failure by the Council to meet any Council Assistance described in section 39 (i.e. the Force Majeure Event described in paragraph 40.1(a)) the Consultancy must raise the matter as follows   * In writing to the Representative and/or the Escalated Person of the Council. * No later than **5 Business Days** from the day on which the Consultancy first became aware of the failure.   The Consultancy is not entitled to suspend such activities in relation to a particular failure by the Council if the Consultancy does not strictly follow these steps by the relevant deadline. |
| Extent to which the Consultancy may suspend its activities in connection with the provision of the Services as a result of any Force Majeure Event |  |
| If the Consultancy is required to suspend its activities by Law under paragraph 40.1(b) | The Consultancy may only suspend the activities to the extent required by Law. |
| If the Council has required the suspension under paragraph 40.1(c) | The Consultancy may only suspend the activities to the extent required by the Council. |
| Otherwise | The Consultancy may only suspend the activities to the extent (and only for as long as) they are genuinely, substantially and directly disrupted by the relevant Force Majeure Event. |
| Keeping informed | The Consultancy must keep the Council informed in a proper and timely manner of significant events or circumstances which are relevant to the suspension of the relevant activities.  This is not required   * If the Force Majeure Events is due to the failure of the Council to meet a relevant Council Assistance under paragraph 40.1(a); and/or * If the Consultancy is required to suspend its activities by Law under paragraph 40.1(b); and/or * If the Council has required the suspension under paragraph 40.1(c). |
| When the Consultancy must resume the relevant suspended activities | * **If suspension of those activities is required by Law under paragraph 40.1(b):** promptly after suspension of those activities (or any part of them) is no longer required by Law. * **If the Council has required the suspension under paragraph 40.1(c):** promptly if requested to do so in writing by the Council. * Otherwise: promptly after the relevant activities are no longer substantially and directly disrupted by any Force Majeure Event. |
| Consequences of suspension due to Force Majeure Event |  |
| Consequences if the Consultancy suspends its activities under this section 40  * All of the following apply * To the extent relevant * To be read independently |  |
| **Amendment to this Agreement:** the Council must not unreasonably refuse a proposal of the Consultancy (if the Consultancy wishes to make a proposal) to amend this Agreement according to the following: |  |
| How the Consultancy must make the proposal if it wishes to propose the amendments | * In writing. * Communicated to the Council’s Representative. |
| Deadline for the Consultancy to submit the proposal The Council is not obliged to consider any such proposal in relation to a particular suspension of activities which the Consultancy issues after that deadline | **30 days** after the day on which the Consultancy is required to resume the affected activities according to paragraph 40.8. |
| Types of amendments which the Consultancy may propose | Any amendments to the extent they are fair, reasonable and proportionate taking into account all relevant factors including any the following (for example):   * The duration of the suspension of the activities. * The nature of the activities that were affected. * The impact of that suspension on the existing terms and conditions of this Agreement. * Any preferences indicated by the Council (e.g. urgency, limits on ability to increase Charges etc.). * Genuine additional costs of the Consultancy. * The capacity of the Consultancy to continue with activities under this Agreement after any relevant deadlines, having regard to other genuine existing commitments. |
| Examples of amendments which the Consultancy may propose | Any one or more of these, as relevant, not an exhaustive list, to the extent they meet the general requirements of paragraph (iii):   * Increasing the Charges under section 11. * Changing the Specification (e.g. in quantity, scope, complexity, standards etc.). * Extensions to any deadlines. * If the parties cannot reach agreement on the proposal * It shall be a Relevant Dispute between the parties, to be resolved according to section 53. |
| Termination rights if Force Majeure Events continue |  |
| Termination rights of the parties if a substantial part of the provision of the Services remains suspended for a continuous period due to any Force Majeure Events | * Either party may terminate this Agreement if and for as long as the relevant activities remain suspended under this section 40 for at least **90 continuous days**. * The party wishing to terminate for this reason must give the other party a Formal Notice strictly according to section 52. |
| The effective date of termination | The date on which the Formal Notice described in paragraph 40.10 is given or any later date indicated in the Formal Notice (not to be after the completion date in paragraph 9.1). |
| Compensation payable by one party to the other party if the relevant party terminates this Agreement under paragraph 40.10 | Nil. |
| If the Force Majeure Event is a failure by the Council to provide Council Assistance under section 39 (if a Force Majeure Event under paragraph 40.1(a)) | Only the Consultancy (and not the Council) may terminate this Agreement for this reason. |

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| Insurance |

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| The Consultancy’s insurance obligations |  |
| Insurance cover required |  |
| The Consultancy must have in place insurance of all of the following types  * To the minimum level indicated * With a reputable insurer |  |
| **Type of cover** | **Minimum level of cover required** |
| Employers’ liability  (only required if and for as long as the Consultancy has any employee engaged in connection with this Agreement) | £5 million per claim or such higher level required by Law. |
| Public liability | £10 million per claim. |
| Professional indemnity | £2 million or greater than |
| Exemptions where the Consultancy (or its relevant subcontractor) is not required to have any particular insurance cover otherwise required in paragraph 41.1 | * Only with the written consent of the Council. * Such consent cannot be unreasonably withheld where **at least one** of the following applies: * There are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements). * The Consultancy can demonstrate that the relevant insurance is not available at genuinely affordable rates for reasons unconnected with the specific circumstances of the Consultancy (e.g. its own claims history). |
| Duration of insurance |  |
| Duration for which the Consultancy must ensure all of the insurance cover described in paragraph 41.1 is in place | For as long as the Consultancy is obliged to provide any of the Services under this Agreement. |
| **Claims made insurance:** further requirements regarding the duration for which the Consultancy must ensure all of the insurance cover described in paragraph 41.1 are in place in relation to insurance which operates on a **‘claims made’** basis | The Consultancy must continue to have such insurance for a further **6years** after the Consultancy ceases to be obliged to provide any of the Services under this Agreement, even if after the end of the period described in paragraph 41.3. |
| Various insurance obligations |  |
| Obligation of the Consultancy to provide evidence that the insurance cover it is required to have under this section 41This obligation continues to apply in relation to a relevant type of insurance cover for as long as the Consultancy is required to hold that cover under this section 41 | * The Consultancy must provide that evidence promptly on the Council’s written request. * That request must be made in good faith and not at unreasonable frequency. * Such evidence may include copies of insurance certificates, cover notes and/or a suitable letter from the Consultancy’s insurance broker. |
| Consequences if the Consultancy does not have any of the insurance cover required in this section 41 at any time whilst it is required to have the relevant cover in place according to this section 41 | * It shall be a Termination Default Event of the Consultancy, even if the Consultancy later obtains that insurance cover. * This does not limit the rights and remedies of the Council in relation to the Consultancy’s breach. |

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| Liability issues |

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| The Consultancy’s indemnity for Claims |  |
| Whom must the Consultancy indemnify under this section 42Each of them is **‘X**’ in this section 42 | Each of the following:   * The Council * Its Affiliates * Their respective Personnel |
| For what the Consultancy must indemnify X Subject to the rest of this section 42, particularly the exceptions in paragraph 42.5 | For X’s respective Losses in relation to a Claim   * Made or threatened against X by any claimant described in paragraph 42.3 * To the extent the Claim against X relates to any of any Indemnifiable Cause described in paragraph 42.4. |
| Who can be a claimant against X for the purposes of paragraph 42.2 | Anyone **other than** the Council and/or its Affiliate. |
| An Indemnifiable Cause of the Consultancy for the purposes of this Agreement is each of the following: |  |
| Various acts, failures to act etc. | Any act or failure to act by the Consultancy **in connection with this Agreement** which involves any of the following:   * Any actual or alleged **breach of this Agreement** by the Consultancy. * Any actual or alleged **breach of the Law** by the Consultancy. * Any actual or alleged **infringement of the property rights (including Intellectual Property rights)** of a third party by the Consultancy. * Any actual or alleged **breach of any duty of care** (whether arising in tort, contract or otherwise) which the Consultancy owes the relevant claimant described in paragraph 42.3. |
| Third parties e.g. subcontractors | Any act or failure to act   * Of the kind described in paragraph (a) * By any third party acting on behalf of the Consultancy (whether a subcontractor, agent or otherwise or other agent). * In connection with this Agreement. |
| Use of deliverables Only applicable if X is The Council or its Affiliate | Use by X of any deliverables provided by the Consultancy in connection with this Agreement (including any act or failure to act by X in reliance upon any advice provided by or on behalf of the Consultancy in connection with the relevant Services) which results in any of the following:   * Any actual or alleged **breach of the Law** by X. * Any actual or alleged **infringement of the property rights (including Intellectual Property rights)** of a third party by X. * Any actual or alleged **breach of any duty of care** (whether arising in tort, contract or otherwise) which X owes the relevant claimant described in paragraph 42.3. |
| Each of the following is an **exception** to the indemnity in paragraph 42.2These exceptions only apply where X is the Council and/or its Affiliate  * To be read independently |  |
| Negligence etc. of the Council | To the extent the Losses were caused by the negligence or other wrongdoing of the Council and/or its Affiliate and/or their respective Personnel or other separate agents. |
| Contractual obligation, instruction etc. | To the extent the act (or failure to act) by or on behalf of the Consultancy to which the relevant Claim relates was in material compliance with **any** of the following:   * Any specific requirement elsewhere in this Agreement; and/or * Any written instruction issued by the Representative of the Council (or any other member of its Personnel of at least equivalent status). |
| In relation to the use of property described in paragraph 42.4(a) to which any claim or allegation of infringement relates | The Council and/or its Affiliate has specifically made the relevant property available for use by the Consultancy in connection with this Agreement (whether under any formal lease or licence or otherwise). |
| In relation to any use by X of any deliverables for the purposes of paragraph 42.4(c) (including any reliance upon any advice provided by or on behalf of the Consultancy in connection with the relevant Services)Only relevant if X is the Council and/or its Affiliate | To the extent **any** of the following applies   * To the extent the Consultancy has prepared the relevant deliverables (including advice) materially according to inaccurate and/or incomplete instructions given by or on behalf of the Council. * The relevant deliverables (including advice) have been materially altered * By any person other than the Consultancy or a person acting on the Consultancy’s behalf; and * Without the Consultancy’s written consent. * The relevant deliverables (including advice) have been used or relied upon in **any** of the following ways: * Unlawfully, except to the extent the Consultancy has expressly advised (or it can be reasonably inferred that the Consultancy it has advised) that such use is lawful. * In a manner that is materially inconsistent with any advice or guidance given by or on behalf of the Consultancy on or before the date on which the Consultancy first made the deliverable, advice or other output available for use in connection with the Services. * In a manner that a reasonable person would not expect it to be used or relied upon. |
| Rules in relation to the indemnity in this section 42 | Section 43 applies to this indemnity. |

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| General indemnity issues |  |
| To what this section 43 applies | This section 43 applies to any indemnity which one party (**‘Indemnifier’**) gives to the other party and/or its Affiliate (**‘Indemnity Beneficiary’**) under this Agreement (**‘Relevant Indemnity’**). |
| General rules regarding Relevant Indemnities |  |
| Nature of obligation under a Relevant Indemnity | The Indemnifier’s obligation to indemnify the Indemnity Beneficiary includes an obligation to keep the Indemnity Beneficiary indemnified. |
| Other rights and remedies | The Indemnifier’s obligation to indemnify the Indemnity Beneficiary shall not in itself limit the rights or remedies of the Indemnity Beneficiary or any other person (except to the extent otherwise clearly indicated). |
| How Relevant Indemnities are to be read | Independently of each other. |
| Extent to which any Contract End in itself affects any rights and/or obligations of any Indemnity Beneficiary or any Indemnifier in relation to any Relevant Indemnity | The Contract End does not in itself affect those rights and/or obligations. |
| A Relevant Indemnity is to be reduced to the extent any of the following applies |  |
| Cause of Losses | The Indemnity Beneficiary’s Losses were caused by the negligence or other wrongdoing by the Indemnity Beneficiary and/or its separate agents. |
| How acting | The act or failure to act by the Indemnifier which has caused the Indemnity Beneficiary’s Losses was in compliance with the written instructions of the Indemnity Beneficiary (or those given by any other person acting on behalf of the Indemnity Beneficiary where the Indemnifier knew or had reasonable grounds to believe had authority to give those instructions on behalf of the Indemnity Beneficiary). |
| Obligations of the Indemnity Beneficiary in relation to the Relevant Indemnity | * To take reasonable steps to mitigate such Losses to which the Relevant Indemnity relates. * **Exception:** to the extent this Agreement otherwise indicates it is not required to do so. |
| Relevant Indemnity procedures |  |
| Procedure which the Indemnity Beneficiary must ` follow to claim amounts under a Relevant Indemnity | The Indemnity Beneficiary must give the Indemnifier a written demand as a Formal Notice strictly according to section 52. |
| Deadline for payment by the Indemnifier to the Indemnity Beneficiary | **30 days** after having been given a demand for payment by the Indemnity Beneficiary. |
| Right to refuse a Relevant Indemnity |  |
| The Indemnifier may refuse to meet a Relevant Indemnity in relation to a Claim made against the Indemnity Beneficiary if and to the extent any of the following apply, as relevant (to be read independently) |  |
| Failure to give the Indemnifier notice of the Claim by a deadline | * The Indemnity Beneficiary has failed to give the Indemnifier written Formal Notice of the Claim more than **30 days** after the Claim has first been communicated in writing to the Indemnity Beneficiary. * This is a strict deadline. * The Indemnity Beneficiary must give that Formal Notice strictly according to section 52. * If the Relevant Indemnity covers a threat of a Claim: the Relevant Indemnity does not cover the Indemnity Beneficiary’s Losses incurred before the Indemnity Beneficiary has given that Formal Notice to the Indemnifier. The Indemnity Beneficiary may give the relevant Formal Notice at any time after the relevant claimant has first threatened the relevant Claim. |
| If the Indemnity Beneficiary has failed to give the Indemnifier proper control over the defence of the Claim if the Indemnifier requests in writing This is subject to each of the following, to the extent relevant: |  |
| Legal restrictions | The Relevant Indemnity is not in itself affected by the Indemnity Beneficiary‘s failure to give such control to the extent there are any legal or other genuine restrictions on the Indemnity Beneficiary giving the Indemnifier such control. |
| Consent from third parties | The Relevant Indemnity is not in itself affected by the Indemnity Beneficiary‘s failure to give such control to the extent   * That control requires the consent of any third-party at arm’s length to both the Indemnity Beneficiary and the Indemnifier (e.g. an arm’s length insurer); and * That third-party has not given its consent for any reason outside the control of both the Indemnity Beneficiary and the Indemnifier. |
| Costs | The Indemnifier must bear all of its own costs of taking over that defence. |
| Keeping the Indemnity Beneficiary informed | In taking on the defence of the Claim, the Indemnifier must keep the Indemnity Beneficiary informed in a proper and timely manner of progress of the defence of the Claim, including significant events or circumstances in relation to the defence as and when they occur. |
| The Indemnity Beneficiary’s requests | In taking on the defence of the Claim, the Indemnifier must act reasonably to seek and to take account of the Indemnity Beneficiary’s reasonable requests in relation to the conduct of the defence. |
| Not bringing the Indemnity Beneficiary’s name into disrepute etc. | In taking on the defence of the Claim, the Indemnifier must not do (or assist or instruct anyone else to do) anything (without good reason) to bring the name of the Indemnity Beneficiary into disrepute in the course of conducting the defence. |
| Indemnity Beneficiary’s assistance with the defence | * The Indemnity Beneficiary must give the Indemnifier reasonable and timely assistance with the defence of the Claim if reasonably requested in writing by the Indemnifier. * Example: such assistance may include (for example and where relevant) the Indemnity Beneficiary providing the Indemnifier with relevant information, subject to relevant persons accepting reasonable confidentiality obligations. |
| Reimbursement of costs | The Indemnifier must reimburse the Indemnity Beneficiary for the following reasonable and sufficiently evidenced costs which the Indemnity Beneficiary incurs in connection with the defence:   * The Indemnity Beneficiary’s third-party disbursements, including external professional costs; and * The time and effort of the Indemnity Beneficiary’s Personnel in providing that assistance, at **£50** per hour plus VAT. |
| Indemnity Beneficiary has failed to defend or settle | * The Indemnity Beneficiary has failed to take reasonable and timely action to defend or settle the Claim if so reasonably requested by the Indemnifier in writing. * This applies if the Indemnifier has not taken control of the defence of the Claim for any reason. |
| Harmed defence of Claim | * The Indemnity Beneficiary and/or its Affiliate and/or their respective Personnel has done any act to substantially harm the Indemnifier’s prospects of defending the Claim including (for example): * Admitting liability, or * Attempting to settle the Claim. * Exceptions: any of the following: * To the extent that act is authorised by the Indemnifier in writing (at its discretion). * To the extent that act is required by Law. |
| Other compensation | To the extent the Indemnity Beneficiary has received any payment or other benefit (e.g. discount, saving, credit etc.) in relation to the third-party Claim. |
| Refund of amounts paid under a Relevant Indemnity |  |
| Liability of the Indemnity Beneficiary to refund any amounts paid by the Indemnifier under any Relevant Indemnity This only applies to the Indemnity Beneficiary if it is a party to this Agreement | * The Indemnity Beneficiary is liable to refund to the Indemnifier any amount paid by the Indemnifier to the Indemnity Beneficiary and/or its Affiliate and/or its Personnel (as the relevant Indemnity Beneficiary) under a Relevant Indemnity. * The Indemnity Beneficiary is only liable to do so to the extent the Indemnity Beneficiary and/or its Affiliate and/or its Personnel (as the relevant) has received any payment or other benefit (e.g. discount, saving, credit etc.) from another source (e.g. proceeds from an insurance claim, or a claim against a third-party) in relation to the same event or circumstance to which the Relevant Indemnity related. |
| Maximum liability of the Indemnity Beneficiary under paragraph 43.11 | The Indemnity Beneficiary’s liability to refund the Indemnifier under paragraph 43.11 must not be greater than the amount paid by the Indemnifier under the Relevant Indemnity. |
| Keeping informed | The Indemnity Beneficiary must inform the Indemnifier in writing (and make payment of the relevant refund) promptly on receipt by the Indemnity Beneficiary and/or its Affiliate and/or its Personnel (as the relevant) of the relevant payment or other benefit from that other source described in paragraph 43.11. |
| Duty of the Indemnity Beneficiary to seek the payment or other benefit from the other source for the purposes of paragraph 43.11 | The Indemnity Beneficiary:   * Must (at its own expense) properly exercise its available rights (whether under to contract or otherwise) to do so on becoming aware of the reasonable prospect of that payment or other benefit; or * Must cause its Affiliate or Personnel to do so, where relevant, and to the extent it is in X’s power to do so   In a reasonably proper and timely manner (at the Indemnity Beneficiary’s own cost). |

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| Caps and exclusions of liability |  |
| Caps on the liability of the Consultancy |  |
| Cap on the liabilities of the Consultancy described in paragraph 44.8 which are reasonably expected to be covered by insurance which the Consultancy is required to have under paragraph 41.1 (according to the usual terms of insurance policies of the relevant types required in paragraph 41.1) | To the level of the insurance cover which is relevant to the particular liability as required in paragraph 41.1. |
| Cap on the liability of the Consultancy for liabilities described in paragraph 44.8 which are not otherwise capped elsewhere in this section 44 | To **125% of the Charges** (excluding VAT) that the Council would be liable to pay the Consultancy as if the Consultancy completed the provision of the Services under this Agreement, whether or not the Council has paid those liabilities at the time the relevant liabilities arose, and whether or not this Agreement is terminated before the Consultancy has completed the provision of the Services. |
| Exclusions of liability |  |
| The liability of the Consultancy (as described in paragraph 44.8) in connection with the use and/or reliance on of any deliverable, advice or other output supplied by or on behalf of the Consultancy in connection with the provision of the Services is excluded to the extent any of the following applies This exclusion of the Consultancy’s liability applies to indemnities for Claims described in section 42 |  |
| Use by others | To the extent that deliverable, advice or other output is used or relied upon by any person other than the Council. |
| Actions by the Council | To the extent the Consultancy has prepared the relevant deliverable, advice or other output according to inaccurate and/or incomplete written instructions given by or on behalf of the Council. |
| Alterations | The deliverable, advice or other output has been materially altered   * By any person other than the Consultancy or a person acting on the Consultancy’s behalf; and * Without the Consultancy’s written consent. |
| Nature of use | The deliverable, advice or other output has been used or relied upon in any of the following ways:   * Unlawfully except to the extent the Consultancy has expressly advised (or it can be reasonably inferred that the Consultancy it has advised) that such use is lawful. * In a manner that is materially inconsistent with any advice or guidance given by or on behalf of the Consultancy on or before the date on which the Consultancy first made the deliverable, advice or other output available for use in connection with the Services. * In a manner that a reasonable person would not expect it to be used or relied upon. |
| Exclusion for compliance with the Council’s instructions This exclusion of the Consultancy’s liability applies to indemnities for Claims described in section 42 | The liability of the Consultancy (as described in paragraph 44.8) is excluded in relation to any act or failure to act by the Consultancy or its separate agents (e.g. subcontractors, Personnel) to the extent that act or failure to act was in compliance with any instructions given by the Council which are:   * Contained elsewhere in this Agreement; and/or * Issued in writing by any authorised representative of the Council   To the extent any of those instructions were not given according to any advice given by the Consultancy to the Council. |
| Liability of each party (as described in paragraph 44.8) in connection with this Agreement is excluded for all of the following |  |
| Indirect, consequential | Special, indirect or consequential loss or damage.. |
| Opportunity | Loss of opportunity. |
| Exclusion of liability of employees of a party | The personal liability of any employee of a party (or of any contractor or other agent of that party) for that employee’s acts (or failures to act) in connection with this Agreement is excluded to the fullest extent permitted by Law. |
| Where caps and exclusions of liability DO NOT apply |  |
| If and to the extent any of the following applies to a particular liability:  * The caps and exclusions of a party’s liability indicated elsewhere in this Agreement (especially those in this section 44) do not apply; and * That liability shall be excluded from any calculation of any cap on that party’s liability indicated elsewhere in this Agreement (especially those in this section 44) * Each of these are to be read independently |  |
| Death etc. | Death or personal injury caused by the negligence of that party. |
| Deliberate | * That party’s deliberate act or deliberate failure to act when otherwise required to act where that act which is done (or failed to be done) with an intention to breach this Agreement and/or any other duty which the Consultancy owes to the Council and/or its Affiliate in connection with the provision of the Services. * A party shall be regarded as having deliberately acted or failed to act where that act as done (or failed to be done) where there is reasonable evidence that the act was done (or not done) under the instruction of that party’s Representative and/or any other member of its senior management. * This shall not include that party attempting to give any communication in connection with this Agreement in good faith where that attempt is later held by a court or anything similar to be (as a technicality) an anticipatory, repudiatory or anything similar breach by that party. |
| Fraudulent misrepresentation | That party’s fraudulent misrepresentation. |
| Indemnities for third-party Claims | Any indemnity that party gives under this Agreement for third-party Claims unless clearly indicated in this Agreement that the relevant caps or exclusions do apply in relation to particular Claims. |
| Elsewhere | As indicated elsewhere in this Agreement. |
| Not permitted by Law | Anything else to the extent liability cannot be capped and/or excluded by Law. |
| Caps and exclusions of liability – interpretation |  |
| About the caps and exclusions of the liability of a party (**‘X’**) in this Agreement |  |
| Liabilities to which the caps and exclusions of X’s liability in this Agreement apply | * Those caps and exclusions apply to X’s (and X’s Affiliates’) liabilities of any kind in connection with this Agreement. * Regardless of whether the liability arises in tort, contract, under statute or otherwise. |
| Calculation of any cap on X’s liability | For the purpose of the cap, X’s liability is to be aggregated between   * The liability X and/or its Affiliates owe to the other party; and * The liability X and/or its Affiliates owe any third-party under this Agreement. |

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| Apportionment of liability |  |
| Apportionment where the loss of party (**‘X’**) is only partly due to the fault of the other party (**‘Y’**) | Where X’s losses in particular circumstances relevant to this Agreement are partly due to other factors (including X’s own acts and failures to act), then the liability of Y to X for compensation or anything similar shall be reduced fairly and proportionately to reflect the extent to which Y’s act or failure to act contributed to causing X’s losses. |

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| Early termination |

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| The Consultancy’s Termination Default Events |  |
| Each of the following is a Termination Default Event of the Consultancy   * To be read independently * For as long as the relevant circumstances continue to apply to the Consultancy |  |
| General breaches |  |
| Material Breach not capable of being remedied | The Consultancy is in Material Breach of this Agreement where that Material Breach is not (on a reasonable view) capable of being remedied by the Consultancy. |
| Material Breach capable of being remedied | All of the following must apply   * The Consultancy is in Material Breach of this Agreement where that Material Breach is (on a reasonable view) capable of being remedied by the Consultancy for as long as the Consultancy has still not remedied the Material Breach * To the reasonable satisfaction of the Council * At the Consultancy’s cost * More than **30 days** after the Council has requested the Consultancy to do so. * The Council must have issued its request as a Formal Notice given strictly according to section 52. * The Council must not unreasonably refuse consent to a written request by the Consultancy to an extension of the above deadline if there are delays to the Consultancy remedying the Material Breach which are significantly due to factors outside the reasonable control of the Consultancy. |
| Failure to complete Services by strict deadline | For as long as the Consultancy has not yet properly completed the Services after the strict deadline indicated in paragraph 9.2. |
| Promised Subcontractor | In the circumstances described in paragraph 30.4. |
| Insurance | * The Consultancy does not have in place the insurance cover required in section 41 at any time while the Consultancy is obliged to have in place under section 41 (even if it subsequently obtains that cover). * But only to the extent this is a Termination Default Event according to paragraph 41.6. |
| General misconduct |  |
| Serious misconduct | The Consultancy and/or its Affiliate has engaged in misconduct, whether or not in connection with the provision of the Services (e.g. a serious public scandal) of sufficient seriousness that a reasonable person would not expect the Council to continue a commercial relationship of this kind with the Consultancy. |
| Misconduct in competitive exercise | * The Consultancy has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Council in awarding this Agreement to the Consultancy. * This applies regardless of whether the misconduct occurred with the knowledge of the Consultancy’s senior management. * Examples of such misconduct: * Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders. * Doing any act in connection with that competitive exercise that would breach paragraph 56.1 in relation to Corrupt Acts if that act were done after the Consultancy entered into this Agreement. * Engaging in any canvassing activity with Personnel of the Council. |
| Modern slavery and trafficking | The Consultancy’s breaches described in paragraph 24.2 relating to modern slavery and trafficking which are Termination Default Events of the Consultancy. |
| Corrupt Act | The Consultancy’s breach of paragraph 56.1 to the extent paragraph 56.3 indicates the breach is a Termination Default Event of the Consultancy. |
| About the Consultancy |  |
| Key Personnel | If the circumstances resulting in a Termination Default Event described in paragraph 26.8 apply relating to Key Personnel, to the extent paragraph 26.8 indicates these circumstances are to result in a Termination Default Event of the Consultancy. |
| Certain appointments | The Consultancy is subject to   * A court order (or equivalent) or * A resolution or similar decision   Requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Consultancy and/or its assets. |
| Winding up | * The Consultancy is subject to * A court order (or equivalent) or * A resolution or similar decision * Requiring the Consultancy to be dissolved and/or wound up. * Exception: in relation to a genuine solvent reconstruction where * The replacement entity agrees in writing to become legally bound to the obligations of the Consultancy under this Agreement; and * The replacement entity accepts in writing liability for the liabilities of the Consultancy in connection with this Agreement; and * The replacement entity (and/or any third-party guarantor it wishes to propose at the time) has at least equivalent financial standing as that which the Consultancy had at the date of this Agreement; and * The replacement entity has the same underlying majority controlling ownership as the Consultancy. |
| Unable to pay liabilities | * If and for as long as the Consultancy is unable to pay its liabilities (taking into account its contingent and prospective liabilities) as defined in any applicable Law, including section 123 of the Insolvency Act 1986. * This applies whether such liabilities individually or in aggregate equal any minimum required under relevant bankruptcy or anything similar legislation from time to time) as they fall due, and the Consultancy has no reasonable prospect of paying such liabilities. |
| Composition with creditors | If and for as long as the Consultancy is a party to a composition or other similar arrangement with its creditors, including any voluntary arrangement within Part I of the Insolvency Act 1986. |

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| The Council’s Termination Default Events |  |
| Each of the following is a Termination Default Event of the Council  * To be read independently * For as long as the relevant circumstances continue to apply to the Council |  |
| Non-payment by the Council If and for as long as all of the following apply |  |
| Overdue liability | Any liability owed by the Council to the Consultancy in connection with this Agreement is overdue. |
| Not disputed | The relevant liability is not subject to a genuine dispute which the Council is using reasonable and genuine efforts to attempt to resolve. |
| No right to delay etc. | The Council has no contractual or other right to refuse and/or to delay payment of the relevant liability. |
| Overdue | The liability (or any part of it) must still be overdue more than **30 days** after the Consultancy has issued a further demand for payment. |
| About the demand described in paragraph (d) | All of the following apply   * The Consultancy may issue it to the Council at any time after the relevant liability first became overdue. * The Consultancy must (if it wishes to issue the demand) issue it strictly as a Formal Notice according to section 52, but either hand delivered to (or marked to the attention of) the Escalated Person of the Council. |

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| Early termination due to a Termination Default Event |  |
| General |  |
| Termination rights of a party under this section 48 | A party (**‘Terminating Party’**) may terminate this Agreement according to the rest of this section 48. if and for as long as a Termination Default Event applies to the other party (**‘Defaulting Party’**) under this Agreement. |
| Termination procedure |  |
| How a Terminating Party terminates this Agreement under this section 48 | By giving the Defaulting Party a Formal Notice as follows:   * Strictly according to section 52. * Setting out in reasonable detail a description of the Termination Default Event of the Defaulting Party. |
| Interpretation | A Termination Default Event applies to a Defaulting Party; and   * That Termination Default Event is expressed to continue if and for as long as particular circumstances apply, and * Those circumstances cease to apply (e.g. the Defaulting Party has remedied the Termination Default Event); and * The Terminating Party has not yet given the Defaulting Party the Formal Notice described in paragraph 48.2 in relation to that Termination Default Event   Then the Terminating Party is no longer entitled to give that Formal Notice to the Defaulting Party in relation to that particular Termination Default Event. |
| Consequences of the termination Formal Notice |  |
| Effective date on which this Agreement is terminated if a Formal Notice is given by the Terminating Party under paragraph 48.2 | * On the date the relevant Formal Notice is given, or * On any later date indicated in that Formal Notice (not to be later than the completion date in paragraph 9.1). |

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| Early termination by the Council without the Consultancy’s Termination Default Event |  |
| Whether the Council may terminate this Agreement early without any Termination Default Event of the Consultancy | * The Council may do so under this section 49. * This does not limit other termination rights of the Council indicated elsewhere in this Agreement. |
| When the Council may terminate this Agreement under this section 49 | Only between the following periods:   * No earlier than the Council’s approval or deemed approval (under section 4) of the **first deliverable.** * No later than **30 days** after the Council’s approval or deemed approval (under section 4) of the **first deliverable.**   Not at any other time. |
| How the Council terminates this Agreement early under this section 49 if the Council wishes to do so | By giving the Consultancy a Formal Notice strictly according to section 52. |
| Effective termination date if the Council terminates this Agreement early under this section 49 | * This Agreement shall terminate immediately when the Formal Notice described in paragraph 49.3 is given. * See paragraph 10.4 regarding ongoing rights, obligations etc. of the parties after the effective termination date. |
| Liability of the Council to pay the Consultancy Charges as a result of the Council terminating this Agreement early under this section 49 | * The Council is only liable to pay the Consultancy the 1/3 of the total Charges (being the Charges attributable to the first deliverable). * The Council is not liable to pay the Consultancy for any work it has undertaken on the 2nd or 3rd deliverables. |

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| Early termination by the Consultancy without the Council’s Termination Default Event |  |
| Whether the Consultancy may terminate this Agreement early without any Termination Default Event of the Council | No, unless otherwise indicated elsewhere in this Agreement. |

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| Exit issues |

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| Exit obligations |  |
| Exit obligations of the parties on the Contract End of this Agreement | Not applicable. |

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| Miscellaneous |

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| Formal Notices |  |
| To what this section 52 applies | It applies to all of the following (each of them is a **‘Formal Notice’**):   * Communications between the parties described as ‘notices’ and/or ‘Formal Notices’ in this Agreement (regardless of whether compliance with this section 52 is cross-referenced). * Any other communications between the parties which (according to this Agreement) must be sent according to this section 52.   The requirements in this section 52 do not apply to other communications between the parties. |
| To whose attention any Formal Notice must be addressed | To be valid, that communication must be addressed to the recipient’s Representative. |
| **Methods:** a Formal Notice has only been validly sent by the relevant sender to the relevant recipient if it has been sent or given to the receiver in at least one of the following ways The Formal Notice is deemed to have been given as indicated below, even if it has actually been given earlier or later than as indicated below |  |
| **Method** | **When the Formal Notice is deemed to have been given** |
| Hand delivery to the recipient’s Representative | On the date it is given to him/her. |
| By registered mail or courier to the recipient’s last known address (addressed to the recipient’s Representative unless otherwise indicated elsewhere in this Agreement in relation to a particular type of communication) | The earlier of the following:   * The date of actual receipt of the Formal Notice, as sufficiently evidenced by Royal Mail (or another equivalent postal carrier if delivered outside the UK) or the courier. * **2 Business Days** after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered. |
| By e-mail issued as follows:  * **If the relevant communication is given to the Council:** to an e-mail address as nominated by the Council to the Consultancy from time to time for such communication. * **If the relevant communication is given to the Consultancy:** to the usual work e-mail address of the Consultancy’s Representative or such additional or replacement e-mail address as nominated by the Consultancy to the Council from time to time for such communication. * **In any case:** with the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address. | On the date and at the time the e-mail is received by the recipient (as the recipient can reasonably prove) subject to the following   * If that date and time is before 9 am on a Business Day: it is deemed to have been received at 9 am on that Business Day. * If that date and time is after 5 pm on a Business Day or at any time on a day that is not a Business Day: it is deemed to have been received at 9 am on the next Business Day. |
| Interpretation of this section 52 | If this Agreement indicates that any communication must be given as a Formal Notice, any attempt by the party to give that communication inconsistently with this section 52 is not in itself a valid way to give that communication. |

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| Resolving disputes |  |
| Purpose of this section 53 | * To set out arrangements for the resolution of any dispute between the Council and the Consultancy in connection with this Agreement (each such dispute is a **'Relevant Dispute'**). * These arrangements apply to the Relevant Dispute except to the extent the parties otherwise agree in writing. |
| Internal resolution |  |
| First step: resolution by Representatives | * The parties must direct their Representatives to use their reasonable efforts to resolve the Relevant Dispute in a timely manner and in good faith. * The parties must bear their own costs in doing so. |
| **Next step:** if the parties' Representatives cannot resolve the Relevant Dispute after more than **30 days** after they have commenced the previous step | * The parties must escalate the matter to their respective Escalated Persons. * The parties must direct their Escalated Persons to use their reasonable efforts to resolve the Relevant Dispute in a timely manner and in good faith. * The parties must (as between them) bear their own costs in doing so. |
| Mediation |  |
| **Next step:** if parties have not resolved the Relevant Dispute more than **60 days** after they have commenced the previous step, the parties must attempt to resolve the Relevant Dispute by mediation, according to all of the following Unless it is reasonable for the parties to resolve the Relevant Dispute by engaging an independent expert under paragraph 53.5  The following apply except to the extent the parties otherwise agree in writing |  |
| How the parties are to commence the mediation | * By either party giving the other party a Formal Notice according to section 52) requesting mediation. * The party giving that Formal Notice must summarise in that Formal Notice in sufficient detail the Relevant Dispute (as understood in good faith by the party giving that Formal Notice). |
| Mediation procedure the parties are to use | The Model Mediation Procedure of the Centre for Effective Dispute Resolution or the comparable rules of any successor body. |
| How the parties must appoint the mediator | * By agreement of the parties (acting promptly and in good faith). * They must appoint a suitably qualified, independent mediator. * **If they cannot agree on a mediator after more than 7 days after the relevant party gives the Formal Notice in paragraph (a):** the parties must request the Centre for Effective Dispute Resolution to recommend a mediator. The parties must accept the person who is recommended unless there are genuine and serious concerns about that person’s independence. |
| The parties must comply with all of the following in connection with the mediation |  |
| Good faith | The parties must act generally in good faith in attempting to resolve the Relevant Dispute. |
| Cooperation | The parties must co-operate fully and promptly with the mediator, including promptly doing such acts (including signing a document substantially in the form of the Centre for Effective Dispute Resolution’s model agreement in force from time to time) as the mediator reasonably requires. |
| Directions to Personnel | The parties must direct their respective Personnel to attend and cooperate with the mediation properly and in good faith, as reasonably necessary. |
| Confidentiality | * Section 32 applies to information disclosed by a party in the course of the mediation. * A party shall not be regarded as having breached its confidentiality obligations in section 32 if that party or its Affiliate or their respective Personnel or other agent makes disclosures of Confidential Information of the relevant Discloser for purposes connected with the mediation. |
| Without prejudice | Anything said or done by a party in the course of the mediation shall not in itself prejudice its rights in any later proceedings between it and the other party in relation to the Relevant Dispute and/or in relation to any other dispute between them. |
| Engagement | The parties must not separately engage (in connection with further proceedings involving the Relevant Dispute or any other dispute) the mediator as an advisor and/or to call him/her as a witness (except if he/she is a witness in a capacity other than as a mediator in relation to the Relevant Dispute). |
| How mediation costs are to be borne | * The parties must share equally the costs of engaging the mediator. * The parties must (as between them) otherwise bear their own costs in connection with the mediation. |
| Right of a party to commence legal proceedings in relation to the Relevant Dispute | A party may do so if the Relevant Dispute is not resolved by mediation after at least **90 days** after the commencement of mediation. |
| Appointment of experts |  |
| **Next step:** if parties have the Relevant Dispute has not been resolved more than **60 days** after they have commenced the previous step But only if the Relevant Dispute is of a kind which (on a reasonable view or as indicated in this Agreement) requires resolution by an independent expert under paragraph 53.5 |  |
| How the parties must resolve the Relevant Dispute | By the parties appointing an independent expert to investigate the Relevant Dispute and to issue his/her opinion on it. |
| How the Relevant Dispute procedure is to be commenced | * By either party giving a Formal Notice to the other party indicating it wishes this dispute resolution procedure to apply. * That Formal Notice must be given strictly according to section 52. |
| How the parties are to appoint the expert | * By agreement between the parties. * If they cannot agree on an expert after more than **30 days** after the relevant party gives the Formal Notice in paragraph (b): * Either party may refer the matter to the President at the time of the Chartered Institute of Arbitrators (or anything similar replacement body), who shall be instructed to appoint a suitably qualified, independent expert. * The parties must accept the person appointed, unless there are genuine and serious concerns about that person’s independence. |
| Cooperation | The parties must provide the expert with appropriate cooperation (e.g. access to records) to allow him/her to make his/her determination. |
| Costs | * The parties must (as between them) bear the costs of the expert’s appointment equally. * The parties must (as between them) otherwise bear their own costs. |
| Confidentiality | * Section 32 applies to information disclosed by a party to the expert for purposes genuinely connected with the Relevant Dispute. * A party shall not be regarded as having breached its confidentiality obligations in section 32 if that party or its Affiliate or their respective Personnel or other agent makes disclosures of Confidential Information of the relevant Discloser for purposes genuinely connected with the Relevant Dispute. |
| Without prejudice | Anything said or done by a party in the course of the expert’s engagement shall not in itself prejudice its rights in any later proceedings between it and the other party in relation to the Relevant Dispute and/or in relation to any other dispute between them. |
| Engagement | The parties must not separately engage (in connection with further proceedings involving the Relevant Dispute or any other dispute) the expert as an advisor and/or to call him/her as a witness (except if he/she is a witness in a capacity other than as the expert engaged in relation to the Relevant Dispute). |
| Status of the expert | * The expert shall act as an expert and not as an arbitrator. * The Arbitration Act 1996 does not apply to the expert. |
| Accept report | The parties must accept the expert’s report (including its observations and recommendations) on the matter as final and binding until revised by the relevant courts who have jurisdiction over this Agreement. |
| Exceptions to paragraph (j) | Paragraph (j) does not apply:   * Where there is a significant and obvious error with the report; and/or * Where there are reasonable grounds to believe that the expert was not independent of the parties. |
| Right of to commence legal proceedings in relation to the Relevant Dispute | A party may do so any time after the expert issues his/her report. |
| Resolving disputes - general |  |
| Various remedies | Nothing in this Agreement (including this section 53) prevents a party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to this Agreement. |
| In relation to any disputes between an Affiliate of the Council and the Consultancy in connection with this Agreement | * The parties must treat that dispute as a Relevant Dispute to be resolved under this section 53. * The Council must use its powers to ensure the Affiliate complies with this section 53 in relation to that dispute. * **If any 2 or more of the Council and/or any of its Affiliates are together parties to the same Relevant Dispute:** for the purpose of allocating any costs under this section 53, they shall be considered together one party to the Relevant Dispute. |

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| Health and safety |  |
| The Consultancy must comply with the highest of the following standards in relation to health and safety when carrying out its activities in connection with the provision of the Services The Consultancy must ensure its relevant Personnel and subcontractors do likewise in their activities in connection with the provision of the Services |  |
| Law | Requirements of the Law which are relevant to health and safety and the provision of the Services at the time. |
| The Specification | Any health and safety requirements in the Specification. |
| Tender | Any health and safety standards, procedures etc. contained in Tender. |
| The Consultancy’s own policy | Requirements of any health and safety policy the Consultancy has in place from time to time. |

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| Local authority powers |  |
| Right to exercise powers etc. | * Nothing in this Agreement in any way affects the right of the Council as a local authority to exercise (or to not exercise) any of its statutory powers and/or its statutory functions. * This includes (for example) the power of the Council to grant or not to grant any kind of permission for planning, any particular licence or anything similar to any of these which is submitted by any other party, even if it results in either party breaching this Agreement. |
| Interpretation | This section 55 shall apply even if the exercise (or non-exercise) of such powers and functions causes   * Either party to be unable to commence or continue any activities contemplated in this Agreement; and/or * Either party breaching any of its obligations under this Agreement. |

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| Corrupt Acts |  |
| Obligations of the Consultancy in relation to Corrupt Acts | The Consultancy must not do any of the following in connection with this Agreement   * Carry out any Corrupt Act; and/or * Assist or instruct another person to carry out any Corrupt Act. |
| A **‘Corrupt Act’** is any of the following acts (to be read independently) |  |
| Certain offers | The act is a direct or indirect offer or promise to which all of the following apply   * It is made to any Personnel of the Council and/or its Affiliate * It offers or promises any benefit or advantage (whether or not financial) * The offer or promise is substantially for any of the following purposes * To encourage that Personnel to carry out his/her duties improperly. * To reward that Personnel for having carried out his/her duties improperly. |
| Policy | * Any act which breaches any policy of the Council from time to time regarding gifts to its Personnel. * But only to the extent the Council has communicated the policy to the Consultancy. |
| Serious attempts | Any serious attempt by any Personnel of the Consultancy and/or its Affiliate to do any act described in paragraph (a) and/or in paragraph (b). |
| Certain offences | In relation to the Consultancy’s dealings with the Council in connection with the provision of the Services, conviction of any offence under any Law relating to fraud, particularly the Bribery Act 2010. |
| Consequence of the Consultancy’s breach of paragraph 56.1 | It shall be a Termination Default Event of the Consultancy.   * This applies regardless of the size of the breach. * But only where the breach was done with the assistance or instruction of the Consultancy’s Representative and/or any other member of the Consultancy’s Personnel of at least equivalent seniority.   This does not limit the rights or remedies of the Council and/or its Affiliates in relation to the Consultancy’s breach of paragraph 56.1. |

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| Other topics |  |
| Third-party rights |  |
| Rights of third parties with rights under this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 | These are excluded to the fullest extent permitted by Law, other than those which are retained under paragraph 57.2. |
| Third parties whose rights to directly enforce their rights, powers, benefits (or anything similar to these) under this Agreement under the Contracts (Rights of Third Parties) Act 1999 are retained  * All of the following (to be read independently) * All other rights of these third parties under the Contracts (Rights of Third Parties) Act 1999 in relation to this Agreement are excluded to the fullest extent permitted by Law |  |
| Affiliates | Affiliates of the Council. |
| Personnel | Personnel of the Council and/or its Affiliates. |
| Relationship between the parties |  |
| Relationship between the parties created by this Agreement | The relationship of an independent client and an independent service provider.  This Agreement does not create any of the following relationships between the parties and/or their Affiliates except to the extent clearly elsewhere indicated in this Agreement   * A partnership between them * A principal-agent relationship between them. **Exception:** to the extent otherwise clearly indicated or reasonably implied elsewhere in this Agreement or as otherwise authorised in writing by the party which is the principal.   Neither party may do anything to give any person any grounds to believe there any relationship between the parties inconsistent with the above. |
| Assignment, novation |  |
| Assignment, novation | If a party wishes to   * Assign its rights, entitlements, benefits, powers or anything similar to any of these in connection with this Agreement; and/or * Novate this Agreement   That party may not do so without the prior written consent of the other party, not to be unreasonably withheld. |
| Entire agreement |  |
| Status of any previous agreements entered between the parties on the subject matter of this Agreement | They are fully extinguished immediately when this Agreement is entered. |
| Liability of a party in relation to any statement, warranty, representation, opinion or prediction of the future which that party may have made which is not described or clearly cross-referenced in this Agreement | To the fullest extent permitted by Law:   * These are excluded from this Agreement. * That party’s liability in relation to any of these is excluded.   This does not exclude any party’s liability for fraudulent misrepresentation. |
| Amendment |  |
| How this Agreement is to be validly amended (as follows - no other way is valid) | * By agreement in writing between the Council and the Consultancy. * The relevant document must clearly indicate an intention to amend this Agreement. * The relevant document must be authorised by a person who has (or it is reasonable for the other party to believe, without making further checks, that the relevant person has) appropriate authority to amend this Agreement. * If no consideration is indicated in the relevant document: the parties shall pay each other £1.00 as consideration, which they consider sufficient consideration. |
| Remedies |  |
| If this Agreement refers to a particular remedy in a particular circumstance | This does not in itself exclude the availability of any other remedy (whether arising under this Agreement or otherwise) in that circumstance (unless otherwise clearly indicated). |
| If a person with rights under this Agreement pursues a particular remedy in particular circumstances | That shall not in itself prevent that person from pursuing other available remedies in those circumstances (whether those remedies arise under common law, equity, statute or otherwise). |
| Acknowledgements of the parties in relation to seeking remedies other than damages | * Damages may not always be an adequate remedy of a person with rights under this Agreement in particular circumstances. * Therefore, that person may (without being required to prove special damage, and where permitted by Law) obtain other remedies available to that person (whether arising under common law, equity, statute or otherwise), including for example, injunctions and/or specific performance. |
| Severability |  |
| If any part of this Agreement is held by any court (or equivalent body) to be invalid or unenforceable for any reason, the parties to this Agreement must do the following |  |
| First step | if reasonably possible, the parties must use reasonable efforts to agree to modify the affected part to the minimum extent necessary to enable that part (and the rest of this Agreement) to be valid and enforceable, whilst keeping the original intention of the parties intact as far as reasonably possible. |
| Second step if the first step is not reasonably possible | The entire part shall be severed from this Agreement unless   * It alters the fundamental nature of this Agreement; and/or * It is against public policy to do so. |
| About the remaining parts of this Agreement which are not described in paragraph 57.11 | They shall remain binding. |
| Waivers |  |
| Strict requirements for a waiver of a party’s rights or powers in connection with this Agreement to be binding on that party | All of the following:   * It is clearly indicated to be a waiver of the relevant right or power. * It is in writing. * It is authorised by a person who has (or it is reasonable for the other party to believe, without making further checks, that the relevant person has) appropriate authority to give the waiver on behalf of that party. |
| Other rules regarding waiver of any party’s right or power in connection with this Agreement | * Delay or failure to exercise that right or power shall not in itself be a valid waiver of it. * A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion. That waiver does not in itself affect any other right or power. |
| Governing law and jurisdiction |  |
| Law under which this Agreement is to be interpreted and generally governed | English law. |
| Jurisdiction to exclusively apply to disputes arising in connection with this Agreement This is subject to the arrangements for resolving Relevant Disputes in section 53 | English courts |

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| Definitions and interpretation |

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| Definitions |
| Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Agreement) the following capitalised words or expressions shall have the following meaning when used in this Agreement |
| (a word or expression not defined below shall be defined according to 1) if there is a common meaning according to industry or trade, it shall have that meaning, or otherwise 2) it shall have the meaning given in the Oxford English Dictionary) |

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| **Defined term** | **Definition** |
| **Affiliate** | * In relation to a person, any other entity which controls that person, is controlled by that person or is under the same common underlying control as that person. * A person (**‘X’**) will be regarded as having ‘control’ over another person (**‘Y’**) if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters. |
| **Arising Intellectual Property** | Any Intellectual Property arising as a result of activities in connection with the provision of the Services, whether created by the Consultancy, its subcontractors or otherwise. |
| **Business Day** | Any day except a Saturday, Sunday or any official bank or public holiday in England. |
| **Charges** | The charges which the Council is liable to pay the Consultancy according to this Agreement, especially section 11. |
| **Claim** | A claim, proceedings, action, prosecution (or anything similar to any of these) which a third-party threatens or makes against a relevant person by a person other than the Consultancy and/or the Council and/or their respective Affiliates. |
| **Confidential Information** | The information described as such in section 32 in relation to a particular Discloser. |
| **Consultancy Background Intellectual Property** | Any Intellectual Property:   * Belonging to the Consultancy and/or its subcontractors and/or their respective third-party licensors * On which any Arising Intellectual Property depends. |
| **Corrupt Act** | See paragraph 56.2. |
| **Council Assistance** | Each assistance which the Council is to provide the Consultancy as described in paragraph 39.1. |
| **Data Protection Legislation** | All Law in the UK relevant to data protection, including each of the following:   * The Data Protection Act 2018 * Any additional or replacement Law from time to time relating to the processing and protection of personal data or anything similar of individuals and privacy. |
| **Defaulting Party** | See paragraph 48.1. |
| **Discloser** | A person in relation to that person’s Confidential Information according to section 32. |
| **Escalated Person** | * **For the Council:** the relevant director responsible for this contract at the time, or his/her delegate. * **For the Consultancy:** the most senior executive located in the UK at the time, or his/her delegate. |
| **FOI Act** | See paragraph 33.1. |
| **Force Majeure Event** | Each event or circumstance described as such in section 40. |
| **Formal Notice** | Each communication described as such in paragraph 52.1. |
| **Indemnifiable Cause** | See paragraph 42.4. |
| **Indemnifier** | See paragraph 43.1. |
| **Indemnity Beneficiary** | See paragraph 43.1. |
| **Intellectual Property** | Copyright, trademarks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, information of a confidential nature, rights to take action for passing off, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the paragraphs listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights. |
| **Key Personnel** | See paragraph 26.1. |
| **Law** | Any of the following applicable to a party from time to time (to be read independently)   * Any statute, regulation, by-law, order, subordinate legislation or anything similar to any of these. * Any treaty * Any judgement, rule of common law or equity * Any order of a competent court, tribunal, arbitrator or anything similar to any of these * Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or anything similar to any of these) required by law and affecting the relevant person and its activities in connection with this Agreement from time to time. * Any guidance or anything similar issued by authorised government bodies (whether legally binding or not) * Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect at the time on the respective activities of any party in connection with this Agreement. |
| **Losses** | All losses, damages, costs, charges and expenses incurred by the relevant person in the relevant circumstances to which the context refers, whether in tort, contract, by Law or otherwise including, where relevant, third-party claims, liabilities, demands, proceedings, interest, penalties and fines, damage to property, death or personal injury, and full legal costs charged on a solicitor-client basis. |
| **Material Breach** | * A breach of this Agreement by a party (**‘X’**) which has significant (and not trivial) consequences for the other party (**‘Y’**). * This includes for example an anticipatory breach or anything similar of this Agreement by X and any breach of any factual promise given by X under this Agreement, but only to the extent any of these has significant (and not trivial) consequences for Y. |
| **Personnel** | In relation to a party or its contractors or other agents: any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or anything similar to these). |
| **Promised Subcontractor** | * Each current subcontractor indicated as such in paragraph 30.1; or * Any replacement subcontractor carrying out the relevant activities from time to time (or a substantial portion of them) applying to such subcontractor indicated in paragraph 30.1. |
| **Recipient** | A party in relation to the Confidential Information of a relevant Discloser for the purposes of section 32. |
| **Relevant Dispute** | See paragraph 53.1. |
| **Relevant Indemnity** | See paragraph 43.1. |
| **Representative** | In relation to a party, the individual (and if more than one, each of them individually) who from time to time holds that role as that party’s representative in connection with this Agreement:   * If and as indicated in this Agreement; or * As otherwise communicated by that party to the other party in writing from time to time   including   * If the relevant individual is absent from time to time: any other individual deputising for him/her, as decided by the relevant party. * Where the position is vacant from time to time: the Escalated Person of the relevant party. |
| **Services** | The services which the Consultancy must provide under this Agreement as described in section 3. |
| **Specification** | * The specification annexed to or cross-referenced in (and forming part of) this Agreement. * This includes any other document which (according to this Agreement) is deemed to form part of the Specification. |
| **Tender** | * The proposal, response to a competitive exercise or application (or anything similar to any of these) which the Consultancy has submitted to the Council in connection with this Agreement. * This includes the Consultancy’s written responses to any selection procedure in connection with a relevant procurement exercise and any and all written responses which the Consultancy has given to any clarification questions or anything similar which were raised by the Council during any relevant procurement process to which this Agreement relates. |
| **Terminating Party** | See paragraph 48.1. |
| **Termination Default Event** | * **In relation to the Consultancy:** each event or circumstance described in section 46. * **In relation to the Council:** each event or circumstance described in section 47. |

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| Interpretation |  |
| The parties agree to interpret this Agreement as follows Except to the extent   * The context otherwise requires; and/or * The parties otherwise agree in writing; and/or  Otherwise indicated elsewhere in this Agreement |  |
| Headings | Headings do not affect the interpretation of this Agreement. |
| Reference to a party | Reference to any party is a reference to a party to this Agreement. |
| Consents, approvals | * Where consent, approval, permission or anything similar of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions. * Where consent, approval, permission or anything similar of a person is to be at that person’s discretion, that person * Shall not be obliged to respond to a request for it; and * Shall not be obliged to give reasons for its decision (including any decision not to respond); and * Excludes (to the fullest extent permitted by Law) that person’s liability to any person for any reason given for that decision (including any decision not to respond). |
| Calculation of time periods etc. | If this Agreement indicates any expiry date, deadline or similar which is expressed as X days (or if relevant, Business Days) after a particular event (e.g. giving a Formal Notice), the relevant period shall commence on the next day (or Business Day) after that event. |
| Definitions | If a word or phrase is defined in this Agreement, its other grammatical forms have a corresponding meaning. |
| Statutes, codes etc. | Reference in this Agreement to any statute, code or anything similar includes reference to any amending, replacing, modifying or consolidating statute, code or anything similar on substantially similar subject matter. |
| If any obligation of a party is indicated in this Agreement to be a ‘reasonable efforts’ obligation | That party will be considered to have discharged that obligation if all of the following applies   * That party has chosen at least one path to carry out that obligation. * At least one such path is reasonable in the circumstances (including any reasonable views of the other party expressed on the matter in good faith). * That party has used reasonable efforts to carry out the obligation using at least one such path, regardless of whether the outcome necessarily met the requirements of this Agreement. |
| ‘In writing’ | * Use of the expression ‘in writing’ (or a similar word) in this Agreement includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form. * It does not include communication by telephone text messages or communication via a social media site, chat facility (e.g. Teams, WhatsApp etc.) or anything similar to any of these. |
| ‘Including’ | * Use of the word ‘including’, ‘in particular’, ‘for example’ (or a similar words or expressions) in this Agreement at the commencement of a list to illustrate a particular concept does not limit that concept in any way. * Use of the abbreviation ‘etc.’ at the end of a list in this Agreement to illustrate a particular concept does not limit that concept in any way. |
| Other references in this Agreement | * Reference to paragraphs, sections, schedules, appendices or annexures is reference to those in this Agreement. * Reference to one gender refers to all genders. * Reference to the singular includes the plural and vice versa. * Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity. |