



**Sandwell Travel Assistance**

**Flexible Purchasing System**

**Call-Off Contract Terms and Conditions**

**Version 1 (2024) of these Terms and Conditions**

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**Sandwell Travel Assistance**  
**Flexible Purchasing System**  
**Call-Off Contract Terms and Conditions**  
**Version 1 (2024) of these Terms and Conditions**

**1. About the Call-Off Contract**

1.1. About these terms and conditions	These terms and conditions apply to Call-Off Contracts entered by the Permitted Purchaser from time to time under the Flexible Purchasing System <b>except</b> to the extent indicated by the Permitted Purchaser at the time (e.g. in the course of a mini-competition).
1.2. Date when the parties first become contractually bound to the relevant Call-Off Contract	On the date on which the parties evidenced their agreement: <ul style="list-style-type: none"> <li>• In writing (text messages, social media messages or equivalent are in themselves not sufficient evidence).</li> <li>• By appropriately authorised representatives.</li> </ul>
1.3. Name and address of the <b>parties</b> to the Call-Off Contract (i.e. the Permitted Purchaser and the Provider)	As indicated in the relevant Work Schedule.
1.4. Appointment and acceptance	On the date indicated in paragraph 1.2: <ul style="list-style-type: none"> <li>• The Permitted Purchaser appoints the Provider to provide the Services.</li> <li>• The Provider accepts that appointment.</li> </ul>
1.5. The lot of the relevant procurement of the Permitted Purchaser to which the relevant Call-Off Contract relates	As indicated in the Work Schedule.
1.6. The terms and conditions of the relevant Call-Off Contract comprise all of the following <ul style="list-style-type: none"> <li>• As amended from time to time according to the relevant Call-Off Contract</li> <li>• The paragraphs listed below take priority in the order they are listed to the extent of any inconsistencies between them <b>except</b> to the extent otherwise indicated</li> </ul> <p>(a) Work Schedule</p>	The Work Schedule of the Call-Off Contract, including any modifications to the Service Specification indicated in the Work Schedule which are relevant to the Call-Off Contract.

(b) The Service Specification	The Service Specification applying to the Flexible Purchasing System generally as it stands at the date of the relevant Call-Off Contract.
(c) Schedules etc.	Any and all schedules, annexures or anything similar to this referred to in and/or attached to any other part of the Call-Off Contract which are not described elsewhere in this paragraph 1.6.
(d) Rest of these terms and conditions	The rest of the relevant Call-Off Contract not described elsewhere in this list.
(e) Other documents	<p>Each other document, website identified by a link, or anything similar to any of these to which all of the following apply</p> <ul style="list-style-type: none"> <li>• It is cross-referenced in any document listed elsewhere in this paragraph 1.6.</li> <li>• Another relevant part of the relevant Call-off Contract indicates it is incorporated into the Call-off Contract.</li> <li>• It (or in the case of a website, the relevant link) has been communicated between the parties.</li> </ul>
(f) Call-Off Tender	<ul style="list-style-type: none"> <li>• Any Call-Off Tender in relation to the particular Call-Off Contract.</li> <li>• Except to the extent the Permitted Purchaser at its discretion decides that any part of Call-Off Tender is more favourable and should override any other sub-paragraphs in the list in this paragraph 1.6.</li> </ul>
(g) Flexible Purchasing System application	<ul style="list-style-type: none"> <li>• The Provider's application to become a member of the relevant lot on the Flexible Purchasing System.</li> <li>• The Permitted Purchaser may decide at its discretion that any part of Call-Off Tender is to override any other sub-paragraphs in the list in this paragraph 1.6.</li> </ul>
1.7. If the Provider is a consortium and one or some (but not all) members of the consortium are executing the relevant Call-Off Contract on behalf of the consortium	Each member of the consortium who agrees to the relevant Call-Off Contract on behalf of the consortium does so as irrevocable agent for all other members of the consortium (as disclosed to the Permitted Purchaser at or around the time of the date of the relevant Call-Off Contract).

**What the Permitted Purchaser requires**

**2. Description of the Services**

2.1. Description of the Services which the Provider must provide under the relevant Call-Off Contract	As indicated in the relevant Work Schedule and/or the Service Specification.
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2.2. Arrangements regarding changes to volumes in relation to the relevant Call-Off Contract

As indicated in the relevant Work Schedule.

### 3. Performance Standards

3.1. Indicate the standards, service levels, KPIs (or anything similar to any of these) (each of them is a '**Performance Standard**') which the Provider must ensure are at least met by the Provider in providing the Services

As indicated in the relevant Work Schedule and/or the Service Specification.

### 4. Cooperation with regulatory investigations

#### Cooperation obligations

4.1. Obligation of the Provider to cooperate with the Permitted Purchaser in relation to regulatory investigations that meet all of the requirements of paragraph 4.2

- The Provider must provide the Permitted Purchaser with reasonable cooperation according to this section 4 in relation to any such investigation.
- The Provider must do so
  - In a proper and timely manner
  - On the Permitted Purchaser's written request.

4.2. The obligations of the Provider described in paragraph 4.1 only apply to regulatory investigations to which **all** of the following apply

(a) Against whom the investigation is carried out

The investigation is conducted by or on behalf of a regulatory body against the Permitted Purchaser and/or its relevant Affiliate.

(b) Nature of investigation

It may be a routine investigation, an investigation in response to a particular event or circumstance (e.g. a complaint, major incident etc.) or otherwise.

(c) Connected with the Services

The investigation relates (in part or full) to activities by or on behalf of the Provider in connection with the Provider's provision of the Services.

4.3. Examples of the cooperation which the Provider must provide the Permitted Purchaser under paragraph 4.2:

(where relevant and this is not intended to be an exhaustive list)

(a) Access

The Provider must provide the relevant regulator with suitable access to the Provider's premises, records, property or otherwise to allow it to conduct its investigation.

(b) Explanations

The Provider must direct its relevant Personnel to provide appropriate explanations and discussions reasonably required by the relevant regulator.



- (c) Subcontractors

The Provider must (at its own expense) properly exercise its available rights (whether under to contract or otherwise) to ensure each of its relevant direct or indirect subcontractors provides comparable cooperation to the extent that subcontractor’s activities in relation to the provision of the Services are involved.

**Liability to pay/reimburse for cooperation**

4.4. Liability of the Permitted Purchaser

- To pay the Provider additional Charges and/or
- To reimburse the Provider for its third-party expenditure

As a result of the Provider providing the cooperation described in this section 4

- (a) To the extent the investigation relates to allegations of wrongdoing by or on behalf of the Provider
- (b) Otherwise

The Permitted Purchaser is not liable to pay or reimburse the Provider.

The Permitted Purchaser is liable to pay the Provider the following:

- A reasonable charge for the time of the Provider’s (and/or its subcontractor’s) Personnel, at then-current rates.
- Reimbursement of its third-party expenses, to the extent those expenses are reasonable and to the extent the Provider can reasonably evidence those expenses.

4.5. Claiming and payment

- The Provider shall be entitled to claim for the charges and reimbursement of the expenses which the Permitted Purchaser is liable to pay the Provider under paragraph 4.4(b) calendar monthly in arrears for all such activities and expenses incurred in the relevant calendar month.
- The rules (if any) regarding invoicing in the relevant Call-Off Contract (see section 23) shall also apply to such claims.
- The Permitted Purchaser must pay this invoice in **30 days** subject to the rules regarding payment of liabilities elsewhere in the relevant Call-Off Contract.

## Duty of care issues

### 5. Service Users

- 5.1. Each individual who is not a party to the relevant Call-Off Contract for whose benefit the Provider is obliged to provide the Services

Each of them is a '**Service User**' in relation to Services provided to that person under the relevant Call-Off Contract

As indicated in the relevant Work Schedule, whether by name and/or membership of a group.

### 6. Third Party Beneficiaries

- 6.1. The Provider owes a contractual duty of care under the relevant Call-Off Contract in providing the Services to the following persons or organisations (in addition to the Permitted Purchaser)

Each such person or organisation is a '**Third Party Beneficiary**'

The Provider does not owe any contractual duty of care to anyone else under the relevant Call-Off Contract in providing the Services

This does not in itself affect the Provider's duties to any person outside the relevant Call-Off Contract (e.g. in tort).

(a) Service Users

- Each Service User described in section 5.
- But only in relation to Services which the Provider provides to him/her under the relevant Call-Off Contract.

(b) Affiliates

Each Affiliate of the Permitted Purchaser.

### 7. Conflict of interest

- 7.1. Obligations of the Provider in dealing with any conflict of interest in relation to the Services which the Provider must provide under the relevant Call-Off Contract

The Provider must ensure any of its or its subcontractor's Personnel allocated to have direct contact with a Service User is suitably independent of that Service User (e.g. is not a relative of the Service User).

## Social value

### 8. Social value obligations

8.1. The social value obligations of the Provider under the relevant Call-Off Contract for the purposes of the Public Services (Social Value) Act 2012

The Provider must carry out these obligations at no further charge to the Permitted Purchaser

If and as indicated in Call-Off Tender if the Permitted Purchaser has requested a social value offer in connection with the Permitted Purchaser's award of the relevant Call-Off Contract.

### How the Provider is to provide the Services

### 9. The Provider's methods

9.1. Methods or techniques (or anything similar to any of these) with which the Provider must comply in providing the Services

As indicated in Call-Off Tender and in the relevant Work Schedule and/or the Service Specification.

### 10. General standards

10.1. The Provider must carry out its obligations under the relevant Call-Off Contract according to the following standards as a minimum

If there is any inconsistency between any of these, the Provider must (as a minimum) meet the most stringent requirement described below

(a) Performance Standards

According to the Performance Standards indicated in section 3.

(b) The relevant Work Schedule and/or the Service Specification, Call-Off Tender

According to any other standards indicated in the relevant Work Schedule and/or the Service Specification and/or in Call-Off Tender.

(c) 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 the relevant Call-Off Contract relates; and
- To carry out similar activities to those to which the relevant Call-Off Contract relates.

(d) 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 the relevant Call-Off Contract.

## 11. General obligations of the Provider not to create certain risks

The Provider must not cause (or create an unreasonable risk of causing) any of the following as a result of the way in which the Provider (and anyone acting on its behalf) provides the Services

(a) Death, personal injury etc.

Death, personal injury, property loss or damage or other serious harm to any Service User.

(b) Breaches

The relevant Permitted Purchaser and/or its Affiliate doing any of the following:

- Breaching the Law.
- Breaching any duty of care which the Permitted Purchaser and/or its Affiliate owes any third party (whether in tort, contract or otherwise).
- Infringing the property rights (including Intellectual Property rights) of any third party. This does not apply to any property which the Permitted Purchaser and/or its Affiliate has specifically supplied the Provider for the purposes of the Call-Off Contract, or which the Permitted Purchaser has instructed the Provider to use for purposes of the Call-Off Contract.

(c) Bad publicity

- The Permitted Purchaser and/or its Affiliate receiving any significant, unjustified and undesirable publicity.
- This does not prevent the Provider or its subcontractors reporting serious and genuinely suspected wrongdoing by the Permitted Purchaser (or anyone connected to the Permitted Purchaser) to appropriate law enforcement authorities.

### 11.2. Exceptions

The Provider is not liable to the Permitted Purchaser and/or its Affiliate and/or any Service User for any act (or failure to act) by the Provider (or anyone acting on the Provider's behalf) which is otherwise in breach of this section 11 to the extent that act (or failure to act) was done (or failed to be done) according to **any** of the following:

- Any requirements in the relevant Call-Off Contract.
- Any written instructions given by the Representative of the Permitted Purchaser (or any member of its Personnel of at least equivalent seniority within its organisation).

## 12. Permitted Purchaser policies

### Current policies

12.1. The Provider must (in providing any of the Services) comply with the following current policies of the Permitted Purchaser

The Provider is only required to comply with a particular current policy indicated if the Permitted Purchaser has communicated that policy to the Provider in writing (which may include providing the Provider with a relevant website link where the Provider may see the policy)

As indicated in the Service Specification.

### Policies from time to time

12.2. The Provider's obligation to comply with **future policies** from time to time in providing any of the Services

This is subject to paragraph 12.3

The Provider must (in providing any of the Services) comply with future policies of the Permitted Purchaser from time to time where all of the following apply

- That future policy must be reasonable, lawful and relevant to the Provider's provision of the Services; and
- That future policy must have been sufficiently communicated to the Representative of the Provider in writing.
- The Permitted Purchaser must have given the Provider reasonable prior notice of the future policy to give the Provider sufficient time to take appropriate action.

12.3. If the Provider would necessarily need to incur further costs (beyond a trivial level of further costs) to comply with any obligation contained in a future policy of the Permitted Purchaser as described in paragraph 12.2

The following apply except to the extent the Permitted Purchaser and the Provider otherwise agree in writing

- (a) If the Provider is required by Law to comply with that obligation anyway
- (b) If the Provider is NOT required by Law to comply with that obligation anyway

The Provider must comply with that obligation in connection with the Provider's provision of the Services without being entitled to any reimbursement from the Permitted Purchaser for those further costs.

The Provider is not obliged to comply with that obligation in connection with the Provider's provision of the Services unless the Permitted Purchaser has become legally bound in writing to reimburse the Provider for those further costs to the extent those costs are reasonable and appropriately evidenced.

12.4. Character of each policy of the Permitted Purchaser with which the Provider must comply under this section 12

- The policy shall be deemed to form part of the relevant Work Schedule and/or the Service Specification.
- **If there is any inconsistency between any such policy of the Permitted Purchaser and any other part of the relevant Work Schedule and/or the Service Specification:** the policy prevails to the extent of the inconsistency.

## Preparation

### 13. Preparation Activities

#### What are Preparation Activities

13.1. Each of the following is a Preparation Activity for the purposes of the relevant Call-Off Contract

Description of Preparation Activity	The parties responsible for it
Mobilisation activities as indicated in the Service Specification.	As indicated in the Service Specification.
As indicated elsewhere in the relevant Work Schedule	As indicated elsewhere in the Work Schedule.

#### About Preparation Activities generally

13.2. Nature of the obligations of a party in relation to Preparation Activities for which that party is responsible  
(unless otherwise clearly indicated)

- **To the extent the Preparation Activity is within its reasonable control:** it is a contractual obligation of that party.
- **To the extent the Preparation Activity is NOT within its reasonable control:** the relevant party must make reasonable efforts to attempt to carry out the Preparation Activity to the extent relevant activities are within its reasonable control to do so.

13.3. When a Preparation Activity is regarded as being 'completed' for the purposes of this section 13

- When either of the following applies:
- That Preparation Activity is completed to the reasonable satisfaction of each party who is not responsible for it, or
  - Each party agrees in writing (acting reasonably) that the Preparation Activity is no longer required.

13.4. Purposes of each Preparation Activity

Each Preparation Activity must be completed before the Provider is obliged to commence providing the Services under the relevant Call-Off Contract.

13.5. A party responsible for a Preparation Activity (or a part of it) must keep the other party informed of all of the following in relation to that Preparation Activity (or part of it) as those events or circumstances occur or arise

That party must do so in a proper and timely manner on first becoming aware of the matter

- (a) Completion
- (b) Delays etc.
- (c) If no longer necessary

That the Preparation Activity has been completed.

Any significant delays or other problems in completing it, including reasons for the delay or other problem, and (if relevant) any reasonable grounds to believe that it is unlikely to be completed by any required deadline.

Any reasonable grounds to believe it is no longer necessary to for the commencement of the provision of the Services.

### Preparation activity costs

13.6. How costs are to be borne by the parties in carrying out the respective Preparation Activities for which they are responsible

Each party bears its own costs except to the extent otherwise indicated in the relevant Work Schedule.

### Termination for incomplete Preparation Activities

13.7. Termination rights of the parties if any Preparation Activities are not completed by a particular deadline

A party may terminate the relevant Call-Off Contract if and for as long as any Preparation Activity remains incomplete or if the other party has not made satisfactory progress by the relevant deadline described in paragraph 13.8 according to the following:

- A party may not do so if that party is causing (in any way) the delay in the completion of that Preparation Activity.
- A party may not do so even if it causes (in any way) the delay in the completion of any other Preparation Activity.
- A party may do so even if it has not completed any other Preparation Activity for which that party is responsible.
- A party (if it wishes to terminate the relevant Call-Off Contract for this reason) must give a Formal Notice strictly according to section 83.
- A party may not do so in relation to a particular Preparation Activity if that Preparation Activity is completed before that party gives the above Formal Notice, even if after the above deadline.

13.8. Deadline for the purposes of paragraph 13.7

- **If the Call-Off Contract requires only 1 vehicle: 5 Business Days** before the commencement date indicated in paragraph 14.1.
- **If the Call-Off Contract requires more than 1 vehicle and 5 or fewer vehicles: 10 Business Days** before the commencement date indicated in paragraph 14.1.
- **If the Call-Off Contract requires more than 5 vehicles and 10 or fewer vehicles: 15 Business Days** before the commencement date indicated in paragraph 14.1.
- **If the Call-Off Contract requires more than 10 vehicles: 20 Business Days** before the commencement date indicated in paragraph 14.1.

## Duration of activities

### 14. Commencement of the Services

14.1. When the Provider must commence providing the Services under the relevant Call-Off Contract

As indicated in the Work Schedule.

### 15. Expiry

15.1. Expiry date of the relevant Call-Off Contract ('Expiry Date')

- As indicated in the Work Schedule; or
- At the end of the extension period according to section 16.

15.2. Whether the Permitted Purchaser is liable to pay the Provider any compensation on the expiry of the relevant Call-Off Contract

- Not for this reason alone.
- **Exception:** to the extent indicated elsewhere in the relevant Call-Off Contract.

### 16. Extensions

16.1. Periods for which the Permitted Purchaser may extend the relevant Call-Off Contract

As indicated in the Work Schedule.

16.2. Whether the Permitted Purchaser may extend the relevant Call-Off Contract for a shorter period than that indicated in paragraph 16.1.

The Permitted Purchaser may do so.

16.3. Procedure the Permitted Purchaser must strictly follow if it wishes to extend the relevant Call-Off Contract under this section 16

The Permitted Purchaser must give the Provider a Formal Notice as follows:

- Strictly according to section 83.
- Subject to the deadlines and other time restrictions in paragraph 16.4.
- The Permitted Purchaser must clearly indicate the relevant extension period in the Formal Notice.



16.4. Any deadlines or other time restrictions on the Permitted Purchaser in validly exercising its right to extend the relevant Call-Off Contract

Or as any such deadlines or other restrictions are extended or relaxed by the Provider in writing.

16.5. Changes to the terms of the relevant Call-Off Contract (as the terms stand at the Expiry Date) during the extension period

E.g. changes to amounts payable by one party to another

If the Permitted Purchaser wishes to extend under this section 16, it must give the relevant Formal Notice described in paragraph 16.3 no later than **10 Business Days** before the last day prior to the relevant extension period.

- Unchanged unless otherwise agreed by the parties in writing.
- In any case, this section 16 shall not apply to the relevant Call-Off Contract in the final extension period (i.e. there shall be no further extension periods).

## 17. Continuation obligations

17.1. Where this section 17 applies

- This section 17 applies to the continuation obligations of the Provider on the Expiry Date or the earlier termination of the relevant Call-Off Contract.
- The continuation obligations of the Provider in this section 17 only apply if and to the extent the Permitted Purchaser requests (in writing) the Provider to carry them out.
- The Permitted Purchaser may only make this request if it can demonstrate delays in making alternative arrangements regarding the provision of substantially similar replacement services (whether itself or by a replacement service provider).

17.2. General continuation obligations of the Provider

- If this section 17 applies to the relevant Call-Off Contract according to paragraph 17.1; and
- In relation to any activities in connection with the provision of the Services which are to be taken over by the Permitted Purchaser itself, or by a replacement provider

The Provider must continue providing the Services (or affected part) as normal until the Permitted Purchaser itself, or a replacement provider is ready to take over the provision of the Services.

17.3. When the Provider must commence its continuation obligations under this section 17

- Promptly from the Expiry Date or earlier termination date of the relevant Call-Off Contract.
- The Permitted Purchaser may only make that request if the relevant circumstances described in paragraph 17.1 apply at the time.

17.4. For how long the Permitted Purchaser may require the Provider to continue with the continuation obligations under this section 17

- For up to a further **3 months** after the Expiry Date or earlier termination date of the relevant Call-Off Contract.
- The above period is a maximum. The Permitted Purchaser may require the Provider to continue with those obligations for a shorter period.

<p>17.5. Who bears the Provider's costs in carrying out its continuation obligations under this section 17</p>	<ul style="list-style-type: none"> <li>• The Permitted Purchaser shall be liable to pay the Provider the Charges applicable at the time for the Provider's continued provision of the relevant Services according to section 19 for the amount of time for which the Provider continued to provide the Services as required by the Permitted Purchaser under this section 17.</li> <li>• If the Charges would be subject to any changes after the Contract End under section 19 (e.g. any increase due to inflation or similar index): the Charges shall change in relation to the provision of the Services after the Contract End.</li> <li>• The Provider otherwise bears its own costs not described above while continuing to provide the Services as required by the Permitted Purchaser under this section 17.</li> </ul>
<p>17.6. Terms and conditions applying during the continuation period</p>	<ul style="list-style-type: none"> <li>• The terms and conditions of the relevant Call-Off Contract continue to apply during the continuation period as if this were an extension of the relevant Call-Off Contract.</li> <li>• However, this section 17 does not apply to impose any further obligations on the Provider at the end of the relevant continuation period required by the Permitted Purchaser (not longer than the period indicated in paragraph 17.4).</li> </ul>

**18. About the Contract End**

<p>18.1. When is the Contract End of the relevant Call-Off Contract</p>	<p>On the later of the following:</p> <ul style="list-style-type: none"> <li>• The Expiry Date indicated in section 15 or its earlier termination according to the relevant Call-Off Contract.</li> <li>• <b>If the Permitted Purchaser requires the continuation of the relevant Call-Off Contract under section 17:</b> at the end of the relevant continuation period.</li> </ul>
<p>18.2. Consequences of a Contract End</p>	<ul style="list-style-type: none"> <li>• The rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties in connection with the relevant Call-Off Contract (as relevant, to which the Contract End relates) shall discontinue.</li> <li>• <b>Exception:</b> to the extent indicated in paragraph 18.4.</li> </ul>
<p>18.3. If the Contract End only applies to part of the relevant Call-Off Contract</p>	<p>Paragraph 18.2 only applies to that part and not to the rest of the relevant Call-Off Contract.</p>

**18.4. Continuing rights, obligations etc.**

The following rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties to the relevant Call-Off Contract (and/or those of any third parties with rights under the relevant Call-Off Contract) shall continue until they are completed, until they expire, or indefinitely, as relevant according to the relevant Call-Off Contract

- Even if after the relevant Contract End
- These are to be read independently

(a) Already arisen, accrued

Those in connection with the relevant Call-Off Contract which had already arisen or accrued on or before the Contract End.

(b) Relating to certain events or circumstances

Those which relate to events or circumstances

- Which are connected with the relevant Call-Off Contract; and
- Which occurred on or before the date of the Contract End.

(c) Interest

Any interest accruing on any liabilities in connection with the relevant Call-Off Contract which relate to events or circumstances which had already occurred or arisen on or before the date of the Contract End.

(d) Continuing nature

Those in connection with the relevant Call-Off Contract which are expressed (or which are reasonably implied) in the relevant Call-Off Contract to continue after the date of the Contract End.

**Financial arrangements**

**19. Calculation of Charges**

**The initial Charges**

19.1. Amount or calculation of the initial Charges which the Permitted Purchaser is liable to pay the Provider in consideration for the Provider carrying out its obligations under the relevant Call-Off Contract

To be subject to the rest of the relevant Call-Off Contract

As indicated in the Work Schedule.

19.2. About the Charges described in this section 19

- The Charges **exclude** VAT or anything similar, unless otherwise clearly indicated.
- The Charges are otherwise **all-inclusive** of the Provider's costs in providing the Services, except to the extent otherwise
  - Agreed in writing by the Permitted Purchaser at its discretion; and/or
  - Clearly indicated elsewhere in the relevant Call-Off Contract.

19.3. Other charges which the Permitted Purchaser is liable to pay the Provider under the relevant Call-Off Contract which are to be considered 'Charges' for the purposes of the relevant Call-Off Contract

As indicated elsewhere in the relevant Call-Off Contract.

### Changes to the Charges over time

19.4. Routine changes to the Charges over time

The Charges shall increase or decrease according to all of the following:

- Annually.
- On each 1<sup>st</sup> April
- By the same percentage increase or decrease (if any) as that between
  - The then-most recently published UK Consumer Price Index figure, and
  - That same figure but as published 12 months previously to that figure.

19.5. Rules in relation to any increase or decrease in the Charges described in paragraph 19.4

The increase or decrease calculated under paragraph 19.4 only applies for a particular year if at least one party has requested the increase or decrease for that year as follows

- By Formal Notice in writing to the other party.
- The party giving the Formal Notice must do so strictly according to section 83.

That Formal Notice must be given no later than **31<sup>st</sup> March before** the relevant 1<sup>st</sup> April of the relevant year in which the change to the Charges is to occur.

### 20. Charges payable by Service Users

20.1. Restrictions on the right of the Provider to impose further charges on a Service User described in section 5 and/or on his/her parents or equivalent in relation to any Services which the Provider provides to that Service User

- The Services which the Provider is to provide the Service User under a Call-Off Contract is to be free to the Service User and/or his/her parents or equivalent.
- The Provider must not impose any further charges on them in relation to those Services.

**21. Service User absence**

21.1. Arrangements regarding the liability of the Permitted Purchaser to continue paying Charges to the Provider under section 19 in relation to a particular Service User described in section 5 **if that Service User is absent for a period for any reason**  
(for example, in hospital, on holidays etc.)

The Permitted Purchaser's liability to pay the Charges is unaffected by such absence.

**22. Reimbursement of expenses**

22.1. Liability of the Permitted Purchaser to reimburse the Provider for any third-party expenditure incurred by the Provider in carrying out its activities in connection with the provision of the Services

No liability except to the extent indicated in the relevant Work Schedule or to the extent otherwise agreed in writing by the Permitted Purchaser and the Provider.

**Claiming and making payments**

**23. Invoicing by the Provider**

23.1. Whether the Provider must submit invoices to the Permitted Purchaser to trigger a liability of the Permitted Purchaser to pay Charges described in section 19

The Provider must do so according to this section 23.

23.2. When the Provider may issue invoices to the Permitted Purchaser  
  
If the Provider issues an invoice earlier than permitted, the Permitted Purchaser is not required to recognise that invoice for any purpose until the first day the Provider may have issued that invoice according to this paragraph 23.2

Calendar monthly in arrears for Services provided under the Call-Off Contract in the relevant calendar month.

23.3. Deadline by which the Provider must issue a particular invoice

- No later than **30 days** after the date on which the Provider was first entitled to issue that invoice according to paragraph 23.2.
- **If the Provider first issues a particular invoice after the relevant deadline:** the Permitted Purchaser shall not be liable to pay that invoice, even if the Provider has satisfactorily met its obligations to which the invoice relates. This is because such delay is likely to cause difficulties for the Permitted Purchaser in verifying the validity and accuracy of the invoice.
- **Exceptions where the above consequences do not apply to an invoice which the Provider's submits after the relevant deadline:** (if any of the following applies to the delay in issuing the invoice):
  - The Permitted Purchaser specifically requested that delay, in writing.
  - The Permitted Purchaser has approved an extension to the deadline in writing (not to be unreasonably withheld where delays are substantially outside the Provider's reasonable control).
  - The Permitted Purchaser substantially caused the delay.

23.4. Formal requirements which the Provider must ensure its invoice meets (e.g. formats, accompanying documentation etc.)

- As instructed by the Permitted Purchaser from time to time, acting reasonably.
- The Permitted Purchaser shall not be required to recognise the invoice if the invoice does not properly meet those requirements in place at the time.
- If the Permitted Purchaser has not raised any issues of non-compliance with such requirements with the Provider'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 23.3) that invoice shall be deemed to have met the relevant formal requirements from the date on which the Provider submitted it to the Permitted Purchaser.

23.5. How and to where must the Provider send its invoices

- As instructed by the Permitted Purchaser from time to time, acting reasonably.
- The Permitted Purchaser shall not be obliged to recognise any invoice if and for as long as the Provider has sent that invoice inconsistently with those instructions.

## 24. Payment of Charges

<p>24.1. Due date by which the Permitted Purchaser must pay the Provider the Charges as indicated in an invoice which the Provider has submitted to the Permitted Purchaser according to section 23 (subject to the relevant Call-Off Contract)</p>	<p><b>28 days</b> from the date on which the Permitted Purchaser receives the invoice which the Provider submits in accordance with the relevant Call-Off Contract (see in particular, section 23).</p>
<p>24.2. Whether the Permitted Purchaser may (according to section 25) delay payment of Charges otherwise due according to this section 24</p>	<p>The Permitted Purchaser may do so.</p>
<p>24.3. Consequences if part of an invoice is subject to a genuine dispute, but other parts of it are not in dispute</p>	<p>The dispute shall not in itself affect the Permitted Purchaser's liability to pay the undisputed part.</p>
<p>24.4. How the Permitted Purchaser must make payments of Charges to the Provider to discharge its liability to pay the Charges</p>	<p>By BACS into the Provider's bank account as it communicates in writing to the Permitted Purchaser from time to time.</p>

## 25. Right to delay payment

<p>25.1. Actions which the Permitted Purchaser may take (but is not obliged to take) if and for as long as any of the circumstances in paragraph 25.2 applies at the time</p>	<p>The Permitted Purchaser may delay any payment which the Permitted Purchaser is otherwise liable to pay the Provider under the relevant Call-Off Contract, even if after the due date for payment.</p>
<p>25.2. The Permitted Purchaser may take any of the actions described in paragraph 25.1 <b>if and for as long</b> as any of the following circumstances applies at the time</p>	
<p>(a) Overdue report, output etc.</p>	<ul style="list-style-type: none"> <li>Any specific report, output, deliverable, proposal, plan, draft plan or anything similar to any of these which the Provider is required to provide the Permitted Purchaser and/or its Affiliate under the relevant Call-Off Contract <b>remains overdue at the time.</b></li> <li><b>Exception:</b> if the Provider is delayed in doing so substantially and directly due to any Force Majeure Event described in section 68.</li> </ul>
<p>(b) Overdue documents relating to membership of the Flexible Purchasing System</p>	<p>Any accounts, plans or anything similar to these which the Provider must provide Sandwell Council according to the rules from time to time of the Flexible Purchasing System as a condition of the Provider's membership of the Flexible Purchasing System <b>remain overdue at the time.</b></p>

(c) Improvement Plan	<ul style="list-style-type: none"> <li>Any of the obligations of the Provider under an Improvement Plan (which has already been prepared by the Provider and approved by the Permitted Purchaser and/or its Affiliate under section 75 in relation to the relevant Call-Off Contract <b>remains overdue</b> according relevant deadlines in that Improvement Plan.</li> <li><b>Exception:</b> to the extent delays have been substantially and directly caused by the Permitted Purchaser and/or its Affiliate.</li> </ul>
(d) Remedying Material Breach	The Provider has still not yet properly remedied (to the reasonable satisfaction of the Permitted Purchaser and/or its Affiliate) a Material Breach of the relevant Call-Off Contract after the Permitted Purchaser and/or its Affiliate has requested the Provider to do so, according to, and for the purposes of paragraph 76.2.
(e) Removal of Personnel	The Provider has still not yet properly complied with any request for the removal of Personnel which the Permitted Purchaser and/or its Affiliate has properly made according to section 38.
(f) Removal of subcontractors	The Provider has still not yet properly complied with any request for the removal of a subcontractor which the Permitted Purchaser and/or its Affiliate has properly made according to section 53.
(g) Inspection requirements	The Provider is in breach of its obligations under paragraph 63.3 in relation to any inspection which the Permitted Purchaser and/or its Affiliate has requested and is entitled to undertake according to section 63 under the relevant Call-Off Contract.

## 26. Interest on late payment

26.1. Interest which accrues on overdue liabilities owed between the Permitted Purchaser and the Provider

- In connection with the relevant Call-Off Contract
- Whether arising in tort, contract or otherwise
- Regardless of which of them is the debtor or creditor
- Unless otherwise indicated elsewhere in the relevant Call-Off Contract

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.



26.2. Strict procedures which a relevant creditor must follow if it wishes to claim interest that has accrued under this section 26 in relation to a particular overdue liability

The creditor must give the debtor a Formal Notice as follows

- Strictly according to section 83
- Clearly indicating
  - The relevant overdue liability, and
  - The interest accrued at the time the Formal Notice is given.
- **If the overdue liability has been paid at the time the Formal Notice is given:**
  - the Formal Notice must be given no later than **30 days** after the relevant creditor received payment for that overdue liability (and if it is paid in instalments, no later than **30 days** after the relevant creditor received payment of the final instalment).
  - **If the relevant creditor has not given the relevant Formal Notice by the relevant deadline:** the relevant debtor is not liable to pay the relevant creditor any interest in relation to that overdue liability.

**27. Set off**

27.1. The rules in relation to the rights of set off, counterclaim, deduction (or anything similar to any of these) of either party to the relevant Call-Off Contract as the **'Set Off Creditor'** against the other party to that Call-Off Contract as the **'Set Off Debtor'**

(a) 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 the relevant Call-Off Contract.
- Regardless of whether that liability arises in tort, contract or otherwise.

(b) 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 the relevant Call-Off Contract.
- 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.

(c) 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.

27.2. Whether anything in this section 27 limits the rights and remedies of the Set Off Creditor

- No.
- However, this section 27 fully indicates the Set Off Creditor's rights of set off, counterclaim, deduction or anything similar in connection with the relevant Call-Off Contract.

27.3. 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 27

- 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 83 are not necessary in relation to this communication.

## 28. Suspension by the Provider for non-payment

28.1. Right of the Provider to suspend providing any of the Services as a result of overdue liabilities owed to the Provider by the Permitted Purchaser (whether or not those liabilities are connected with the relevant Call-Off Contract)

- The Provider may not do so for this reason alone.
- The only rights and remedies of the Provider 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 26 if the liability relates to the relevant Call-Off Contract); and/or
  - To exercise relevant termination rights (if any) if non-payment results in a Termination Default Event of the Permitted Purchaser (see section 77).

## About the parties

### 29. Required Accreditations

29.1. Licences, registrations, accreditations, permits, consents (or anything similar to any of these) which the Provider must have in place at all times whilst it is obliged to provide any of the Services

Each of them is a '**Required Accreditation**'

- Private Hire Operator Licence
- Restricted Private Hire Operator Licence (Home to School Only Licence)
- Standard National PSV Operator License
- Standard National and International PSV Operator License
- Any others indicated in the Work Schedule
- **In any case:** any others which are required by Law from time to time to carry out activities relevant to the Call-Off Contract.

29.2. To the extent any activities in connection with the relevant Call-Off Contract **are carried out on the Provider's behalf by a subcontractor**

(a) Requirement for the subcontractor

If the subcontractor is required by Law to hold a particular Required Accreditation to carry out those activities, the Provider must ensure the subcontractor holds the Required Accreditation for as long as the subcontractors carries out those activities in connection with the relevant Call-Off Contract.

(b) If a subcontractor does not hold a particular Required Accreditation as required in paragraph (a)

See section 53 on the rights of the Permitted Purchaser to require the removal of the subcontractor if and for as long as it does not have the relevant Required Accreditations in place from time to time whilst carrying out the relevant activities.

(c) If and for as long as

- A subcontractor carries out relevant activities on behalf of the Provider which require a particular Required Accreditation; and
- The Provider itself is not carrying out those activities; and
- The subcontractor holds that Required Accreditation

The Provider is deemed to have met its obligations under this section 29 regarding the holding of that Required Accreditation, even if the Provider itself does not hold the Required Accreditation.

29.3. Obligation of the Provider to provide the Permitted Purchaser with evidence of its compliance with this section 29

- The Provider must provide the Permitted Purchaser with appropriate evidence that the Provider and/or relevant subcontractors have the relevant Required Accreditations in place.
- The Provider must do so promptly on the Permitted Purchaser's reasonable request from time to time.

### 30. Factual promises of the Provider

The Provider warrants and represents to the Permitted Purchaser that each of the following (to be read independently) is materially true and materially correct at the date of the relevant Call-Off Contract and again on the commencement of each extension period if any of that Call-Off Contract under section 16

Excluding any exceptions sufficiently disclosed by the Provider to Sandwell Council (receiving such disclosures on its own behalf and on behalf of each other Permitted Purchaser) in writing before the relevant date when the factual promise applies

#### About the Provider generally

30.1. Claims made by the Provider

The claims the Provider has made about itself and/or about its subcontractors or the respective Personnel of the Provider and/or its subcontractors in the Call-Off 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 Provider's knowledge having made reasonably necessary inquiries.

30.2. No changes to the Provider since Call-Off Tender

- There have been no significant changes to the circumstances of the Provider and/or those of any subcontractor identified in the Call-Off Tender compared to those disclosed in the Call-Off Tender.
- For this purpose, a significant change is one which would (on reasonable view) significantly and unfavourably affect the ability of the Provider to meet its obligations under the relevant Call-Off Contract.

30.3. Not negligently or deliberately withheld information

There is no reasonably significant information about the Provider, its Personnel and/or its subcontractors to which all of the following apply

- The Provider has negligently or deliberately withheld that information from the Permitted Purchaser; and
- If that information had been sufficiently disclosed, it would be reasonably likely to have significantly affected the decision of the Permitted Purchaser (acting reasonably in the circumstances) to enter into the relevant Call-Off Contract on the relevant terms.

30.4. Non-routine investigations, claims

The Provider 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 Provider being significantly and unfavourably affected in its ability to properly carry out its obligations under the relevant Call-Off Contract.
- Service Users generally (or their representatives generally, in relation to Service Users who do not have capacity e.g. parents or equivalent of the Service Users) having good reason not to have appropriate confidence in the Provider.
- Serious, unjustified and unfavourable publicity being brought to the Permitted Purchaser and/or to its Affiliates.

30.5. The Provider as a human being (e.g. a sole trader)

The Provider is not aware of any serious issue relating to his/her health or other personal circumstances which is likely to prevent him/her carrying out his/her obligations as required under the terms of the relevant Call-Off Contract.

#### Financial status of the Provider

30.6. Able to pay liabilities

The Provider is able to pay its liabilities (taking into account its contingent and prospective liabilities) when they fall due.

30.7. Not bankrupt (if the Provider as a human being e.g. a sole trader)

- The Provider is not an undischarged bankrupt; and
- No procedure is currently underway to put the Provider into bankruptcy.

30.8. Various orders, resolutions, appointments etc.

All of the following apply:

- The Provider 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 Provider and/or its assets.
- The Provider has no reasonable grounds to believe that any of the above is imminent.

**Promised Subcontractors**

30.9. All of the following apply in relation to each Promised Subcontractor indicated in paragraph 51.1 or that subcontractor’s replacement (as in place at the time when the relevant factual promise is given)

(a) Contracts in place

The Provider 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 51.1 in connection with the provision of the Services.

(b) Investigations

The Provider 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 51.1 in connection with the provision of the Services.

(c) 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 Sandwell Council (who receives such disclosures on behalf of all Permitted Purchasers) when its approval of the Promised Subcontractor was first sought by the Provider (whether in Call-Off 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 51.1 in connection with the provision of the Services.

(d) No circumstances preventing involvement

The Provider 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 51.1 in connection with the provision of the Services in a proper way, and without unnecessary disruption.

**Ability to carry out obligations**

30.10. Sufficient systems, resources

The Provider has (whether directly or through permitted subcontractors) the necessary and sufficient systems, Personnel and other resources to carry out its obligations under the relevant Call-Off Contract in a proper and punctual manner.

30.11. Due diligence

The Provider 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 Provider is able to carry out its obligations under the relevant Call-Off Contract as follows:
  - As required in the relevant Call-Off Contract; and
  - Without imposing charges or seeking reimbursement from the Permitted Purchaser beyond the Provider's entitlements which are clearly indicated in the relevant Call-Off Contract.
- The Provider understands the risks it faces in entering into the relevant Call-Off Contract and in carrying out its obligations under it.

30.12. Third-party consents, regulatory approvals etc.

The Provider has obtained all necessary third-party consents, regulatory approvals or anything similar to enable it to do all of the following

- To enter into the relevant Call-Off Contract.
- To carry out its obligations under it according to the relevant Call-Off Contract.

30.13. No breaches etc.

By entering into the relevant Call-Off Contract and by carrying out its obligations under it, the Provider 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 Provider 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**

30.14. In any **competitive procedure** in which the Provider was awarded the relevant Call-Off Contract, the Provider has **not** done any of the following:

- (a) Collusion
- (b) Canvassing
- (c) Corrupt Act

Colluded with (or engaged in any other anti-competitive conduct with) any other actual or potential tenderer.

Engaged in any canvassing activity with any Personnel of the Permitted Purchaser and/or its Affiliates.

Done any act in relation to that competitive procedure that would breach paragraph 88.1 in relation to Corrupt Acts if that act were done after the relevant Call-Off Contract is entered.

## Miscellaneous

30.15. If the Provider is a consortium, partnership, joint venture (or similar to any of these)

Each factual promise in this section 30 applies to each member of that consortium, partnership, joint venture (or similar), to the extent reasonably relevant to that member.

## Intellectual Property

### 31. Intellectual Property – general statement

31.1. General statement regarding Intellectual Property

Except to the extent

- Clearly indicated elsewhere in the relevant Call-Off Contract; or
- Otherwise separately agreed between the parties in writing

A party to the relevant Call-Off Contract and/or its Affiliate shall not (as a result of entering and/or exercising any rights and/or carrying out any obligations under the relevant Call-Off Contract) acquire any right or interest in the separately acquired or separately developed Intellectual Property of the other party to the relevant Call-Off Contract and/or its Affiliates or their respective third-party licensors.

31.2. Interpretation of any license over Intellectual Property granted by a party under the relevant Call-Off Contract  
(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.

### 32. Arising Intellectual Property

32.1. Who owns arising Intellectual Property as between the Permitted Purchaser and the Provider

The Permitted Purchaser or the Provider (or the relevant party's contractors, other clients or third-party licensors) shall own whatever 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 the relevant Call-Off Contract.

### Licence to the Permitted Purchaser

32.2. Licence for the benefit of the Permitted Purchaser and its Affiliates

- (a) Who grants the licence  
(the licensor under this paragraph 32.2)

The Provider



(b) To whom the licence is granted (each of them is the licensee under this paragraph 32.2)	<ul style="list-style-type: none"> <li>To the Permitted Purchaser; and</li> <li>Its Affiliates from time to time.</li> </ul>
(c) The Intellectual Property over which the licence is granted	<ul style="list-style-type: none"> <li>Any and all arising Intellectual Property which is to belong to the Provider (and/or its respective third-party clients, contractors, licensors or anything similar) under paragraph 32.1; and</li> <li>Any and all relevant background Intellectual Property of the Provider (and/or of its third-party contractors, licensors or anything similar) over which any Intellectual Property arising from the provision of the Services (whether belonging to the Provider or the Permitted Purchaser) depends.</li> </ul>
(d) Commencement of the licence	Immediately when the relevant Intellectual Property arising from the provision of the Services is first created, developed (or similar).
(e) Main terms of the licence	It shall be a non-exclusive, worldwide, perpetual, royalty-free licence.
(f) Permitted use of the licensed Intellectual Property	<ul style="list-style-type: none"> <li>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).</li> <li>The licensee may only do so to enable it to properly enjoy the benefit of the Services.</li> </ul>
(g) Prohibited use of licensed Intellectual Property for which any licensee must not use the licensed Intellectual Property, even if otherwise permitted elsewhere in this licence	<p>The Permitted Purchaser must not use (or cause or assist or instruct anyone else to use) that Intellectual Property for any of the following activities:</p> <ul style="list-style-type: none"> <li>For unlawful activities.</li> <li>For any activities which (on a reasonable view) compete with the Provider according to its business activities at the time when the arising Intellectual Property was created, developed or anything similar.</li> <li>For activities which bring (or which create an unreasonable risk of bringing) significant, unjustified and unfavourable publicity to the Provider and/or its Affiliates.</li> <li>For activities which damage the goodwill attaching to the licensed Intellectual Property.</li> </ul>
(h) Right of the licensee to assign or sub-licence this licence	The licensee may not do so without the prior written consent of the Provider, not to be unreasonably withheld.
(i) General obligations of the Permitted Purchaser if its Affiliate is a licensee	The Permitted Purchaser must accept any breach of this licence by its Affiliate as if it were the Permitted Purchaser's own breach.

- (j) If any of the relevant Intellectual Property to which this licence relates belongs to the Provider's third-party contractors, licensors or anything similar

The Provider must use reasonable efforts at its own cost to obtain a licence on these terms from that person in relation to that Intellectual Property.

### 33. Use the Permitted Purchaser's logo etc.

33.1. Right or obligation of the Provider to use any logo, trademark, livery or anything similar of the Permitted Purchaser and/or its Affiliate in connection with the Services under a Call-Off Contract

- (a) If the Permitted Purchaser is Sandwell Council

- Sandwell Council (as Permitted Purchaser) expects to provide the Provider with Sandwell Council's travel assistance service lanyard.
- If Sandwell Council does so under the Call-Off Contract, the Provider must direct relevant Personnel to wear at all times while driving a vehicle in connection with the Call-Off Contract.
- The Provider must not use the Council's logo, trademark, livery or anything similar for any other purpose in connection with the Call-Off Contract, except to the extent permitted or required by the Permitted Purchaser in the relevant Work Schedule.

- (b) If the Permitted Purchaser is any other entity

The Provider must not use the Council's logo, trademark, livery or anything similar for any purpose in connection with the Call-Off Contract, except to the extent permitted or required by the Permitted Purchaser in the relevant Work Schedule.

### Personnel issues

#### 34. General obligations in relation to the Provider's Personnel

34.1. The Provider's general obligations in relation to its (and its subcontractor's) Personnel in connection with the provision of the Services

- (a) Sufficient Personnel

The Provider must ensure it and its relevant subcontractors have (between them) a sufficient number of Personnel to meet the Provider's obligations under the relevant Call-Off Contract.

- (b) Suitable

The Provider must ensure its Personnel are reasonably suitable for the tasks allocated to them in connection with the Provider's obligations under the relevant Call-Off Contract, having regard to their personal and professional characteristics (e.g. experience, qualifications, training etc.).

(c) Allocation – if there are Personnel requirements	The Provider must not allocate activities to any of Personnel in connection with the provision of the Services if that individual does not meet the requirements of section 35 which relate to those activities.
(d) Directions	The Provider 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.
(e) Levels of authority	The Provider must ensure its Personnel have been given levels of authority to bind the Provider which are appropriate to the relevant individual's activities in connection with the provision of the Services.
(f) Support	The Provider 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.
(g) Policies	<ul style="list-style-type: none"> <li>• The Provider must have in place HR policies which meet or exceed standards reasonably expected of comparable firms or organisations.</li> <li>• The Provider must promptly provide the Permitted Purchaser with copies of such policies on request (to be made reasonably and in good faith).</li> </ul>
(h) Not to cause breach	The Provider must not give its Personnel directions or assistance that would cause the Provider to breach its obligations under the relevant Call-Off Contract.
(i) Subcontractors	<ul style="list-style-type: none"> <li>• The Provider must properly exercise its available rights and powers (whether under contract or otherwise) to ensure subcontractors which are significantly involved in connection with the provision of the Services comply with this section 34 in relation to their own relevant Personnel engaged for such purposes.</li> <li>• This obligation does not apply where the subcontractor only takes a minor role in connection with those activities.</li> </ul>

### 35. The Provider's Personnel requirements

35.1. Specific requirements which the Provider must ensure each of its Personnel meets before the Provider may involve the relevant individual in the provision of the Services

As relevant, depending on that individual's activities in connection with the provision of the Services

Activity	Requirement
(a) For drivers	<ul style="list-style-type: none"> <li>• An appropriate valid driver's licence.</li> <li>• <b>If driving a taxi:</b> an appropriate valid taxi licence (whether issued by Sandwell Council or another appropriate issuing authority).</li> <li>• <b>If driving a PCV:</b> an appropriate valid licence to drive a PCV.</li> </ul>
(b) For drivers and personal assistants	Enhanced DBS (or equivalent) checks.
(c) For drivers and personal assistants	<p>Passed all of the following:</p> <ul style="list-style-type: none"> <li>• The Online Travel Assistance Service Training as provided by the Sandwell Council.</li> <li>• Sandwell Council's supplementary test which it requires when the relevant individual collects his/her badge</li> </ul> <p>supplemented by a test when they pick up their badge for driver and pa</p>
(d) For drivers and personal assistants	<ul style="list-style-type: none"> <li>• Must have a TAS badge issued by Sandwell Council.</li> <li>• For this purpose, Sandwell Council:               <ul style="list-style-type: none"> <li>- May but is not obliged to undertake further checks on an individual who requires a TAS badge.</li> <li>- Refuse to issue a TAS badge to an individual who requires a TAS badge, but may only do so with reasonable grounds.</li> </ul> </li> </ul>
(e) For any Personnel having contact with Service Users and/or their families in connection with the Services	Appropriate ability to speak, read and write in English.
(f) All Personnel engaged in the provision of the Services	Right to work in the UK.

<p>(g) All Personnel engaged in the provision of the Services</p>	<p>Neither of the following</p> <ul style="list-style-type: none"> <li>• Unspent convictions of any crime involving dishonesty, violence, sexual misconduct or serious property damage (regardless of the penalty) or any other type of offence resulting in a prison sentence (whether suspended or otherwise).</li> <li>• Current anti-social behaviour orders (as defined in the Crime and Disorder Act 1998).</li> </ul> <p><b>Exception:</b> to the extent the individual's participation in the provision of the Services has been approved by Sandwell Council (in writing, at discretion and on behalf of all other Permitted Purchasers). The Provider must make sufficient disclosures about the matter to the Permitted Purchaser to enable it to properly consider the matter.</p>
<p>(h) <b>Others:</b> as indicated in the Service Specification and/or the relevant Work Schedule</p>	<p>As indicated in the Service Specification and/or the relevant Work Schedule.</p>
<p>(i) <b>Others:</b> in relation to activities for which the Law requires an individual to hold a specific licence, qualification, background check (or anything similar to these) to carry out those activities</p>	<p>As required by Law</p>
<p>35.2. Extent to which the Provider's obligations in paragraph 35.1 extend to Personnel of subcontractors engaged by the Provider in connection with the provision of the Services</p>	<p>It only applies in respect of any one or more of the following:</p> <ul style="list-style-type: none"> <li>• Each subcontractor which is an Affiliate of the Provider.</li> <li>• Each Promised Subcontractor (section 51).</li> <li>• Other subcontractors in relation to whom the Permitted Purchaser's consent is required under section 52.</li> </ul> <p>It does not apply to other subcontractors.</p>

## 36. Key Personnel

### 36.1. Definition of 'Key Personnel'

<ul style="list-style-type: none"> <li>• Each current Key Personnel indicated in paragraph 36.2; or</li> <li>• Each replacement appointed according to the relevant Call-Off Contract (particularly this section 36) from time to time to have the involvement, role etc. with the provision of the Services as indicated in paragraph 36.2.</li> </ul> <p><b>If there are 2 or more individuals described in paragraph 36.2:</b> reference in the relevant Call-Off Contract to a Key Personnel is reference to each of them.</p>
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36.2. Indicate the current Key Personnel of the Provider whom the Provider must use in certain activities connected with the Services

Involvement, required role etc. in connection with the Services	Current named individual
As indicated in the relevant Work Schedule.	As indicated in the relevant Work Schedule.

36.3. The Provider must do all of the following in relation to each Key Personnel in place at the time

(a) Contracts in place

The Provider must ensure it has appropriate contracts in place to ensure the Key Personnel can have the relevant involvement, role etc. as required in paragraph 36.2.

(b) Directions

The Provider 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 36.2.

(c) Absence

The Provider 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.).

(d) Not to terminate

The Provider must not terminate either of the following while the Provider is required to provide any of the Services under the relevant Call-Off Contract:

- **If the Key Personnel's contract is with the Provider directly (e.g. he/she is an employee, officer, worker or direct contractor of the Provider):** the Provider's contract with the Key Personnel, except due to his/her serious default.
- **If the Key Personnel's contract is NOT with the Provider directly (e.g. he/she is an employee, officer, worker or direct contractor of a direct or indirect subcontractor of the Provider):** the Provider'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.

36.4. Right of the Provider 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 Provider

- Only with the written consent of the Permitted Purchaser.
- The Permitted Purchaser must not withhold that consent where the removal of the Key Personnel is made for good reasons. See paragraph 36.5 for examples.
- In any case, the Permitted Purchaser may withhold that consent until it is satisfied (acting reasonably) with arrangements regarding a replacement.

36.5. Examples of good reasons for the Provider to remove the Key Personnel under paragraph 36.4 whilst he/she still remains an employee, officer, worker or direct contractor of the Provider (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.

36.6. The Provider must replace the Key Personnel from time to time but only if any of the following applies

(a) Removal

The Provider removes the Key Personnel under paragraph 36.4.

(b) If the Key Personnel is directly contracted by the Provider  
(e.g. he/she is an employee, officer, worker or direct contractor of the Provider)

The Provider's contract with the Key Personnel ends for any reason other than due to termination by the Provider without the Key Personnel's serious default (e.g. due to the Key Personnel's death, resignation or retirement, dismissal for serious default).

(c) If the Key Personnel is NOT directly contracted by the Provider  
(e.g. he/she is an employee, officer, worker or direct contractor of a direct or indirect subcontractor)

- The Provider'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.

(d) Requested removal

The Permitted Purchaser has required the removal of the Key Personnel from his/her activities in connection with the provision of the Services, but only with reasonable grounds, including the following:

- Serious misconduct; and/or
- Serious incompetence.

This is subject to the Permitted Purchaser reasonably consulting with the Provider before taking such action with a view to remedying the situation, unless immediate removal is justified.

(e) Requested removal

The Permitted Purchaser has required the removal of the Key Personnel from his/her activities in connection with the provision of the Services according to section 38.

(f) 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 Provider) has indicated that the Key Personnel expects to be absent during the term of the relevant Call-Off Contract for a continuous period of **30 days** for any reason (e.g. illness, maternity etc.), in which case the Provider must replace the Key Personnel when his/her anticipated absence commences.

36.7. Approval rights of the Permitted Purchaser in connection with the appointment of any replacement Key Personnel from time to time

The Permitted Purchaser must accept a replacement proposed by the Provider unless

- The Permitted Purchaser has reasonable grounds to object to the proposed replacement; and
- The Permitted Purchaser has raised the objection no later than the later of the following:
  - **If the Permitted Purchaser has NOT requested the cooperation described below after more than 7 days after the proposed replacement was first communicated by the Provider to the Permitted Purchaser: 7 days** after the date of that communication.
  - **If the Permitted Purchaser has requested the cooperation described below 7 days or less after the proposed replacement was first communicated by the Provider to the Permitted Purchaser: 7 days** after the last date on which the Provider provided that cooperation.

The Provider must provide the Permitted Purchaser with reasonable cooperation in relation to the proposed replacement (e.g. providing CVs, allowing an interview) if reasonably requested by the Permitted Purchaser to enable the Permitted Purchaser to determine whether or not to object to the appointment.

36.8. Consequence if

- The Provider is required to replace a Key Personnel under paragraph 36.6; and
- The Provider has not proposed a replacement (other than those in relation to whom the Permitted Purchaser has objected under paragraph 36.7) within a certain period

It shall be a Termination Default Event if and for as long as the Provider has not proposed a replacement more than **30 days** after the Provider was first required to replace the relevant individual under paragraph 36.6.



36.9. **Keeping informed:** the Provider must keep the Permitted Purchaser informed promptly on the Provider first becoming aware of any of the following in relation to the Key Personnel at the time

(a) Anticipated temporary absence

The Provider 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.).

(b) Termination notice

- Any notice given by or to the Key Personnel to terminate his/her contract with the Provider 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 Provider (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 the relevant Call-Off Contract).

(c) Death, disability

The death or total and permanent disability of the Key Personnel.

### 37. Modern slavery and trafficking

37.1. The Provider must comply with all of the following obligations in connection with the provision of the Services regarding modern slavery and trafficking

(a) Comply with Law

The Provider must comply with relevant Law, including the Modern Slavery Act 2015.

(b) Comply with policies

The Provider must comply with any policy of the Permitted Purchaser in relation to the issue, to the extent required under section 12.

(c) Supply chain

The Provider 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 37.1.

37.2. Breaches of paragraph 37.1 by the Provider which are to be a Termination Default Event of the Provider

- Any breach of the Modern Slavery Act 2015 (or any reasonable equivalent Law applicable to the Provider or its Affiliate at the time) by the Provider and/or its Affiliate.
- This applies even if the breach is minor.

37.3. Keep informed

The Provider must keep the Permitted Purchaser informed in a proper and timely manner if the Provider becomes aware of any incident involving slavery and/or trafficking in connection with the provision of the Services.

- Within the Provider’s own organisation, and/or
- Within the Provider’s supply chain.

**38. Removal of the Provider’s Personnel**

**Obligation to remove**

38.1. The Provider’s obligation

The Provider must remove any of its (or its subcontractor’s) Personnel from involvement in the provision of the Services promptly on request of the Permitted Purchaser according to this section 38.

38.2. When the Permitted Purchaser may request removal of relevant Personnel

- Only with reasonable grounds.
- See paragraph 38.3 for examples of reasonable grounds.

38.3. Examples of reasonable grounds for requiring removal of Personnel under this section 38

(where relevant and not to exclude other reasonable grounds that may apply, and to be read independently)

(a) Meeting Personnel requirements

The individual does not properly meet the requirements indicated in section 35 where relevant to his/her activities in connection with the provision of the Services.

(b) Basis to disclose under Data Protection Legislation

The Provider or its subcontractor (as relevant) does not have sufficient basis under the Data Protection Legislation (e.g. the consent of the individual or other basis) to allow the Permitted Purchaser to check that the relevant individual properly meets the requirements relevant to him/her in section 35.

(c) Incompetence

The individual has demonstrated serious incompetence in his/her allocated tasks in connection with the provision of the Services.

(d) Misconduct

The individual’s serious misconduct in his/her activities in connection with the provision of the Services.

(e) Corrupt Acts

- The individual carries out any Corrupt Act described in paragraph 88.1 in connection with the provision of the Services; and/or
- Directs and/or assists another person to do so.

(f) 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 Permitted Purchaser generally.

(g) If the Provider is processing any Processed Personal Data under section 59

- In the circumstances described in paragraph 59.30(h).
- In this case, such removal only relates to that individual's access to, and/or involvement in, the processing of, any Processed Personal Data of the Permitted Purchaser under the relevant Call-Off Contract.

38.4. Obligations of the Permitted Purchaser before requesting removal of Personnel under this section 38

The Permitted Purchaser must do the following:

- Reasonably consult with the Provider, and
- Give the Provider a reasonable opportunity to remedy or otherwise deal with the matter.

The above obligations of the Permitted Purchaser do not apply where it is reasonable for the Permitted Purchaser to require immediate removal of the individual.

#### Liability in relation to removal

38.5. Whether the Provider's removal of any Personnel on the request of the Permitted Purchaser under this section 38 in itself relieves the Provider of its obligations under the relevant Call-Off Contract

No.

38.6. Liability of the Permitted Purchaser for any Losses incurred by the Provider in connection with any third party Claim made or threatened against the Provider as a result of any request of the Permitted Purchaser under this section 38

The liability of the Permitted Purchaser for any such Losses is excluded to the fullest extent permitted by Law,

#### Reinstatement

38.7. The Provider's right to reinstate Personnel who have been removed under this section 38

The Provider 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 Permitted Purchaser, given according to paragraph 38.8.

38.8. The Permitted Purchaser's consent for the purpose of paragraph 38.7 is to be given as follows:

- (a) Where the Permitted Purchaser is not to unreasonably withhold consent to the reinstatement of an individual
  
- (b) Otherwise

- **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 Permitted Purchaser is satisfied (acting reasonably) that appropriate corrective action has been taken (where reasonably possible).

The Permitted Purchaser's consent is at its discretion.

## TUPE on Commencement

### 39. TUPE Transfers on commencement

39.1. Where section 39 to section 41 inclusive apply

Section 39 to section 41 inclusive only apply if any individual has a right to a TUPE Transfer in connection a Commencement Undertaking Transfer in connection with the relevant Call-Off Contract.

39.2. Information regarding each individual who is expected to have a right to a TUPE Transfer in connection a Commencement Undertaking Transfer

As supplied to the Provider and/or any other relevant transferee employer by the Permitted Purchaser and/or by any relevant transferor employer.

39.3. Obligation of the Permitted Purchaser to update the information regarding individuals who are expected to have a right to a TUPE Transfer in connection a Commencement Undertaking Transfer

The Permitted Purchaser must do so in a timely manner, but only if it has received any such update from a relevant transferor employer.

39.4. If any individual has a right to a TUPE Transfer as a result of a Commencement Undertaking Transfer, obligations of

- The Permitted Purchaser (if and insofar it is the transferor employer of any individual under the Commencement Undertaking Transfer) and
- The Provider (if and insofar it is the transferee employer of any individual under the Commencement Undertaking Transfer)
- Each of them must do all of the following where relevant

- (a) Comply with Law

The Permitted Purchaser and the Provider must comply in a proper and timely manner with their respective obligations if any under relevant Law in relation to that transfer.

(b) Provide information	<p>The obligations of the Permitted Purchaser and the Provider in paragraph (a) include (for example and where relevant) providing (in a proper and timely manner) the other party or the other party's contractor (if the contractor is a transferor employer or the transferee employer)</p> <ul style="list-style-type: none"> <li>• With appropriate information</li> <li>• To enable the other party (or its contractor, as relevant) to properly carry out its obligations under regulation 13 of the TUPE Regulations.</li> </ul>
(c) If a transferor employer of any individual is a direct or indirect contractor of the Permitted Purchaser	<p>The Permitted Purchaser must (at its own expense) properly exercise its available rights (whether under contract or otherwise) to ensure all of the following</p> <ul style="list-style-type: none"> <li>• That the contractor complies with paragraph (a) and paragraph (b) by that direct or indirect contractor (as transferor employer) in relation to the transfer of the relevant individual's employment.</li> <li>• That the contractor properly meets all of its Pre-TUPE Transfer Liabilities to all of its employees who have rights to a TUPE Transfer on the Commencement Undertaking Transfer.</li> </ul>
(d) If a transferee employer of any individual is a direct or indirect contractor of the Provider	<p>The Provider must (at its own expense) properly exercise its available rights (whether under to contract or otherwise) to ensure compliance with paragraph (a) and paragraph (b) by that contractor (in its capacity as transferee employer) in relation to the transfer of the relevant individual's employment.</p>
39.5. Whether the Permitted Purchaser gives the Provider any promise that any particular individual identified as having a right to a TUPE Transfer will exercise his/her right to a TUPE Transfer on a Commencement Undertaking Transfer	<p>Due to the nature of this right of the individual, the Permitted Purchaser cannot give a promise of this kind.</p>
39.6. When a relevant Commencement Undertaking Transfer is deemed to take place	<p>At 23.59 hours on the day immediately before the day on which relevant activities transfer.</p>

**40. Limitation of the Permitted Purchaser's liability on a Commencement Undertaking Transfer**

40.1. Liability of the Permitted Purchaser to the Provider and/or its direct or indirect subcontractors in relation to any TUPE Transfer (or asserted TUPE Transfer) of any individual in connection with a Commencement Undertaking Transfer

- The Permitted Purchaser's liability in these circumstances is limited to its breach of its obligations to the Provider under paragraph 39.4(c).
- All other liability of the Permitted Purchaser to the Provider and/or its direct or indirect subcontractors in relation to any such TUPE Transfer (or any such asserted TUPE Transfer) is excluded to the fullest extent permitted by Law.
- This is reasonable because the Permitted Purchaser is not a transferor employer.
- Therefore, these matters are outside the Permitted Purchaser's reasonable control.

**41. TUPE Transfers on a Commencement Undertaking Transfer – the Provider's indemnity**

41.1. To whom the Provider indemnifies under this section 41  
(each of them 'X')

- Each of the following:
- The Permitted Purchaser; and
  - The Permitted Purchaser's direct or indirect previous service provider to the extent it is a transferor employer of any individual with a right to a TUPE Transfer on a Commencement Undertaking Transfer.

41.2. For what the Provider must indemnify X

- For X's Losses in respect of any one or more of the following, as relevant
- The first paragraph of this indemnity in paragraph 41.3.
  - The second paragraph of this indemnity in paragraph 41.4.
  - The third paragraph of this indemnity in paragraph 41.6.

41.3. First paragraph of the indemnity for the purposes of paragraph 41.2

All of the following apply

(a) For what the Provider must indemnify X under this paragraph 41.3

For X's Losses resulting from any Claim made or threatened against that person as described in this paragraph 41.3.

(b) The Claim described in paragraph (a) must be made against X by an individual to whom either of the following applies

(i) Employment transfers

The individual's employment transfers to the Provider or its direct or indirect subcontractor (whichever is the relevant transferee employer) as a TUPE Transfer as a result of any Commencement Undertaking Transfer.

(ii) Employment would have transferred

- The individual's employment would have transferred to the Provider or its direct or indirect subcontractor (whichever is the relevant transferee employer) as a TUPE Transfer as a result of any Commencement Undertaking Transfer.
- However, all of the following apply to the individual:
  - The individual must have done at least one of the things described in paragraph (c) in relation to the TUPE Transfer (or prospective TUPE Transfer).
  - The main reason for the individual doing any of the things in paragraph (c) is that the transferee employee has proposed any changes to the individual's terms and conditions of employment which are unfavourable to the employee.
  - The transferee employer has not withdrawn that proposal.

(c) For paragraph (b)(ii) to apply to an individual, he/she must have done at least one of the following:

(i) Object

That individual must have raised an objection to the TUPE Transfer.

(ii) Resignation

That individual must have resigned immediately prior to the Commencement Undertaking Transfer.

(iii) Certain termination of employment

That individual must have treated his/her employment as having been terminated under regulation 4(9) of the TUPE Regulations.

(d) The Claim described in paragraph (a) must relate to at least one of the following for the purposes of this paragraph 41.3

(i) Employment

A breach by the relevant transferee employer of its employment contract with the relevant individual.

(ii) Collective agreement

A breach by the relevant transferee employer of any collective agreement relevant to the individual (e.g. with his/her union).

(iii) Transfer process

A breach by the relevant transferee employer of the Law relating to the individual's TUPE Transfer, including the relevant transferee employer's breach of its consultation obligations under regulation 13 of the TUPE Regulations.

(iv) If the relevant individual has done any of the things described in paragraph (c)

The transferee employer has proposed changes to the relevant individual's terms and conditions of employment as described in paragraph (b)(ii).

41.4. Second paragraph of the indemnity for the purposes of paragraph 41.2

The Provider must indemnify X for X's Losses to the extent they relate

- To any statement
- Issued by the Provider and/or its relevant direct or indirect contractor (whichever is the transferee employer)
- Where paragraph 41.5 applies to that statement.

41.5. Requirements of the statement for the purposes of paragraph 41.4

All of the following:

(a) Purposes of the statement

The relevant transferee employer has issued the statement in connection with the proposed TUPE Transfer of any individual in connection with a Commencement Undertaking Transfer.

(b) When the statement is made

The relevant transferor employer has issued the statement before the date of the Commencement Undertaking Transfer.

(c) Without permission

The relevant transferor employer has issued the statement without X's prior written permission.

41.6. Third paragraph of the indemnity for the purposes of paragraph 41.2

For X's Losses to the extent they relate to any Claim made or threatened against X where all of the following apply

(a) Who is the claimant

The Claim is made or threatened against X by HMRC or other statutory or similar body (whether or not related to taxation).

(b) For what the Claim relates

The Claim relates to X's liabilities

- In respect of any individual whose employment is subject to a TUPE Transfer on a Commencement Undertaking Transfer.
- Including liabilities to pay PAYE and/or national insurance contributions

To the extent those liabilities relate to events or circumstances which occurred or arose arise after the date of the Commencement Undertaking Transfer.

41.7. **Exceptions:** the indemnity in this section 41 does not apply to X's Losses to the extent any of the following applies to those Losses

(a) Negligence

To the extent X's Losses are caused by

- X's negligence, or
- The negligence of X's separate agents.



(b) Breach of Law	To the extent X's Losses are caused by <ul style="list-style-type: none"> <li>• X's breach of the Law (including the TUPE Regulations); or</li> <li>• The breach of the Law of X's separate agents.</li> </ul>
(c) Breach of contract	To the extent X's Losses are caused by <ul style="list-style-type: none"> <li>• X's breach of contract or other legally binding arrangement; or</li> <li>• The breach of contract or other legally binding arrangement of X's separate agents</li> </ul>
41.8. Rules in relation to the indemnity given in this section 41	Section 72 applies to this indemnity.

**Limits on the organised grouping for TUPE purposes**

**42. Agreed Grouping**

42.1. The agreed size and composition of the organised grouping which the Provider may use in carrying out its activities under the relevant Call-Off Contract (the '**Agreed Grouping**' at a particular time) are as follows

- (a) Current
- (b) From time to time

(a) Current	If and as indicated in the Call-Off Tender.
(b) From time to time	As changed by the Provider from time to time, with the prior written consent of the Permitted Purchaser, not to be unreasonably withheld.
42.2. The Provider's obligations	The Provider must provide the Services in such a way to ensure that no individual who is not a member of the Agreed Grouping at a particular time would have any right to a TUPE Transfer if a Cessation Undertaking Transfer occurred at that time.
42.3. Consequences in relation to any individual who <ul style="list-style-type: none"> <li>• Has (or claims to have) rights to a TUPE Transfer on a Cessation Undertaking Transfer, but</li> <li>• Is not a member of the Agreed Grouping at the time</li> </ul>	The indemnity which the Provider gives in section 47 applies in relation to that individual.

## TUPE on cessation

### 43. TUPE Transfers on a Cessation Undertaking Transfer

- 43.1. Where section 43 to section 47 inclusive apply
- 43.2. When a relevant Cessation Undertaking Transfer is deemed to take place
- 43.3. General obligations of the Permitted Purchaser and the Provider in relation to TUPE Transfers on any Cessation Undertaking Transfer

Section 43 to section 47 inclusive only apply if any individual has a right to a TUPE Transfer on any Cessation Undertaking Transfer.

At 23.59 hours on the day immediately before the day on which relevant activities transfer.

- To comply with their respective obligations under the Law generally in relation to the TUPE Transfers.
- **If the transferor employer is a direct or indirect subcontractor of the Provider:** the Provider must (at its own expense) properly exercise its available rights (whether under to contract or otherwise) to ensure the relevant transferor employer complies with such obligations in relation to relevant transferring employees.
- **If the transferee employer is a replacement provider of the Permitted Purchaser or that provider's direct or direct subcontractor:** the Permitted Purchaser must (at its own expense) properly exercise its available rights (whether under to contract or otherwise) to ensure the relevant transferee employer complies with such obligations in relation to relevant transferring employees.

### 44. Providing TUPE information on Cessation Undertaking Transfer

- 44.1. Purpose of this section 44
- 44.2. What information the Provider must provide the Permitted Purchaser
- 44.3. How the Provider must provide the information described in paragraph 44.2

To set out the Provider's obligations in providing information to the Permitted Purchaser regarding prospective TUPE Transfers if any individual may have a right to a TUPE Transfer in relation to a Cessation Undertaking Transfer.

All information indicated in paragraph 44.12 to the extent relevant to each individual who would have a right to a TUPE Transfer if a Cessation Undertaking Transfer occurred at the date on which the Provider receives the Permitted Purchaser's request for that information.

- In writing; and
- With material accuracy and completeness.

<p>44.4. Deadline by which the Provider must provide the information indicated in paragraph 44.2</p>	<ul style="list-style-type: none"> <li>• No later than <b>30 days</b> after the Permitted Purchaser has requested the information from the Provider in writing; or</li> <li>• Such longer time requested by the Provider and as permitted by the Permitted Purchaser in writing, acting reasonably.</li> </ul>
<p>44.5. When the Permitted Purchaser may make the request described in paragraph 44.4</p>	<ul style="list-style-type: none"> <li>• In good faith; and</li> <li>• Only in genuine contemplation of a Cessation Undertaking Transfer.</li> </ul> <p>This may include the conduct of a competitive procurement exercise (or similar) in contemplation of a Cessation Undertaking Transfer that would occur if the Provider were replaced by another operator.</p>
<p>44.6. Whether the Provider may provide the information in a manner to protect the rights of relevant individuals under the Data Protection Legislation</p>	<ul style="list-style-type: none"> <li>• The Provider may take reasonable and proportionate steps to do so, for genuine purposes of complying with the Data Protection Legislation.</li> <li>• This may include (if relevant) providing the relevant information in a manner so that no individual can be identified.</li> <li>• Exceptions: in the circumstances described in paragraph 44.10.</li> </ul>
<p>44.7. Responsibility under the Data Protection Legislation</p>	<p>As between the Provider and the Permitted Purchaser, the Provider shall retain liability to any individual whose personal data is disclosed and used according to (and for the purposes of) this section 44 if such disclosures and use breach that individual's rights under the Data Protection Legislation.</p>
<p>44.8. Consequence if the Provider does not provide any such information whatsoever as required in paragraph 44.2 by the deadline described in paragraph 44.4</p>	
<p>(a) Deemed disclosure</p>	<p>The Provider shall be deemed to have disclosed to the Permitted Purchaser that no individual would have had any right to a TUPE Transfer if a Cessation Undertaking Transfer had occurred on the deadline in paragraph 44.4.</p>
<p>(b) Consequences of the deemed disclosure in paragraph (a) – the Permitted Purchaser's right to disclose (examples only, not an exhaustive list)</p>	<p>The Permitted Purchaser may disclose to prospective replacement operators (whether or not in a public procurement exercise) that no individual would have had any right to a TUPE Transfer on the Cessation Undertaking Transfer in reliance on the deemed disclosure by the Provider.</p>
<p>(c) Indemnity</p>	<p>Section 47 sets out an indemnity given by the Provider in relation to any individual who later asserts that he/she has a right to a TUPE Transfer in connection with the Cessation Undertaking Transfer.</p>

44.9. The Provider's obligation to provide updates to the information requested by the Permitted Purchaser under this section 44

(a) Main obligation

- The Provider must provide updates (e.g. significant changes) in writing until the relevant Cessation Undertaking Transfer occurs.
- The Provider must do so in a way to reflect changes that occur and that would be relevant if the Cessation Undertaking Transfer occurred at the time the update was made.

(b) How the Provider must carry out its obligations under paragraph (a)

- The Provider must do so according to all of the following:
- Promptly when any significant change occurs;
  - Regardless of whether the Permitted Purchaser has requested the update; and
  - In any case, promptly on the request of the Permitted Purchaser (made reasonably and in good faith for purposes genuinely connected to the prospective Cessation Undertaking Transfer).

44.10. Further obligations of the Provider to provide personally identifying information before the Cessation Undertaking Transfer

(a) Further information which the Provider must provide the Permitted Purchaser or another relevant transferee employer

All of the information of the kind described in paragraph 44.2

- That is materially accurate and materially complete.
- In relation to each individual whose employment is to transfer to the relevant transferee employer on the Cessation Undertaking Transfer.
- Regardless of whether the Provider or its direct or indirect subcontractor is the transferor employer.
- Identifying by name each individual to whom the information relates.

(b) To whom the Provider must provide the further information described in paragraph (a)

To the relevant transferee employer of the individual on the Cessation Undertaking Transfer.

(c) Deadline by which the Provider must provide the further information described in paragraph (a)

Either of the following, as relevant

(i) If special circumstances make it not reasonably practicable for the transferee employer to allow the information to be provided by the minimum deadline in the TUPE Regulations

- As soon as reasonably practicable after the relevant transferee employer requests that information in writing.
- **In any case:** no later than the date of the relevant Cessation Undertaking Transfer.

(ii) In all other cases where paragraph (i) **does not** apply

No later than the minimum deadline in the TUPE Regulations by which a transferor employer ordinarily must provide 'employee liability information' where no urgent circumstances apply.

(d) When the information provided under paragraph (a) must be materially accurate and materially complete

It is regarded to be materially accurate and materially complete for the purposes of the relevant Call-Off Contract

- **14 days** before the date on which the Provider (or other relevant transferor employer) provides the relevant information, or
- Such later date indicated by the Provider (or other relevant transferor employer) at the time.

44.11. Whether the Permitted Purchaser is obliged to reimburse the Provider for its costs in carrying out its obligations under this section 44

No.

44.12. Information which the Provider must supply the Permitted Purchaser for the purposes of this section 44

- All of the following
- To the extent requested in writing by the Permitted Purchaser; and
- To the extent relevant to each individual who would have a right to a TUPE Transfer if a Cessation Undertaking Transfer occurred at the relevant time when the Provider provides the information

(a) Job title

The individual's job title

(b) Grade

The individual's grade if any.

(c) Wages etc.

The individual's wages, salary, entitlements to bonuses and/or entitlement to any profit sharing (or anything similar to any of these), as relevant.

(d) Pension

The individual's current pension arrangements with the individual's current employment, including (if relevant) the individual's membership (or eligibility for membership) for any public sector pension scheme.

(e) Other benefits

The individual's other employment related benefits (e.g. membership of any pension or other retirement benefit scheme or anything similar, membership of any share option plan, company car, health insurance, life assurance etc.).

(f) Date of birth

The individual's date of birth.

(g) Commencement

The commencement date of the individual's employment.

(h) Working hours

The individual's working hours.

(i)	Time spent	A genuine approximation of the percentage of the individual's time spent on the Services at or around the time the Provider provides the information.
(j)	Relationship with the Provider	The individual's relationship with the Provider (e.g. whether an employee, or an employee of the Provider's contractor, or otherwise).
(k)	Employer	The identity of the individual's employer (or person who engages him/her in any other capacity) if it is not the Provider (e.g. if it is a subcontractor).
(l)	Continuous service	The individual's level of continuous service, including continuous service for the purposes of relevant Law or the individual's contract of employment relating to the calculation of redundancy payments.
(m)	Termination and redundancy	The main contractual terms relating to the termination of the individual's employment, including notice periods, redundancy procedures and redundancy payments.
(n)	Leave entitlements	The individual's contractual leave entitlements (e.g. holidays).
(o)	Accrued leave entitlements	The individual's accrued leave entitlements (e.g. holidays) which he/she has not yet taken for the relevant period.
(p)	Liabilities, claims	<p>Any known</p> <ul style="list-style-type: none"> <li>• Liabilities owed to, and/or</li> <li>• Claims made or threatened by</li> </ul> <p>The relevant individual in connection with this/her employment.</p> <p>These include (for example and where relevant) liabilities or claims relating to personal injury, breach of his/her contract of employment, or breach of the Law in relation to his/her employment (e.g. breaches relating to discrimination, equal pay etc.).</p>
(q)	Long term absence	Whether the relevant individual is on any kind of long-term absence (e.g. long-term sick leave, maternity leave, paternity leave etc.).
(r)	Union membership	The relevant individual's union membership, if any.
(s)	Adjustments	Extent to which the individual has protected characteristics (e.g. disability) which (according to Law) require his/her employer to make reasonable adjustments in connection with his/her employment.
(t)	Arrangements with unions etc.	Details of any arrangements or understandings (including any collective arrangements) the relevant individual has in place with any trade union, staff body or other representative body of employees.

(u) Mobility	Whether the relevant individual's contract of employment contains any right of his/her employer to change his/her work location.
(v) Any notice to terminate	Whether the relevant individual has given (or been given) a notice to terminate his/her employment, and if so, when any notice period is to end.
(w) Relevant documents	Copies of relevant documents, materials etc. relevant to the above, including copies of relevant contracts of employment (or standard contracts if applicable generally to some or all employees).
(x) Disciplinary	A summary of the individual's disciplinary record.
(y) Grievance, disciplinary	A summary of ongoing disciplinary or grievance matters relating to the relevant individual.
(z) Other	Any other information which is required as "employee liability information" under regulation 11 of the TUPE Regulations which is not otherwise described elsewhere in this paragraph 44.12.

44.13. Rights of the Permitted Purchaser to deal with information provided to it by the Provider under this section 44

- The Permitted Purchaser may do so for genuine purposes connected with a proposed or actual Cessation Undertaking Transfer.
- For example, the Permitted Purchaser may disclose the information to actual or prospective transferee employers (whether in the context of a publicly-advertised competitive procurement exercise or anything similar, or otherwise).

#### 45. Providing employee records on a Cessation Undertaking Transfer

45.1. Purpose of this section 45

To set out the obligations of the Provider to provide to the relevant transferee employer certain employment-related records relating to each individual whose employment transfers to that transferee employer as a TUPE Transfer on a Cessation Undertaking Transfer.

45.2. The Provider must supply each record which meet all of the following requirements

- In relation to each individual (if any) whose employment transfers as a TUPE Transfer on a Cessation Undertaking Transfer
- To the relevant transferee employer (whether the Permitted Purchaser or its direct or indirect replacement service provider, whichever is the transferee employer)

(a) Reasonably necessary

The record must be reasonably relevant to the ongoing employment of the relevant individual by the relevant transferee employer after the individual's TUPE Transfer.

(b) In possession or control

The record must then be in the possession or control of the relevant transferor employer (whether the Provider or its direct or indirect subcontractor).

45.3. Examples of the records which the Provider must supply to the relevant transferee employer under paragraph 45.2 in relation to a relevant individual

- To the extent the record meets the requirements in paragraph 45.2
- These are examples only, and do not exclude any other records which otherwise meet the requirements in paragraph 45.2

(a) Contract of employment

An up-to-date copy of the individual's contract of employment with the transferor employer.

(b) Payroll records

Relevant payroll records, including for example those showing the following

- Data from the individual's most recent payslip.
- Details of any individual's bank or building society account into which he/she wishes to have his/her pay deposited.
- The individual's cumulative pay (for tax and pension purposes) for the relevant financial year.
- The individual's tax code.
- The individual's cumulative pay (for tax and pension purposes) for the relevant financial year.
- The cumulative tax paid by the individual from his/her pay for the relevant tax year. Any deductions to be made from the individual's pay (whether as required by a court order or on the request of the relevant individual or otherwise).

(c) Pension-related

Records relating to the individual's pension matters (e.g. contributions, entitlements etc.).

(d) Right to work

Records evidencing that the transferor employer has sufficiently checked whether the individual has right to work in the UK or such other country where his/her duties in connection with the Services were carried out immediately before the Cessation Undertaking Transfer.

(e) Requirements to carry out activities

Records evidencing that the transferor employer has sufficiently checked whether the individual meets any and all requirements which he/she must meet

- By Law; and/or
- Under the relevant Call-Off Contract (see in particular, section 35)
- to carry out the duties which the transferor employer allocated to him/her in connection with the Services immediately before the Cessation Undertaking Transfer.



(f) <b>Continuing professional development:</b> if the individual is required by Law or the standards of his/her trade or profession to meet continuing professional development requirements to carry out the duties which the transferor employer allocated to him/her in connection with the Services immediately before the Cessation Undertaking Transfer	Records indicating the extent to which that individual has met those requirements in the year in which his/her TUPE Transfer occurs.
(g) Location, if relevant	If the Permitted Purchaser has specifically required the Provider to provide any of the Services at 2 or more different locations, the relevant location or locations at which the individual carried out his/her duties in connection with the Services at the relevant time.
(h) Mobility	The extent to which the transferor employer has the contractual right to require the individual to carry out his/her duties at different locations.
(i) Leave	<p>Records relating to the following leave-related matters of the relevant individual including the following:</p> <ul style="list-style-type: none"> <li>• His/her leave entitlements (e.g. holiday leave) for the rest of the year after his/her TUPE Transfer, including any past year unused leave to which he/she is still entitled on the Cessation Undertaking Transfer.</li> <li>• The individual's sickness records.</li> <li>• If (on the date of the individual's TUPE Transfer) the individual is (or is expected to be) on long term sick leave or on maternity or paternity leave: his/her anticipated return date.</li> <li>• Any leave requests (e.g. holidays, maternity or paternity leave etc.) which the individual has made to the transferor employer where any part of that leave is expected to be taken after his/her TUPE Transfer.</li> </ul>
(j) Disciplinary	The individual's disciplinary records.
(k) Claims	Records relating to any unresolved claims, proceedings, or anything similar between the individual and the transferor employer.
(l) Grievances	Records relating to any unresolved grievances, allegations or anything similar formally raised by the individual to the transferor employer.
(m) Resignation	Any notice of resignation which the individual has given to the transferor employer where the notice period is expected to expire after the individual's TUPE Transfer.

45.4. Deadline by which the Provider must provide the records described in paragraph 45.2	<p>No later than</p> <ul style="list-style-type: none"> <li>• <b>30 days</b> after the written request of the transferee employer; or</li> <li>• Such longer time as permitted by the transferee employer in writing. If the Permitted Purchaser is the transferee employer, it must not unreasonably withhold that permission.</li> </ul> <p>In any case, no later than the date of the relevant TUPE Transfer of the individual as a result of the Cessation Undertaking Transfer.</p>
45.5. When the relevant transferee employer may make the request described in paragraph 45.4	<ul style="list-style-type: none"> <li>• In good faith; and</li> <li>• Only for the genuine purposes of the TUPE Transfer of the relevant individual resulting from the relevant Cessation Undertaking Transfer.</li> </ul>
45.6. How the Provider's costs are borne in complying with its obligations under this section 45	The Provider must bear its own costs in doing so, without being entitled to any separate reimbursement of such costs from the Permitted Purchaser and/or any other relevant transferee employer.

**46. Restrictions on the Provider prior to a Cessation Undertaking Transfer**

46.1. The Provider must comply with all of the following obligations in relation to any prospective Cessation Undertaking Transfer

Subject to the rest of this section 46

(a) The Provider must not do any of the following in relation to any organised grouping which carries out the relevant activities in connection with the Services

(i) Change size

The Provider must not increase or decrease the size of the grouping.

(ii) Change composition

The Provider must not materially change the composition of their roles within the grouping.

(iii) Change amount of time

The Provider must not materially change the amount of time the grouping spends on the relevant activities.

(iv) Replace

The Provider must not replace any individual who is then a member of the grouping with another individual, whilst he/she remains an employee of the Provider or its Affiliate or its subcontractor engaged in activities in connection with the Services at the time.

(v) Terms and conditions	<ul style="list-style-type: none"> <li>• The Provider must not change the terms and conditions of any member of the organised grouping (including any customary practice in relation to that individual).</li> <li>• This includes (for example) those relating to his/her remuneration and/or his/her rights and entitlements in relation to the termination of his/her employment.</li> </ul>
(vi) Termination of contract of employment	The Provider must not terminate the contract of employment of any member of the relevant organised grouping.
(b) Keep informed	The Provider must keep the Permitted Purchaser informed in a proper and timely manner of first becoming aware of the occurrence of any of the events described in paragraph (a).
(c) Subcontractors	The Provider must (at its own expense) properly exercise its available rights (whether under to contract or otherwise) to ensure compliance with paragraph (a) by each of its direct or indirect subcontractors which would be a transferor employer of any individual if a relevant Cessation Undertaking Transfer occurs.
(d) Not to become legally bound	The Provider must not agree (or otherwise become legally bound) to do any act that would breach any of its obligations described in paragraph (a)
(e) Further obligations	<ul style="list-style-type: none"> <li>• The Provider must not assist or instruct another person (e.g. any subcontractor) to do any act that would breach this section 46 if that act were done by the Provider directly.</li> <li>• If the Provider's Affiliate does any such act: the onus will lie with the Provider to prove it was not done under its assistance or instructions.</li> </ul>

46.2. When the Provider must comply with its obligations in paragraph 46.1

At the following times (where relevant)

- **If the Cessation Undertaking Transfer results from an early termination:** at any time after the relevant termination notice is given by the terminating party.
- **In any case:** within the **6-month** period immediately before the Expiry Date of the relevant Call-Off Contract (as relevant depending on the Cessation Undertaking Transfer) (see section 15).

**In relation to extensions of the relevant Call-Off Contract under section 16:** for this purpose, the **6-month** period immediately before the Expiry Date of the relevant Call-Off Contract refers to the following, as relevant:

- **In relation to any period where there is any further extension period under section 16:** the **6-month** period immediately before the Expiry Date of that period. The Provider's obligations of the Provider in paragraph 46.1 in relation to that period discontinue when the Permitted Purchaser gives the relevant Formal Notice under paragraph 16.3 to extend the relevant Call-Off Contract according to section 16.
- **In relation to any period where there is NO further extension period under section 16:** the **6-month** period immediately before the Expiry Date of that period.

The obligations continue until the Provider is no longer required to carry out the relevant activities under the relevant Call-Off Contract.

46.3. If partial termination

If the relevant Call-Off Contract is partially terminated, the obligations of the Provider in paragraph 46.1 only apply to the relevant part which is terminated.

46.4. Exceptions to the Provider's obligations in paragraph 46.1

(any of the following where relevant, to be read independently)

(a) Required or permitted elsewhere

To the extent the Provider is required or permitted not to comply with those obligations elsewhere in the relevant Call-Off Contract.

(b) Consent of the Permitted Purchaser

- To the extent the Provider is acting with the written approval of the Permitted Purchaser.
- The Permitted Purchaser must not unreasonably withhold that approval.

(c) In relation to any changes in the terms and conditions of a member of the organised grouping as described in paragraph 46.1(a)(v)

Any of the following

- The change is the result of any genuine negotiations with a trade union (or anything similar) which is then representing the relevant individual.
- The change is required by Law.

(d) In relation to the termination of the contract of employment of any member of the organised grouping described in paragraph 46.1(a)(vi)

If at least one of the following applies to the termination

(i) Certain reasons for the termination

The termination of the relevant individual's contract of employment is for any of the following reasons

- His/her serious misconduct.
- His/her default under his/her contract of employment.
- Serious, genuine and long-term health issues affecting him/her (e.g. disability, long term illness) which genuinely affect his/her ability to continue in his/her normal duties.
- Any request by the Permitted Purchaser to remove the individual from activities under section 38.
- Any requirement of the Law.

(ii) Replaced

If the relevant individual is replaced by an individual

- Who (on a reasonable view) has at least equal skills, experience and expertise as the person he/she replaces; and
- Who is employed on terms and conditions which are not less favourable to the relevant transferor employer than those of the individual he/she replaces (other than changes required by Law).

#### **47. TUPE Transfers on cessation – the Provider indemnity**

47.1. To whom the Provider gives the indemnity under this section 47

(each of them is 'X' in this section 47)

- The Permitted Purchaser; and
- Each of its direct or indirect replacement service providers to the extent it is a transferee employer of any individual who has (or who asserts) a right to a TUPE Transfer on a Cessation Undertaking Transfer.

47.2. The Provider must indemnify X for X's Losses which are the direct result of either of the following

(a) Certain Claims by individuals

- Any Claim made or threatened against X:
- By or on behalf of any individual who has a right (or who asserts a right) to a TUPE Transfer on a Cessation Undertaking Transfer.
- Where the Claim is for any of the matters described in paragraph 47.3.
- But only if all of the conditions of paragraph 47.4 are met in relation to the relevant Claim.

(b) Certain payments of compensation

- Compensation which X is liable to pay to an individual
- Whose employment is terminated; and
  - Where all of the conditions in paragraph 47.5 are met in relation to that individual.

47.3. For the purposes of paragraph 47.2(a), the indemnity in this section 47 applies to Claims made or threatened against X by an individual described in paragraph 47.2(b) for any one or more of the following paragraphs

(a) Pre-TUPE Transfer Liabilities

- Any Pre-TUPE Transfer Liabilities in relation to the individual's employment before the Cessation Undertaking Transfer.
- This applies regardless of whether or not the individual's identity (whether by name or role) was communicated to X before the Cessation Undertaking Transfer, and regardless of whether information provided about the individual is accurate and/or complete.

(b) Compensation payable by X to the relevant individual for the transferor employer's breach in relation to the following

(i) For what compensation

- Compensation which X (as transferee employer) must pay the relevant individual
- To the extent X is liable to pay that compensation as a result of the transferor employer's breach of its obligations under the TUPE Regulations to inform and consult the relevant individual in connection with the individual's TUPE Transfer on the relevant Cessation Undertaking Transfer.

(ii) Identification of the individual etc.

This applies regardless of whether or not the individual's identity (whether by name or role) was communicated to X before the Cessation Undertaking Transfer, and regardless of whether information provided about the individual is accurate and/or complete.

(iii) Steps which X must have taken to be eligible to be indemnified for this compensation

The indemnity for this compensation under this section 47 only applies if X had communicated the transferor's breach:

- In writing
- To the Provider's Representative
- No later than **3 months** after the date of the relevant Cessation Undertaking Transfer.

(c) Compensation payable by X to the relevant individual for X's breach in relation to the following

(i) For what compensation

- Compensation which X (as transferee employer) must pay the relevant individual
- To the extent X is liable for the X's own breach of its obligations under the TUPE Regulations to inform and consult the relevant individual in connection with the individual's TUPE Transfer on the relevant Cessation Undertaking Transfer.

(ii) Individuals to whom X's breach applies

Only those individuals whose right to a TUPE Transfer on a Cessation Undertaking Transfer was not disclosed (whether by name or role)

- In writing;
- By the Provider (and/or by its direct or indirect subcontractor if it is the transferor employer);
- To the Permitted Purchaser and/or to the other relevant transferee employer; and
- Before the Cessation Undertaking Transfer.

(d) Legal costs

X's legal costs in relation to the Claim described elsewhere in this paragraph 47.3

- To the extent reasonably incurred; and
- To the extent reasonably evidenced.
- **If the Provider has any rights to take over the defence of the Claim under paragraph 72.10(b):** the Provider has not exercised those rights after a reasonable time of having been given the opportunity to do so.

47.4. Other conditions for the purposes of paragraph 47.2(a)

The Permitted Purchaser must not have done anything to instruct, encourage or deliberately assist the relevant individual to bring a Claim in relation to any of the matters described in paragraph 47.3.

47.5. Conditions that must be met in relation to the indemnity given to X under this section 47 in relation to compensation which X is liable to pay to an individual in relation to the termination of that individual's employment for the purposes of paragraph 47.2(b)

(a) Whose employment is terminated

Any individual who has a right to a TUPE Transfer against X on the Cessation Undertaking Transfer.

(b) Who terminates the individual's employment

X, in its capacity as transferee employer on the individual's TUPE Transfer.

(c) Reasons for the termination of the employment of the individual

It must be due to a genuine and lawful redundancy.

(d) Any of the following applies to the individual if his/her employment is terminated for any reason indicated elsewhere in this paragraph 47.5

(i) Not disclosed

The individual was not identified at all (whether by name and/or by role)

- To the Permitted Purchaser and/or to the relevant transferee employer (if not the Permitted Purchaser – e.g. its replacement service provider or a subcontractor of that service provider)
- By the Provider and/or by the relevant transferor employer (if the transferor employer is not the Provider)

Before the Cessation Undertaking Transfer.

(ii) Inaccuracies, incompleteness in information provided

All of the following apply in relation to the relevant individual:

- The Provider and/or the relevant transferor employer (if the transferor employer of the individual is not the Provider) had disclosed to the Permitted Purchaser and/or to the relevant transferee employer (if not the Permitted Purchaser) that the individual (whether identified by name and/or by role) was expected to have a right to a TUPE Transfer in connection with the Cessation Undertaking Transfer.
- There were material inaccuracies and/or material omissions in the disclosures made by the Provider and/or the relevant transferor employer (if the transferor employer of the individual is not the Provider) in relation to that individual.

(iii) Agreed Grouping

- The relevant individual is **not** a member of the Agreed Grouping (according to section 42) immediately before the Cessation Undertaking Transfer.
- This applies regardless of whether the identity of the individual has been disclosed to X before the Cessation Undertaking Transfer.



47.6. What X must do if it wants the Provider to indemnify X under this section 47 for the compensation for which X is liable in relation to a relevant individual under paragraph 47.2(b)

All of the following to the extent relevant

(a) If there had been a failure by the Provider (and/or any other transferor employer) to disclose that a particular relevant individual had a right to a TUPE Transfer before the service provision change

X must give the Provider or its nominee (e.g. any subcontractor which is the transferor employer) a reasonable opportunity (including reasonable cooperation) to enable the Provider to dispute whether the individual has a right to a TUPE Transfer on the service provision change.

(b) In any case

X must give the Provider a reasonable opportunity to minimise (to the extent reasonable) the compensation payable to the relevant individual (e.g. by offering the individual suitable alternative employment, giving another person the opportunity to do so etc.).

47.7. How the compensation for which X is liable to pay the relevant individual must be calculated for the purposes of paragraph 47.2(b) and for the purposes of the indemnity in this section 47

The compensation must be properly and lawfully calculated, having regard to the relevant circumstances (e.g. the individual's remuneration, length of service etc.).

47.8. Deadline by which X must have commenced the procedure to terminate the individual's employment for this indemnity to apply to the compensation described in paragraph 47.2(b)

(a) If the identity of the individual had been sufficiently disclosed to X before the Cessation Undertaking Transfer (whether by name and/or role etc.)

No later than **60 days** after the Cessation Undertaking Transfer.

(b) If the identity of the individual had not been sufficiently disclosed to X before the Cessation Undertaking Transfer (whether by name and/or role etc.)

No later than **60 days** after the date on which the individual gives X any indication in writing of the individual's assertion of a right to a TUPE Transfer as a result of the Cessation Undertaking Transfer.

(c) If the individual is not a member of the Agreed Grouping immediately before the Cessation Undertaking Transfer according to paragraph 42.1

No later than **60 days** after the Cessation Undertaking Transfer.

47.9. X cannot claim the indemnity under this section 47 for the compensation described in paragraph 47.2(b) in relation to a relevant individual if **all** of the following apply

(a) Continues to work

If the individual continues to work for X and/or its Affiliate

- In any capacity (e.g. as an officer, employee, contractor etc.)
- Regardless of whether the activities in the role are similar to those which he/she carried out prior to the Cessation Undertaking Transfer).
- After the end of the period described in paragraph (b).

(b) Period for purpose of paragraph (a)

The longer of the following

- The minimum notice period which the individual is entitled to receive by Law.
- The minimum notice period which the individual is entitled to receive by under his/her contract of employment.
- With the notice of termination to be deemed to have been given according to paragraph (c).

(c) When X or its Affiliate is deemed to have given the termination notice for the purposes of paragraph (b)

On the earlier of the following

- The date on which X or its Affiliate actually gives the notice to the individual; or
- As follows (regardless of whether X or its Affiliate has actually given the individual the notice):
  - **If the individual's identity had been sufficiently disclosed to X before the date of the Cessation Undertaking Transfer: 30 days** after the date of the Cessation Undertaking Transfer.
  - **If the individual's identity had NOT been sufficiently disclosed to X before the date of the Cessation Undertaking Transfer: 30 days** after the date on which X or its Affiliate first became aware that the individual was its employee.

47.10. Refund of indemnity payments: the Permitted Purchaser must pay the Provider a refund according to the following

(a) Circumstances where the Permitted Purchaser becomes liable to pay the Provider the refund described in paragraph (b)

Where all of the following apply

- The Provider has paid X an amounts under the indemnity in this section 47 in relation to compensation payable to an individual described in paragraph 47.2(b).
- That individual is later re-engaged according to all of the following
  - By X or its Affiliate
  - In any capacity (e.g. as an officer, employee, contractor etc.)
  - Any time **12 months** or less from the date on which his/her employment was terminated for the purposes of paragraph 47.5.

(b) Amounts which the Permitted Purchaser becomes liable to refund to the Provider if the circumstances in paragraph (a) apply in relation to an individual

All of the following

- All amounts which the Provider has paid to X under the indemnity in this section 47 in relation to compensation for which X was liable as described in paragraph 47.2(b);
- Interest accruing from the date of payment of the relevant amount by the Provider to X and calculated under section 26.

(c) Due date by which the Permitted Purchaser must pay the refund it is liable to pay under this paragraph 47.10 to the Provider

- No later than **7 days** after a written demand issued by the Provider.
- The Provider must send that demand strictly as a Formal Notice according to section 83.

(d) Further obligations of the Permitted Purchaser

The Permitted Purchaser must keep the Provider informed (in a timely manner on first becoming aware) of the circumstances in paragraph (a) as and when they arise in relation to an individual.

(e) Whether the Permitted Purchaser is liable to pay the Provider the refund under this paragraph 47.10 if X is a replacement service provider of the Permitted Purchaser (and if the Provider paid the indemnity to that replacement service provider)

- The Permitted Purchaser is liable to the Provider to pay the refund in these circumstances.
- Any liability of the replacement service provider to compensate the Permitted Purchaser is a matter between them that does not affect the Provider.

47.11. **Procedures:** X must strictly follow all of the following procedures if it wishes to claim the indemnity under this section 47

(a) Notice which X must give the Provider

- X must give the Provider a Formal Notice of its intention to enforce the indemnity.
- The Formal Notice must be given strictly as a Formal Notice according to section 83.

(b) The Formal Notice described in paragraph (a) must contain all of the following contents as a minimum to the extent relevant

(i) Name

The name of the individual to whom the indemnity relates.

(ii) If the transferor employer was a previous direct or indirect subcontractor of the Provider (and not the Provider itself)

The name of that subcontractor

(iii) Details of Claim etc.

Details of the matter to which the claim for the indemnity relates.

(c) What must accompany the Formal Notice described in paragraph (a)

- Suitable proof of the matter to which the claim for the indemnity relates (whether relating to a Claim described in paragraph 47.2(a) or a liability to pay compensation under paragraph 47.2(b), as relevant).
- **If and to the extent the indemnity relates to X's liability to pay compensation under paragraph 47.2(b):** suitable proof that all of the conditions in paragraph 47.5 are met.

47.12. Rules relating to the indemnity in this section

- Section 72 applies to this indemnity.
- **In relation to the compensation described in paragraph 47.2(b):** section 72 only applies in relation to Claims made or threatened by an individual under which that individual asserts he/she has a right to a TUPE Transfer to X on the relevant Cessation Undertaking Transfer.
- This section 47 overrides section 72 to the extent of any inconsistency.

## Pre-TUPE Transfer Liabilities

### 48. Pre-TUPE Transfer Liabilities

48.1. Definition of ‘Pre-TUPE Transfer Liabilities’

Subject to the rest of this section 48

A ‘Pre-TUPE Transfer Liability’ is any employment-related liability

- Owed by a relevant transferor employer (whether that transferor employer is the Permitted Purchaser or the Provider or any of their direct or indirect contractors).
- To a particular individual whose employment transfers as a TUPE Transfer under the relevant Call-Off Contract and/or to anyone else in relation to that individual (e.g. HMRC).

In connection with that individual’s employment with the transferor employer up to the date of the relevant individual’s TUPE Transfer.

48.2. Examples of employment-related liabilities in connection with a relevant individual for the purpose of paragraph 48.1

- To the extent connected with the relevant individual’s employment with the transferor employer up to the transfer of the individual’s employment as a TUPE Transfer
- Not an exhaustive list of examples

(a) Remuneration

Liability to pay remuneration and other compensation under the relevant individual’s contract of employment, including wages, commissions, bonuses and other benefits.

(b) Pension

Liability to make employer’s pension contributions in relation to the relevant individual.

(c) Compensation

Liability to compensate the relevant individual for any breach against the relevant individual (e.g. unfair, wrongful or constructive dismissal, personal injury or other losses caused by negligence, breaches in relation to harassment, bullying, anti-discrimination, equal pay, and equal treatment of the relevant individual as a part time worker).

(d) Holiday pay	Liability to the relevant individual relating to holidays (including holiday pay) that had accrued before the date of the TUPE Transfer.
(e) PAYE, national insurance etc.	Liability of the transferor employer to make payments attributable to the relevant individual in relation to PAYE and/or national insurance and/or anything similar to these to HMRC or a similar body.
(f) Collective agreement	Liabilities relating to any obligations under any collective agreement affecting the relevant individual.
(g) Penalties etc.	Any penalties, fines, interest (or anything similar to any of these) payable by the transferor employer in respect of any Claim relating to its employment of the relevant individual.
(h) Termination, redundancy	Any liability relating to any dismissal, redundancy or other termination procedure in relation to the relevant individual which <ul style="list-style-type: none"> <li>• Is completed by the transferee employer, but</li> <li>• Was commenced by the transferor employer before the relevant transfer of the relevant individual's employment.</li> </ul>
(i) Custom, practice etc.	Any liability arising as a result of any custom or practice in relation to relevant individual's employment which the transferor employer is legally bound to honour.

48.3. Further requirements of any liability for the purposes of paragraph 48.1

(a) How the liability accrues or arises	The liability arises in tort, contract, under statute or otherwise.
(b) When the liability accrues or arises	The liability accrues, arises, or relates to any event or circumstance which occurred when the individual was still an employee of the transferor employer (i.e. before the relevant service provision change).
(c) Does it matter whether the liability is known to the transferor employer when the TUPE Transfer occurs	No.
(d) Requirement of a TUPE Transfer	The individual's employment must have transferred to the transferee employer (whether that transferee employer is the Permitted Purchaser or the Provider or its respective direct or indirect contractor) as a TUPE Transfer on the relevant service provision change.

48.4. Regardless of anything elsewhere in this section 48, a liability to which all of the following apply is not a Pre-TUPE Transfer Liability

(a) Whose liability	It Is a liability of the transferor employer.
(b) To whom the liability is owed	An individual whose employment has transferred as a TUPE Transfer.

(c) To what the liability relates

The liability (even if arising before the date of the relevant service provision change) relates to the resignation of the relevant individual before the date of his/her TUPE Transfer.

(d) Reason for the resignation

A substantial reason for the individual's resignation was that the relevant transferee employer proposed changes to the individual's working conditions (including his/her remuneration, pension arrangements or otherwise) which

- Are substantial and unfavourable to the individual; and
- Which the transferee employer proposes to take effect after the date of the relevant TUPE Transfer.

## Subcontracting

### 49. Liability for the acts of subcontractors

49.1. Liability of the Provider for the acts or failures to act by any subcontractor directly or indirectly appointed by the Provider 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 Provider's own act or failure to act if the Provider were responsible for those activities directly.
- This does not limit any person's rights and remedies against the subcontractor directly.

### 50. Paying subcontractors

50.1. Subcontractors to which the obligations of the Provider in this section 50 apply

Each subcontractor appointed directly by the Provider in connection with the provision of the Services.

#### The Provider's obligations

50.2. Main obligations

- The Provider must pay each subcontractor described in paragraph 50.1 the charges, fees or the similar which the Provider is liable to pay the subcontractor under the relevant subcontract by the deadline in paragraph 50.3.
- The Provider 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 Provider and the subcontractor).

50.3. Deadline by which the Provider must pay the subcontractor those charges

The earlier of the following after the Provider'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.

50.4. Requirements of the subcontractor's invoice for the purposes of paragraph 50.3

The Provider's obligations under paragraph 50.2 only apply to invoices of the subcontractor to the Provider which are

- Valid having regard to the terms of the subcontract; and
- Not subject to a genuine dispute which the Provider is using reasonable and genuine efforts to attempt to resolve in a timely way.

**51. Promised Subcontractors**

51.1. Each current subcontractor which the Provider 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 Call-Off Tender.	As indicated in Call-Off Tender.

51.2. The Provider requires the prior written consent of the Permitted Purchaser before doing any of the following in relation to a Promised Subcontractor in place from time to time

The Permitted Purchaser must not unreasonably withhold that consent)

- (a) Extending deadline
- (b) Terminating subcontract
- (c) Replacement
- (d) The Provider carrying out activities

Extending the deadline described in paragraph 51.3.
Terminating the Provider's contract with the Promised Subcontractor insofar as termination affects the activities for which the Provider must engage the Promised Subcontractor under paragraph 51.1.
Appointing a replacement Promised Subcontractor from time to time for the relevant activities described in paragraph 51.1.
The Provider itself carrying out the relevant activities of the Promised Subcontractor as described in paragraph 51.1.

51.3. If a Promised Subcontractor discontinues any of its required activities described in paragraph 51.1 for any reason (e.g. termination of the relevant subcontract), the deadline by which the Provider 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

51.4. Consequences if the Provider fails to have suitable alternative arrangements in place by the deadline in paragraph 51.3

Either

- **30 days** from the discontinuation of the relevant Promised Subcontractor; or
- Such later deadline permitted in writing by the Permitted Purchaser (acting reasonably).

This is subject to the consent of the Permitted Purchaser described in paragraph 51.2.

The Provider must give the Permitted Purchaser enough time to properly consider the Provider's proposed alternative arrangements to ensure those arrangements can be in place before this deadline.

- It shall be a Termination Default Event of the Provider.
- This does not limit the Permitted Purchaser's rights and remedies.

## 52. Consents to appointment of subcontractors

52.1. The Provider must obtain the prior written consent of the Permitted Purchaser if the Provider wishes to appoint any of the following subcontractors in relation to the relevant Call-Off Contract

- This applies whether the subcontractor is appointed directly by the Provider or indirectly by any intermediary subcontractor
- Such consents are not required in circumstances described in paragraph 52.2
- The Permitted Purchaser may not unreasonably withhold such consent unless otherwise clearly indicated
- The consent of the Permitted Purchaser is not required in relation to any other direct or indirect subcontractors which the Provider wishes to appoint in relation to the relevant Call-Off Contract

(a) Contact with Service Users etc.

If the subcontractor is engaged in activities in relation to the Call-Off Contract which involve **driving or other direct face-to-face contact with Service Users and/or their parents or equivalent.**

(b) Promised Subcontractor

Any replacement subcontractor from time to time to carry out any activities allocated to the relevant 'Promised Subcontractor' according to paragraph 51.1.



(c) Sub-processor

- Any Sub-processor (defined in paragraph 59.1(e)) if the Provider is a data processor for the purposes of section .
- See paragraph 59.34(b) for a non-exhaustive list of examples of reasonable grounds on which the Permitted Purchaser's consent may be withheld to the appointment of a proposed Sub-processor.

(d) Reinstatement  
(consent to be at the Permitted Purchaser's discretion)

- In relation to the Provider's reinstatement of a subcontractor whom the Permitted Purchaser has previously required to be removed from the provision of the Services under section 53.
- This applies
  - Regardless of whether the activities which the subcontractor is to carry out in connection with the provision of the Services are similar to those which the subcontractor carried out when it was removed.
  - Regardless of whether the consent of the Permitted Purchaser to the original appointment would have been required elsewhere in this section 52.

52.2. Where the Permitted Purchaser's consent to a subcontractor engaged in activities described in paragraph 52.1 is **not required**

The consent is not required if the relevant subcontractor is at the time also a member of the relevant Lot of the Flexible Purchasing System (and is not at the time under suspension).

However, if the Provider wishes to appoint such a subcontractor, it must inform the Permitted Purchaser in writing to enable the Permitted Purchaser to inform the parents or equivalent of the affected subcontracting of the Services.

The Provider must inform the Permitted Purchaser as follows:

- **Ordinarily:** at least **5 Business Days** before commencement of the subcontractor commences its involvement in the relevant Call-Off Contract.
- **Exception to the above:** in a genuine emergency, the Provider may allow the subcontractor to commence its involvement in the relevant Call-Off Contract before informing the Permitted Purchaser. However, the Provider must inform the Permitted Purchaser promptly after such commencement.

52.3. Consent of Sandwell Council

If Sandwell Council consents to the Provider using a particular subcontractor, the Provider is not obliged to obtain separate consent of another Permitted Purchaser in relation to the Provider's use of that subcontractor in relation to Call-Off Contracts of that other Permitted Purchaser.

52.4. If the Permitted Purchaser consents to a particular subcontractor for the purposes of this section 52 for one Call-Off Contract, whether the Provider must also obtain further consent from the Permitted Purchaser for that subcontractor for other Call-Off Contracts

- Not required.
- **Exception:** where consent is required to reinstate the subcontractor in paragraph 52.1(d).

52.5. Subcontractors in relation to whom the consent of the Permitted Purchaser has already been given in relation to particular activities

Each subcontractor if any named in Call-Off Tender in relation to relevant activities described in Call-Off Tender.

### 53. Removal of subcontractors

53.1. Obligation of the Provider to remove subcontractors

The Provider must promptly remove a subcontractor carrying out activities in connection with the provision of the Services (whether or not that subcontractor was directly appointed by the Provider) if the Provider is requested to do so by the Permitted Purchaser according to this section 53.

53.2. About the Permitted Purchaser's request under paragraph 53.1

The Permitted Purchaser may only make this request

- In writing (the formal requirements in section 83 are not required).
- With reasonable grounds (e.g. serious incompetence, serious misconduct); and
- Having given the Provider a reasonable opportunity to fix the issue, if reasonably possible.

53.3. Whether the removal of a subcontractor under this section 53 in itself relieves the Provider of its obligations in connection with the relevant Call-Off Contract

No.

53.4. Right of the Provider to reinstate a subcontractor whose removal has been requested according to this section 53

The Provider must not do so without the prior written consent of the Permitted Purchaser, at its discretion.

## Information

### 54. Accuracy of the Permitted Purchaser's information

54.1. In relation to information given by the Permitted Purchaser to the Provider in relation to the relevant Call-Off Contract

(a) No warranty etc.

- The Permitted Purchaser gives no person any warranty or representation in relation to the accuracy and/or the completeness of that information.
- **Exception:** as otherwise indicated elsewhere in the relevant Call-Off Contract.

(b) Exclusion of liability

The liability of the Permitted Purchaser and its Affiliates in relation to the accuracy and/or completeness of that information is excluded to the fullest extent permitted by Law.

(c) No relief

The Provider is not entitled to any relief from its obligations under the relevant Call-Off Contract for the sole reason that any such information is inaccurate and/or incomplete.

54.2. No exclusion

Nothing in this section 54 excludes any person's liability for fraudulent misrepresentation.

### 55. Confidentiality

#### What is 'Confidential Information'

55.1. Each of the following is Confidential Information of the Permitted Purchaser and/or its Affiliates respectively as a 'Discloser' (to be read independently)

(a) 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 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)

(b) Dispute resolution

Disclosures made by the Discloser in the course of any dispute resolution procedure described in section 84.

55.2. What is Confidential Information of a relevant Service User described in section 5 for whose benefit the Services as a 'Discloser'

The obligations of a Recipient in relation to that Confidential Information under this section 55 apply only to the Provider

All information relating to that Service User obtained by or on behalf of the Provider (as the Recipient) in connection with the Services, regardless of

- The medium in which that information is held; and
- How information is obtained by or on behalf of the Provider, and
- Whether or not that information is labelled 'confidential'.

55.3. What is Confidential Information of the Provider as a 'Discloser'

Each of the following, to be read independently

(a) Charges

- The Provider's Charges from time to time according to section 19.
- But only to the extent the Charges have been uniquely determined by the Provider or privately negotiated between the parties for the purposes of the relevant Call-Off Contract (e.g. they are not set by the Permitted Purchaser, they are not publicly-available etc.).

(b) Call-Off Tender

The contents of a genuinely confidential nature in Call-Off Tender to the extent those contents are not repeated elsewhere in this paragraph 55.3.

(c) Subcontractor, Personnel

Any information relating to

- Any subcontractor appointed directly or indirectly by the Provider in connection with the provision of the Services; and/or
- Any Personnel of the Provider or its subcontractors;

To which either of the following apply:

- The Provider and/or its agents have disclosed that information in writing to the Permitted Purchaser and/or its other agents in connection with the provision of the Services;
- That information has been made available to the Permitted Purchaser and/or its other agents in the course of any inspection described in section 63.

(d) Monitoring

Information of a confidential nature

- About the Provider 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 the relevant Call-Off Contract

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.

(e) Another Call-Off Contract

Information of the Provider:

- Which is disclosed or otherwise made available to the Permitted Purchaser in connection with the relevant Call-Off Contract; and
- Which is subject to confidentiality obligations which another Permitted Purchaser owes the Provider under another Call-Off Contract,

(f) Dispute resolution

Disclosures made by the Discloser in the course of any dispute resolution procedure described in section 84.

55.4. Rules regarding how the information must be disclosed etc. to be considered a relevant Discloser's Confidential Information

(a) 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.

(b) Whether the information must be labelled as 'confidential' (yes/no)

Not required.

(c) By whom must the information be disclosed or made available (according to this paragraph 55.4

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).

55.5. 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

(a) 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 the relevant Call-Off Contract.

(b) 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 the relevant Call-Off Contract.
- **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.

(c) Trivial

The information is of a trivial nature.

### Confidentiality obligations

55.6. 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 55.7

(a) Non-disclosure  
(except to the extent permitted in paragraph 55.8)

The Recipient

- Must keep that Confidential Information strictly in confidence, and
- Must not disclose it or make it available to third parties.

(b) 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.

(c) **Storage:** the Recipient (where it is the Provider) must store the Confidential Information as follows:

(i) Reasonable standard

To a reasonable standard of security.

(ii) Comparable

In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality.

(d) Comply with the Law

The relevant Recipient must comply with relevant Law in relation to the keeping, disclosure or use of that Confidential Information.

(e) Not to direct others

- The Recipient must not direct or assist any person to do any act that would breach this section 55 if the Recipient did that act itself.
- If any Personnel or Affiliate of the Provider (as Recipient) does such act: the onus will lie with the Provider to prove the act was not done with the Provider's direction and/or assistance.

55.7. Period of the Recipient's obligations in paragraph 55.6 in relation to each piece of the Discloser's Confidential Information

- **3 years** from the Contract End of the relevant Call-Off Contract; 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 55.5.

### Exceptions to obligations

55.8. **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 55.6(a)

(a) Consent

With the prior written consent of the Discloser, subject to the Recipient's compliance with any conditions attached to that consent.

(b) Disclosures to any of the following  
Subject to paragraph 55.9

(i) Personnel

To the genuine existing or prospective Personnel of the Recipient and/or its Affiliates.

(ii) 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.

(iii) Public body

Any public body authorised to review the relevant Call-Off Contract.

(iv) Assignment, novation

Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of the relevant Call-Off Contract.

(v) Relevant Disputes

Relevant third parties engaged for the purpose of resolving Relevant Disputes under section 84.

(vi) Third parties with rights

Any third-party described in paragraph 0 with rights, powers or benefits (or similar to these) under the relevant Call-Off Contract for the purpose of advising the third-party of such rights, powers or benefits (or similar to these).

- (c) Required by Law  
Subject to paragraph 55.10

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 a public body 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 56).
- A law enforcement body.

55.9. All of the following rules apply to the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person under paragraph 55.8(b)

- (a) 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.

- (b) 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.

- (c) 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.

55.10. 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 55.8(c)

- (a) 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.

- (b) 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.



(c) 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.

(d) Keep to minimum

The Recipient must keep such disclosures to the minimum it is compelled to disclose or make available.

(e) Exceptions to the rest of this paragraph 55.10

- The rest of this paragraph 55.10 does not apply if disclosure is required under any FOI Act.
- This is covered in section 56.

55.11. Reporting to police etc.

Nothing in the relevant Call-Off Contract 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.

55.12. Providing references

Nothing in the relevant Call-Off Contract prevents the Permitted Purchaser disclosing (fairly, in good faith and with material accuracy) any information relating to the performance of the Provider 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 Provider.

## 56. Freedom of information

56.1. What are the **FOI Acts** for the purposes of this section 56

The Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

56.2. Each party (each of them a '**FOI Party**') which is subject to any FOI Act

- The Permitted Purchaser.
- The Provider, but only if it is a public authority which is subject to a relevant FOI Act.

56.3. The extent to which the other party (i.e. other than the relevant FOI Party) considers any of its information to be 'commercially sensitive' for the purposes of any FOI Act

- To the extent indicated by the other party to the FOI Party in writing from time to time.
- This is for indicative purposes only. It is not binding on the FOI Party.

56.4. Consequences if the FOI Party receives a request for information under any FOI Act involving information of the other party in relation to the relevant Call-Off Contract

(all of the following to the extent relevant)

(a) Rights of the FOI Party

The FOI Party may make its own determination according to Law as to whether or not to provide that information to the person making the request.

(b) Extent to which the FOI Party is required to consult etc.	The FOI Party is not obliged under the relevant Call-Off Contract to consult the other party or anyone else in relation to that request for information.
(c) Consequence if the FOI Party does consult the other party and/or anyone else	The FOI Party is not obliged under the relevant Call-Off Contract to have regard to the views of the other party and/or anyone else.
(d) To what this paragraph 56.4 is subject	It is subject to the FOI Party 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.

**57. Announcements and publicity**

57.1. Restrictions on the Provider making announcements and/or giving itself publicity in connection with the relevant Call-Off Contract (e.g. press releases, public circulars, interviews etc.)	<ul style="list-style-type: none"> <li>• The Provider must not do so without the prior written consent of the Permitted Purchaser.</li> <li>• The Permitted Purchaser must not unreasonably withhold that consent.</li> </ul>
57.2. Restrictions on the Provider and/or its Affiliate using any reference to the Permitted Purchaser and/or its Affiliates (including use of its logos or other branding) in the publicity materials of the Provider and/or its Affiliate	<ul style="list-style-type: none"> <li>• The Provider must not do so without the prior written consent of the Permitted Purchaser.</li> <li>• The Permitted Purchaser must not unreasonably withhold that consent.</li> </ul>
57.3. Other	<ul style="list-style-type: none"> <li>• The Provider must not assist or instruct another person to do any act that would breach this section 57 if that act were done by the Provider directly.</li> <li>• If the Provider's Affiliate and/or any Personnel of the Provider or its Affiliate does any such act, the onus will lie with the Provider to prove it was not done with the Provider's instruction and/or assistance.</li> </ul>

**58. Data protection – status as controller of personal data**

58.1. Status of each party to the relevant Call-Off Contract from time to time regarding any personal data in its possession or control in connection with the relevant Call-Off Contract  This only applies to personal data which is not Processed Personal Data under section 59	<ul style="list-style-type: none"> <li>• Each party is to determine the purposes for which that personal data will be held and used.</li> <li>• 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.</li> </ul>
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58.2. 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 the relevant Call-Off Contract overrides this obligation.

58.3. Interpretation

The definitions in the Data Protection Act 2018 apply to this section 58 and to the relevant Call-Off Contract unless otherwise indicated in the relevant Call-Off Contract.

## 59. Processing certain Processed Personal Data

59.1. Definitions

- Some definitions and interpretation
- (unless the context otherwise indicates)

(a) Data Loss Event

Any event that causes (or creates an unreasonable risk of causing) any of the following:

- Unauthorised access to any Processed Personal Data then in the possession or control of the Provider or its Sub-processors in connection with the relevant Call-Off Contract.
- Loss or destruction of Processed Personal Data
- Which puts the Provider in breach of the relevant Call-Off Contract and/or in breach of the Data Protection Legislation.

(b) Data Protection Impact Assessment

An assessment by the Permitted Purchaser of the impact of the processing of the Processed Personal Data in connection with the relevant Call-Off Contract on the protection of that Processed Personal Data.

(c) Protective Measures

Technical and organisational measures for the purposes of this section 59, particularly paragraph 59.12.

(d) Processed Personal Data

In relation to the Permitted Purchaser, any personal data if and for as long as all of the following apply to that personal data

- A Permitted Purchaser is a controller according to the Data Protection Legislation.
- The Provider and/or its Sub-processor is a processor in connection with the relevant Call-Off Contract according to the Data Protection Legislation.

(e) Sub-processor

Any third-party (including any subcontractor of the Provider) appointed by the Provider to process any Processed Personal Data in connection with the relevant Call-Off Contract.

(f) Interpretation

The definitions in the Data Protection Act 2018 apply to this section 59 and to the relevant Call-Off Contract, unless otherwise indicated in the relevant Call-Off Contract.

### Roles of the parties

59.2. Roles of the Permitted Purchaser and the Provider (for the purposes of the Data Protection Legislation) in relation to any Processed Personal Data which the Provider is to process in connection with the relevant Call-Off Contract

The Permitted Purchaser is the controller and the Provider is the processor in relation to the Processed Personal Data.

### About the processing

59.3. **About the data subjects:** the categories of the data subjects in relation to whom the relevant Processed Personal Data relates in connection with the relevant Call-Off Contract

Service Users, their parents or equivalent (e.g. foster carers), their neighbours.

59.4. Brief description of relevant Processed Personal Data which the Provider is to process in connection with the relevant Call-Off Contract

Contact details, address, medical/disabilities, looked after child status, child protection issues (e.g. orders in place).

E.g. types, subject matter of the relevant Processed Personal Data

59.5. **Duration:** for how long the Provider is to process the relevant Processed Personal Data in connection with the relevant Call-Off Contract

For the duration of the Call-Off Contract, and such longer period as is reasonably necessary.

59.6. The nature, scope and purpose of the processing of the relevant Processed Personal Data by the Provider in connection with the relevant Call-Off Contract

Only for purposes genuinely incidental to the provision of the Services.

### Permitted Purchaser's obligations

59.7. General obligations of the Permitted Purchaser

The Permitted Purchaser must comply with the Law, particularly the Data Protection Legislation, in its role as controller in relation to the relevant Processed Personal Data.

### General issues with processing

59.8. Paramount obligation of the Permitted Purchaser and the Provider in relation to Processed Personal Data of the Permitted Purchaser

- Each of them must comply with their respective obligations under the Law, particularly the Data Protection Legislation in relation to Processed Personal Data of the Permitted Purchaser.
- This overrides anything to the contrary elsewhere in the relevant Call-Off Contract.

59.9. Purposes for which the Provider and/or its Sub-processors are authorised to process any Processed Personal Data under the relevant Call-Off Contract

Only for at least one of the following purposes to the extent consistent with the Law (particularly the Data Protection Legislation) (and for no other purposes):

- To enable the Provider and/or a relevant Sub-processor to meet its obligations:
  - Under the relevant Call-Off Contract; and
  - According to Law (particularly the Data Protection Legislation) in relation to the processing of that Processed Personal Data in connection with the relevant Call-Off Contract.
- For any other purpose permitted in writing by the Permitted Purchaser.
- For any other purpose for which the relevant data subject to whom the relevant Processed Personal Data relates has given written consent (subject to the requirements of the Data Protection Legislation relating to the giving of that consent).

59.10. The Provider must comply with all of the following if and for as long as it (or its Sub-processor) processes any Processed Personal Data in connection with the relevant Call-Off Contract (whichever imposes the highest standard on the Provider)

(a) The relevant Work Schedule and/or the Service Specification

All lawful obligations and instructions in the relevant Work Schedule and/or the Service Specification relating to processing the Processed Personal Data.

(b) Policies, instructions

Reasonable, lawful, relevant and adequately communicated policies and/or instructions of the Permitted Purchaser from time to time in connection with the processing of the Processed Personal Data.

(c) Provider's policy

The Provider's own relevant policies in place while processing the Processed Personal Data.

(d) Law

- In any case, relevant Law, particularly the Data Protection Legislation, including where relevant all of the data protection principles indicated in the Data Protection Legislation.
- This overrides any other obligation elsewhere in the relevant Call-Off Contract to the extent of any inconsistency.

59.11. If the Provider believes (with reasonable grounds) that any part of its compliance with paragraph 59.9 and/or paragraph 59.10 would result in the Provider and/or the Permitted Purchaser being in breach of relevant Law (particularly any Data Protection Legislation)

- The Provider shall not be required to comply with the relevant part of paragraph 59.9 and/or paragraph 59.10.
- The Provider must communicate the matter to appropriate Personnel of the Permitted Purchaser in writing as follows:
- Before taking appropriate alternative action in relation to the relevant processing, if reasonably possible to do so beforehand, with a view to seeking alternative instructions from the Permitted Purchaser; or
- if it is not reasonably possible to communicate before taking such alternative action: promptly after having taken such action.
- In any case, indicating the reasons for why it believes the relevant part of paragraph 59.9 and/or paragraph 59.10 would result in it and/or the Permitted Purchaser being in breach of relevant Law (particularly any Data Protection Legislation).

### Protective Measures

59.12. Obligations of the Provider in relation to Protective Measures

- The Provider must have Protective Measures in place to process the Processed Personal Data in connection with the relevant Call-Off Contract which are appropriate to the processing of Processed Personal Data by the Provider or its Sub-processor.
- Those Protective Measures must be appropriate having regard to reasonably relevant matters including the following where relevant:
  - The nature of the Processed Personal Data being processed.
  - The risks to that processing of any serious adverse consequences to the relevant Processed Personal Data, including unlawful access, unlawful processing, accidental loss, modification or destruction.
  - The state of technological development
  - The cost of implementing the Protective Measures.

59.13. Examples of Protective Measures for the purposes of paragraph 59.12 (where relevant to the processing)

- Encrypting and pseudonymising the Processed Personal Data.
- Ensuring confidentiality, integrity, availability and resilience of systems and services
- Ensuring that availability of and access to the Processed Personal Data can be restored in a timely manner after an incident.
- Regularly testing and evaluation of the relevant security measures.
- Regularly testing and evaluating the effectiveness of such measures.

**59.14. Information about Protective Measures**

- The Provider must provide the Permitted Purchaser the following in relation to the Protective Measures which the Provider (or its Sub-processor where relevant) has in place for the purposes of the processing of the Processed Personal Data in connection with the relevant Call-Off Contract
- The Provider must (promptly and at its own cost) provide this to the Permitted Purchaser on written request any of the following as the Permitted Purchaser requests
- The Permitted Purchaser must not make any such request more than once per calendar year unless it has reasonable grounds to suspect significant non-compliance

(a) Description

A written description of the Provider’s Protective Measures.

(b) Report

A written report indicating compliance with such Protective Measures to the extent they relate to the Processed Personal Data.

(c) Copies of documentation

Copies of all documentation of the Provider or its relevant Sub-processors relevant to those Protective Measures (e.g. any relevant manuals, procedures, protocols, and training materials).

**Obligations to inform**

59.15. The Provider must inform the Permitted Purchaser of any of the following events or circumstances in relation to any Processed Personal Data which the Provider is the Processor in connection with the relevant Call-Off Contract

- The Provider must do so promptly on first becoming aware of the event or circumstance
- But only to the extent it is lawful for the Provider to do so

(a) Requests, complaints or other communication

As indicated in paragraph 59.26 in relation to certain requests, complaints and other communications.

(b) Unauthorised access

Any incident of unauthorised access to that Processed Personal Data.

(c) Data Loss Event

A Data Loss Event in relation to the relevant Processed Personal Data.

(d) Breach

Any incident of processing of that Processed Personal Data that results in any of the following:

- A Material Breach of the relevant Call-Off Contract; and/or
- In any case, a serious breach of the Data Protection Legislation.

59.16. In relation to the Provider's obligation to inform the Permitted Purchaser about any event or circumstance described in paragraph 59.15 (other than paragraph 59.15(a)) if it occurs or arises

(a) When the Provider must inform the Permitted Purchaser

Promptly on first becoming aware of the relevant event or circumstance.

(b) Information the Provider must provide the Permitted Purchaser

All of the following to the extent relevant

A reasonable description of the relevant event or circumstance.

- The number of data subjects affected.
- How the Permitted Purchaser can obtain further information (e.g. a contact person within the organisation of the Provider or the Sub-processor).
- The likely consequences of the relevant event or circumstance
- The measures the Provider or the Sub-processor has taken (and/or proposes to take) in response to the event or circumstance to mitigate the harm to the Processed Personal Data and/or to the relevant data subjects and/or to the Permitted Purchaser.

59.17. Further obligations of the Provider in relation to its obligations to inform the Permitted Purchaser under paragraph 59.15

- The Provider must also provide appropriate Personnel of the Permitted Purchaser with further relevant information on the relevant events or circumstances in phases as details become available.
- The Provider must do so promptly on becoming aware of the relevant information.

59.18. Other obligations of the Provider if any of the events or circumstances described in paragraph 59.15 (other than paragraph 59.15(a)) occurs or arises in relation to any Processed Personal Data which the Provider is the Processor in connection with the relevant Call-Off Contract

(all of the following to the extent relevant)

(a) Assist

The Provider must provide the Permitted Purchaser with reasonable assistance in relation to the Permitted Purchaser's response to the relevant event or circumstance.



(b) Preventative steps	The Provider must take appropriate steps (having reasonable regard to the views of the Permitted Purchaser) to reduce the reoccurrence of the relevant event or circumstance.
(c) Non-disclosure	<p>The Provider must not disclose any information about the relevant event or circumstance to a data subject, the Information Commissioner (or other regulatory or law enforcement body) or anyone else except to the extent:</p> <ul style="list-style-type: none"> <li>• The Permitted Purchaser permits the disclosure in writing.</li> <li>• The disclosure is to the Permitted Purchaser or its other authorised agents.</li> <li>• The Provider is required to make that disclosure by Law.</li> </ul>
(d) If notification of the relevant event or circumstance is required under the Data Protection Legislation	<p>The Provider must do the following</p> <ul style="list-style-type: none"> <li>• Give the Permitted Purchaser reasonable assistance in preparing that notification.</li> <li>• Reimburse the Permitted Purchaser for its reasonable and sufficiently-evidenced costs in giving that notification. The Provider must do so no later than <b>30 days</b> after the Permitted Purchaser's written demand.</li> </ul> <p><b>Exception where the Provider is not obliged to comply with the above obligations:</b> where the relevant event or circumstance is substantially caused by the negligence or deliberate misconduct of the Permitted Purchaser and/or its separate agents.</p>
(e) Investigate	The Provider must investigate the relevant event or circumstance.
(f) Mitigate harm	<ul style="list-style-type: none"> <li>• The Provider must take reasonable action (within its reasonable power and in accordance with the Permitted Purchaser's reasonable instructions) to mitigate the harm the relevant event or circumstance may cause to the relevant data subjects and/or the Permitted Purchaser.</li> <li>• The Provider must keep records of any such action which it takes.</li> </ul>
(g) No to offer compensation etc.	The Provider must not offer any compensation or other remedy to any data subject in relation to the relevant event or circumstance without the Permitted Purchaser's prior written consent.
(h) Comply with Law	In any case, the Provider must comply with the Data Protection Legislation and the Law generally in its response to the relevant event or circumstance.
59.19. How the Provider must inform the Permitted Purchaser if required to do so anywhere in this section 59	

**Obligation to assist**

59.20. Assistance which the Provider must give the Permitted Purchaser in relation to the Processed Personal Data

The Provider must give to the Permitted Purchaser reasonable assistance for any of the following purposes

- To enable the Permitted Purchaser to meet its obligations in relation to the Processed Personal Data under Law, particularly the Data Protection Legislation.
- To enable the Permitted Purchaser to respond to any request, complaint or other communication received by the Permitted Purchaser and/or the Provider relating to the processing of the Processed Personal Data by the Provider and/or its Sub-processor. This request, complaint or other communication may come from
  - The relevant data subject; and/or
  - The Information Commissioner or other regulatory or law enforcement body; and/or
  - Any person not described above who is entitled by Law to a response to its request, complaint or other communication.

59.21. When the Provider must give the Permitted Purchaser the assistance described in paragraph 59.20

- In a timely manner on the Permitted Purchaser's reasonable request having regard to the circumstances (e.g. any deadlines imposed on the Permitted Purchaser by Law).
- The Provider is only required to provide that assistance if the Permitted Purchaser has made the request for at least one of the purposes indicated in paragraph 59.20.

59.22. How the Provider's costs in providing the assistance described in paragraph 59.20 are to be met

The Permitted Purchaser must reimburse the Provider for the Provider's reasonable and sufficiently evidenced costs in providing that assistance.

59.23. Examples of assistance which the Provider must provide for the purposes of paragraph 59.20

- Each of the following, where relevant
- Not an exhaustive list of the assistance which the Provider must provide for the purposes of paragraph 59.20

(a) Supplying Processed Personal Data

Supplying the Permitted Purchaser, at its request, with any of the relevant Processed Personal Data.

(b) Requests, complaints or other communication

As indicated in paragraph 59.26 in relation to cooperation required in relation to any requests, complaints, communications etc.

(c) Protective Measures

Providing the Permitted Purchaser with the information regarding Protective Measures according to paragraph 59.14.

(d) Assessment of operations	Providing the Permitted Purchaser an assessment of the necessity and proportionality of the processing operations in relation to the Processed Personal Data.
(e) Risk assessment	Providing a risk assessment in relation to the rights and freedoms of data subjects.
(f) Data Loss Event	Providing the Permitted Purchaser with reasonable assistance following any Data Loss Event relating to the Processed Personal Data.
(g) Information Commissioner	<p>Providing the Permitted Purchaser with reasonable assistance as requested by the Permitted Purchaser with respect to any of the following insofar as it relates to the Processed Personal Data:</p> <ul style="list-style-type: none"> <li>• Any request from the Information Commissioner (or other regulatory body exercising its functions as such)</li> <li>• Any consultation by the Permitted Purchaser with the Information Commissioner (or other regulatory body exercising its functions as such).</li> </ul>

**Dealing with Permitted Purchaser’s queries**

59.24. The Provider’s obligations in relation to any query which the Permitted Purchaser raises from time to time in relation to any Processed Personal Data

- The Provider must respond to that query in a prompt and proper manner.
- The Provider must do so at the Provider’s own cost.

**Assisting with Data Protection Impact Assessments**

59.25. Obligation of the Provider to assist the Permitted Purchaser in preparing any Data Protection Impact Assessment

- The Provider must provide the Permitted Purchaser with reasonable assistance when the Permitted Purchaser prepares any Data Protection Impact Assessment prior to the Provider (or its Sub-processor) commencing any processing of any Processed Personal Data in connection with the relevant Call-Off Contract.
- But only in relation to those parts of the Data Protection Impact Assessment relevant to that processing.

**Requests, complaints, communications**

59.26. The Provider must comply with all of the following obligations in relation to any request complaint or other communication which the Provider or its Sub-processor receives in connection with any Processed Personal Data

- Whether relating to the obligations of the Permitted Purchaser, the Provider and/or the Sub-processor
- Including those from any of the following
- A data subject (e.g. an access request, a request to rectify)
- The Information Commissioner and/or any other regulatory or law enforcement body.
- Any other person entitled to a response by Law

(a) Obligation to inform

The Provider must (to the extent not in breach of any relevant Law) inform the Permitted Purchaser of the request complaint or other communication relevant matter In a prompt manner, and in any case no later than 5 Business Days (or any shorter deadline as required by the Data Protection Legislation) after the Provider first receives the relevant request, complaint or other communication.

(b) Obligation to cooperate

The Provider must provide the Permitted Purchaser with reasonable and timely cooperation in relation to the request, complaint or other communication relating to any Processed Personal Data.

(c) Providing copies

The Provider must provide the Permitted Purchaser with full copies of the relevant request, complaint or other communication.

(d) If it is an access request

The Provider must either:

- Comply with the access request according to deadlines required by Law; or
- Assist the Permitted Purchaser to do so

As requested in writing by the Permitted Purchaser.

(e) Instructions

The Provider must comply with reasonable and relevant instructions of authorised representatives of the Permitted Purchaser in responding to the relevant request, complaint or other communication.

(f) Supply the Processed Personal Data

If requested by the Permitted Purchaser, the Provider must supply the Permitted Purchaser with relevant Processed Personal Data to which the request, complaint or other communication relates, to enable the Permitted Purchaser to respond to the relevant request, complaint or other communication.

59.27. Liability of the Permitted Purchaser to make any additional payment to the Provider in return for the Provider carrying out its obligations in paragraph 59.26

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**Transferring Processed Personal Data**

59.28. Obligations of the Provider in transferring any Processed Personal Data

The Provider must not host and/or transfer any Processed Personal Data outside of

- The UK; and/or
- Any other area covered by a UK adequacy decision in place at the time

Unless both of the following apply:

- The Provider has the written consent of the Permitted Purchaser, not to be unreasonably withheld.
- All of the conditions in paragraph 59.29 are met.

59.29. All of the following conditions must be met for the purposes of paragraph 59.28

(a) Safeguards

The Permitted Purchaser and/or the Provider and/or its Sub-processor has provided appropriate safeguards in relation to the transfer as decided by the Permitted Purchaser, in accordance with applicable Data Protection Legislation.

(b) Obligations under the Data Protection Legislation

The Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Processed Personal Data that is hosted or otherwise transferred.

(c) Rights of the data subject

The data subject has enforceable rights and effective legal remedies which are enforceable and effective in relation to the Processed Personal Data which is hosted or otherwise transferred.

(d) Standard clauses

If requested by the Permitted Purchaser in writing, the Provider (or Sub-processor where relevant) has become legally bound (in favour of the Permitted Purchaser and its Affiliates) to

- The standard contractual clauses applicable to the hosting or other transfer of Personal Data between Controllers and Processors as set out in the European Commission decision of February 5, 2010 (C (2010) 593), as amended; or
- Such other contractual clauses approved by the Permitted Purchaser, such approval not to be unreasonably withheld where these other contractual clauses provide at least equivalent protection to the Processed Personal Data.

## About the Provider's Personnel

59.30. The Provider must comply with all of the following obligations in relation to each of its (and/or its Sub-processor's) Personnel In relation to the individual's access to, or his/her involvement in, the processing of, any Processed Personal Data in connection with the relevant Call-Off Contract

(a) Level of access	The Provider may only give the relevant individual access to the Processed Personal Data if he/she has a genuine 'need to know' for the purposes of carrying out his/her duties.
(b) How they process	The Provider must ensure the relevant individual does not do anything to cause the Provider to breach the relevant Call-Off Contract and/or (in any case) the Law.
(c) Understanding of obligations	The Provider must use reasonable efforts to ensure the individual understands and complies with the Provider's obligations under the relevant Call-Off Contract and under the Law in relation to the processing of the Processed Personal Data.
(d) Training	The Provider must ensure that the individual has undertaken adequate training in the refs of the Law and the Provider's policies and procedures in the processing of the relevant Processed Personal Data.
(e) Confidentiality undertakings	The Provider must ensure the individual has given legally binding confidentiality obligations to the Provider or relevant Sub-processor, as relevant (e.g. under his/her contract of employment) which are sufficient to protect the confidentiality of the Processed Personal Data.
(f) Informed of confidential nature	<p>The Provider must ensure all of the following:</p> <ul style="list-style-type: none"> <li>• That the individual has been informed of the confidential nature of the Processed Personal Data.</li> <li>• That the individual has undertaken adequate training in the use, care, protection and handling (or anything similar to any of these) of the relevant Processed Personal Data.</li> </ul>
(g) Not to breach confidentiality	<p>The Provider must ensure the individual does not disclose or publish (or anything similar to any of these) any of the relevant Processed Personal Data to any third-party except to the extent:</p> <ul style="list-style-type: none"> <li>• Permitted elsewhere in the terms of the relevant Call-Off Contract; and/or</li> <li>• Required by Law; and/or</li> <li>• Instructed by appropriate Personnel of the Permitted Purchaser.</li> </ul>

(h) Removal

The Provider must promptly discontinue a member of its Personnel's access to, and/or involvement in, the processing of, any Processed Personal Data if

- The Provider is aware of circumstances that reasonably indicate that the individual is not a fit and proper person to have such access and/or involvement; and/or
- The Permitted Purchaser requires the Provider to discontinue that individual's access or involvement in that processing where either of them first becomes aware of those circumstances.

### Record keeping obligations

59.31. Record keeping obligations of the Provider

- The Provider must keep complete and accurate records and information to demonstrate its compliance with this section 59.
- The Provider is not required to do so if it is exempt in paragraph 59.32.

59.32. Exemptions to paragraph 59.31

The Provider is not obliged to comply with paragraph 59.31 if from time to time the Provider employs fewer than 250 employees.

**Exception where the Provider is required to comply with paragraph 59.31 if even if it has fewer than 250 employees:** if the Permitted Purchaser (or the Permitted Purchaser on its behalf if it is not the relevant Controller in relation to the Processed Personal Data) concludes (acting reasonably) that all of the following applies:

- The processing of the relevant Processed Personal Data is not occasional.
- The relevant Processed Personal Data includes any of the following
  - Special categories of data or equivalent in relevant Data Protection Legislation.
  - Personal Data relating to criminal convictions and offences referred to in other relevant Data Protection Legislation.
  - The processing of the relevant Processed Personal Data is likely to result in a substantial risk to the rights and freedoms of relevant data subjects.

### Inspecting the Provider

59.33. Inspection rights of the Permitted Purchaser in relation to personal data in relation to which it and/or its Affiliate is a data controller and the Provider is a data processor.

These rights are set out as part of the Permitted Purchaser's overall inspection rights in section 63.

## Sub-processors

59.34. The Provider must comply with all of the following if any Sub-processor processes any relevant Processed Personal Data in connection the relevant Call-Off Contract

(not to limit the Provider's obligations in relation to such Sub-processor generally)

(a) Consents of the Permitted Purchaser

- The Provider must not appoint a direct or indirect Sub-processor without the prior written consent of the Permitted Purchaser.
- The Permitted Purchaser must not unreasonably withhold that consent.

(b) Examples of reasonable grounds on which the Permitted Purchaser may refuse consent under paragraph (a)

Any of the following, not to exclude other reasonable grounds to do so

- The Sub-processor is not legally bound to obligations to the Provider which are at least as onerous to the Sub-processor as those in this section 59 are to the Provider.
- The Permitted Purchaser has reasonable grounds to believe (having been given a reasonable opportunity to check) that the Sub-processor's Protective Measures are not adequate.

(c) Ensure compliance

The Provider must ensure the Sub-processor's compliance with relevant obligations under this section 59 in connection with the Sub-processor's processing of the relevant Processed Personal Data.

(d) Rules relating to subcontractors

- A Sub-processor of the Provider is considered a subcontractor of the Provider for the purposes of the relevant Call-Off Contract.
- Therefore, any other requirements elsewhere in the relevant Call-Off Contract relating to subcontractors generally also apply to the Provider's Sub-processors except to the extent otherwise clearly indicated.
- If there is any inconsistency between this section 59 and anything elsewhere in the relevant Call-Off Contract relating to subcontractors of the Provider generally, the one more advantageous to the Permitted Purchaser shall prevail to the extent of the inconsistency.



## Delete or return

59.35. The Provider must do any of the following in relation to any particular Processed Personal Data in relation to which the Provider or its Sub-processor is the processor in connection with the relevant Call-Off Contract

Any of the following as the Permitted Purchaser instructs.

- Delete it; or
- Return it (including copies) to the Permitted Purchaser; or
- Give it to a third-party nominated by the Permitted Purchaser
- Exception: this obligation does not apply to the extent the Provider or its Sub-processor is required by Law to retain the relevant Processed Personal Data.

59.36. When the Provider must carry out its obligations in paragraph 59.35

- Promptly on the Permitted Purchaser's request (to be made when the Provider has no further need to retain that Processed Personal Data for the purpose of the relevant Call-Off Contract); or
- In any case promptly on the final discontinuation of the provision of the Services under the relevant Call-Off Contract unless similar activities are to continue under a new contract.

## Modifying Processed Personal Data

59.37. Restrictions on the right of the Provider to modify any of the Processed Personal Data

The Provider must not modify any of the Processed Personal Data except to the extent any of the following applies:

- The Provider is required by Law to do so.
- The Provider is permitted or required elsewhere in the relevant Call-Off Contract to do so.
- The Permitted Purchaser permits or requires the Provider to do so.

## Suspension of processing

59.38. Obligation to suspend processing

- The Provider must promptly suspend (and must require its Sub-processor to promptly suspend, where relevant) the processing of any Processed Personal Data if the Permitted Purchaser requests the Provider to do so in writing.
- The Permitted Purchaser may only make that request if the Permitted Purchaser has reasonable grounds to believe there is a substantial risk of the Provider and/or its Sub-processor processing any of the Processed Personal Data in breach of the relevant Call-Off Contract, and in any case, in breach of the Data Protection Legislation and/or the Law generally.

**Indemnity given by the Provider**

59.39. Provider indemnity

Subject to the exceptions in paragraph 59.40

<p>The Provider must indemnify (and keep indemnified) the Permitted Purchaser</p> <ul style="list-style-type: none"> <li>• In relation to the Losses incurred by the Permitted Purchaser</li> <li>• As a result of any Claim made or threatened against it</li> <li>• In connection with any one or more of the following in relation to any Processed Personal Data in the possession or control of the Provider and/or its Sub-processor in connection with the relevant Call-Off Contract:             <ul style="list-style-type: none"> <li>- Its loss, and/or</li> <li>- Its misuse, and/or</li> <li>- Any unauthorised access to it.</li> </ul> </li> </ul>
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59.40. **Exceptions:** the Provider is not required to indemnify the Permitted Purchaser under paragraph 59.39 for the Permitted Purchaser's Losses described in paragraph 59.39 to the extent those Losses are caused by any of the following:

- (a) Acts or failures by Permitted Purchaser
- (b) Instructions

<p>Any act or failure to act by the Permitted Purchaser and/or its separately appointed agents (e.g. Personnel, other service providers).</p>
<p>Any act or failure to act by the Provider and/or its Sub-processor which materially complies with any instructions or other requirements of the Permitted Purchaser</p> <ul style="list-style-type: none"> <li>• Issued from time to time by its authorised representative; and/or</li> <li>• Indicated elsewhere in the relevant Call-Off Contract (e.g. in the relevant Work Schedule and/or the Service Specification) except to the extent they have been prepared by or materially according to any advice of the Provider.</li> </ul>
<p>Section 72 applies to the indemnity.</p>
<p>Yes.</p>

59.41. Other rules in relation to the indemnity in paragraph 59.39

59.42. Whether the caps and exclusions of the Provider's liability in section 73 apply to the indemnity given by the Provider in paragraph 59.39

Indicate yes or no

## Reimbursing the Provider

59.43. Liability of the Permitted Purchaser (as the Permitted Purchaser)

- To pay the Provider (as the Provider) any additional Charges and/or
- To reimburse the Provider (as the Provider) for the Provider's third-party expenditure
- For the Provider (as the Provider) carrying out its obligations under this section 59

The Permitted Purchaser is not liable to do so, except where otherwise clearly indicated in this section 59.

## Miscellaneous issues

59.44. Whether this section 59 limits the confidentiality obligations (if any) of either party under the relevant Call-Off Contract (see especially, section 55)

No.

59.45. Duration of the rights and obligations (or anything similar to any of these) of the Permitted Purchaser and the Provider under this section 59

Those rights and obligations (or anything similar to any of these) continue for as long as the Provider and/or Its Sub-processor continues to process any Processed Personal Data of the Permitted Purchaser in connection with the provision of the Services, even if after the Contract End

59.46. Other obligations of the Provider under this section 59

The Provider must not instruct, assist or knowingly permit any other person (particularly its Personnel and its Sub-processors) to do any act that would breach this section 59 if the act were done by the Provider directly.

## Exclusivity

### 60. Exclusivity obligations

60.1. Whether either party is obliged under the relevant Call-Off Contract to deal with the other party on an exclusive basis

No.

## Contract monitoring

### 61. Record keeping

61.1. Records which the Provider must keep under the relevant Call-Off Contract

As indicated in the Service Specification.

61.2. Requirements of the Provider in keeping each record described in paragraph 61.1

(a) For how long the Provider must keep the records

- For **6 years** from the date the record was created; or
- For such longer or shorter period required by Law in relation to the record.

**Exception:** the Provider is not required to continue to hold records which the Permitted Purchaser requires the Provider to send elsewhere (e.g. to the Permitted Purchaser itself, or to another person, such as a replacement provider).

(b) Where the Provider must keep those records (if those records are not held electronically)

- At any of its usual places of business in the United Kingdom; or
- At such other locations for the genuine purposes of record storage in circumstances where the Provider can access those records in a timely manner if the Permitted Purchaser requires it to do so according to the relevant Call-Off Contract (e.g. in the Permitted Purchaser exercising inspection rights under section 63).

(c) How the Provider must keep those records

To the standards required in section 10.

## 62. Reporting obligations

62.1. Regular reports which the Provider must supply the Permitted Purchaser

Indicate for each regular report

- The content required
- The frequency with which the Provider must supply it to the Permitted Purchaser
- The due date by which the Provider must supply it to the Permitted Purchaser
- Any other requirement

Only to the extent indicated in the relevant Work Schedule.

<p>62.2. Circumstances where the Provider must provide the Permitted Purchaser with further reports in addition to the regular reports indicated in paragraph 62.1</p>	<p>The Provider must provide such additional reports if requested in writing to do so by the Permitted Purchaser.</p> <p>The Provider must do so by any deadlines set by the Permitted Purchaser which are reasonable in the circumstances.</p> <p>The Permitted Purchaser may only make such request for such additional reports acting reasonably and proportionately, and giving the Provider advance warning which is reasonable in the circumstances, and only where any of the following applies</p> <ul style="list-style-type: none"> <li>• There has been a Material Breach of the relevant Call-Off Contract by the Provider, even if it has been remedied.</li> <li>• The Provider has persistently failed to meet any one or more of its specific obligations under the relevant Call-Off Contract.</li> </ul>
<p>62.3. Format requirements of reports required under this section 62</p>	<p>As directed by the Permitted Purchaser from time to time, acting reasonably.</p>
<p>62.4. How the Provider must provide reports required under this section 62 to the Permitted Purchaser</p>	<p>By e-mail to the Permitted Purchaser’s Representative, or as the Permitted Purchaser otherwise reasonably instructs.</p>
<p>62.5. General obligations of the Provider in relation to reports it is required to send under this section 62</p>	<p>The Provider must ensure required reports are:</p> <ul style="list-style-type: none"> <li>• Materially accurate; and</li> <li>• Not materially misleading (or reasonably likely to materially mislead) due to any inaccuracies or omissions.</li> </ul>

**63. Inspection**

**What the Permitted Purchaser may inspect**

63.1. The Permitted Purchaser may inspect any of the following in relation to the relevant Call-Off Contract if it wishes to do so, according to this section 63

(a) Records

Any records held by or on behalf of the Provider in any medium (e.g. hard copy, electronic) in connection with the provision of the Services which the Provider is specifically required to keep under section 61.

(b) Personnel records

Records of the Provider or its subcontractors to evidence compliance with section 35.

(c) Processing

Activities in relation to the processing of any Processed Personal Data by or on behalf of the Provider in connection with the provision of the Services as described in section 59.

(d) Vehicles

Vehicles which the Provider or its subcontractors use (or propose to use) in connection with the Services.

### Requesting inspections

63.2. Minimum notice the Permitted Purchaser must give before an inspection

The Provider is not obliged to comply with its obligations in this section 63 before the end of that notice period

- At least **5 Business Days** prior notice.
- **Exception:** the Permitted Purchaser is not required to give any notice where it has reasonable grounds to suspect fraud or other misconduct in connection with the things being inspected (e.g. removal or destruction of records etc.).

### Conducting inspections

63.3. Main obligations

If the Permitted Purchaser requests an inspection according to this section 63, the Provider must give reasonable, proper and timely assistance to representatives of the Permitted Purchaser in connection with the relevant inspection.

63.4. Examples of the Provider's obligations under paragraph 63.3

(not to limit paragraph 63.3)

(a) Access

The Provider must give access to relevant premises to the Permitted Purchaser's representatives on a non-exclusive licence basis.

(b) Making things available

The Provider must make relevant records or other paragraphs which the Permitted Purchaser is permitted to inspect available to the Permitted Purchaser's representatives for this purpose.

(c) Providing facilities

The Provider must provide suitable facilities to the Permitted Purchaser's representatives for the purposes of the inspection.

(d) Providing explanations

The Provider must direct its Personnel to provide open and accurate explanations and discussions from relevant Personnel, as reasonably required by the Permitted Purchaser's representative in connection with the inspection.

63.5. The Provider's obligations to ensure its subcontractors comply with inspection obligations under this section 63

- The Provider must (at its own expense) properly exercise its available rights (whether under to contract or otherwise) to require its subcontractors used in connection with the provision of the Services.
- The Provider is only required to do so if relevant to the subcontractor, having regard to what the Permitted Purchaser may inspect under paragraph 63.1.

### Miscellaneous inspection issues

63.6. How inspection costs are to be borne

Each party bears its own costs.

63.7. **Duration of inspection rights:** the inspection rights of the Permitted Purchaser under this section 63 continue as follows:

(a) Main period

For as long as the Provider is obliged to provide the Services under the relevant Call-Off Contract.

(b) Ongoing

For such further period as the Provider continues to do any of the following in connection with the relevant Call-Off Contract:

- Hold any records as required under section 61; and/or
- Hold any property of the Permitted Purchaser and/or its Affiliate

#### 64. Surveys

64.1. Obligations of the Provider under the relevant Call-Off Contract to conduct surveys of Service Users and/or their parents or equivalent in connection with the Services

As indicated in the Work Schedule and/or in the Service Specification.

#### 65. Complaint resolution

65.1. Obligations of the Provider if the Permitted Purchaser receives any complaint from any third party to the extent the complaint relates to the Provider's activities in connection with the relevant Call-Off Contract

- The Provider must provide such reasonable assistance to the Permitted Purchaser as reasonably requested by the Permitted Purchaser from time to time to respond to any complaint raised to the Permitted Purchaser by any person to the extent the complaint relates to any activities of the Provider in connection with the relevant Call-Off Contract.
- The Provider must do so
  - In a timely manner on the written request of the Permitted Purchaser having regard to any deadlines reasonably requested by the Permitted Purchaser.
  - At the Provider's own cost.
  - Only to the extent the assistance relates to matters within the Provider's control.

65.2. Duration of the Provider's obligations in paragraph 65.1

- Whenever the Permitted Purchaser receives a third party complaint relating to the Provider's activities in connection with the relevant Call-Off Contract.
- Even if the Permitted Purchaser receives that complaint after the Contract End.

## 66. Keeping informed

Events or circumstances on which the Provider must keep the Representative of the Permitted Purchaser informed under this section 66

- In writing where reasonably possible
- In a proper and timely manner when the Provider first becomes aware of the matter
- The Provider must keep the Representative (or other appropriate Personnel of the Permitted Purchaser) 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 the relevant Call-Off Contract to inform the Permitted Purchaser on a particular matter

66.1. Unable to meet obligations

The Provider being unable to significantly meet its obligations in connection with the provision of the Services.

66.2. Any event or circumstance (e.g. accident or other incident) relating to activities of the Provider or its subcontractors in connection with the provision of the Services which cause, or creating an unreasonable risk of causing any of the following

(a) Harm to Service Users

Death or serious personal injury or other serious harm to any Service User described in section 5.

(b) Property loss etc.

Any serious unfavourable consequence (loss, theft, damage destruction etc.) to any significant property of any kind (including for example, any documents, files, equipment, premises or data) of the Permitted Purchaser or its Affiliate which is then in the possession and/or control of the Provider for purposes reasonably connected with the provision of the Services.

(c) Adverse publicity

The event or circumstance affects the Provider, 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 Permitted Purchaser and/or its Affiliates due to its association with the Provider.

66.3. Loss of Required Accreditation

The Provider (or a relevant subcontractor) losing or having imposed on it any significant restrictions or conditions on, or being under a serious threat of losing or having imposed on it, any Required Accreditation which the Provider (or that subcontractor) must have under section 29.

66.4. Bankruptcy (if the Provider is a sole trader)

- The Provider's bankruptcy and/or
- Any bankruptcy proceedings being commenced against him/her.



66.5. Charge, conviction (if the Provider is a sole trader)	The Provider being charged or convicted of a crime of dishonesty or violence (regardless of the penalty) or a crime of any other kind resulting him/her receiving a prison sentence (whether served or suspended).
66.6. Right to remain (if the Provider is a sole trader)	The Provider no longer has right to remain in the United Kingdom (or such other country where his/her duties in connection with the provision of the Services are to be carried out).
66.7. Winding up	Any order of a court (or equivalent) being made or any resolution being passed requiring the Provider to be dissolved and/or wound up.
66.8. 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 Provider and/or its assets.
66.9. If the Provider is a consortium, partnership or anything similar	<ul style="list-style-type: none"> <li>• Any of the following:</li> <li>• Any change in the composition of its membership.</li> <li>• Any of the events or circumstances indicated elsewhere in this section 66 in relation to any of its members individually.</li> </ul>
66.10. Investigations, prosecutions, disputes	<p>Any</p> <ul style="list-style-type: none"> <li>• Non-routine third-party investigation (e.g. by the police, a regulatory body), and/or</li> <li>• Prosecution (or anything similar) and/or</li> <li>• Third-party dispute affecting the Provider and/or its subcontractors that is (on a reasonable view) likely to significantly and unfavourably affect the Provider's ability to carry out its obligations under the relevant Call-Off Contract.</li> </ul>
66.11. Corrupt Acts	Any breach by the Provider of paragraph 88.1.
66.12. Representative	Changes to the Provider's Representative from time to time.
66.13. 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 51) insofar as its termination affects any part of the provision of the Services.

## Issues outside the Provider's control

### 67. Permitted Purchaser Assistance

67.1. The following are the assistance which the Permitted Purchaser is to provide the Provider to enable the Provider to meet its obligations under the relevant Call-Off Contract

Each of them is '**Permitted Purchaser Assistance**'

67.2. About resources NOT to be provided by the Permitted Purchaser as Permitted Purchaser Assistance

As indicated in the Work Schedule and/or in the Service Specification.

The Provider 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 the relevant Call-Off Contract which is not otherwise provided by the Permitted Purchaser as Permitted Purchaser Assistance under paragraph 67.1.

### 68. Force majeure

#### Definition of 'Force Majeure Events'

68.1. Each of following is an 'Force Majeure Event' for the purposes of the relevant Call-Off Contract

- Only to the extent each of them is genuinely outside the Provider's reasonable control; and
- Only to the extent each of them directly and substantially disrupts the Provider's ability to meet its affected obligations under the relevant Call-Off Contract without imposing significant additional cost to the Provider and/or without imposing significant risk of harm to relevant Personnel and/or property loss or damage to the Provider and/or its agents
- These are to be read independently

(a) Required by Law

(b) As required by the Permitted Purchaser

The Provider is required by Law to suspend any activities it is required to carry out under the relevant Call-Off Contract.

- The Permitted Purchaser requires the Provider to suspend the affected obligations, even if the Provider is willing and able to carry them out.
- The Permitted Purchaser must have reasonable grounds to impose this requirement.

(c) Unsafe, impractical

On a reasonable view, it is seriously unsafe and/or seriously impractical for the Provider (and/or anyone else carrying out activities on its behalf in connection with the provision of the Services) to carry out the Provider's affected obligations under the relevant Call-Off Contract due to severe weather with public warnings against travel relating to affected route, natural disasters, war, invasion, armed conflict, epidemic, acts of terrorism, civil unrest, or other armed conflict (whether or not declared) or any event or circumstance similar to any of these.

(d) Elsewhere in Call-Off Contract

Any other event or circumstance referred to as a Force Majeure Event in the terms and conditions of that Call-Off Contract (e.g. in the Work Schedule).

### Force Majeure Events – suspension of activity

68.2. Whether the Provider is obliged to suspend or simply permitted to suspend activities connected with the relevant Call-Off Contract as a result of relevant Force Majeure Events

- The Provider is obliged to suspend the activity if it is required to do so by Law under paragraph 68.1(a) and/or by the Permitted Purchaser under paragraph 68.1(b).
- Otherwise, the Provider 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.

68.3. Obligation to communicate

The Provider must communicate its intention to suspend carrying out such activities as follows

- To the Permitted Purchaser's Representative or (in any emergency) other suitable Personnel of the Permitted Purchaser; 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 Provider must provide this communication in writing if reasonably possible.

68.4. Whether the Provider must communicate the matter under paragraph 68.3 if the Permitted Purchaser has required the suspension under paragraph 68.1(b)

Not required.

68.5. Extent to which the Provider may suspend its activities in connection with the provision of the Services as a result of any Force Majeure Event

(a) If the Provider is required to suspend its activities by Law under paragraph 68.1(a)

The Provider may only suspend the activities to the extent required by Law.

(b) If the Permitted Purchaser has required the suspension under paragraph 68.1(b)

The Provider may only suspend the activities to the extent required by the Permitted Purchaser.

(c) Otherwise

The Provider 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.

68.6. Keeping informed

The Provider must keep the Permitted Purchaser 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 Provider is required to suspend its activities by Law under paragraph 68.1(a); and/or
- If the Permitted Purchaser has required the suspension under paragraph 68.1(b).

68.7. When the Provider must resume the relevant suspended activities

- **If suspension of those activities is required by Law under paragraph 68.1(a):** promptly after suspension of those activities (or any part of them) is no longer required by Law.
- **If the Permitted Purchaser has required the suspension under paragraph 68.1(b):** promptly if requested to do so in writing by the Permitted Purchaser.
- 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

68.8. Consequences if the Provider suspends its activities under this section 68

- All of the following apply
- To the extent relevant
- To be read independently

(a) Service continuity plans

The parties are to carry out their respective obligations under the most recent service continuity plan which it has submitted to Sandwell Council according to all of the following:

- In a proper, timely and lawful manner;
- But only to the extent the service continuity plan imposes obligations on them when the relevant Force Majeure Event arises;
- With proper regard to the welfare of human beings and the protection of property, where appropriate to the relevant Force Majeure Event;
- With each party bearing its own costs in doing so, except to the extent indicated in the relevant service continuity plan and/or except to the extent the parties otherwise agree in writing.

(b) Right to relief	<p>The Provider shall be relieved of all liability (whether for breach of contract or otherwise)</p> <ul style="list-style-type: none"> <li>To any person with rights against the Provider under the relevant Call-Off Contract</li> <li>For the Provider's failure to carry out any activities which the Provider is otherwise obliged to carry out under the relevant Call-Off Contract</li> <li>To the extent the Provider was permitted or required to suspend those activities under this section 68.</li> </ul>
(c) Meeting Performance Standards	<p>If the relevant suspension substantially and directly causes the Provider to fail to meet any Performance Standard described in section 3, the suspension shall not be taken in to account for the purpose of determining whether or not that Performance Standard has been met.</p>
<p>(d) Consequences for the liability of the Permitted Purchaser to pay the Provider the Charges under section 19 for activities</p> <ul style="list-style-type: none"> <li>Which the Provider was required to carry out under the relevant Call-Off Contract;</li> <li>But which were suspended under this section 68</li> </ul>	<ul style="list-style-type: none"> <li><b>If the Provider is required to suspend its activities by Law under paragraph 68.1(a):</b> the Permitted Purchaser's liability is unaffected.</li> <li><b>If the Permitted Purchaser has required the suspension under paragraph 68.1(b):</b> the Permitted Purchaser's liability is unaffected.</li> </ul> <p><b>Otherwise:</b></p> <ul style="list-style-type: none"> <li>If suspension continues for a consecutive period of 10 Business Days or less, the Permitted Purchaser's liability is unaffected.</li> <li>If suspension continues for a consecutive period of more than 10 Business Days but the suspension is 20 Business Days or less, the Permitted Purchaser is only liable to pay <b>50%</b> of the relevant Charges.</li> <li>If suspension continues for a consecutive period of 20 Business Days or more, the Permitted Purchaser is not liable to pay the relevant Charges.</li> </ul>

**Termination rights if Force Majeure Events continue**

<p>68.9. 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</p>	<ul style="list-style-type: none"> <li>Either party may terminate the relevant Call-Off Contract if and for as long as the relevant activities remain suspended under this section 68 for at least <b>10 continuous school days</b>.</li> <li>The party wishing to terminate for this reason must give the other party a Formal Notice strictly according to section 83.</li> </ul>
<p>68.10. The effective date of termination</p>	<p>The date on which the Formal Notice described in paragraph 68.9 is given or any later date indicated in the Formal Notice (not to be after the Expiry Date of the relevant Call-Off Contract).</p>
<p>68.11. Compensation payable by one party to the other party if the relevant party terminates the relevant Call-Off Contract under paragraph 68.9</p>	<p>Nil.</p>

## Insurance

### 69. The Provider's insurance obligations

#### Insurance cover required

69.1. The Provider 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 Provider has any employee engaged in connection with the relevant Call-Off Contract)	£10 million per claim or such higher level required by Law.
Public liability	£10 million per claim.
Motor liability	£10 million per claim.
69.2. Exemptions where the Provider (or its relevant subcontractor) is not required to have any particular insurance cover otherwise required in paragraph 69.1	<ul style="list-style-type: none"> <li>• Only with the written consent of the Permitted Purchaser.</li> <li>• Such consent cannot be unreasonably withheld where <b>at least one</b> of the following applies: <ul style="list-style-type: none"> <li>- There are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements).</li> <li>- The Provider can demonstrate that the relevant insurance is not available at genuinely affordable rates for reasons unconnected with the specific circumstances of the Provider (e.g. its own claims history).</li> </ul> </li> </ul>

#### Duration of insurance

69.3. Duration for which the Provider must ensure all of the insurance cover described in paragraph 69.1 is in place

For as long as the Provider is obliged to provide any of the Services under the relevant Call-Off Contract.

69.4. **Claims made insurance:** further requirements regarding the duration for which the Provider must ensure all of the insurance cover described in paragraph 69.1 are in place in relation to insurance which operates on a '**claims made**' basis

The Provider must continue to have such insurance for a further **6 years** after the Provider ceases to be obliged to provide any of the Services under the relevant Call-Off Contract, even if after the end of the period described in paragraph 69.3.

## Various insurance obligations

69.5. Obligation of the Provider to provide evidence that the insurance cover it is required to have under this section 69

This obligation continues to apply in relation to a relevant type of insurance cover for as long as the Provider is required to hold that cover under this section 69

- The Provider must provide that evidence promptly on the Permitted Purchaser'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 Provider's insurance broker.

69.6. Obligations of the Provider in relation to any subcontractor it appoints in connection with the relevant Call-Off Contract

- The Provider must ensure the subcontractor has in place such cover that the Provider would be reasonably required to have in place under this section 69 if the Provider carried out the relevant activities in connection with the relevant Call-Off Contract instead of that subcontractor.
- See section 53 regarding the right of the Permitted Purchaser to require removal of a subcontractor which does not meet this requirement.

69.7. Consequences if the Provider does not have any of the insurance cover required in this section 69 at any time whilst it is required to have the relevant cover in place according to this section 69

- It shall be a Termination Default Event of the Provider, even if the Provider later obtains that insurance cover.
- This does not limit the rights and remedies of the Permitted Purchaser in relation to the Provider's breach.

## Liability issues

### 70. Liability of consortium members

70.1. If a party is a consortium, partnership under the Partnership Act 1890, joint venture or anything similar: nature of the liability of its members in connection with the relevant Call-Off Contract

Their liability is 'joint and several'.

### 71. The Provider's indemnity for Claims

71.1. Whom must the Provider indemnify under this section 71

Each of them is 'X' in this section 71

Each of the following:

- The Permitted Purchaser
- Its Affiliates
- Their respective Personnel

<p>71.2. For what the Provider must indemnify X</p> <p>Subject to the rest of this section 71, particularly the exceptions in paragraph 71.6</p>	<p>For X's respective Losses in relation to a Claim</p> <ul style="list-style-type: none"> <li>• Made or threatened against X by any claimant described in paragraph 71.3</li> <li>• To the extent the Claim against X relates to any of any Indemnifiable Cause described in paragraph 71.4.</li> </ul>
<p>71.3. Who can be a claimant against X for the purposes of paragraph 71.2</p>	<p>Anyone <b>other than</b> the Permitted Purchaser and/or its Affiliate.</p>
<p>71.4. An Indemnifiable Cause of the Provider for the purposes of the relevant Call-Off Contract is each of the following:</p>	
<p>(a) Various acts, failures to act etc.</p>	<p>Any act or failure to act by the Provider <b>in connection with the relevant Call-Off Contract</b> which involves any of the following:</p> <ul style="list-style-type: none"> <li>• Any actual or alleged <b>breach of the relevant Call-Off Contract</b> by the Provider.</li> <li>• Any actual or alleged <b>breach of the Law</b> by the Provider.</li> <li>• Any actual or alleged <b>infringement of the property rights (including Intellectual Property rights)</b> of a third party by the Provider.</li> <li>• Any actual or alleged <b>breach of any duty of care</b> (whether arising in tort, contract or otherwise) which the Provider owes the relevant claimant described in paragraph 71.3.</li> </ul>
<p>(b) Third parties e.g. subcontractors</p>	<p>Any act or failure to act</p> <ul style="list-style-type: none"> <li>• Of the kind described in paragraph (a)</li> <li>• By any third party acting on behalf of the Provider (whether a subcontractor, agent or otherwise or other agent).</li> <li>• In connection with the relevant Call-Off Contract.</li> </ul>
<p>71.5. Whether the Provider's indemnity in paragraph 71.2 applies if the Claim relates to any act (or failure to act) by or on behalf of the Provider <b>as a data processor</b> in relation to Processed Personal Data in relation to which the Permitted Purchaser and/or its Affiliate is a data controller (see section 59)</p>	<p>Only to the extent indicated in paragraph 59.39.</p>



71.6. Each of the following is an **exception** to the indemnity in paragraph 71.2

These exceptions only apply where X is the Permitted Purchaser and/or its Affiliate

To be read independently

(a) Negligence etc. of the Permitted Purchaser	To the extent the Losses were caused by the negligence or other wrongdoing of the Permitted Purchaser and/or its Affiliate and/or their respective Personnel or other separate agents.
(b) Contractual obligation, instruction etc.	To the extent the act (or failure to act) by or on behalf of the Provider to which the relevant Claim relates was in material compliance with <b>any</b> of the following: <ul style="list-style-type: none"> <li>Any specific requirement elsewhere in the relevant Call-Off Contract; and/or</li> <li>Any written instruction issued by the Representative of the Permitted Purchaser (or any other member of its Personnel of at least equivalent status).</li> </ul>
(c) In relation to the use of property described in paragraph 71.4(a) to which any claim or allegation of infringement relates	The Permitted Purchaser and/or its Affiliate has specifically made the relevant property available for use by the Provider in connection with the relevant Call-Off Contract (whether under any formal lease or licence or otherwise).
71.7. Rules in relation to the indemnity in this section 71	Section 72 applies to this indemnity.

**72. General indemnity issues**

72.1. To what this section 72 applies	This section 72 applies to any indemnity which one party ( <b>'Indemnifier'</b> ) gives to the other party and/or its Affiliate ( <b>'Indemnity Beneficiary'</b> ) under the relevant Call-Off Contract ( <b>'Relevant Indemnity'</b> ).
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**General rules regarding Relevant Indemnities**

72.2. 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.
72.3. 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).
72.4. How Relevant Indemnities are to be read	Independently of each other.
72.5. 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.

72.6. A Relevant Indemnity is to be reduced to the extent any of the following applies

(a) 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.

(b) 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).

72.7. 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 the relevant Call-Off Contract otherwise indicates it is not required to do so.

### Relevant Indemnity procedures

72.8. 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 83.

72.9. 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

72.10. 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)

(a) 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 83.
- 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.

- (b) 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:

(i) 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.
(ii) Consent from third parties	<p>The Relevant Indemnity is not in itself affected by the Indemnity Beneficiary's failure to give such control to the extent</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• That third-party has not given its consent for any reason outside the control of both the Indemnity Beneficiary and the Indemnifier.</li> </ul>
(iii) Costs	The Indemnifier must bear all costs of taking over that defence.
(iv) 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.
(v) 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.
(vi) 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.
(vii) Indemnity Beneficiary's assistance with the defence	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>

(viii) Reimbursement of costs	<p>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:</p> <ul style="list-style-type: none"> <li>• The Indemnity Beneficiary's third-party disbursements, including external professional costs; and</li> <li>• The time and effort of the Indemnity Beneficiary's Personnel in providing that assistance, at £50 per hour plus VAT.</li> </ul>
(c) Indemnity Beneficiary has failed to defend or settle	<ul style="list-style-type: none"> <li>• 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.</li> <li>• This applies if the Indemnifier has not taken control of the defence of the Claim for any reason.</li> </ul>
(d) Harmed defence of Claim	<ul style="list-style-type: none"> <li>• 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): <ul style="list-style-type: none"> <li>- Admitting liability, or</li> <li>- Attempting to settle the Claim.</li> </ul> </li> <li>• Exceptions: any of the following: <ul style="list-style-type: none"> <li>- To the extent that act is authorised by the Indemnifier in writing (at its discretion).</li> <li>- To the extent that act is required by Law.</li> </ul> </li> </ul>
(e) Other compensation	<p>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.</p>

**Refund of amounts paid under a Relevant Indemnity**

72.11. 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 the relevant Call-Off Contract

- 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.

72.12. Maximum liability of the Indemnity Beneficiary under paragraph 72.11

The Indemnity Beneficiary's liability to refund the Indemnifier under paragraph 72.11 must not be greater than the amount paid by the Indemnifier under the Relevant Indemnity.

72.13. 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 72.11.

72.14. Duty of the Indemnity Beneficiary to seek the payment or other benefit from the other source for the purposes of paragraph 72.11

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).

### 73. Caps and exclusions of liability

#### Caps on the liability of the Provider

73.1. Cap on the liabilities of the Provider described in paragraph 73.9 which are reasonably expected to be covered by insurance which the Provider is required to have under paragraph 69.1 (according to the usual terms of insurance policies of the relevant types required in paragraph 69.1)

To the level of the insurance cover which is relevant to the particular liability as required in paragraph 69.1.

73.2. If the Provider is exempt from having the insurance required in paragraph 69.1 according to paragraph 69.2

For the purposes of this section 73, the cap applies as if the exemption were not given according to paragraph 69.2 (i.e. as if the Provider had the insurance required in paragraph 69.1).

73.3. Cap on the liability of the Provider for liabilities described in paragraph 73.9 which are not otherwise capped elsewhere in this section 73  
If the duration of the Call-Off Contract is 12 months or less

To **125% of the Charges** (excluding VAT) that the Permitted Purchaser would be liable to pay the Provider as if the relevant Call-Off Contract continues until its Expiry Date, whether or not the Permitted Purchaser has paid those liabilities at the time the relevant liabilities arose, and whether or not the relevant Call-Off Contract is terminated before its Expiry Date.

73.4. Cap on the liability of the Provider for liabilities described in paragraph 73.9 which are not otherwise capped elsewhere in this section 73  
If the duration of the Call-Off Contract is more than 12 months

For each year of the relevant Call-Off Contract (being a 12-month period commencing on the date of the relevant Call-Off Contract and again on each anniversary of that date), to **125% of the Charges** (excluding VAT) that the Permitted Purchaser would be liable to pay the Provider as if the relevant Call-Off Contract continues for that full 12-month period, whether or not the Permitted Purchaser has paid those liabilities at the time the relevant liabilities arose, and whether or not the relevant Call-Off Contract is terminated before the end of that 12-month period.

## Exclusions of liability

### 73.5. Exclusion for compliance with the Permitted Purchaser's instructions

This exclusion of the Provider's liability applies to indemnities for Claims described in section 71

The liability of the Provider (as described in paragraph 73.9) is excluded in relation to any act or failure to act by the Provider 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 Permitted Purchaser which are:

- Contained elsewhere in the relevant Call-Off Contract; and/or
- Issued in writing by any authorised representative of the Permitted Purchaser

To the extent any of those instructions were not given according to any advice given by the Provider to the Permitted Purchaser.

### 73.6. Liability of each party (as described in paragraph 73.9) in connection with the relevant Call-Off Contract is excluded for all of the following

- (a) Indirect, consequential
- (b) Opportunity

Special, indirect or consequential loss or damage.

Loss of opportunity.

### 73.7. Exclusion of the liability of the Permitted Purchaser in relation to information provided by the Permitted Purchaser to the Provider in connection with the relevant Call-Off Contract

See section 54.

## Where caps and exclusions of liability DO NOT apply

### 73.8. 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 the relevant Call-Off Contract (especially those in this section 73) do not apply; and
- That liability shall be excluded from any calculation of any cap on that party's liability indicated elsewhere in the relevant Call-Off Contract (especially those in this section 73)
- Each of these are to be read independently

- (a) Death etc.

Death or personal injury caused by the negligence of that party.

(b) 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 the relevant Call-Off Contract and/or any other duty which the Provider owes to the Permitted Purchaser 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 the relevant Call-Off Contract 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.

(c) Fraudulent misrepresentation

That party's fraudulent misrepresentation.

(d) Subcontracting – no consent where required

- In relation to the liability of the Provider, the liability of the Provider relates to any act or negligent failure by a subcontractor
- Where that subcontractor has been appointed directly by the Provider, or indirectly by any such subcontractor (or any intermediary subcontractors)
  - Where all of the following apply:
    - The act or negligent failure is in connection with the provision of the Services.
    - The Provider was required under section 52 to obtain the Permitted Purchaser's consent to the appointment of that subcontractor.
    - Either of the following applies, as relevant
      - The Provider did not seek such consent in writing; or
      - The Provider sought such consent, and the Permitted Purchaser refused consent to that subcontractor, in writing and with reasonable grounds.

(e) Subcontracting – removal	<p>In relation to the liability of the Provider, the liability of the Provider relates to any act or negligent failure by a subcontractor</p> <ul style="list-style-type: none"> <li>• Where that subcontractor has been appointed directly by the Provider, or indirectly by any intermediary subcontractors</li> <li>• Where all of the following apply: <ul style="list-style-type: none"> <li>– The act or negligent failure is in connection with the provision of the Services.</li> <li>– The Permitted Purchaser had required the removal of the subcontractor under and according to section 53.</li> <li>– The Permitted Purchaser had reasonable grounds to request that removal.</li> <li>– The Permitted Purchaser had not permitted the reinstatement of the subcontractor according to paragraph 53.4.</li> </ul> </li> </ul>
(f) Indemnities for third-party Claims	<p>Any indemnity that party gives under the relevant Call-Off Contract for third-party Claims unless clearly indicated in the relevant Call-Off Contract that the relevant caps or exclusions do apply in relation to particular Claims.</p>
(g) Specific liabilities	<p>Specific liabilities arising under or in connection with the relevant Call-Off Contract including interest accruing on any such liabilities.</p>
(h) Elsewhere	<p>As indicated elsewhere in the relevant Call-Off Contract.</p>
(i) Not permitted by Law	<p>Anything else to the extent liability cannot be capped and/or excluded by Law.</p>

**Caps and exclusions of liability – interpretation**

73.9. About the caps and exclusions of the liability of a party ('X') in the relevant Call-Off Contract

(a) Liabilities to which the caps and exclusions of X's liability in the relevant Call-Off Contract apply	<ul style="list-style-type: none"> <li>• Those caps and exclusions apply to X's (and X's Affiliates') liabilities of any kind in connection with the relevant Call-Off Contract.</li> <li>• Regardless of whether the liability arises in tort, contract, under statute or otherwise.</li> </ul>
(b) Calculation of any cap on X's liability	<p>For the purpose of the cap, X's liability is to be aggregated between</p> <ul style="list-style-type: none"> <li>• The liability X and/or its Affiliates owe to the other party; and</li> <li>• The liability X and/or its Affiliates owe any third-party under the relevant Call-Off Contract.</li> </ul>



## Various default issues

### 74. Required Suspensions

74.1. The Permitted Purchaser may take any one or more of the following actions if and for as long as any of the events or circumstances in paragraph 74.2 applies to the Provider

Any such action is a **'Required Suspension'**

The Permitted Purchaser may suspend the Provider from providing the Services in full or part.

74.2. The Permitted Purchaser may impose (but is not obliged to impose) a Required Suspension on the Provider if and for as long as any of the following events or circumstances applies at the time

Not to limit the rights or remedies of the Permitted Purchaser if the event or circumstance arises

(a) Material Breach

If (and for as long as) the Provider is remedying a Material Breach of the relevant Call-Off Contract under paragraph 76.2.

(b) Loss of Required Accreditation

The Provider

- Loses or
- Has restrictions placed upon (in such a way to affect the ability of the Provider to provide any of the Services)

Any Required Accreditation described in section 29.

(c) Investigations: if and for as long as all of the following apply

(i) Non-routine investigation

The Provider is subject to any significant, non-routine investigation

- By any regulatory or law enforcement agency (e.g. the police, the Permitted Purchaser in exercise of any statutory or other function, regulatory body etc.); and/or
- By the Permitted Purchaser in relation to any serious misconduct (e.g. safeguarding issues) affecting the Services and involving Personnel of the Provider and/or its subcontractors.

(ii) To what the investigation relates

That investigation may relate to the Services and/or to other unrelated activities of the Provider and/or its Affiliates anywhere in the world.

(iii) Risks to the Permitted Purchaser if it did not require suspension	<p>If the Permitted Purchaser did not require the suspension, there would be an unreasonable risk of any of the following:</p> <ul style="list-style-type: none"> <li>• Serious harm to any individual.</li> <li>• Serious adverse consequences for any person's property.</li> <li>• The Permitted Purchaser and/or its Affiliate breaching any genuine arm's length duty of care to another person.</li> <li>• Serious, unjustified and unfavourable publicity to the Permitted Purchaser.</li> </ul>
(iv) Other	<p>Any other events or circumstances indicated in the relevant Work Schedule and/or the Service Specification that give the Permitted Purchaser a right to impose Required Suspension against the Provider.</p>
74.3. How the Permitted Purchaser exercises its rights to impose a Required Suspension under this section 74	<ul style="list-style-type: none"> <li>• By communicating the matter in writing to the Representative of the Provider.</li> <li>• The Permitted Purchaser is not required to comply with the formalities for Formal Notices indicated in section 83.</li> </ul>
74.4. Consequences on the following if the Permitted Purchaser imposes a Required Suspension under this section 74	<p>(a) On Charges in section 19</p> <p>(b) For the rest of the relevant Call-Off Contract (e.g. deadlines, service standards, etc.)</p> <ul style="list-style-type: none"> <li>• The Provider's failure to carry out the relevant activities to which the Required Suspension relates shall not in itself be a breach of contract.</li> <li>• The parties shall act reasonably to proportionately amend any targets, service levels, deadlines or other parts of the relevant Call-Off Contract which are genuinely affected by the Required Suspension.</li> </ul>
74.5. For how long the Permitted Purchaser is entitled to impose a Required Suspension under this section 74	<p>Only for as long as at least one of the circumstances in paragraph 74.2 continues to apply.</p>
74.6. Whether imposing a Required Suspension under this section 74 in itself limits the rights and remedies of the Permitted Purchaser if any of the events or circumstances in paragraph 74.2 occur or arise	<p>No.</p>

## 75. Improvement Plans

### 75.1. Definition of a 'Improvement Plan'

A plan in writing which

- Is requested by the Permitted Purchaser if and for as long as the breaches by the Provider as described in paragraph 75.2 apply
- Is prepared by the Provider for the approval of the Permitted Purchaser according to this section 75.
- Sets out the obligations of the Provider to remedy those breaches.

### 75.2. The individual breaches and/or persistent breaches of the relevant Call-Off Contract by the Provider which allow the Permitted Purchaser to give the Formal Notice described in paragraph 75.5

- Any breach of the relevant Call-Off Contract, even if only one occurrence; or
- If the Permitted Purchaser has good reason to believe the Provider has misled the Permitted Purchaser in relation to its decision to award the relevant Call-Off Contract to the Provider.

### 75.3. Consequence for the procedure in this section 75 if the Provider remedies any of the relevant breaches described in the Formal Notice described in paragraph 75.5 to the reasonable satisfaction of the Permitted Purchaser, but before the completion of the procedure

The procedure in relation to those breaches shall discontinue.

### 75.4. When the Provider must prepare a first draft of an Improvement Plan

- When the Permitted Purchaser gives the Provider a Formal Notice described in paragraph 75.5
- The Permitted Purchaser may only give that Formal Notice if and when any individual breaches and/or persistent breaches of the kind described in paragraph 75.2 applies.

### 75.5. Requirements of the Formal Notice described in paragraph 75.4

That Formal Notice

- Must strictly comply with section 83 as a Formal Notice; and
- Must indicate reasonably clearly the relevant individual breaches and/or persistent breaches to which the Formal Notice relates; and
- Must indicate that the Permitted Purchaser requires the Provider to provide a draft Improvement Plan which addresses the relevant individual breaches and/or persistent breaches indicated in the Formal Notice.

### 75.6. Consequences if the Permitted Purchaser gives the Formal Notice described in paragraph 75.5

#### (a) First draft of an Improvement Plan

The Provider must give the Permitted Purchaser a first draft of an Improvement Plan for the Permitted Purchaser's consideration.

<p>(b) Minimum content requirements of the first draft (and any later drafts, if necessary)</p>	<p>All of the following:</p> <ul style="list-style-type: none"> <li>• Steps the Provider proposes to take to do the following, as relevant <ul style="list-style-type: none"> <li>– If the relevant individual breaches and/or persistent breaches are continuing at the time: to remedy them; and</li> <li>– In any case: to prevent them from occurring in future.</li> </ul> </li> <li>• A proposed deadline by which the Provider is to complete the proposed steps.</li> </ul>
<p>(c) Deadline by which the Provider must give the Permitted Purchaser the first draft of the Improvement Plan</p>	<ul style="list-style-type: none"> <li>• <b>30 days</b> from the date the Formal Notice described in paragraph 75.5 is given, or</li> <li>• Such longer period indicated in that Formal Notice, or</li> <li>• As extended by agreement with the Permitted Purchaser in writing, subject to paragraph (d).</li> </ul>
<p>(d) Extension to the deadline in paragraph (c)</p>	<p>The Permitted Purchaser must not unreasonably refuse a request from the Provider for an extension to that deadline if all of the following apply to that request from the Provider:</p> <ul style="list-style-type: none"> <li>• The request is made in writing</li> <li>• The request is made before the deadline in paragraph (c).</li> <li>• The extension is reasonably necessary due to circumstances genuinely outside the Provider's control.</li> </ul>
<p>75.7. Consequence if and for as long as the Provider has not submitted to the Permitted Purchaser a first draft of the Improvement Plan</p> <ul style="list-style-type: none"> <li>• Which properly meets the minimum content requirements in paragraph 75.6(b)</li> <li>• After the deadline in paragraph 75.6(c)</li> </ul>	<p>It shall be a Termination Default Event of the Provider.</p>
<p>75.8. Obligations of the Permitted Purchaser in relation to the first draft (and any later drafts, where necessary) of the Improvement Plan</p>	<ul style="list-style-type: none"> <li>• The Permitted Purchaser must not unreasonably withhold its written approval to drafts of the Improvement Plan which the Provider submits.</li> <li>• The Permitted Purchaser must provide the Provider with timely feedback if the Permitted Purchaser does not approve a particular draft.</li> </ul>
<p>75.9. Obligations of the Provider if the Permitted Purchaser withholds approval (with reasonable grounds)</p>	<p>The Provider must reissue further drafts of the Improvement Plan until the Permitted Purchaser approves the final draft.</p>
<p>75.10. Obligations of both the Permitted Purchaser and the Provider</p>	<p>To work together in a timely, reasonable and generally cooperative manner to agree a final Improvement Plan.</p>

75.11. Deemed approval of a particular draft Improvement Plan	<p>The Permitted Purchaser shall be deemed to have approved the draft if the Permitted Purchaser has not communicated in writing to the Provider any of the following</p> <ul style="list-style-type: none"> <li>• Its rejection of the draft, or</li> <li>• Any genuine queries, requests for information or clarifications in relation to the draft, or</li> <li>• Any genuine requests for amendments to the draft</li> </ul> <p>More than <b>30 days</b> after the Provider has submitted the draft to the Permitted Purchaser.</p>
75.12. If the Provider disputes a rejection by the Permitted Purchaser of a draft Improvement Plan	It shall be a Relevant Dispute for the purposes of section 84.
75.13. Obligations of the Provider in relation to the Improvement Plan when the Permitted Purchaser has approved (or deemed to have approved) the Improvement Plan	The Provider must complete its obligations in the approved Improvement Plan by the relevant deadlines (if any) indicated in the Improvement Plan, if and as those deadlines are extended under paragraph 75.14.
75.14. Right of the Provider to an extension to the deadline to complete its obligations in the approved Improvement Plan	<p>The Permitted Purchaser shall not unreasonably refuse any reasonable and proportionate request by the Provider to extend any deadlines in the Improvement Plan if all of the following apply:</p> <ul style="list-style-type: none"> <li>• Delays to completing the Provider's obligations in the Improvement Plan are substantially and directly caused by events or circumstances outside the Provider's reasonable control. This includes any failure by the Permitted Purchaser to carry out its obligations (if any) in the Improvement Plan in a proper and timely way; and</li> <li>• The Provider's request for the extension is issued to the Permitted Purchaser in writing, in a timely manner.</li> </ul>
75.15. Who bears the Provider's costs in carrying out its obligations in the approved Improvement Plan	The Provider must bear its own costs in carrying out its obligations in the Improvement Plan.
75.16. Consequence of the Provider's failure to properly complete its obligations under the approved Improvement Plan by the deadline in that Improvement Plan (if and as extended)	It is a Termination Default Event of the Provider.
75.17. Extent to which anything in this section 75 in itself limits the rights and remedies of the Permitted Purchaser in relation to any breaches described in paragraph 75.2.	Nothing in this section 75 in itself limits the rights and remedies of the Permitted Purchaser in connection with any such breaches.

## Early termination

### 76. The Provider's Termination Default Events

Each of the following is a Termination Default Event of the Provider

- To be read independently
- For as long as the relevant circumstances continue to apply to the Provider

#### General breaches

- 76.1. Material Breach not capable of being remedied
- 76.2. Material Breach capable of being remedied
- 76.3. Failure to supply first draft of Improvement Plan

The Provider is in Material Breach of the relevant Call-Off Contract where that Material Breach is not (on a reasonable view) capable of being remedied by the Provider.

All of the following must apply

- The Provider is in Material Breach of the relevant Call-Off Contract where that Material Breach is (on a reasonable view) capable of being remedied by the Provider for as long as the Provider has still not remedied the Material Breach
  - To the reasonable satisfaction of the Permitted Purchaser
  - At the Provider's cost
  - More than **30 days** after the Permitted Purchaser has requested the Provider to do so.
- The Permitted Purchaser must have issued its request as a Formal Notice given strictly according to section 83.
- The Permitted Purchaser must not unreasonably refuse consent to a written request by the Provider to an extension of the above deadline if there are delays to the Provider remedying the Material Breach which are significantly due to factors outside the reasonable control of the Provider.

If the Permitted Purchaser has requested the Provider to provide a first draft of an Improvement Plan where it is permitted to do so under section 75 for as long as the Provider has not yet supplied that first draft of the Improvement Plan:

- Which substantially meets the content requirements of paragraph 75.6(b)
- After the relevant deadline in paragraph 75.6(c), if and as extended).

But only to the extent paragraph 75.7 indicates that this is a Termination Default Event of the Provider.

76.4. Failure to complete obligations under Improvement Plan	<p>For as long as the Provider still has not yet fully completed its obligations in the Improvement Plan indicated in section 75.</p> <ul style="list-style-type: none"> <li>• Properly according to the requirements of the Improvement Plan; and</li> <li>• After the expiry of the deadlines (if any) indicated in the Improvement Plan (if and as extended)</li> </ul> <p>But only if paragraph 75.16 indicates that this is a Termination Default Event of the Provider.</p>
76.5. Promised Subcontractor	In the circumstances described in paragraph 51.4.
76.6. Insurance	<ul style="list-style-type: none"> <li>• The Provider does not have in place the insurance cover required in section 69 at any time while the Provider is obliged to have in place under section 69 (even if it subsequently obtains that cover).</li> <li>• But only to the extent this is a Termination Default Event according to paragraph 69.7.</li> </ul>

**General misconduct**

76.7. Serious misconduct	<p>The Provider 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 Permitted Purchaser to continue a commercial relationship of this kind with the Provider.</p>
76.8. Misconduct in competitive exercise	<ul style="list-style-type: none"> <li>• The Provider has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Permitted Purchaser in awarding the relevant Call-Off Contract to the Provider.</li> <li>• This applies regardless of whether the misconduct occurred with the knowledge of the Provider's senior management.</li> <li>• Examples of such misconduct: <ul style="list-style-type: none"> <li>- Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders.</li> <li>- Doing any act in connection with that competitive exercise that would breach paragraph 88.1 in relation to Corrupt Acts if that act were done after the Provider entered into the relevant Call-Off Contract.</li> <li>- Engaging in any canvassing activity with Personnel of the Permitted Purchaser.</li> </ul> </li> </ul>
76.9. Modern slavery and trafficking	<p>The Provider's breaches described in paragraph 37.2 relating to modern slavery and trafficking which are Termination Default Events of the Provider.</p>
76.10. Corrupt Act	<p>The Provider's breach of paragraph 88.1 to the extent paragraph 88.3 indicates the breach is a Termination Default Event of the Provider.</p>

## About the Provider

### 76.11. Loss of Required Accreditation

The Provider does not hold (for whatever reason) any Required Accreditation which it is required to hold under section 29 as follows

- **If the Provider is required by Law to hold that Required Accreditation to carry out any activities in connection with the provision of the Services:** this shall be a Termination Default Event of the Provider even if the Provider later acquires that Required Accreditation after the Permitted Purchaser gives the relevant termination Formal Notice.
- **Otherwise:** this shall be a Termination Default Event only for as long as the Provider has failed to acquire that Required Accreditation.

This is not in itself a Termination Default Event of the Provider if all of the following apply, if relevant:

- A subcontractor of the Provider carrying out the affected activities holds the Required Accreditation at the time; and
- **If the Permitted Purchaser's consent is required to that subcontractor under section 52:** the Permitted Purchaser has either given its consent under section 52, or (if the Provider has sought such consent) there are no reasonable grounds for the Permitted Purchaser to withhold that consent; and
- **If the Permitted Purchaser has required the removal of the subcontractor under section 53:** the Permitted Purchaser has permitted the reinstatement of that subcontractor under paragraph 53.4.

### 76.12. Key Personnel

If the circumstances resulting in a Termination Default Event described in paragraph 36.8 apply relating to Key Personnel, to the extent paragraph 36.8 indicates these circumstances are to result in a Termination Default Event of the Provider.

### 76.13. Right to operate

The Provider is not permitted to operate in the UK, if a physical presence in the UK is reasonably necessary to enable the Provider to carry out its obligations in connection with the provision of the Services.

### 76.14. Death (if the Provider is an individual)

The Provider dies.

### 76.15. Bankruptcy (if the Provider is an individual)

The Provider becomes bankrupt.

### 76.16. Certain convictions (if the Provider is an individual)

The Provider is convicted of any crime of violence or dishonesty, any crime relevant to safeguarding (where the activities in connection with the provision of the Services involve safeguarding issues) or any other offence resulting in a prison sentence (whether suspended or served).



76.17. Certain appointments	<p>The Provider is subject to</p> <ul style="list-style-type: none"> <li>• A court order (or equivalent) or</li> <li>• A resolution or similar decision</li> </ul> <p>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 Provider and/or its assets.</p>
76.18. Winding up	<ul style="list-style-type: none"> <li>• The Provider is subject to <ul style="list-style-type: none"> <li>- A court order (or equivalent) or</li> <li>- A resolution or similar decision</li> </ul> </li> <li>• Requiring the Provider to be dissolved and/or wound up.</li> <li>• Exception: in relation to a genuine solvent reconstruction where <ul style="list-style-type: none"> <li>- The replacement entity agrees in writing to become legally bound to the obligations of the Provider under the relevant Call-Off Contract; and</li> <li>- The replacement entity accepts in writing liability for the liabilities of the Provider in connection with the relevant Call-Off Contract; and</li> <li>- 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 Provider had at the date of the relevant Call-Off Contract; and</li> <li>- The replacement entity has the same underlying majority controlling ownership as the Provider.</li> </ul> </li> </ul>
76.19. Unable to pay liabilities	<ul style="list-style-type: none"> <li>• If and for as long as the Provider 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.</li> <li>• 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 Provider has no reasonable prospect of paying such liabilities.</li> </ul>
76.20. Composition with creditors	<p>If and for as long as the Provider 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.</p>
<b>Flexible Purchasing System issues</b>	
76.21. Termination of a Call-Off Contract	<p>Termination of any other Call-Off Contract under the Flexible Purchasing System by the Permitted Purchaser or by any other Permitted Purchaser due to a default by the Provider.</p>
76.22. Removal from the relevant Lot of the Flexible Purchasing System	<p>Removal of the Provider from the relevant Lot of the Flexible Purchasing System by Sandwell according to the rules at the time of the Flexible Purchasing System.</p>

**Third-party guarantee (e.g. parent company guarantee)**

76.23. If the liabilities, obligations etc. of the Provider in connection with the relevant Call-Off Contract entered with the Provider under the Flexible Purchasing System are subject to any guarantee by a third-party, both paragraph (a) and paragraph (b) apply

(a) Any of the following events or circumstances applies to the guarantor

(i) If the guarantor is a human being

Any of the following applies to him/her

- He/she dies.
- He/she becomes a patient within the meanings of section 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Provider in his/her relevant jurisdiction.
- He/she becomes bankrupt.
- He/she receives a prison sentence.

(ii) If the guarantor is an entity other than a human being (e.g. a company)

The guarantor is subject to a court order (or equivalent) or a resolution (or equivalent)

- 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 guarantor and/or its assets; and/or
- Requiring the guarantor to be dissolved and/or wound up.

(iii) Unable to pay liabilities

The guarantor is unable to pay its liabilities (taking into account its contingent and prospective liabilities) as defined in any applicable Law

- As they fall due, and the guarantor has no reasonable prospect of paying such liabilities
- Whether such liabilities individually or in aggregate equal any minimum required under relevant bankruptcy or anything similar legislation from time to time.

(iv) Composition with creditors

The guarantor enters into a composition or other similar arrangement with its creditors.

(v) Moratorium

If the guarantor is a 'small company' under section 382(3) of the Companies Act 2006: if and for as long as a moratorium (or any equivalent in its relevant jurisdiction) is in force under Schedule A1 of the Insolvency Act 1986.

(vi) Failure to pay liabilities	<p>If and for as long as the guarantor has still not yet fully paid the following:</p> <ul style="list-style-type: none"> <li>• Any overdue liability the guarantor owes to the Permitted Purchaser or its Affiliate more than <b>14 days</b> after the Permitted Purchaser or Affiliate demands payment</li> <li>• Whether or not that liability is connected with the provision of the Services</li> <li>• Subject to rights of set off, deduction or counterclaim which the Provider has in relation to that liability (if any)</li> <li>• But only where that overdue liability is not subject to a genuine dispute which the guarantor is using reasonable efforts in good faith to attempt to resolve.</li> </ul>
(vii) If the guarantor is a partnership, consortium or anything similar	Any of the events or circumstances described elsewhere in this paragraph (a) applies to any of its members.
(b) Failure to provide a replacement: the Provider has failed to provide the Permitted Purchaser with a replacement guarantee as follows	
(i) Strict deadline by which the Provider must provide the Permitted Purchaser with the replacement guarantee	<p>No later than</p> <ul style="list-style-type: none"> <li>• <b>14 days</b>, or</li> <li>• Such longer period permitted in writing by the Permitted Purchaser, at its discretion</li> </ul> <p>After the relevant event or circumstance described in paragraph (a) first occurs or first arises.</p>
(ii) Whether the approval of the Permitted Purchaser is required to the proposed replacement guarantee	<p>Yes, to be given in writing.</p> <p>The Permitted Purchaser may not withhold that approval unless at least one of the circumstances in paragraph (iii) applies.</p>
(iii) Where the Permitted Purchaser may withhold approval of the proposed replacement guarantee	<p>Only if at least one of the following applies:</p> <ul style="list-style-type: none"> <li>• The terms of the guarantee are materially less advantageous to the Permitted Purchaser and/or to any person for whose benefit the immediately preceding guarantee was given; and/or</li> <li>• The replacement guarantor does not on a reasonable view have at least equivalent financial strength than that which the immediately preceding guarantor had at the time it entered into its guarantee.</li> </ul>

**Miscellaneous**

76.24. If the Provider is a consortium, partnership or anything similar, all of the following apply:

(a) Certain events apply to a member	Any of the events or circumstances described elsewhere in this section 76 applies to any member at the time of the consortium, partnership or anything similar.
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(b) Removal

- For as long as the Provider has continued to fail to remove that member from its involvement with the relevant part of the provision of the Services more than **14 days** after the written request of the Permitted Purchaser.
- The Permitted Purchaser must have made that request as a Formal Notice strictly according to section 83.

(c) Arrangements

The Provider has **not** taken appropriate steps (where necessary and to the reasonable satisfaction of the Permitted Purchaser to ensure continuity of the provision of the Services resulting from the removal of the member of the consortium, partnership or anything similar.

## 77. Permitted Purchaser Termination Default Events

Each of the following is a Termination Default Event of the Permitted Purchaser under the Call-Off Contract

- To be read independently
- For as long as the relevant circumstances continue to apply to the Permitted Purchaser

### 77.1. Non-payment by the Permitted Purchaser

If and for as long as all of the following apply

(a) Overdue liability

Any liability owed by the Permitted Purchaser to the Provider in connection with the relevant Call-Off Contract is overdue.

(b) Not disputed

The relevant liability is not subject to a genuine dispute which the Permitted Purchaser is using reasonable and genuine efforts to attempt to resolve.

(c) No right to delay etc.

The Permitted Purchaser has no contractual or other right to refuse and/or to delay payment of the relevant liability.

(d) Overdue

The liability (or any part of it) must still be overdue more than **30 days** after the Provider has issued a further demand for payment.

(e) About the demand described in paragraph (d)

All of the following apply

- The Provider may issue it to the Permitted Purchaser at any time after the relevant liability first became overdue.
- The Provider must (if it wishes to issue the demand) issue it strictly as a Formal Notice according to section 83, but either hand delivered to (or marked to the attention of) the Escalated Person of the Permitted Purchaser.

## 78. Early termination due to a Termination Default Event

### General

78.1. Termination rights of a party under this section 78

A party (**'Terminating Party'**) may terminate the relevant Call-Off Contract according to the rest of this section 78. if and for as long as a Termination Default Event applies to the other party (**'Defaulting Party'**) under the relevant Call-Off Contract.

### Partial termination

78.2. Whether the Terminating Party may terminate only part of the relevant Call-Off Contract under this section 78 if the Terminating Party wishes to do so

The Terminating Party may terminate part of the relevant Call-Off Contract which is reasonably severable from the rest of the relevant Call-Off Contract.

78.3. Obligations of the parties if the Terminating Party terminates only part of the relevant Call-Off Contract under paragraph 78.2

Each party must use reasonable efforts to attempt to amend the relevant Call-Off Contract as follows

- Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the relevant Call-Off Contract
- According to the formal requirements for amending the relevant Call-Off Contract indicated elsewhere in the relevant Call-Off Contract
- Promptly on being requested to do so by the other party.

78.4. Interpretation

Reference in this section 78 to the termination of the relevant Call-Off Contract includes reference to the termination of part of the relevant Call-Off Contract where the Terminating Party only terminates part of the relevant Call-Off Contract.

### Termination procedure

78.5. How a Terminating Party terminates the relevant Call-Off Contract under this section 78

By giving the Defaulting Party a Formal Notice as follows:

- Strictly according to section 83.
- Setting out in reasonable detail a description of the Termination Default Event of the Defaulting Party.

## 78.6. 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 78.5 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

78.7. Effective date on which the relevant Call-Off Contract is terminated if a Formal Notice is given by the Terminating Party under paragraph 78.5

- 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 Expiry Date of the relevant Call-Off Contract or, if the Permitted Purchaser has exercised its rights to continue under section 17, at the end of the relevant period).

## 79. Early termination by the Permitted Purchaser without the Provider's Termination Default Event

### Right to terminate

79.1. Whether the Permitted Purchaser may terminate the relevant Call-Off Contract early without any Termination Default Event of the Provider

- The Permitted Purchaser may do so under this section 79.
- This does not limit other termination rights of the Permitted Purchaser indicated elsewhere in the relevant Call-Off Contract.

### Partial termination

79.2. Whether the Permitted Purchaser may terminate only part of the relevant Call-Off Contract under this section 79 if the Permitted Purchaser wishes to do so

The Permitted Purchaser may terminate part of the relevant Call-Off Contract which is reasonably severable from the rest of the relevant Call-Off Contract.

79.3. Obligations of the parties if the Permitted Purchaser terminates only part of the relevant Call-Off Contract under paragraph 79.2

Each party must use reasonable efforts to attempt to amend the relevant Call-Off Contract as follows

- Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the relevant Call-Off Contract.
- According to the formal requirements for amending the relevant Call-Off Contract indicated elsewhere in the relevant Call-Off Contract.
- Promptly on being requested to do so by the other party.

79.4. Interpretation

Reference in this section 79 to the termination of the relevant Call-Off Contract includes reference to the termination of part of the relevant Call-Off Contract where the Permitted Purchaser only terminates part of the relevant Call-Off Contract.

#### When the Permitted Purchaser may terminate

79.5. Any initial period when the Permitted Purchaser may not terminate the relevant Call-Off Contract early under this section 79

(a) If termination under this section 79 is mainly due to a change in circumstances of a Service User

E.g. his/her death, his/her needs change, his/her family moves away etc.

(b) If termination under this section 79 is mainly due to other circumstances

No initial period. The Permitted Purchaser may terminate at any time.

If the Permitted Purchaser gives the Formal Notice described in paragraph 79.6 less than **4 months** after the commencement date in paragraph 14.1, that Formal Notice is deemed to have been given **4 months** after the commencement date in paragraph 14.1.

#### Termination procedure

79.6. How the Permitted Purchaser terminates the relevant Call-Off Contract early under this section 79 if the Permitted Purchaser wishes to do so

By giving the Provider a Formal Notice strictly according to section 83.

## Effective termination date

79.7. Notice period which the Permitted Purchaser must give to the Provider to terminate the relevant Call-Off Contract under this section 79

i.e. the effective termination date of the relevant Call-Off Contract is the end of this notice period

- (a) If termination under this section 79 is mainly due to a change in circumstances of a Service User where the Call-Off Contract is entirely for his/her benefit

E.g. his/her death, his/her needs change, his/her family moves away etc.

- **7 days** after the Permitted Purchaser gives the Formal Notice described in paragraph 79.6 (or the Expiry Date if before the end of that notice period); or
- Such later date indicated in the Formal Notice (not being after the Expiry Date of the relevant Call-Off Contract); or
- Such other date the parties agree in writing.

See paragraph 18.4 regarding ongoing rights, obligations etc. of the parties after the effective termination date.

Whether the Permitted Purchaser requires the Provider to continue providing the Services during this notice period will depend on the circumstances (in particular, whether the Service User requires continued Services).

However, the Permitted Purchaser will be liable to pay the Charges for the full notice period, regardless of whether the Permitted Purchaser requires the Provider to continue to provide the Services during the notice period.

- (b) If termination under this section 79 is mainly due to other circumstances

- **30 days** after the Permitted Purchaser gives the Formal Notice described in paragraph 79.6 (or the Expiry Date if before the end of that notice period); or
- Such later date indicated in the Formal Notice (not being after the Expiry Date of the relevant Call-Off Contract); or
- Such other date the parties agree in writing.

## During the notice period

79.8. Indicate whether

- The Provider must **continue to provide the Services as normal** during the notice period described in this section 79; or
- The Provider must **wind the provision down** during that notice period (and if so, indicate what the Provider must do)

The Provider must continue to do so except to the extent otherwise directed by the Permitted Purchaser.



79.9. Indicate any restrictions on the right of the Provider to replace (or to permit its subcontractors to replace) Personnel from their roles in relation to the provision of the Services during the notice period described in this section 79

Any such restrictions only apply whilst the relevant Personnel remains an employee of the Provider or its subcontractor (or their respective Affiliates) during that period

Only to the extent indicated in section 46 or (in relation to any Key Personnel if relevant) to the extent indicated in section 36.

#### Termination fee

79.10. Liability of the Permitted Purchaser to pay the Provider any termination fee (or similar) as a result of the Permitted Purchaser terminating the relevant Call-Off Contract early under this section 79

No liability except to the extent indicated in the relevant Work Schedule.

#### 80. Early termination by the Provider without Permitted Purchaser Termination Default Event

80.1. Whether the Provider may terminate the relevant Call-Off Contract early without any Termination Default Event of the Permitted Purchaser

No, unless otherwise indicated elsewhere in the relevant Call-Off Contract.

#### 81. Early termination, ineffectiveness etc. under PCR 2015

81.1. This section 81 applies if any of the following events or circumstances applies

(a) Regulation 73

The Permitted Purchaser may terminate the relevant Call-Off Contract under regulation 73 of the Public Contracts Regulations 2015.

(b) Declaration of ineffectiveness

A declaration of ineffectiveness is made in relation to the relevant Call-Off Contract under regulation 98 of the Public Contracts Regulations 2015.

81.2. What is a '**Termination Circumstance**' in relation to the relevant Call-Off Contract

Either of the following:

- The Permitted Purchaser terminates the relevant Call-Off Contract according to paragraph 81.3 where it is permitted to do so under regulation 73 of the Public Contracts Regulations 2015.
- A declaration of ineffectiveness in relation to the relevant Call-Off Contract as described in paragraph 81.1(b).

81.3. How the Permitted Purchaser terminates the relevant Call-Off Contract if and for as long as it is permitted to do so under regulation 73 of the Public Contracts Regulations 2015.

- By giving the Provider a Formal Notice (strictly according to section 83) terminating the relevant Call-Off Contract.
- The Permitted Purchaser must include the grounds under regulation 73 of the Public Contracts Regulations 2015 which apply to the termination.

81.4. Effect on the relevant Call-Off Contract if a declaration of ineffectiveness described in paragraph 81.1(b) applies to it

- The relevant Call-Off Contract shall immediately become ineffective.
- This does not apply to any parts of the relevant Call-Off Contract which survive the declaration of ineffectiveness as indicated in paragraph 81.6.

**Compensation**

81.5. Compensation which the Permitted Purchaser is liable to pay the Provider if any Termination Circumstance described in paragraph 81.2 applies in relation to the relevant Call-Off Contract

Nil.

**Surviving rights and obligations:**

81.6. The following rights, powers, obligations, liabilities, restrictions or prohibitions (or anything similar to any of these) under the relevant Call-Off Contract survive even if any Termination Circumstance described in paragraph 81.2 applies

- (a) This section
- (b) Caps, exclusions
- (c) Indemnities
- (d) Paying subcontractors
- (e) Intellectual Property
- (f) Amendment
- (g) Confidentiality
- (h) Freedom of information
- (i) Announcements and publicity

This section 81.

Those if any in the relevant Call-Off Contract (particularly section 73) relating to any caps and exclusions of liability of any party.

Those in relation to any indemnities given by a party relating to third-party Claims against a person.

Those in relation to the payment of subcontractors under section 50.

Those in relation to the ownership, ongoing use (under licence) and registration of arising Intellectual Property and relevant Provider background Intellectual Property on which that arising Intellectual Property depends.

Requirements regarding the amendment to any of these surviving rights and obligations, under section 89.

Those in section 55 relating to confidentiality and other matters described in that section 55.

Those in section 56 relating to FOI Acts.

Those in section 57 relating to announcements, publicity and other matters described in that section 57.

(j) Processed Personal Data	Those in section 59 relating to the processing of any Processed Personal Data still in the possession or control of the Provider in connection with the relevant Call-Off Contract.
(k) Insurance	Any ongoing obligations of a party to maintain any insurance required under the relevant Call-Off Contract after the Contract End.
(l) Continuation	Those in relation to certain continued obligations in section 17.
(m) Exit	Those in relation to exit under section 82.
(n) Interpretation	Anything else in the relevant Call-Off Contract which is reasonably necessary for the interpretation of any paragraphs indicated in this paragraph 81.6 (e.g. section 90 and 91).
(o) Other	The surviving rights and obligations under the relevant Call-Off Contract indicated in paragraph 18.4.
81.7. Interpretation of the surviving rights, powers, obligations, liabilities, restrictions or prohibitions (or anything similar to any of these) indicated in paragraph 81.6	<ul style="list-style-type: none"> <li>• They shall be severed from the rest of the relevant Call-Off Contract.</li> <li>• They shall be regarded as a separate, legally binding contract between the Permitted Purchaser and the Provider.</li> <li>• <b>If there is no consideration between the Permitted Purchaser and the Provider in relation to those surviving rights, powers, obligations, liabilities, restrictions or prohibitions (or anything similar to any of these):</b> the Permitted Purchaser and the Provider are liable to pay each other £1.00, if demanded. The parties acknowledge this is sufficient consideration.</li> </ul>

## Exit issues

### 82. Exit obligations

82.1. Purpose of this section 82

To set out the exit obligations of the parties on the Contract End of the relevant Call-Off Contract, or at the end of the Provider's continuation obligations in section 17, whichever is later.

82.2. Exit obligations of the parties on the Contract End or at the end of the continuation obligations indicated in section 17

As indicated in the Service Specification.

These obligations apply **except** to the extent the parties otherwise agree in writing (e.g. if the Permitted Purchaser awards another contract to the Provider in relation to substantially similar activities)

82.3. How the parties are to carry out their respective exit obligations described in paragraph 82.2

- In a timely manner on the Contract End on the Contract End or at the end of the continuation obligations indicated in section 17 (or earlier if indicated elsewhere in the relevant Call-Off Contract), having regard to any deadlines or similar described in the exit plan.
- At their own respective cost (i.e. with no right to reimbursement or similar from the other party) except to the extent indicated in the exit plan or to the extent the parties agree in writing.

## Miscellaneous

### 83. Formal Notices

83.1. To what this section 83 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 the relevant Call-Off Contract (regardless of whether compliance with this section 83 is cross-referenced).
- Any other communications between the parties which (according to the relevant Call-Off Contract) must be sent according to this section 83.

The requirements in this section 83 do not apply to other communications between the parties.

83.2. To whose attention any Formal Notice must be addressed

To be valid, that communication must be addressed to the recipient's Representative.

83.3. **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
(a) Hand delivery to the recipient's Representative	On the date it is given to him/her.

<p>(b) By registered mail or courier to the recipient's last known address (addressed to the recipient's Representative unless otherwise indicated elsewhere in the relevant Call-Off Contract in relation to a particular type of communication)</p>	<p>The earlier of the following:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• <b>2 Business Days</b> after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered.</li> </ul>
<p>(c) By e-mail issued as follows:</p> <ul style="list-style-type: none"> <li>• <b>If the relevant communication is given to the Permitted Purchaser:</b> to an e-mail address as nominated by the Permitted Purchaser to the Provider from time to time for such communication.</li> <li>• <b>If the relevant communication is given to the Provider:</b> to the usual work e-mail address of the Provider's Representative or such additional or replacement e-mail address as nominated by the Provider to the Permitted Purchaser from time to time for such communication.</li> <li>• <b>In any case:</b> with the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address.</li> </ul>	<p>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</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>

## 84. Resolving disputes

### 84.1. Purpose of this section 84

- To set out arrangements for the resolution of any dispute between the Permitted Purchaser and the Provider in connection with the relevant Call-Off Contract (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

### 84.2. 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.

84.3. **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**

84.4. **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 84.5

The following apply except to the extent the parties otherwise agree in writing

- (a) How the parties are to commence the mediation
- (b) Mediation procedure the parties are to use
- (c) How the parties must appoint the mediator
- (d) The parties must comply with all of the following in connection with the mediation
  - (i) Good faith

- By either party giving the other party a Formal Notice according to section 83) 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).

The Model Mediation Procedure of the Centre for Effective Dispute Resolution or the comparable rules of any successor body.

- 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 act generally in good faith in attempting to resolve the Relevant Dispute.

(ii) 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.
(iii) 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.
(iv) Confidentiality	<ul style="list-style-type: none"> <li>• Section 55 applies to information disclosed by a party in the course of the mediation.</li> <li>• A party shall not be regarded as having breached its confidentiality obligations in section 55 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.</li> </ul>
(v) 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.
(vi) 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).
(e) How mediation costs are to be borne	<ul style="list-style-type: none"> <li>• The parties must share equally the costs of engaging the mediator.</li> <li>• The parties must (as between them) otherwise bear their own costs in connection with the mediation.</li> </ul>
(f) 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 <b>90 days</b> after the commencement of mediation.

**Appointment of experts**

84.5. **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 the relevant Call-Off Contract) requires resolution by an independent expert under paragraph 84.5

(a) 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.

(b) How the Relevant Dispute procedure is to be commenced	<ul style="list-style-type: none"> <li>• By either party giving a Formal Notice to the other party indicating it wishes this dispute resolution procedure to apply.</li> <li>• That Formal Notice must be given strictly according to section 83.</li> </ul>
(c) How the parties are to appoint the expert	<ul style="list-style-type: none"> <li>• By agreement between the parties.</li> <li>• If they cannot agree on an expert after more than <b>30 days</b> after the relevant party gives the Formal Notice in paragraph (b): <ul style="list-style-type: none"> <li>- 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.</li> <li>- The parties must accept the person appointed, unless there are genuine and serious concerns about that person's independence.</li> </ul> </li> </ul>
(d) Cooperation	<p>The parties must provide the expert with appropriate cooperation (e.g. access to records) to allow him/her to make his/her determination.</p>
(e) Costs	<ul style="list-style-type: none"> <li>• The parties must (as between them) bear the costs of the expert's appointment equally.</li> <li>• The parties must (as between them) otherwise bear their own costs.</li> </ul>
(f) Confidentiality	<ul style="list-style-type: none"> <li>• Section 55 applies to information disclosed by a party to the expert for purposes genuinely connected with the Relevant Dispute.</li> <li>• A party shall not be regarded as having breached its confidentiality obligations in section 55 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.</li> </ul>
(g) Without prejudice	<p>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.</p>
(h) Engagement	<p>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).</p>
(i) Status of the expert	<ul style="list-style-type: none"> <li>• The expert shall act as an expert and not as an arbitrator.</li> <li>• The Arbitration Act 1996 does not apply to the expert.</li> </ul>



(j) 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 the relevant Call-Off Contract.
(k) Exceptions to paragraph (j)	Paragraph (j) does not apply: <ul style="list-style-type: none"> <li>• Where there is a significant and obvious error with the report; and/or</li> <li>• Where there are reasonable grounds to believe that the expert was not independent of the parties.</li> </ul>
(l) 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**

84.6. Various remedies	Nothing in the relevant Call-Off Contract (including this section 84) prevents a party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to the relevant Call-Off Contract.
84.7. In relation to any disputes between an Affiliate of the Permitted Purchaser and the Provider in connection with the relevant Call-Off Contract	<ul style="list-style-type: none"> <li>• The parties must treat that dispute as a Relevant Dispute to be resolved under this section 84.</li> <li>• The Permitted Purchaser must use its powers to ensure the Affiliate complies with this section 84 in relation to that dispute.</li> <li>• <b>If any 2 or more of the Permitted Purchaser and/or any of its Affiliates are together parties to the same Relevant Dispute:</b> for the purpose of allocating any costs under this section 84, they shall be considered together one party to the Relevant Dispute.</li> </ul>

**85. Health and safety**

85.1. The Provider 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 Provider must ensure its relevant Personnel and subcontractors do likewise in their activities in connection with the provision of the Services

(a) Law	Requirements of the Law which are relevant to health and safety and the provision of the Services at the time.
(b) The relevant Work Schedule and/or the Service Specification	Any health and safety requirements in the relevant Work Schedule and/or the Service Specification.
(c) Call-Off Tender	Any health and safety standards, procedures etc. contained in Call-Off Tender.

- (d) The Provider's own policy
- (e) The Permitted Purchaser's policy

	Requirements of any health and safety policy the Provider has in place from time to time.
	<ul style="list-style-type: none"> <li>• The Permitted Purchaser's health and safety policy (if any) from time to time.</li> <li>• But only to the extent the Provider is obliged to comply with it under section 12.</li> </ul>

**86. Local authority powers**

86.1. Right of Sandwell Council to exercise powers etc.

	<ul style="list-style-type: none"> <li>• Nothing in the relevant Call-Off Contract in any way affects the right of Sandwell Council (whether or not it is also the Permitted Purchaser) as a local authority to exercise (or to not exercise) any of its statutory powers and/or its statutory functions.</li> <li>• This includes (for example) the power of Sandwell Council (whether or not it is also the Permitted Purchaser) 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 the relevant Call-Off Contract.</li> </ul>
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86.2. Interpretation

	<p>This section 86 shall apply even if the exercise (or non-exercise) of such powers and functions causes</p> <ul style="list-style-type: none"> <li>• Either party to be unable to commence or continue any activities contemplated in the relevant Call-Off Contract; and/or</li> <li>• Either party breaching any of its obligations under the relevant Call-Off Contract.</li> </ul>
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**87. Equalities**

87.1. Main obligation of the Provider relating to anti-discrimination and equalities

	<ul style="list-style-type: none"> <li>• The Provider must comply with relevant Law relating to equalities and anti-discrimination in each jurisdiction in which it carries out activities connected with the provision of the Services.</li> <li>• This includes complying with the Equality Act 2010.</li> </ul>
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87.2. Examples of obligations for the purposes of paragraph 87.1 protected characteristics

The Provider must (in relation to activities within the UK) comply with the Equality Act in relation to the following protected characteristics (to the extent that Act requires the Provider to do so):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Any additional or replacement protected characteristics included in that Act from time to time

87.3. What the Provider must have in place

The Provider must have in place (at all times whilst it is carrying out any activities in connection with the provision of the Services within the UK):

- Appropriate policies and procedures relating to equalities and anti-discrimination matters, and
- Adequate systems in place to monitor and enforce those policies and procedures.

## 88. Corrupt Acts

88.1. Obligations of the Provider in relation to Corrupt Acts

The Provider must not do any of the following in connection with the relevant Call-Off Contract

- Carry out any Corrupt Act; and/or
- Assist or instruct another person to carry out any Corrupt Act.

88.2. A '**Corrupt Act**' is any of the following acts (to be read independently)

(a) 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 Permitted Purchaser 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.

(b) Policy

- Any act which breaches any policy of the Permitted Purchaser from time to time regarding gifts to its Personnel.
- But only to the extent the Permitted Purchaser has communicated the policy to the Provider.

(c) Serious attempts

Any serious attempt by any Personnel of the Provider and/or its Affiliate to do any act described in paragraph (a) and/or in paragraph (b).

(d) Certain offences

In relation to the Provider's dealings with the Permitted Purchaser in connection with the provision of the Services, conviction of any offence under any Law relating to fraud, particularly the Bribery Act 2010.

88.3. Consequence of the Provider's breach of paragraph 88.1

It shall be a Termination Default Event of the Provider.

- This applies regardless of the size of the breach.
- But only where the breach was done with the assistance or instruction of the Provider's Representative and/or any other member of the Provider's Personnel of at least equivalent seniority.

This does not limit the rights or remedies of the Permitted Purchaser and/or its Affiliates in relation to the Provider's breach of paragraph 88.1.

## 89. Other topics

### Third-party rights

Rights of third parties with rights under the relevant Call-Off Contract 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 0.

Third parties whose rights to directly enforce their rights, powers, benefits (or anything similar to these) under the relevant Call-Off Contract 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 the relevant Call-Off Contract are excluded to the fullest extent permitted by Law

(a) Affiliates

Affiliates of the Permitted Purchaser.

(b) Personnel

Personnel of the Permitted Purchaser and/or its Affiliates.

(c) Third Party Beneficiaries

Each Third Party Beneficiary described in section 6 in relation to Services provided for that person's benefit.

- (d) Cessation Undertaking Transfer – transferee employers

Any direct or indirect replacement service provider of the relevant Call-Off Contract in relation to its rights under the relevant Call-Off Contract as a transferee employer resulting from any Cessation Undertaking Transfer, particularly its rights under the indemnity given by the Provider under section 47.

### Relationship between the parties

- 89.2. Relationship between the parties created by the relevant Call-Off Contract

The relationship of a public sector commissioner and an independent service provider.

The relevant Call-Off Contract does not create any of the following relationships between the parties and/or their Affiliates except to the extent clearly elsewhere indicated in the relevant Call-Off Contract

- A partnership between them
- A principal-agent relationship between them.  
**Exception:** to the extent otherwise clearly indicated or reasonably implied elsewhere in the relevant Call-Off Contract or as otherwise authorised in writing by the party which is the principal.
- Any employment relationship between them.

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

- 89.3. Assignment, novation

If a party wishes to

- Assign its rights, entitlements, benefits, powers or anything similar to any of these in connection with the relevant Call-Off Contract; and/or
- Novate the relevant Call-Off Contract

That party may not do so without the prior written consent of the other party, not to be unreasonably withheld.

### Entire agreement

- 89.4. About Call-Off Contract

- The terms and conditions of the relevant Call-Off Contract described in paragraph 1.6 comprise the entire agreement between the parties on the subject matter of the Call-Off Contract.
- No other material forms part of it.

- 89.5. Status of any previous agreements entered between the parties on the subject matter of the relevant Call-Off Contract

They are fully extinguished immediately when the relevant Call-Off Contract is entered.

89.6. 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 the relevant Call-Off Contract

To the fullest extent permitted by Law:

- These are excluded from the relevant Call-Off Contract.
- That party's liability in relation to any of these is excluded.

This does not exclude any party's liability for fraudulent misrepresentation.

#### Amendment

89.7. How the relevant Call-Off Contract is to be validly amended  
(as follows - no other way is valid)

- By agreement in writing between the Permitted Purchaser and the Provider.
- The relevant document must clearly indicate an intention to amend the relevant Call-Off Contract.
- 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 the relevant Call-Off Contract.
- 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

89.8. If the relevant Call-Off Contract refers to a particular remedy in a particular circumstance

This does not in itself exclude the availability of any other remedy (whether arising under the relevant Call-Off Contract or otherwise) in that circumstance (unless otherwise clearly indicated).

89.9. If a person with rights under the relevant Call-Off Contract 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).

89.10. 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 the relevant Call-Off Contract 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

89.11. If any part of the relevant Call-Off Contract is held by any court (or equivalent body) to be invalid or unenforceable for any reason, the parties to the relevant Call-Off Contract must do the following

(a) 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 the relevant Call-Off Contract) to be valid and enforceable, whilst keeping the original intention of the parties intact as far as reasonably possible.

(b) Second step if the first step is not reasonably possible

The entire part shall be severed from the relevant Call-Off Contract unless

- It alters the fundamental nature of the relevant Call-Off Contract; and/or
- It is against public policy to do so.

89.12. About the remaining parts of the relevant Call-Off Contract which are not described in paragraph 89.11

They shall remain binding.

## Waivers

89.13. Strict requirements for a waiver of a party's rights or powers in connection with the relevant Call-Off Contract 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.

89.14. Other rules regarding waiver of any party's right or power in connection with the relevant Call-Off Contract

- 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

89.15. Law under which the relevant Call-Off Contract is to be interpreted and generally governed

English law.

89.16. Jurisdiction to exclusively apply to disputes arising in connection with the relevant Call-Off Contract

English courts

This is subject to the arrangements for resolving Relevant Disputes in section 84

## Definitions and interpretation

### 90. Definitions

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in the relevant Call-Off Contract) the following capitalised words or expressions shall have the following meaning when used in the relevant Call-Off Contract

(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)

Defined term	Definition
<b>Affiliate</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Agreed Grouping</b>	See paragraph 42.1.
<b>Business Day</b>	Any day except a Saturday, Sunday or any official bank or public holiday in England.
<b>Call-Off Tender</b>	<ul style="list-style-type: none"> <li>• The proposal, response to a competitive exercise or application (or anything similar to any of these) if any which the Provider has submitted to the Permitted Purchaser in connection with the relevant Call-Off Contract.</li> <li>• This includes the Provider's written responses to any selection procedure in connection with a relevant procurement exercise and any and all written responses which the Provider has given to any clarification questions or anything similar which were raised by the Permitted Purchaser during any relevant procurement process to which the relevant Call-Off Contract relates.</li> </ul>
<b>Cessation Undertaking Transfer</b>	Any service provision change (for the purposes of the TUPE Regulations) to the Permitted Purchaser (or its replacement direct or indirect contractor) from the Provider (or its direct or indirect subcontractors) on the cessation of the provision of any part of the Services.
<b>Charges</b>	The charges which the Permitted Purchaser is liable to pay the Provider according to the relevant Call-Off Contract, especially section 19.
<b>Claim</b>	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 Provider and/or the Permitted Purchaser and/or their respective Affiliates.
<b>Commencement Undertaking Transfer</b>	Any service provision change (for the purposes of the TUPE Regulations) from the Permitted Purchaser (or its previous direct or indirect contractors) to the Provider (or its direct or indirect subcontractor) on the commencement of the provision of any part of the Services.



<b>Confidential Information</b>	The information described as such in section 55 in relation to a particular Discloser.
<b>Contract End</b>	See paragraph 18.1.
<b>Corrupt Act</b>	See paragraph 88.2.
<b>Data Loss Event</b>	See paragraph 59.1(a).
<b>Data Protection Impact Assessment</b>	See paragraph 59.1(b).
<b>Data Protection Legislation</b>	All Law in the UK relevant to data protection, including each of the following: <ul style="list-style-type: none"> <li>• The Data Protection Act 2018</li> <li>• 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.</li> </ul>
<b>Defaulting Party</b>	See paragraph 78.1.
<b>Discloser</b>	A person in relation to that person's Confidential Information according to section 55.
<b>Escalated Person</b>	<ul style="list-style-type: none"> <li>• <b>For the Permitted Purchaser:</b> the relevant director responsible for this contract at the time, or his/her delegate.</li> <li>• <b>For the Provider:</b> the most senior executive located in the UK at the time, or his/her delegate.</li> </ul>
<b>Expiry Date</b>	The date indicated as such in section 15.
<b>Flexible Purchasing System</b>	The Sandwell Travel Assistance flexible purchasing system established by Sandwell Council in 2024 under which the Provider is a member provider of the relevant Lot to which the relevant Call-Off Contract relates.
<b>FOI Act</b>	See paragraph 56.1.
<b>FOI Party</b>	Each party identified as such in paragraph 56.2.
<b>Force Majeure Event</b>	Each event or circumstance described as such in section 68.
<b>Formal Notice</b>	Each communication described as such in paragraph 83.1.
<b>Improvement Plan</b>	See paragraph 75.1.
<b>Indemnifiable Cause</b>	See paragraph 71.4.
<b>Indemnifier</b>	See paragraph 72.1.
<b>Indemnity Beneficiary</b>	See paragraph 72.1.
<b>Intellectual Property</b>	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.

<b>Key Personnel</b>	See paragraph 36.1.
<b>Law</b>	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> <li>• Any statute, regulation, by-law, order, subordinate legislation or anything similar to any of these.</li> <li>• Any treaty</li> <li>• Any judgement, rule of common law or equity</li> <li>• Any order of a competent court, tribunal, arbitrator or anything similar to any of these</li> <li>• 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 the relevant Call-Off Contract from time to time.</li> <li>• Any guidance or anything similar issued by authorised government bodies (whether legally binding or not)</li> <li>• 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 the relevant Call-Off Contract.</li> </ul>
<b>Losses</b>	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.
<b>Lot</b>	The relevant lot of the Flexible Purchasing System to which the relevant Call-Off Contract relates.
<b>Material Breach</b>	<ul style="list-style-type: none"> <li>• A breach of the relevant Call-Off Contract by a party ('X') which has significant (and not trivial) consequences for the other party ('Y').</li> <li>• This includes for example an anticipatory breach or anything similar of the relevant Call-Off Contract by X and any breach of any factual promise given by X under the relevant Call-Off Contract, but only to the extent any of these has significant (and not trivial) consequences for Y.</li> </ul>
<b>Performance Standards</b>	The standards, service levels, KPIs (or anything similar to any of these) described in section 3.1, as amended from time to time.
<b>Permitted Purchaser Assistance</b>	Each assistance which the Permitted Purchaser is to provide the Provider as described in paragraph 67.1.
<b>Personnel</b>	<ul style="list-style-type: none"> <li>• 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).</li> <li>• <b>In relation to the Provider if a sole trader:</b> the Provider in relation to his/her personal involvement in the provision of the Services.</li> </ul>
<b>Preparation Activity</b>	Each activity indicated as such in section 13.
<b>Pre-TUPE Transfer Liability</b>	See paragraph 48.1.

<b>Processed Personal Data</b>	See paragraph 59.1(d).
<b>Promised Subcontractor</b>	<ul style="list-style-type: none"> <li>• Each current subcontractor indicated as such in paragraph 51.1; or</li> <li>• 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 51.1.</li> </ul>
<b>Protective Measures</b>	See paragraph 59.1(c).
<b>Recipient</b>	A party in relation to the Confidential Information of a relevant Discloser for the purposes of section 55.
<b>Relevant Dispute</b>	See paragraph 84.1.
<b>Relevant Indemnity</b>	See paragraph 72.1.
<b>Representative</b>	<p>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 the relevant Call-Off Contract:</p> <ul style="list-style-type: none"> <li>• If and as indicated in the relevant Call-Off Contract; or</li> <li>• As otherwise communicated by that party to the other party in writing from time to time</li> </ul> <p>including</p> <ul style="list-style-type: none"> <li>• If the relevant individual is absent from time to time: any other individual deputising for him/her, as decided by the relevant party.</li> <li>• Where the position is vacant from time to time: the Escalated Person of the relevant party.</li> </ul>
<b>Required Accreditation</b>	Each licence, accreditation, registration, background check (or anything similar to any of these) described in section 29.
<b>Required Suspension</b>	See paragraph 74.1.
<b>Sandwell Council</b>	Sandwell Metropolitan Borough Council or its successors.
<b>Service Specification</b>	<ul style="list-style-type: none"> <li>• The specification <ul style="list-style-type: none"> <li>- Which applies to the relevant Lot to which the relevant Call-Off Contract relates, and</li> <li>- Which had been published by Sandwell Council at the time the Permitted Purchaser and the Provider entered the relevant Call-Off Contract.</li> </ul> </li> <li>• This includes any other document which (according to the relevant Call-Off Contract) is deemed to form part of that Service Specification.</li> </ul>
<b>Service User</b>	Each individual to whom Services are provided, as described in section 5.
<b>Services</b>	The services which the Provider must provide under the relevant Call-Off Contract as described in section 2.
<b>Sub-processor</b>	See paragraph 59.1(e).
<b>Terminating Party</b>	See paragraph 78.1.
<b>Termination Circumstance</b>	See paragraph 81.2.

**Termination Default Event**

- **In relation to the Provider:** each event or circumstance described in section 76.
- **In relation to the Permitted Purchaser:** each event or circumstance described in section 77.

**Third Party Beneficiary**

Each person described as such in section 6.

**91. Interpretation**

The parties agree to interpret the relevant Call-Off Contract as follows

Except to the extent

- The context otherwise requires; and/or
- The parties otherwise agree in writing; and/or
- Otherwise indicated elsewhere in the relevant Call-Off Contract

91.1. Headings

Headings do not affect the interpretation of the relevant Call-Off Contract.

91.2. Reference to a party

Reference to any party is a reference to a party to the relevant Call-Off Contract.

91.3. 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).

91.4. Calculation of time periods etc.

If the relevant Call-Off Contract 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.

91.5. Definitions

If a word or phrase is defined in the relevant Call-Off Contract, its other grammatical forms have a corresponding meaning.

91.6. Statutes, codes etc.	Reference in the relevant Call-Off Contract 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.
91.7. If any obligation of a party is indicated in the relevant Call-Off Contract to be a 'reasonable efforts' obligation	<p>That party will be considered to have discharged that obligation if all of the following applies</p> <ul style="list-style-type: none"> <li>• That party has chosen at least one path to carry out that obligation.</li> <li>• 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).</li> <li>• 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 the relevant Call-Off Contract.</li> </ul>
91.8. 'In writing'	<ul style="list-style-type: none"> <li>• Use of the expression 'in writing' (or a similar word) in the relevant Call-Off Contract includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form.</li> <li>• 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.</li> </ul>
91.9. 'Including'	<ul style="list-style-type: none"> <li>• Use of the word 'including', 'in particular', 'for example' (or a similar words or expressions) in the relevant Call-Off Contract at the commencement of a list to illustrate a particular concept does not limit that concept in any way.</li> <li>• Use of the abbreviation 'etc.' at the end of a list in the relevant Call-Off Contract to illustrate a particular concept does not limit that concept in any way.</li> </ul>
91.10. Other references in the relevant Call-Off Contract	<ul style="list-style-type: none"> <li>• Reference to paragraphs, sections, schedules, appendices or annexures is reference to those in the relevant Call-Off Contract.</li> <li>• Reference to one gender refers to all genders.</li> <li>• Reference to the singular includes the plural and vice versa.</li> <li>• Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.</li> </ul>