



Terms and Conditions

Details of Flexible Purchasing System: Care and Support in Extra Care Housing and Local Communities (Liverpool City Region 2018)

These Terms and Conditions apply to each Individual Contract entered under the Flexible Purchasing System

Version: 2018 version 1

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Introduction

1. Background

1.1	To what these Terms and Conditions relate	<p>They form part of the contractual terms and conditions of a particular Individual Contract entered from time to time between:</p> <ul style="list-style-type: none">• The Permitted Purchasing Body referred to in the Work Order of the Individual Contract; and• The Provider referred to in that Work Order,
1.2	What is the ' Individual Contract ' described in these Terms and Conditions	<p>It is the contract entered</p> <ul style="list-style-type: none">• Under a Work Order that cross-references the relevant Flexible Purchasing System to which these Terms and Conditions relate• Between the Permitted Purchasing Body and the Provider described in that Work Order• In relation to Services described in that Work Order.
1.3	What are the terms and conditions of the Individual Contract	<p>As follows (with inconsistencies between them resolved under section 126)</p> <ul style="list-style-type: none">• The Individual Specification.• A sufficiently-completed Work Order.• The General Specification applicable to the relevant Flexible Purchasing System.• These Terms and Conditions as they are at the time the Individual Contract is entered. <p>As any of these are amended according to section 72 in these Terms and Conditions.</p>

2. Associated Documents

2.1	Each Associated Document in relation to the Individual Contract	As indicated in the relevant Work Order.
2.2	How any inconsistency between <ul style="list-style-type: none">• The Associated Document and• The terms of the Individual Contract (as described in item 1.3) is to be resolved	See section 126.
2.3	Incorporation of these Terms and Conditions and/or a relevant Work Order into each Associated Document (if the Permitted Purchasing Body and the Provider are the only parties to that Associated Document)	<ul style="list-style-type: none">• This terms of these Terms and Conditions and/or a relevant Work Order (including any definitions and rules for interpretation) shall apply to each Associated Document.• Exception: to the extent otherwise clearly indicated in the Associated Document.
2.4	Effect of the expiry or early termination of these Terms and Conditions on each Associated Document (if the Permitted Purchasing Body and the Provider are the only parties to that Associated Document)	<ul style="list-style-type: none">• The Associated Document terminates at the same time as these Terms and Conditions expires or terminates.• Exception: to the extent otherwise clearly indicated in the Associated Document.

3. Service Users

- 3.1 Service Users for whose benefit the Services are to be provided (**'Service Users'**)
- 3.2 Restrictions on the Provider's right to **enter into unrelated business dealings with any Service User** introduced to the Provider in connection with the Individual Contract
E.g. any restrictions on the Provider's right to offer the Service User goods and/or services for payment, other than the Services required under the Individual Contract

As indicated in the Work Order.

No restrictions.

4. Third Party Beneficiaries of the Services

- 4.1 Persons **in addition to the Permitted Purchasing Body** to whom the Provider owes a duty of care under the Individual Contract in carrying out the Provider's obligations under the Individual Contract (each of them a **'Third Party Beneficiary'**)

Each of the following

- Each Service User described in item 3.1 but only in relation to Services provided to that Service User.
- Each Affiliate of the Permitted Purchasing Body.

About the Services

5. Description of the Services

- 5.1 Description of the Services which the Provider must provide under the Individual Contract

As indicated in the following:

- The General Specification; and
- The Individual Specification.

6. Contract Standards

- 6.1 Indicate the specific standards, service levels, KPIs (or the like of any of these) (each of them is a **'Contract Standard'**) which the Provider must ensure are met in carrying out the Services

As indicated in the following:

- The General Specification; and
- The Individual Specification.

7. Operating Manuals

- 7.1 Description of each operating manual in relation to the Services (**'Operating Manual'**, which includes that manual as amended from time to time)

- The initial Operating Manual in relation to the Individual Contract as approved by the Permitted Purchasing Body according to item 7.2
- As amended (or replaced in its entirety) from time to time with the written approval of the Permitted Purchasing Body (such approval not to be unreasonably withheld).

- 7.2 About the initial Operating Manual described in item 7.1

- (a) The Provider's initial obligations

The Provider must submit a first draft of an Operating Manual to the relevant Permitted Purchasing Body for its approval.

- (b) Whether the Provider may use an existing operating manual used at the scheme as a basis for the first draft

It may do so, on the assumption it has not been approved by the relevant Permitted Purchasing Body unless the Permitted Purchasing Body has indicated otherwise, in writing/

	(c) Due date for submitting the first draft	6 weeks after the date the Individual Contract is entered.
	(d) Purpose of submission	<ul style="list-style-type: none"> • For the approval of the Permitted Purchasing Body. • The approval of the Permitted Purchasing Body cannot be unreasonably withheld.
	(e) Obligations of the Permitted Purchasing Body if approval is not given	To give the Provider timely feedback to enable it to submit the next draft.
	(f) Until the approval of the Permitted Purchasing Body is given	<ul style="list-style-type: none"> • The Provider must resubmit further drafts of the Operating Manual until the approval of the Permitted Purchasing Body is given. • The Provider must do so in a timely manner. • The Provider must give proper regard to any feedback given to it by the Permitted Purchasing Body.
	(g) If the parties cannot agree on a particular Operating Manual (or any amendment) proposed by the Provider for the approval of the Permitted Purchasing Body	It shall be a dispute for the purposes of section 119.
7.3	The Provider's obligations in relation to each Operating Manual	As indicated in the following: <ul style="list-style-type: none"> • The General Specification; and • The Individual Specification.
7.4	Rights of the Permitted Purchasing Body to have access to each Operating Manual	
7.5	Arrangements regarding changes to each Operating Manual from time to time e.g. <ul style="list-style-type: none"> • Any consent of the Permitted Purchasing Body required • Any obligation of the Provider to communicate the changes to the Permitted Purchasing Body 	
7.6	Arrangements in relation to each Operating Manual when the Individual Contract expires or is terminated early	See item 110.7 in relation to the Provider's obligations in relation to the Operating Manual as part of the Provider's exit obligations.
8.	Fitness for purpose	
8.1	Purposes for which the Provider must ensure the Services are to be fit	To ensure the safety and general welfare of each Service User in receiving the Services, insofar as these are affected by the Services.
9.	Obligation to meet outcomes	
9.1	Outcomes, benefits (or the like of any of these) which the Provider is contractually obliged to ensure the Services achieve	As indicated in the Work Order of the Individual Contract.

10. Novation or assignment of third party contracts

- 10.1 The Permitted Purchasing Body and the Provider must use reasonable endeavours (working cooperatively) to arrange the assignment or novation of the following contracts from the Permitted Purchasing Body to the Provider

Contract details	Third party to the contract	Whether assigned or novated	Whether assignment or novation is <u>required or permitted</u>
As indicated in the Work Order	As indicated in the Work Order	As indicated in the Work Order	As indicated in the Work Order
10.2	Consequences if the third party to a contract described in item 10.1 does not agree to the assignment or novation	<p>The Provider is not obliged or permitted to the assignment or novation.</p> <p>This is subject to the Permitted Purchasing Body having used reasonable endeavours (including exercising any relevant contractual rights) to require the third party to agree to it.</p>	
10.3	Warranties and representations given by the Permitted Purchasing Body in relation to each contract described in item 10.1	<p>None given.</p> <p>The Provider must make its own checks.</p>	
10.4	Arrangements in relation to liabilities of the Permitted Purchasing Body under each contract described in item 10.1 which is to be novated to the Provider according to item 10.1		
(a)	Which liabilities are to remain liabilities of the Permitted Purchasing Body	Those relating to the contract which accrue, arise or relate to events or circumstances which occur or arise on or before the effective date in item (c).	
(b)	Which liabilities are to be assumed by the Provider	Those relating to the contract which accrue, arise or relate to events or circumstances which occur or arise after the effective date in item (c).	
(c)	What is the ' effective date ' of the transfer of any liabilities from the Permitted Purchasing Body to the Provider for the purposes of this item 10.4	As indicated in the Work Order.	
(d)	Indemnity given by a party ('X') to the other party ('Y') in accepting liability under that contract according to this item 10.4	<ul style="list-style-type: none"> • X indemnifies Y for Y's Losses resulting any Claim made or threatened against Y by any person in respect of that contract. • This indemnity only applies to the extent X has accepted liability under that contract according to this item 10.4. • This indemnity is subject to section 96. 	

Method in providing the Services

11. Method in providing the Services

- 11.1 Methods or techniques (or the like of any of these) with which the Provider must comply in providing the Services

As (and to the extent) indicated in any of the following:

- The General Specification;
- The Individual Specification; and
- The Provider Submission.

12. General standards

12.1 The Provider must provide the Services to at least the highest of the following standards

(a)	Specification, Provider Submission	<p>To the extent any standards indicated in any of the following:</p> <ul style="list-style-type: none">• The General Specification;• The Individual Specification; and• The Provider Submission. <p>This includes any Contract Standards described in item 6.1.</p>
(b)	Standards of a skilled person	<p>The standard of skill, care, diligence, prudence and foresight where all of the following apply</p> <ul style="list-style-type: none">• It is a standard which would reasonably be expected from an appropriately skilled, diligent and experienced person• That person is engaged to provide similar services to those required under the Individual Contract.• That person is engaged in similar circumstances to those to which the Individual Contract relates.
(c)	Law	<ul style="list-style-type: none">• In any case, the requirements of relevant Law applying to the relevant activities.• This is a paramount obligation and overrides anything to the contrary elsewhere in these Terms and Conditions and/or a relevant Work Order.

13. Obligations of the Provider – certain consequences and risks

13.1 The Provider must not cause (or create an unreasonable risk of causing) any of the following to be suffered by the Permitted Purchasing Body and/or its Affiliate and/or any Third Party Beneficiary described in item 4.1 (each of them a '**Protected Person**') as a result of the way in which the Provider (and anyone acting on its behalf) provides the Services

(a)	Death, personal injury etc.	<p>Death, personal injury or other serious harm to any of the following</p> <ul style="list-style-type: none">• The Protected Person, if a human being.• Any person whom the Provider knows (or reasonably ought to know) is owed a duty of care by the Protected Person (e.g. its Personnel).
(b)	Property loss etc.	<p>Loss, theft, damage or other significant undesirable consequence to any data, Intellectual Property, equipment, records, land and buildings or other property of any kind of (or used by) any of the following</p> <ul style="list-style-type: none">• The Protected Person.• Any person whom the Provider knows (or reasonably ought to know) is owed a duty of care by the Protected Person (e.g. its Personnel). <p>Exception: any of these result from activities which are genuinely part of the Services (e.g. destruction of property).</p>

(c) Certain breaches etc.	<p>Breaches, infringements or the like by the Protected Person of any of the following</p> <ul style="list-style-type: none"> Any Law. Any duty which the Protected Person then owes any third party (whether arising in tort, contract, statute or otherwise, including any breach of any duty of confidentiality) to the extent the Provider knows (or reasonably ought to know) of that duty. The property (including Intellectual Property) rights of any third party. Exception: where that property (including Intellectual Property where relevant) <ul style="list-style-type: none"> Has been leased or licensed to the Provider or its subcontractors by the Permitted Purchasing Body and/or its Affiliate; or Has otherwise been made available to the Provider by the Permitted Purchasing Body or its nominated agent for purposes connected with the Services.
(d) Bad publicity (in relation to the Permitted Purchasing Body and/or its Affiliate)	<ul style="list-style-type: none"> The Protected Person receiving any significant, unjustified and undesirable publicity. This does not prevent the Provider or its subcontractors reporting serious and genuinely suspected wrongdoing by the Protected Person (or anyone connected to the Protected Person) to appropriate law enforcement authorities.

14. Permitted Purchasing Body policies

14.1 Current policies of the Permitted Purchasing Body with which the Provider must comply when providing the Services under the Individual Contract	<p>As indicated in the relevant Work Order.</p> <p>But only if the relevant policy (or a relevant website link containing the policy) is communicated to the Provider by the Permitted Purchasing Body in writing.</p>
14.2 Policies of the Permitted Purchasing Body from time to time with which the Provider must comply when providing the Services under the Individual Contract	<p>Each policy of the Permitted Purchasing Body from time to time to which all of the following apply:</p> <ul style="list-style-type: none"> It must be reasonable, lawful and relevant to the Services; and It must have been sufficiently communicated to the Representative of the Provider in writing. This includes communicating a relevant website link containing the policy.
14.3 If the Provider would necessarily need to incur further costs (beyond a trivial level) to comply with any obligation contained in a policy of the Permitted Purchasing Body described in item 14.2	<ul style="list-style-type: none"> If the Provider is required by Law to comply with that obligation anyway: the Permitted Purchasing Body is not obliged to reimburse the Provider for those further costs in relation to that obligation except to the extent the Permitted Purchasing Body and the Provider otherwise agree in writing. If the Provider is NOT required by Law to comply with that obligation anyway: the Provider is not obliged to comply with that obligation unless the Permitted Purchasing Body has agreed in writing to reimburse the Provider for those costs <ul style="list-style-type: none"> To the extent those costs are reasonable, appropriately evidenced; and Subject to any reasonable conditions the Permitted Purchasing Body requires.

14.4 Character of each Permitted Purchasing Body policy described in this section 14 for the purposes of the Individual Contract

- It shall be deemed to form part of the Individual Specification.
- **If there is any inconsistency between any Permitted Purchasing Body policy and any other part of the Individual Specification:** the policy prevails to the extent of the inconsistency.

Location

15. Location

15.1 Any specific location at which the Provider must provide the Services (or such part of them as indicated)

As indicated in the Work Order.

About the parties

16. Licences, registrations, accreditations

16.1 Licences, registrations, accreditations, permits, consents (or the like of any of these) which the Provider must have in place at all times whilst providing the Services

Registration by CQC or any successor body from time to time.

Any others indicated in the Work Order.

Any others required by Law from time to time in relation to the Provider's activities in carrying out the Services.

16.2 Obligations of the Provider if

- Any subcontractor which it directly or indirectly appoints (on a reasonable view)
- Requires any of the licences, registrations or the like described in item 16.1
- In relation to activities which the subcontractor carries out in connection with the Individual Contract

- The Provider must ensure the subcontractor has the relevant licences, registrations or the like described in item 16.1 in place at all times while the subcontractor carries out those activities.
- See section 62 and section 63 on the rights of the Permitted Purchasing Body to require the removal of the subcontractor if and for as long as it does not have the relevant licences, registrations or the like described in item 16.1 in place from time to time.

16.3 Providing evidence

- The Provider must provide the Permitted Purchasing Body with appropriate evidence that the Provider and/or relevant subcontractors meet all of the requirements in item 16.1.
- The Provider must do so promptly on the Permitted Purchasing Body's reasonable request from time to time.
- **If the Permitted Purchasing Body is not also the Lead Council:** the Provider will have satisfied this requirement if it provides such evidence to the Lead Council on the Permitted Purchasing Body's behalf.

17. Local authority powers

17.1 Status of a party ('X') if it is a local authority

(a) Right to carry out powers etc.

Nothing in the terms of the Individual Contract (as described in item 1.3) in any way affects the right of X as a local authority to exercise (or to not exercise) any of its statutory powers and/or its statutory functions.

(b) Examples

Without limiting this, this includes the power of X to grant or to deny any kind of application for planning, any particular licence or the like of any of these which is submitted by any other party to the Individual Contract.

The above paragraphs shall apply even if the exercise (or non-exercise) of such powers and functions causes either party to breach its obligations under the Individual Contract.

18. Warranties and representations of the Provider

The Provider warrants and represents

- To the Permitted Purchasing Body and its Affiliates
- That each of the following (to be read independently) is materially true and materially correct
- At the date on which the Work Order is executed by the Provider, and again on the commencement of the Services under the Individual Contract, and again on the commencement of any extension period of the Individual Contract
- Subject to any exceptions which have been sufficiently disclosed by the Provider to the Permitted Purchasing Body (or to the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) in writing before the relevant date when the warranty and representation applies
- In addition to other warranties and representations of the Provider indicated elsewhere in these Terms and Conditions or the Work Order.

About the Provider generally

18.1 Claims made by the Provider

The claims the Provider has made about itself or its subcontractors or their respective Personnel in the Provider Submission are, to the best of the Provider's knowledge having made reasonably necessary inquiries:

- **True:** materially true; and
- **Not misleading:** not reasonably likely to be misleading (whether by omission or otherwise) to a reasonable person.

18.2 No changes to the Provider since the Provider Submission

- There have been no significant changes to the circumstances of the Provider compared to those disclosed in the Provider Submission
- **Changes to the Provider's circumstances to which this applies:** only to those changes which would (on reasonable view) significantly and unfavourably affect the ability of the Provider to provide the Services as required under the Individual Contract.

18.3 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 Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council); and
- If that information had been sufficiently disclosed, it would be reasonably likely to have significantly affected the decision of the Permitted Purchasing Body (acting reasonably in the circumstances) to enter the Individual Contract on its terms.

18.4	Investigations, proceedings etc.	<p>The Provider is not</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • Any Service User described in section 3 (or his/her representative if he/she does not have capacity) having reasonable grounds not to have appropriate confidence in the Provider; and/or • The Provider being significantly and unfavourably affected in its ability to properly provide the Services; and/or • Serious, unjustified and unfavourable publicity being brought to the Permitted Purchasing Body.
18.5	Competitive procedure	<p>In any competitive procedure in which the Provider was awarded the Individual Contract: the Provider has not done any of the following:</p> <ul style="list-style-type: none"> • Engaged in any collusive or other anti-competitive conduct with other bidders (or potential bidders). • Engaged in any canvassing activity. • Done any act that would breach item 114.1 in relation to Corrupt Acts if that act were done after these Terms and Conditions is entered.
18.6	If the Provider is a human being (e.g. a sole trader)	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider meets the requirements in item 36.1 to the extent relevant to his/her expected activities in relation to the Services; and • 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 under the Individual Contract.
18.7	If the Provider is a company or other type of entity other than a human being	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider has the following to enter the Individual Contract and to carry out its obligations under it <ul style="list-style-type: none"> - It has the power under its constituent document; and - It has obtained the relevant resolutions and taken the required corporate action. • The Provider validly exists under the Law of the place where it was incorporated or otherwise constituted.
Financial status of the Provider		
18.8	Able to pay debts	<p>The Provider is able to pay its debts (taking into account its contingent and prospective liabilities) when they fall due.</p>
18.9	If the Provider is a human being (e.g. a sole trader)	<p>The Provider is not an undischarged bankrupt.</p>

18.10 If the Provider is a company or other type of entity **other than** a human being

All of the following

- 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.

Ability to carry out obligations

18.11 **Due diligence:** the Provider has satisfied itself (including making investigations, gathering information, seeking advice or the like) of all of the following

(a) Ability to meet obligations

The Provider is able to carry out its obligations under the Individual Contract as follows:

- As required under the Individual Contract; and
- Without imposing charges or seeking reimbursement from the Permitted Purchasing Body beyond its entitlements indicated elsewhere in the terms of the Individual Contract (as described in item 1.3).

(b) Provider's understanding

The Provider understands the risks it faces in entering the Individual Contract and in carrying out its obligations under it.

(c) To what item (a) and item (b) are to be subject

- Due diligence rights of the Provider in relation to TUPE Transfers described in section 45; and
- The Permitted Purchasing Body carrying out its obligations in item 45.4 in relation to that due diligence.

18.12 Licences, permits, accreditations etc. in place

- The Provider and each subcontractor which it directly or indirectly appoints has in place all licences, permits, accreditations or the like which it is required to have under item 16.1 as relevant to their activities in relation to the Services; and
- The Provider has no reasonable grounds to expect it (or the relevant subcontractor) to suffer any loss or restrictions to such licences, permits, accreditations or the like that would prevent the Provider carrying out any of its obligations under the Individual Contract.

18.13 Sufficient systems, resources

The Provider has (whether directly or through permitted subcontractors) the necessary and sufficient systems, Personnel and other resources to provide the Services in a proper and punctual manner.

18.14 Processing Client Personal Data

The Provider (whether directly or through its subcontractors) has appropriate technical, operational and organisational measures in place to protect integrity of Client Personal Data described in item 82.2 for the purposes described in item 82.5.

18.15	Third party consents, regulatory approvals etc.	<p>The Provider has obtained all necessary third party consents, regulatory approvals or the like to enable it to do the following</p> <ul style="list-style-type: none"> • To enter the Individual Contract; and • To carry out its obligations as required under the Individual Contract.
18.16	Intellectual Property	<ul style="list-style-type: none"> • The Provider either owns or has appropriate licences and other permissions in place to enable it to use any Intellectual Property (including any Provider Background Intellectual Property) which it intends to use in carrying out its obligations under the Individual Contract. • Exception: this does not apply to any Intellectual Property which the Permitted Purchasing Body has done any of the following to enable the Provider to carry out its obligations under the Individual Contract <ul style="list-style-type: none"> - Has required the Provider to use; and/or - Has licensed or otherwise made available to the Provider and/or its subcontractors to use.
18.17	By entering into the Individual 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)	
(a)	Law	The Law.
(b)	Duties owed to third parties	Any duty it owes a third party (whether arising under tort, contract, statute, or otherwise).
(c)	Third party property rights	The property rights (including rights in connection with Intellectual Property) of any third party.

Personnel issues

18.18	Personnel to be engaged	<p>Each of the Personnel of the Provider (and those of its relevant subcontractors) who is engaged in activities connected with the Services:</p> <ul style="list-style-type: none"> • Has the necessary skills, qualifications, training and experience to carry out the his/her allocated duties; and • Meets (or is deemed under item 36.2 to meet) the requirements in item 36.1 to the extent relevant to his/her activities in connection with the Services.
18.19	All of the following apply to each Key Personnel which the Provider must make available in relation to the Services at the relevant time when the Provider gives this warranty and representation (see section 40)	
(a)	Arrangements in place	The Provider has appropriate contractual arrangements in place to ensure that Key Personnel is available to have the relevant involvement in the Services as indicated in item 40.2.

(b) Investigations	<p>The Provider is not aware (and has no reason to be aware having made reasonably necessary inquiries) of any circumstances where all of the following apply</p> <ul style="list-style-type: none"> • That the Key Personnel is under any non-routine investigation (whether by any law enforcement or regulatory body or the like); • For any serious matter; • That is (on a reasonable view) reasonably likely to have any of the following consequences: <ul style="list-style-type: none"> - To materially and unfavourably affect the Key Personnel's proper involvement in the relevant parts of the Services according to item 40.1; and/or - To bring any serious and unjustified adverse publicity to the Permitted Purchasing Body.
(c) Nothing to stop involvement	<ul style="list-style-type: none"> • The Provider is not aware (and has no reasonable grounds to believe having made reasonably necessary checks) there are any circumstances preventing (or are reasonably likely to prevent) the Key Personnel from his/her proper involvement in the Services according to item 40.2. • For example <ul style="list-style-type: none"> - The Key Personnel (or his/her employer, as relevant) has not already given any termination notice under a relevant contract with the Provider that would result in that contract terminating before the Key Personnel's involvement in the Services has been completed; and/or - The Key Personnel has not made the Provider aware of any significant impending absence for health or other reasons (e.g. maternity).

Promised Subcontractors (section 60)

18.20 All of the following apply in relation to each current Promised Subcontractor in place at the time when the relevant warranty or representation is given

(a) Contracts in place	<p>The Provider has all reasonably necessary contractual arrangements in place to ensure that Promised Subcontractor is bound to provide those relevant parts of the Services according to item 60.1.</p>
(b) Investigations	<p>The Provider is not aware (and has no reason to be aware having made reasonably necessary checks) of all of the following</p> <ul style="list-style-type: none"> • That the Promised Subcontractor is under any non-routine investigation (whether by the police or regulatory body or the like) • For any serious matter • That is (on a reasonable view) likely to materially and unfavourably affect the Promised Subcontractor's involvement in the relevant parts of the Services indicated in item 60.1.

(c) No changes in circumstances

There have been no significant changes (all of the following)

- To the circumstances of the Promised Subcontractor in place at the time compared to the circumstances disclosed to the Permitted Purchasing Body (or to the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) when its approval of the Promised Subcontractor was first sought by the Provider (whether in the Provider Submission or otherwise).
- That on a reasonable view would significantly and unfavourably affect the Promised Subcontractor's proper involvement in the relevant parts of the Services according to item 60.1.

(d) No circumstances preventing involvement

The Provider is not aware (and has no reason to be aware having made due inquiry) of any circumstances preventing the full, punctual and uninterrupted involvement of the Promised Subcontractor in connection with the relevant parts of the Services according to item 60.1.

Insurance (section 93)

18.21 Insurance

The Provider (and its subcontractors, as relevant according to the nature of their roles in providing the Services) have properly in place with a reputable insurer all relevant insurance cover it is required to have under section 93.

Miscellaneous

18.22 If the Provider is a consortium, partnership, joint venture or the like

Each warranty and representation in this section 18 applies to each member of it, to the extent reasonably relevant to that member.

18.23 Not acting on behalf of a third party

The Provider is not entering the Individual Contract on behalf of any third party whose identity has not been sufficiently disclosed in writing to the Permitted Purchasing Body.

18.24 Valid execution

The Provider has validly executed the Work Order of the Individual Contract.

Preparation

19. Mobilisation or implementation

19.1 The mobilisation or implementation activities which the Provider must carry out in connection with the Individual Contract

As indicated in the Provider Submission.

19.2 Cooperation the Permitted Purchasing Body must provide in relation to the Provider's mobilisation or implementation activities described in item 19.1

The Permitted Purchasing Body must carry out its obligations indicated in the mobilisation plan or implementation plan indicated in the Provider Submission as follows:

- On a reasonable endeavours basis.
- In a reasonably timely manner.
- At its own cost.

19.3 How the Provider is to carry out its mobilisation or implementation activities indicated in item 19.1

- As indicated in item 20.4.
- At its own cost.
- Subject to the proper and timely cooperation (if any) which the Permitted Purchasing Body must provide according to item 19.2.

20. Preparation Activities

20.1 Each Preparation Activity for the purposes of the Individual Contract (all of the following)

Description of Preparation Activity		Party responsible for it
(a)	Mobilisation activities (if any) described in section 19	The Provider, subject to cooperation which the Permitted Purchasing Body must provide according to section 19.
(b)	Others: as indicated in the relevant Work Order.	As indicated in the Work Order.
20.2	Purposes of each Preparation Activity	The Preparation Activity must be completed before the Provider may commence the Services under the Individual Contract.
20.3	When a Preparation Activity is regarded as being 'completed'	When either of the following applies: <ul style="list-style-type: none"> • The 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.
20.4	Nature of the obligations of the parties in relation to Preparation Activities for which they are responsible (unless otherwise clearly indicated)	
(a)	To the extent control of the obligations is substantially within the reasonable control of that party	It shall be an absolute contractual obligation of that party.
(b)	Otherwise	It shall be a 'reasonable endeavours' obligation of that party.
20.5	How costs are to be borne by the parties in carrying out their respective Preparation Activities	Each party bears its own
20.6	Obligation to keep informed: a party responsible for a Preparation Activity must keep the other party informed of each of the following events or circumstances in relation to that Preparation Activity if and as they occur (it must do so in a proper and timely manner on first becoming aware of the matter)	
(a)	Completion	That it has been completed.
(b)	Delays etc.	Any significant delays or other problems in completing it.
(c)	If no longer required	Any reasonable grounds to believe it is no longer required.
(d)	Unlikely to be completed in time	Any reasonable grounds to believe that it is unlikely to be completed by any required deadline.

20.7 Right of a party ('X') to terminate the Individual Contract (or a relevant part, as indicated in item (b)) if another party ('Y') has not completed any Preparation Activity for which Y is responsible by a particular deadline

(a) When X may do so	<p>If and for as long as any Preparation Activity remains incomplete</p> <ul style="list-style-type: none"> • Substantially due to Y's delay. • After the following deadline: as indicated in the Work Order. <p>If a Preparation Activity is completed after that deadline, but before X has exercised its termination rights, X shall no longer have termination rights under this item 20.7 in relation to that particular Preparation Activity.</p>
(b) X's right to partially terminate the Individual Contract if it wishes to do so	<p>X may do so.</p> <p>But only in relation to a part of the Individual Contract which</p> <ul style="list-style-type: none"> • Is reasonably and genuinely affected by the relevant Preparation Activity; and • Is reasonably severable from the rest of the Individual Contract.
(c) Consequence of partial termination if it is permitted in item (b)	<p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> • Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. • According to the formal requirements in section 72. • Promptly on being requested to do so by the other party.
(d) How X terminates the Individual Contract (or relevant part of it, if partial termination is permitted in item (b))	<ul style="list-style-type: none"> • By notice in writing to Y. • The notice must strictly comply with section 121. • If X is partially terminating the Individual Contract (and may do so under item (b)): the notice must indicate the relevant part being terminated. • The notice may be given <ul style="list-style-type: none"> - At any time after the deadline indicated in item (a). - But not after the relevant Preparation Activity is subsequently completed (even if after the deadline in item (a)).
(e) Whether X is permitted to terminate the Individual Contract even if any other Preparation Activity for which X is responsible remains incomplete	<p>X may do so.</p>

Commencement

21. Commencement of the Services

21.1 When the Provider must commence providing the Services under the Individual Contract	<ul style="list-style-type: none"> • As indicated in the relevant Work Order. • If it is not reasonably clear in the Work Order when the Services are to commence: the Provider must commence them promptly after the Individual Contract is executed.
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- 21.2 Strict deadline by which the Provider must commence the Services under the Individual Contract, if and as extended under item 21.3
- This only applies if there are **no Preparation Activities** in relation to the Individual Contract (according to the Work Order)
 - It is a Termination Default Event of the Provider if the Provider has not commenced the Services by this deadline

- 21.3 Extensions to the strict deadline in item 21.2
- This only applies if there are **no Preparation Activities** in relation to the Individual Contract (according to the Work Order)

Either

- As indicated in the relevant Work Order.
- **If it is not reasonably clear in the Work Order: 30 days** after either:
 - The commencement date of the Services indicated in the Work Order.
 - **If it is not reasonably clear in the Work Order when the Services are to commence:** the date the Individual Contract is executed.

- With the written consent of the Permitted Purchasing Body.
- Such consent shall not be unreasonably withheld where delays in commencement are due to circumstances genuinely outside the Provider's reasonable control (including delays which are substantially caused by the Permitted Purchasing Body).

Expiry

22. Expiry

- 22.1 Expiry date of the Individual Contract
- 22.2 Whether the Individual Contract automatically expires when the Flexible Purchasing System expires or is terminated
- 22.3 Whether the Provider is entitled to any compensation from the Permitted Purchasing Body on the expiry of the Individual Contract
- 22.4 If the Individual Contract is extended under section 23

As indicated in the relevant Work Order.

No, the Individual Contract continues until its own expiry date, or until it is terminated early.

Not for this reason alone.

Exception: unless indicated elsewhere in the terms of the Individual Contract (as described in item 1.3) and/or in any exit plan described in section 110.

- Reference in these Terms and Conditions and/or a relevant Work Order to the expiry or expiry date of the Individual Contract is reference to the expiry or expiry date of the extension period; and
- **If there is more than one extension period:** the expiry or expiry date of the last period for which the Individual Contract is extended.

23. Extensions

- 23.1 Periods for which the Permitted Purchasing Body may extend the Individual Contract
- 23.2 Whether the Permitted Purchasing Body may extend the Individual Contract for a shorter period than that indicated in item 23.1
- 23.3 Any deadlines or other time restrictions on the Permitted Purchasing Body in exercising its right to extend the Individual Contract

As indicated in the Work Order.

It may do so.

As indicated in the Work Order.

23.4	Changes to the terms of the Individual Contract (as the terms stand at the expiry date) during the extension period E.g. changes to amounts payable by one party to another	<ul style="list-style-type: none"> Unchanged unless otherwise agreed by the parties in writing according to section 72. In any case, this section 23 shall not apply in the final extension period (i.e. there shall be no further extension periods).
23.5	Procedure the Permitted Purchasing Body must strictly follow if it wishes to extend the Individual Contract under this section 23	<p>It must give the Provider a notice as follows:</p> <ul style="list-style-type: none"> Strictly according to section 121. Subject to the deadlines and other time restrictions in item 23.3. The Permitted Purchasing Body must clearly indicate the extension period in the notice.
23.6	Whether any Individual Contract may be extended under this section 23 where the extension period commences after the expiry of the Flexible Purchasing System	No.

Financial arrangements

24. Charges

24.1	Amount or calculation of the current Charges which the Permitted Purchasing Body is required to pay to the Provider in consideration for providing the Provider providing Services under the Individual Contract	As indicated in the Work Order.
24.2	Whether the Charges include or exclude VAT	They exclude VAT unless otherwise clearly indicated.
24.3	Routine changes to the Charges over time	As indicated in the Work Order.

25. Charges relating to Service Users

25.1	Any restriction on the right of the Provider to impose further charges on a Service User described in item 3.1 in relation to any Services provided under the Individual Contract to that Service User	As indicated in the Work Order.
25.2	Arrangements regarding the obligation of the Permitted Purchasing Body to continue paying Charges to the Provider if the Service User described in item 3.1 is absent for a period for any reason (for example, in hospital, on holidays etc.)	As indicated in the Work Order.
25.3	Arrangements regarding the obligation of the Permitted Purchasing Body to continue paying Charges to the Provider if there are vacancies from time to time	
(a)	What constitutes a 'vacancy' for the purposes of this item 25.3	As indicated in the Work Order.
(b)	Arrangements where the Permitted Purchasing Body is liable to continue paying the Provider in relation to vacancies	As indicated in the Work Order.
(c)	Arrangements where the Permitted Purchasing Body is not obliged to continue paying the Provider in relation to vacancies	As indicated in the Work Order.

(d) Other issues in relation to the payment of Charges if there are vacancies

As indicated in the Work Order.

26. No reimbursement of expenses

26.1 Any obligation of the Permitted Purchasing Body to reimburse the Provider for any third party expenditure incurred by the Provider in providing the Services (in addition to payment of Charges)

No obligation.

27. Invoicing by the Provider

27.1 Whether the Provider must submit invoices to the Permitted Purchasing Body to trigger an obligation of the Permitted Purchasing Body to pay Charges described in section 24

Only if indicated in the Work Order.
This section 27 only applies if the Work Order indicates the Provider must submit invoices in relation to the Individual Contract, and not otherwise.

27.2 When the Provider may issue invoices to the Permitted Purchasing Body for Charges calculated under section 24

As indicated in the Work Order,

27.3 Charges which the Provider is permitted to include in each invoice (and no other Charges except as agreed by the Permitted Purchasing Body in writing)

As indicated in the Work Order,

27.4 Whether the Permitted Purchasing Body may suspend recognition of invoices according to section 30

It may do so.

27.5 Any deadline by which the Provider must issue a particular invoice

No later than **60 days** after the date on which the Provider was first entitled to issue that invoice according to this section 27.

27.6 Consequences if the Provider issues a particular invoice **after** the relevant deadline in item 27.5

- The Permitted Purchasing Body **shall not** be liable to pay that invoice, even if the Provider has satisfactorily provided the Services to which the invoice relates.
- **Exception:** where either applies to the delay in issuing that invoice:
 - The Permitted Purchasing Body **specifically requested that delay, in writing.**
 - That delay was substantially caused by the Permitted Purchasing Body.

27.7 Formal requirements a Provider's invoice must meet (e.g. formats, accompanying documentation etc.)

As instructed by the Permitted Purchasing Body from time to time, acting reasonably.

27.8 Consequences if an invoice does not meet the requirements in item 27.7

- The Permitted Purchasing Body shall not be required to recognise the invoice.
- If the Permitted Purchasing Body has not raised any such issues of non-compliance after more than **30 days** after the invoice has been issued (if issued no later than the deadline indicated in item 27.5) that invoice shall be deemed to have met such requirements.

27.9	How and to where must the Provider send its invoices	<ul style="list-style-type: none"> As instructed by the Permitted Purchasing Body from time to time, acting reasonably. The Permitted Purchasing Body shall not be obliged to recognise any invoice if and for as long as the Provider has sent that invoice inconsistently with those instructions.
28.	Payment of Charges	
28.1	Due date for payment of Charges described in section 24 by the Permitted Purchasing Body to the Provider, subject to these Terms and Conditions This only applies if the Provider is required to submit invoices under section 27	30 days from the proper submission of the invoice submitted in accordance with these Terms and Conditions (see in particular, section 27).
28.2	Due date for payment of Charges described in section 24 by the Permitted Purchasing Body to the Provider, subject to these Terms and Conditions This only applies if the Work Order indicates that the Provider is NOT required to submit invoices under section 27	As indicated in the Work Order.
28.3	Whether the Permitted Purchasing Body may delay payment of Charges otherwise due according to this section 28 according to section 30	It may do so.
28.4	If the Permitted Purchasing Body wishes to dispute any Charges contained in any invoice issued by the Provider according to section 27	
	(a) How the Permitted Purchasing Body raises the dispute	<ul style="list-style-type: none"> By notice in writing to the Provider. The notice must be given strictly according to section 121. The notice must clearly set out <ul style="list-style-type: none"> The amount of the disputed Charges. The reasons why it is disputed.
	(b) Deadline by which the Permitted Purchasing Body must give the notice described in item (a)	<ul style="list-style-type: none"> No later than 90 days after the invoice is issued. If no notice is not given in relation to a particular invoice (or a particular issue within an invoice) by that deadline, the Permitted Purchasing Body shall be regarded as having waived its rights to dispute that invoice (or issue within that invoice, as relevant).
	(c) Dealing with any dispute which the Permitted Purchasing Body raises according to this item 28.4	<ul style="list-style-type: none"> It shall be regarded as a Relevant Dispute for the purposes of section 119. Section 119 shall apply to the resolution of that Relevant Dispute.
28.5	Consequences if part of an invoice (section 27) is subject to a genuine dispute, but other parts of it are not in dispute	The dispute shall not in itself affect the Permitted Purchasing Body's obligations to pay the undisputed part of the invoice.
28.6	How the Permitted Purchasing Body must make payments of Charges to the Provider in connection with these Terms and Conditions	By BACS into the Provider's nominated bank account from time to time.

29. Early payment discount

29.1 Discounts which the Permitted Purchasing Body may apply to relevant Charges otherwise calculated under section 24 under a particular invoice if the Permitted Purchasing Body pays that invoice before the due date for payment according to section 27

As indicated in the Work Order.

30. Right to delay payment etc.

30.1 Actions which the Permitted Purchasing Body may take if and for as long as any of the circumstances in item 30.2 applies at the time (any of the following

(a) Recognition of invoices (section 27)

Suspend recognition of outstanding invoices issued by the Provider under section 27 for the purposes of determining when payment is due under item 28.1, if permitted to do so under item 27.4.

(b) Delay payment (section 28)

Delay payment of Charges otherwise payable under section 28 if permitted to do so in item 28.3.

(c) Pension reimbursements (section 48)

Delay payment of any reimbursements to the Provider otherwise due under item 48.6. if permitted to do so under item 48.7(d).

30.2 The Permitted Purchasing Body may take any one or more of the actions described in item 30.1 (as relevant at the time) **if and for as long** as any of the following applies at the time

(a) Overdue report, output etc.

Any specific report, output, deliverable, proposal, plan or the like of any of these which the Provider is required to provide the Permitted Purchasing Body according to the Individual Contract remains overdue.

- **Exception:** where the delay is substantially caused by any failure by the Permitted Purchasing Body to meet any Client Assistance in item 73.1, subject to the Provider having met the requirements of item 73.2.
- **Exception:** to the extent the Provider is excused under item 76.1 due to any Uncontrollable Circumstance (section 74).
- **Exception:** to the extent the Permitted Purchasing Body has agreed in writing to any extension.

(b) Social value proposal

Any updated social value proposals required in the Individual Specification (or otherwise in the Work Order of the relevant Individual Contract) is overdue.

(c) Continuity plans (item 75.1)

A first draft of the business or service continuity plan is overdue according to item 75.1(b).

(d) Exit plan (item 110.3)

A first draft of the exit plan is overdue according to item 110.3.

(e) Overdue debts

- Any debt or other liability then owed by the Provider and/or its Affiliate to the Permitted Purchasing Body and/or its Affiliate (whether in connection with these Terms and Conditions or otherwise) remains overdue.
- **Exception:** this does not apply to any debt or other liability which is subject to a genuine dispute which the Provider and/or its relevant Affiliate is using reasonable and genuine efforts to attempt to resolve.

(f)	Remedying Material Breach	The Provider has not yet remedied (to the reasonable satisfaction of the Permitted Purchasing Body) a Material Breach of the Individual Contract after the Permitted Purchasing Body has requested the Provider to do so, according to, and for the purposes of item 104.2.
(g)	Remedial Plan (section 91)	If and for as long as either of the following applies <ul style="list-style-type: none"> • The Provider's first draft of a Remedial Plan is overdue under section 91. See item 91.4(b) for the deadline; or • The Provider has not yet properly completed its obligations under any Remedial Plan described in section 91 which has been agreed between the parties.
(h)	Removal of Personnel (section 38)	The Provider has not properly complied with any request for the removal of Personnel which the Permitted Purchasing Body has properly made under section 38.
(i)	Removal of subcontractors (section 62)	The Provider has not properly complied with any request for the removal of a subcontractor which the Permitted Purchasing Body has properly made under section 62.
(j)	Inspection requirements (section 86)	The Provider is not materially complying with its obligations under item 86.4 in relation to an inspection which the Permitted Purchasing Body has requested and is entitled to undertake under section 86.

31. Set off

31.1	Whether the Provider has the rights of set off, counterclaim, deduction (or the like of any of these) under the Individual Contract	No, all such rights of the Provider (whether arising in law, equity or otherwise) are waived to the fullest extent permitted by Law.
31.2	Rules in relation to the rights of set off, counterclaim, deduction (or the like of any of these) of the Permitted Purchasing Body under the Individual Contract	
(a)	Debts and other liabilities which the Permitted Purchasing Body may deduct from the debts and other liabilities described in item (b)	All of the following <ul style="list-style-type: none"> • Any debts or other liabilities owed by the Provider and/or its Affiliate to the Permitted Purchasing Body and/or its Affiliate. • Regardless of whether <ul style="list-style-type: none"> - Such debts or other liabilities are connected with the Individual Contract - Such debts or other liabilities arise in tort, contract or otherwise. • Including any unliquidated debt as estimated by the Permitted Purchasing Body acting reasonably and in good faith.
(b)	Debts and other liabilities from which the Permitted Purchasing Body may deduct the debts or other liabilities described in item (a)	Any debts or other liabilities to which all of the following apply <ul style="list-style-type: none"> • Owed by the Permitted Purchasing Body and/or its Affiliate • To the Provider and/or its Affiliate • In connection with the Individual Contract • Whether arising in tort, contract or otherwise.

(c)	Exceptions in relation to debts or other liabilities described in item (a) or in item (b)	This item 31.2 shall not apply to any debt or other liability owed by any person to the extent it is subject to a genuine dispute in relation to which the relevant debtor is using reasonable and genuine efforts to attempt to resolve.
(d)	Whether anything in this item 31.2 limits the rights and remedies of the Permitted Purchasing Body	No.
(e)	Obligation of the Permitted Purchasing Body to notify the Provider of any exercise of the rights of the Permitted Purchasing Body under this item 31.2	<ul style="list-style-type: none"> The Permitted Purchasing Body must do so not less than 7 days before exercising such rights. The communication must be in writing to the Representative of the Provider. The Permitted Purchasing Body is not obliged to observe the formalities in section 121 in relation to this communication.

32. Interest on late payment

32.1	<p>What interest accrues on overdue debts or other liabilities owed between the Permitted Purchasing Body and the Provider</p> <ul style="list-style-type: none"> In connection with the Individual Contract Whether arising in tort, contract or otherwise Regardless of which of them is the debtor or creditor 	<p>The relevant debtor shall be obliged to pay interest to the relevant creditor as follows:</p> <ul style="list-style-type: none"> In addition to the relevant principal. At the following rate: 4% per year above the Bank of England base rate at the time (but if the Bank of England base rate falls below 0%, for this purpose it shall be deemed to be 0%). To compound monthly from the due date until payment, whether before or after judgement. Except to the extent and for as long as the debt or other liability is subject to a genuine dispute which the debtor is using reasonable and genuine efforts to attempt to resolve.
32.2	<p>Strict procedures which a relevant creditor must follow if it wishes to claim interest that has accrued under item 32.1 in relation to a particular overdue debt or other liability</p>	<p>The creditor must give the debtor a notice as follows</p> <ul style="list-style-type: none"> According to section 121. Clearly indicating <ul style="list-style-type: none"> The relevant overdue debt or other liability, and The interest accrued at the time the notice is given. If the overdue debt has been paid at the time the notice is given: the notice must be given no later than 30 days after that overdue debt was received by the creditor (and if it is paid in instalments, 30 days after the creditor's receipt of payment of the final instalment).

33. Suspension by the Provider for non-payment

33.1	<p>Right of the Provider to suspend Services to the Permitted Purchasing Body as a result of overdue debts or other liabilities owed to the Provider by the Permitted Purchasing Body in connection with the Individual Contract</p>	<p>The Provider may not do so for this reason alone.</p> <p>The only rights and remedies of the Provider in relation to an overdue debt or other liability are as follows:</p> <ul style="list-style-type: none"> To claim interest according to section 32; and To exercise relevant termination rights (if any) if non-payment results in a Termination Default Event of the Permitted Purchasing Body.
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34. Provider lien

34.1 The Provider's lien rights in connection with the Individual Contract

These rights are waived to the fullest extent permitted by Law.

Personnel issues

35. Safeguarding

35.1 Whether safeguarding is relevant to the Services

Yes.

35.2 **Safeguarding investigations:** the Provider must comply with all of the following obligations in relation to any safeguarding investigation in respect of any of its (and/or its subcontractor's) Personnel engaged in the Services

(a) To keep informed

The Provider must keep the Permitted Purchasing Body informed in a timely manner of developments in relation to the investigation as the Provider becomes aware of them.

(b) To comply with directions to suspend etc.

The Provider must (at its own cost) comply in a proper and timely manner with any reasonable requests of the Permitted Purchasing Body to suspend or permanently discontinue the involvement of the relevant individual in safeguarding-related activities in connection with the Services.

(c) If the relevant individual is cleared

If and when any investigations discontinue or the relevant individual is cleared (e.g. by a court), the Provider may reinstate the individual (assuming there are no other grounds at the time to require his/her suspension or removal).

35.3 Other general safeguarding obligations

The Provider must comply with the relevant Law relating to safeguarding in all its activities, whether or not connected with the Services.

36. Provider Personnel requirements

36.1 Specific requirements which the Provider must ensure its each of its Personnel (including those of its subcontractors) meets before the Provider may involve the relevant individual in the Services (as relevant, depending on that individual's duties)

Activity		Requirement
(a)	Lone contact with the children and/or vulnerable adults if safeguarding is relevant to the Services (item 35.1)	Appropriate DBS checks
(b)	All Personnel engaged in the Services	Right to work in the UK.

(c) All Personnel engaged in the Services	<ul style="list-style-type: none"> No 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). No current anti-social behaviour orders (as defined in the Crime and Disorder Act 1998). Exception: to the extent approved by the Permitted Purchasing Body in writing, at discretion. The Provider must make sufficient disclosures about the matter to the Permitted Purchasing Body to enable it to properly consider the matter. If the Permitted Purchasing Body is not also the Lead Council: the above approval of the Lead Council on behalf of the Permitted Purchasing Body shall be sufficient.
(d) Other: as indicated in the Individual Specification and/or the Work Order	As indicated in the Individual Specification and/or the Work Order

36.2 Extent to which the requirements in item 36.1 apply to Personnel whose employment transfers to the Provider (or its direct or indirect subcontractor) as a TUPE Transfer on a Commencement Transfer: the relevant individual shall be deemed to meet each requirement relevant to his/her activities in connection with the Services **until the first of the following** applies

(a) Change in circumstances	<p>An event or circumstance occurs or arises</p> <ul style="list-style-type: none"> After the Commencement Transfer Resulting in the individual no longer meeting the requirement in item 36.1 to the extent relevant to his/her activities in connection with the Services.
(b) New activities	<p>The requirement in item 36.1 relates specifically to any new activity which the individual carries out in connection with the relevant Services which that individual did not carry out immediately before the Commencement Transfer.</p>
(c) If the transferor employer is NOT the Permitted Purchasing Body or its Affiliate	<ul style="list-style-type: none"> The expiry of the first 3 months from the date of the Commencement Transfer. After this, the Provider must make its own checks whether or not the individual meets the relevant requirements.

37. General obligations in relation to Provider Personnel

37.1 The Provider must comply with all of the following obligations in relation to its (and its subcontractor's) Personnel engaged in connection with the Services provided under the Individual Contract

(a) Sufficient, suitable	<p>The Provider must ensure the following in order to meet its obligations in connection with the Individual Contract:</p> <ul style="list-style-type: none"> It and its relevant subcontractors (as between them) have a sufficient number of Personnel. Such Personnel are reasonably suitable for the tasks allocated to them in connection with the Services, having regard to their personal and professional characteristics (e.g. experience, qualifications, training etc.).
(b) Meet requirements	<p>The Provider must not allocate activities to any individual if he/she does not properly meet (or is not deemed to meet) the requirements of item 36.1, insofar as those requirements are relevant to those activities.</p>

(c)	Directions	The Provider must give appropriate directions to ensure each such Personnel carries out his/her relevant duties in a competent, timely, professional, safe, ethical, courteous and lawful manner.
(d)	Levels of authority	The Provider must ensure those Personnel have been given levels of authority to bind the Provider which are appropriate to the relevant individual's duties in connection with the Services.
(e)	Support	The Provider must provide those Personnel with such instruction, supervision, equipment, training and other resources and support that are appropriate and reasonably necessary to the relevant individual's duties in connection with the Services.
(f)	Policies	<ul style="list-style-type: none"> The Provider must have in place HR policies which meet or exceed standards reasonably expected of comparable firms or organisations. The Provider must promptly provide the Permitted Purchasing Body with copies of such policies on request (to be made reasonably and in good faith).
(g)	Not to cause breach	The Provider must not give Personnel directions or assistance that would cause the Provider to breach its obligations connected with the Individual Contract.
(h)	Subcontractors	<ul style="list-style-type: none"> The Provider must use reasonable endeavours (including properly exercising relevant contractual rights) to ensure subcontractors which are significantly involved in providing the Services comply with this section 37 in relation to their own relevant Personnel engaged in connection with the Services. This obligation does not apply where the subcontractor only takes a minor role in the provision of the Services.

38. Removal of Provider Personnel

38.1	Right of the Permitted Purchasing Body to require the removal of Personnel of the Provider (including its subcontractors) from activities in connection with the Services	
(a)	When the Provider must remove such Personnel	Promptly on request of the Permitted Purchasing Body.
(b)	When the Permitted Purchasing Body may request removal of relevant Personnel	<ul style="list-style-type: none"> Only with reasonable grounds. See item 38.2 for examples of reasonable grounds.
(c)	Obligations of the Permitted Purchasing Body before requesting removal of Personnel	<p>All of the following</p> <ul style="list-style-type: none"> It must reasonably consult with the Provider, and It must give the Provider a reasonable opportunity to remedy or otherwise deal with the matter. <p>Exception to the above obligations: where immediate removal of the individual by the Permitted Purchasing Body is reasonably justified.</p>
(d)	Consequences of such removal on the Provider's obligations	Removal shall not in itself relieve the Provider from its obligations in connection with the Individual Contract.

(e) Reinstatement of the individual

- The Provider must not reinstate (or permit a relevant subcontractor to reinstate) the individual to become involved in the Services again without the prior written consent of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council).
- Such consent shall not be unreasonably withheld where either of the following applies:
 - **If removal is for competence-related issues:** the individual is allocated to activities better suited to his/her abilities.
 - **In any case:** the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) is satisfied (acting reasonably) that appropriate corrective action has been taken (where reasonably possible).

38.2 Examples of reasonable grounds for which the Permitted Purchasing Body may require the removal of Personnel under this section 38 (where relevant and it does not exclude other reasonable grounds that may apply)

(a) Meeting requirements

The individual does not properly meet the requirements indicated in item 36.1 where relevant to his/her duties.

(b) Consents

The individual has not given appropriate consents (particularly for the purposes of Law relating to data protection) to allow the Permitted Purchasing Body to check that he/she properly meets the requirements relevant to him/her in item 36.1.

(c) Misconduct

- The individual's serious misconduct in his/her activities in connection with the Services.
- This includes, without limitation, any act by the individual contrary to section 114.

(d) Incompetence

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

(e) 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 Services
 - That is sufficiently serious that a reasonable person would not expect
 - The individual to be involved in the Services; and/or
 - The individual to be associated with the Permitted Purchasing Body generally.

39. Provider employee terms and conditions

39.1 Obligations of the Provider in relation to the terms and conditions of its employees engaged in connection with the Services

As indicated in the General Specification.

39.2 To which employees of the Provider the obligations in item 39.1 apply

As indicated in the General Specification.

39.3 Obligations of the Provider in relation to the terms and conditions of employees of its subcontractors engaged in connection with the Services

To ensure such subcontractors comply with the obligations described in item 39.1.

The Provider's obligation to do so is on a **reasonable endeavours** basis only.

The Provider's obligation to do so only applies to the following subcontractors:

- Those in relation to which consent is required under section 59; and
- Promised Subcontractors (section 60).

The Provider's obligation does not extend to its other subcontractors.

40. Key Personnel

40.1 Definition of 'Key Personnel'

- Each current Key Personnel indicated in item 40.2.
- Each replacement appointed according to this section 40 from time to time to have the involvement with the Services indicated in item 40.2.

40.2 Indicate any 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 Work Order	As indicated in the Work Order

40.3 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 indicated in item 40.2.

(b) Directions

- The Provider must give the Key Personnel appropriate directions to ensure he/she gives appropriate time and attention to his/her involvement in the Services, as required in item 40.2.
- **Exception:** where and for as long as the Key Personnel cannot do so in extenuating circumstances (e.g. illness, disability, jury service, maternity or paternity leave, genuine holidays etc.).

(c) Not to terminate

- The Provider must not terminate either of the following whilst it is required to provide the Services:
 - **If the Provider's contract is with the Key Personnel directly (e.g. an employee, officer, worker or direct contractor of the Provider):** the Provider's contract with the Key Personnel.
 - **If the Key Personnel is an employee, officer, worker or direct contractor of the Provider's subcontractor:** the Provider's contract with that subcontractor.
- **Exception:** where termination of the relevant contract is reasonably justified under the relevant contract with the Key Personnel or his/her employer, as relevant.

(d) Other	The Provider's obligations in this relevant Individual Contract relating to its (or its subcontractor's) Personnel generally also apply to its Key Personnel.
40.4 Right of the Provider to remove the Key Personnel from his/her required involvement in the Services whilst he/she still remains an employee, officer, worker or direct contractor of the Provider	<p>Only with the written consent of the Permitted Purchasing Body (or the Lead Council on its behalf). The Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) must not withhold that consent where the removal of the Key Personnel is made for good reasons, including the following (where relevant and without limiting other good reasons for doing so)</p> <ul style="list-style-type: none"> • 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 Services is not reasonably practicable. • Serious illness, maternity, or other factors affecting the individual where his/her continued involvement in the Services is not reasonably practicable. <p>The Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) may refuse consent until it is satisfied (acting reasonably) with arrangements regarding a replacement.</p>
40.5 Approval rights of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) in connection with the appointment of any replacement Key Personnel from time to time	<ul style="list-style-type: none"> • Any replacement shall be subject to the prior written approval of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council). • The Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) must not unreasonably withhold that approval. • The Provider must promptly comply with reasonable requests of the Permitted Purchasing Body (or Lead Council) to review CVs and to conduct interviews for this purpose.
40.6 For how long any Key Personnel is to be continuously absent from his/her activities (e.g. due to illness) before he/she is to be regarded as having discontinued his/her involvement with the Provider for the purposes of item 40.7	45 continuous Business Days.

<p>40.7 If the Key Personnel has discontinued his/her involvement with the Provider</p>	<p>All of the following apply:</p> <ul style="list-style-type: none"> • The Provider must replace him/her no later than 60 days after he/she discontinues. • This is subject to the approval rights of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) in item 40.3. • If the Provider fails to do so by this deadline (and if and for as long as the failure to replace is ongoing), it shall be a Termination Default Event of the Provider.
<p>40.8 The Provider must keep the Permitted Purchasing Body informed promptly on the Provider first becoming aware of any of the following in relation to the Key Personnel at the time (the Provider shall have met this obligation if it informs the Lead Council on the matter, if the Permitted Purchasing Body is not also the Lead Council)</p> <p>(a) Anticipated absence</p> <p>(b) Death, disability</p> <p>(c) Termination notice</p> <p>(d) Termination of subcontractor</p> <p>40.9 If and for as long as the Key Personnel or his/her employer has a contract in place with a subcontractor of the Provider (e.g. an employment contract, a contract as an independent contractor)</p>	<p>The Provider becoming aware of any significant anticipated absence of the Key Personnel from his/her involvement in the Services for any reason (e.g. illness, maternity etc.).</p> <p>The death or total and permanent disability of the Key Personnel.</p> <p>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.</p> <p>If the Key Personnel is contracted to a subcontractor of the Provider: any notice given by or to that subcontractor to terminate its contract with the Provider.</p> <p>The Provider must use reasonable endeavours to ensure the subcontractor complies with item 40.3 and item 40.4.</p>

TUPE on commencement

41. Whether TUPE transfers expected on commencement

<p>41.1 Whether any individual is expected to have any rights to a TUPE Transfer on the commencement of any Services under the Individual Contract</p>	<p>As indicated in the Work Order.</p>
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42. If TUPE transfers unexpectedly arise on commencement

<p>42.1 Obligations of the parties if any individual unexpectedly has a right to a TUPE Transfer on the commencement of any Services under the Individual Contract (this section 42 only applies if the Work Order indicates that no individual is expected to have rights to a TUPE Transfer on the commencement of any Services under the Individual Contract)</p>	<p>Each of them must do all of the following where relevant</p> <ul style="list-style-type: none"> • Comply in a proper and timely manner with its respective obligations under relevant Law (particularly the TUPE Regulations) in relation to that transfer. • Use reasonable endeavours (including proper enforcement of any contractual rights, if relevant) to ensure such compliance with their respective direct or indirect contractors, where relevant to that transfer. • To do the following (in a proper and timely manner) <ul style="list-style-type: none"> - Provide and use reasonable endeavours to require their respective contractors to provide - The other party (or the other party's respective contractor, if it is the transferor employer or the transferee employer) - With appropriate information - To enable the other party (or its contractor) to properly carry out its obligations under regulation 13 of those regulations.
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43. TUPE Transfers on a Commencement Transfer

<p>43.1 Application of this section 43</p>	<p>It applies if the Work Order indicates that at least one individual is expected to have rights to a TUPE Transfer on the commencement of any Services under the Individual Contract.</p>
<p>43.2 Information regarding each individual who is expected to have a right to a TUPE Transfer in connection a Commencement Transfer in relation to the Individual Contract</p>	<p>As indicated in the Work Order.</p>
<p>43.3 When a relevant Commencement Transfer is deemed to take place in relation to the Individual Contract</p>	<p>At 23.59 hours on the day on which relevant activities transfer.</p>
<p>43.4 Obligation of the Permitted Purchasing Body to update the information regarding individuals who are expected to have a right to a TUPE Transfer in connection a Commencement Transfer (up to the date of the Commencement Transfer)</p>	<p>The Permitted Purchasing Body must do so in a timely manner as changes occur, and in any case, on the written request of the Provider (acting reasonably).</p>

43.5 Obligations of the parties if any individual has a right to a TUPE Transfer as a result of a Commencement Transfer

Each of them must do all of the following where relevant

- Comply in a proper and timely manner with their respective obligations under the TUPE Regulations (and relevant Law generally) in relation to that TUPE Transfer.
- Use reasonable endeavours (including proper enforcement of any contractual rights, if relevant) to do the following
 - To ensure such compliance with their respective direct or indirect contractors, where any of them is the transferor employer or the transferee employer in relation to the TUPE Transfer.
 - **In the case of the Permitted Purchasing Body if the transferor employer is its direct or indirect contractor:** to ensure that 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 Transfer.
- To do the following (in a proper and timely manner)
 - Provide and use reasonable endeavours to require their respective contractors to provide
 - The other party (or the other party's respective contractor, if it is the transferor employer or the transferee employer)
 - With appropriate information
 - To enable the other party (or its contractor) to properly carry out its obligations under regulation 13 of the TUPE Regulations.

43.6 Whether the Permitted Purchasing Body gives the Provider any promise that any particular individual will exercise his/her right to a TUPE Transfer on a Commencement Transfer

Due to the nature of this right of the individual, the Permitted Purchasing Body cannot give a promise of this kind.

44. TUPE Transfers – union recognition

44.1 Obligations of the Provider in relation to recognition of unions in relation to which individuals who exercise their rights to a TUPE Transfer on a Commencement Transfer are members at the time

(a) Recognise

The Provider must recognise the trade unions representing those individuals as at the date of the TUPE Transfer.

(b) Supply copies of recognition agreements

The Provider must supply the Permitted Purchasing Body with copies of each of its union recognition agreements.

(c) Subcontractors

- The Provider must use reasonable endeavours to ensure compliance with the above by each of its directly or indirectly appointed subcontractors who is a transferee employer of the relevant individual.
- This applies whether the TUPE Transfer occurs on commencement of the Services, or if it occurs in any later service provision change if the subcontractor is replaced from time to time.

45. TUPE Transfers – due diligence arrangements

45.1	Whether this section 45 applies to the Individual Contract if there is to be any Commencement Transfer	As indicated in the Work Order
45.2	Due diligence rights of the Provider	<p>The Provider is permitted to carry out a reasonable due diligence to determine all of the following issues</p> <ul style="list-style-type: none"> • Which individuals have a right to a TUPE Transfer on a Commencement Transfer. • Whether or not those individuals will exercise their rights to that TUPE Transfer; • The terms and conditions of employment of those individuals who will exercise their rights to a TUPE Transfer (e.g. job descriptions). • The associated costs, liabilities or the like in relation to the TUPE Transfers of those individuals.
45.3	When the Provider is entitled to conduct the due diligence described in item 45.2	Promptly after the Individual Contract is entered.
45.4	Obligations of the Permitted Purchasing Body in connection with the due diligence activities of the Provider under this section 45	<p>The Permitted Purchasing Body:</p> <ul style="list-style-type: none"> • Must provide the Provider with cooperation (see examples in item 45.5) • To enable the Provider to determine the issues described in item 45.2. <p>The Permitted Purchasing Body must do so</p> <ul style="list-style-type: none"> • In a reasonable and timely manner; and • At its own cost.
45.5	Examples of cooperation which the Permitted Purchasing Body must provide for the purposes of item 45.4	<p>Each of the following (where relevant and not an exhaustive list)</p> <ul style="list-style-type: none"> • Give the Provider access to records, information or the like to enable the Provider to determine the issues described in item 45.2. • Give such cooperation to each subcontractor which is directly or indirectly appointed by the Provider and which is the transferee employer as a result of the TUPE Transfer. • Use reasonable endeavours (including exercising rights under contracts, if relevant) to ensure compliance with the above by any previous service provider of the Permitted Purchasing Body if that service provider is the transferor employer in the TUPE Transfer.
45.6	How the parties are to conduct the due diligence	<p>All of the following:</p> <ul style="list-style-type: none"> • In good faith. • In a timely manner. • On an 'open book' basis'.

45.7 Consequences of the findings resulting from the due diligence activities of the Provider under this section 45

(a) If the findings of the due diligence result in an increase in the charges of a Client Required Subcontractor used in connection with the Services (section 64)	<p>The Permitted Purchasing Body shall reimburse the Provider that increase in charges of the Client Required Subcontractor</p> <ul style="list-style-type: none"> • To whom any individual's employment transfers as a TUPE Transfer • To the extent the increase in those charges resulting from those transfers are agreed between the Client Required Subcontractor and the Permitted Purchasing Body.
(b) If the activities from the due diligence indicate increased costs of the Provider (including increased charges from its subcontractors used in connection with the Services)	<ul style="list-style-type: none"> • The Permitted Purchasing Body must consider in good faith and must not unreasonably refuse a reasonable request by the Provider to increase its Charges under section 24 to meet that increase in costs. • The increases in costs described in item (c) do not apply. • This obligation of the Permitted Purchasing Body only applies if all of the conditions in item 45.9 are met.
(c) Increases in costs which do not apply as indicated above (any of the following)	<p>Each of the following where relevant</p> <ul style="list-style-type: none"> • Any increase in charges imposed by any Client Required Subcontractor (see section 64) - this is covered in item (a). • Any increase in costs for which the Provider is compensated elsewhere according to these Terms and Conditions and/or a relevant Work Order. • Any increase in costs for which the Provider is compensated by Law (e.g. regulation 12 of the TUPE Regulations) or from any arm's length third party. • Any increase in costs resulting from a change in Law that comes into effect after the date on which the Individual Contract is executed.
(d) If the activities from the due diligence indicate decreased costs of the Provider (including decreased charges from its subcontractors used in connection with the Services)	<ul style="list-style-type: none"> • The Provider shall not unreasonably refuse a reasonable request by the Permitted Purchasing Body for the Provider to reduce its Charges under section 24 to reflect the reduced costs. • Exception where this does not apply: in relation to any decrease in costs to the extent it is due to any individual expected to have rights to a TUPE Transfer (and who was disclosed by the Permitted Purchasing Body before the service provision change, whether by name or role etc.) not exercising his/her right to a TUPE Transfer for whatever reason. • Exception where this does not apply: in relation to a decrease in charges of a Client Required Subcontractor. (section 64).

(e)	If the Provider Submission includes any promise by the Provider to provide the Services with a proposed organisational structure or the like	<p>The Permitted Purchasing Body must consider in good faith and must not unreasonably refuse a request by the Provider to amend that organisational structure or the like.</p> <p>But only to the extent the request by the Provider is reasonable and proportionate according to any changes discovered as a result of this due diligence exercise</p> <ul style="list-style-type: none"> • Being changes to the number and/or the identity of individuals who have rights to a TUPE Transfer on commencement of the relevant Services • Compared to the number and/or identity of individuals expected to have such rights according to the most recent written communications from the Permitted Purchasing Body to the Provider immediately before the execution date of the Individual Contract.
45.8	Rules in determining whether the costs of the Provider (or its relevant subcontractors) have increased or decreased for the purposes of item 45.7	
(a)	Which costs of the Provider (or such subcontractors) are the base from which any increase or decrease is determined	<p>Any of the following costs (subject to the rest of this item 45.8)</p> <ul style="list-style-type: none"> • Costs of remunerating the Personnel to be used in the Provider's workforce in connection with the Services, and/or • Costs of conducting a reorganisation to have in place the Provider's proposed workforce to be used in connection with the Services (e.g. recruitment costs, redundancy costs etc.).
(b)	Other rules which apply to the costs described in item (a)	<p>All of the following</p> <ul style="list-style-type: none"> • The costs must have been disclosed by the Provider in the Provider Submission. • In determining those disclosed costs, the Provider must have taken into account any disclosures made by or on behalf of the Permitted Purchasing Body regarding any individuals expected to have a right to a TUPE Transfer on the relevant Commencement Transfer. • The costs must be consistent with any requirements in these Terms and Conditions and/or a relevant Work Order regarding the pay and conditions of Personnel to be used in connection with the Services.
45.9	All of the following conditions must be met before the Permitted Purchasing Body has any obligations under item 45.7 in relation to increased costs of the Provider described in item 45.7	
(a)	How and when the Provider must raise the request described in item 45.7	<p>The Provider must have raised that request according to all of the following</p> <ul style="list-style-type: none"> • In writing • To the Permitted Purchasing Body. • No later than 30 days after first becoming aware of the circumstances resulting in the additional costs.
(b)	Any increase in the Charges in section 24 must meet all of the following requirements	
(i)	Wholly attributable	<p>The increase in the Charges in section 24 must be directly and exclusively attributable to the increased costs which meet all of the requirements in the rest of this item (b).</p>

(ii)	Who must have incurred those costs	<ul style="list-style-type: none"> • The Provider; or • Any subcontractor directly or indirectly appointed by the Provider in connection with the Services.
(iii)	All of the following apply	
	(A) The Charges in section 24 exclude TUPE costs	<ul style="list-style-type: none"> • The Charges are clearly indicated in section 24 (or in any document cross-referenced in it) to fully exclude the costs of the Provider (and/or the costs of its subcontractors where relevant) in accepting the TUPE Transfers of individuals on the commencement of the Services. • Exception: other than the costs of a Client Required Subcontractor described in section 64.
	(B) Not reasonably foreseeable	<p>The increased costs must not have been reasonably foreseeable by the Provider at the date of this relevant Work Order according to all of the following</p> <ul style="list-style-type: none"> • Due to circumstances outside the Provider's reasonable control • Including (without limitation) any non-disclosures or inaccuracies in relation to information supplied by the Permitted Purchasing Body or its previous service provider that is the transferor employer. • Regardless of whether or not there was any fault on the part of the Permitted Purchasing Body or the relevant previous service provider in relation to the non-disclosures, inaccuracies etc.
(iv)	Mitigation of the cost increase	<p>The Provider (or its relevant subcontractor) must be able to reasonably demonstrate</p> <ul style="list-style-type: none"> • To the satisfaction of the Permitted Purchasing Body (acting reasonably) • That the Provider or its subcontractor has used reasonable endeavours to mitigate the relevant increase in costs. See item (v) for examples.
(v)	Examples of activities for the purposes of item (iv)	<p>Any of the following (where appropriate and without limiting the other actions that may otherwise be reasonably expected)</p> <ul style="list-style-type: none"> • Disputing any unmerited Claims made or threatened by an individual in relation to his/her TUPE Transfer (or his/her alleged right to a TUPE Transfer). • Finding ways to have the cost increases borne by other revenue streams of the Provider or relevant subcontractor where it is appropriate to do so (e.g. by having an individual who is subject to a TUPE Transfer work on contracts with other clients etc.). • Working in a reasonable and cooperative manner with the Permitted Purchasing Body or their respective previous service providers to find ways to mitigate the costs.
(vi)	Nothing to do to cause increase	<p>There is no reasonable evidence that the Provider (or relevant subcontractor) has done anything unreasonable to unnecessarily cause the relevant cost increase.</p>

46. Permitted Purchasing Body's liability on a Commencement Transfer

46.1	Liability of the Permitted Purchasing Body to the Provider and/or to the Provider's direct or indirect subcontractors in relation to any individual who has (or asserts that he/she has) a right to a TUPE Transfer in connection with a Commencement Transfer where neither the Permitted Purchasing Body nor its Affiliate is the transferor employer	
	(a) In relation to any Pre-TUPE Transfer Liabilities	Excluded to the fullest extent permitted by Law.
	(b) In relation to any other aspect of the actual or prospective TUPE Transfer of the individual This includes any inaccuracies and/or incompleteness of any information provided regarding the rights of individuals to a TUPE Transfer	Excluded to the fullest extent permitted by Law.
46.2	Statement regarding exclusions of liability of the Permitted Purchasing Body in item 46.1	<ul style="list-style-type: none">• These exclusions are reasonable because the transferor employer is a previous service provider of the Permitted Purchasing Body, and not the Permitted Purchasing Body itself.• Therefore, these matters are outside the Permitted Purchasing Body's reasonable control.

47. TUPE Transfers on a Commencement Transfer – Provider indemnity

47.1	Indemnity given by the Provider	
(a)	Who the Provider indemnifies	<ul style="list-style-type: none">• The Permitted Purchasing Body; or• Its previous direct or indirect service provider whichever is the relevant transferor employer of the relevant individual.
(b)	For what the Provider indemnifies (and keeps indemnified) the person in item (a)	<ul style="list-style-type: none">• For that person's respective Losses• For any of the following, as relevant<ul style="list-style-type: none">- The first item of indemnity in item 47.2.- The second item of indemnity in item 47.3.- The third item of indemnity in item 47.4.- The fourth item of indemnity in item 47.5.
47.2	First item of the indemnity for the purposes of item 47.1(b)	
(a)	For what the Provider indemnifies (and keeps indemnified) the person in item 47.1(a)	<ul style="list-style-type: none">• For that person's respective Losses• Resulting from any Claim made or threatened against that person as described in this item 47.2
(b)	Who can make or threaten the Claim indicated in item (a): any of the following	
(i)	Any individual to whom either of the following applies	
(A)	Employment transfers	His/her 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 Transfer.

(B)	Employment would have transferred	<p>His/her 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 Transfer but</p> <ul style="list-style-type: none">Any of the following applies:<ul style="list-style-type: none">He/she raised an objection to the TUPE Transfer; orHe/she resigned immediately prior to the Commencement Transfer service provision change;He/she treats his/her employment as having been terminated under regulation 4(9) of the TUPE Regulations.The main reason for the individual doing any of the above was any changes to the individual's terms and conditions, or working conditions proposed by the transferee employer.
(ii)	Acting on behalf	<ul style="list-style-type: none">Anyone acting on behalf of any individual described in item (i).This may include any trade union, staff association or employee representative (whether or not recognised by the Provider or the relevant subcontractor) of which any of the above individuals is a member.
(c) The Claim must relate (for the purposes of item (a)) to a breach by the relevant transferee employer in connection with any of the following		
(i)	Employment	The relevant individual's employment with the transferee employer (including without limitation, any failure or delay to pay wages or other remuneration to that individual).
(ii)	Collective agreement	Any collective agreement relevant to the individual (e.g. with his/her union).
(iii)	Transfer process	The transfer process in relation to the individual's TUPE Transfer, including a breach by the transferor employer of its consultation obligations under regulation 13 of the TUPE Regulations.
(iv)	In the case of an individual who raises an objection or resigns or treats his/her employment as having been terminated under item (b)(i)(B):	The proposed changes described in item (b)(i)(B).
Second item of the indemnity for the purposes of item 47.1(b): any respective Losses of any person indicated in item 47.1(a) in relation to any liability to which all of the following apply		
(a)	To whom the liability is owed	Any individual whose 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 Transfer.

(b) For what the liability relates (to the extent all of the following apply)

- The liability relates to any of the following
 - The resignation of that individual before the date of the Commencement Transfer
 - That individual having treated his/her employment with the transferor employer as having terminated under regulation 4(9) of the TUPE Regulations
 - Any other Claim against the relevant person indicated in item 47.1(a) by that individual
- A substantial reason for his/her resignation or Claim was all of the following
 - Changes proposed by the transferee employer
 - To the individual's working conditions (including his/her remuneration, pension arrangements or otherwise)
 - Which are **substantial and unfavourable** to the individual
- Which the transferee employer proposes are to take effect after the date of the Commencement Transfer
- Subject to the relevant transferor employer having used reasonable endeavours to mitigate that liability.

47.4 Third item of the indemnity for the purposes of item 47.1(b)

- For Losses of the person indicated in item 47.1(a)
- 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 all of the following apply the statement
 - Is in connection with the proposed TUPE Transfer of any individual in connection with a Commencement Transfer
 - Is made before the date of the Commencement Transfer
 - Is made without the prior written permission of the person indicated in item 47.1(a).

47.5 Fourth item of the indemnity for the purposes of item 47.1(b)

- For Losses of the person indicated in item 47.1(a)
- To the extent they relate to any Claim made or threatened against that person where all of the following apply
 - The Claim is made or threatened by HMRC or other statutory body
 - In respect of financial obligations (including obligations to pay PAYE and/or national insurance contributions)
 - In respect of any individual whose employment is subject to a TUPE Transfer on a Commencement Transfer
 - To the extent the Claim relates to liabilities which arise after the date of the Commencement Transfer.

47.6	Exceptions to the indemnity given by the Provider given in this section 47 – if Losses caused by certain breaches	<p>The indemnity does not apply to the extent any Losses of the relevant person indicated in item 47.1(a) (to which the indemnity would otherwise apply) are caused by any of the following by that person:</p> <ul style="list-style-type: none"> • That person's negligence. • That person's breach of the Law (including without limitation, its breach of the TUPE Regulations). • That person's breach of any contract or other legally binding arrangement to which that person is a party.
47.7	Exceptions to the indemnity given by the Provider given in this section 47 – in relation to reimbursement (item 48.6)	<p>The indemnity does not apply to the extent any Losses of the relevant person involve any costs which the Permitted Purchasing Body is obliged to reimburse the Provider under item 48.6 in relation to the LGPS, if relevant.</p>
47.8	Rules in relation to the indemnity given in this section 47	<ul style="list-style-type: none"> • Section 96 applies to this indemnity. • If there is any inconsistency between section 96 and this section 47: this section 47 overrides section 96 to the extent of the inconsistency.
48. LGPS arrangements on Commencement Transfers		
48.1	To what this section 48 applies	<p>Arrangements in relation to any individual who is expected to have rights to a TUPE Transfer on a Commencement Transfer is either</p> <ul style="list-style-type: none"> • A member of the LGPS • Eligible to be a member of the LGPS.
48.2	Individuals to whom this section 48 applies (each of them is an ' Eligible LGPS Employee ')	<p>Only to any individual to whom all of the following applies:</p> <ul style="list-style-type: none"> • He/she is a member (or is eligible to become a member) of the LGPS (whether as a current or former employee of a relevant local authority). • His/her contract of employment transfers to the Provider or its direct or indirect subcontractor as a result of a relevant TUPE Transfer on a Commencement Transfer. <p>The Permitted Purchasing Body cannot give any assurance there will be any such individual.</p>
48.3	Acknowledgements by the parties	<p>The Best Value Authorities Staff Transfer (Pensions) Direction 2007 may apply to the Individual Contract in relation to each Eligible LGPS Employee, if any exercises any right to a TUPE Transfer on a Commencement Transfer.</p>

48.4	Main obligations of the Provider in relation to the Best Value Authorities Staff Transfer (Pensions) Direction 2007 (not to limit its obligations in relation to that Direction)	<p>To secure (and to use reasonable endeavours to ensure any relevant direct or indirect subcontractor secures) rights of each Eligible LGPS Employee (if any) to acquire pension benefits which are either of the following:</p> <ul style="list-style-type: none">• The same as those that the Eligible LGPS Employee had, or that he/she had a right to acquire, as an employee of the Permitted Purchasing Body immediately before the service provision change; or• A registered occupational pension scheme (within the meaning of Part 4 of the Finance Act 2004)<ul style="list-style-type: none">- Reasonably acceptable to the Permitted Purchasing Body- Certified from time to time<ul style="list-style-type: none">➤ By the Government Actuary's Department (as renewed from time to time) or➤ By an actuary appointed by the Permitted Purchasing Bodyas providing benefits which are the same as, broadly comparable to or better than those benefits provided by the LGPS as at the date of the service provision change.• The above obligations commence after a change in the Eligible LGPS Employee's employer after a Commencement Transfer.
48.5	Obligations regarding contributions	<ul style="list-style-type: none">• The Provider shall make such contributions to the LGPS as required.• This is subject to any right to reimbursement by the Permitted Purchasing Body under item 48.6.
48.6	Responsibility as between the Provider and the Permitted Purchasing Body for the following in relation to any Eligible LGPS Employees (after his/her TUPE Transfer on a Commencement Transfer and for as long as he/she remains engaged in providing the Services under the Individual Contract) if from time to time the Provider has admitted body status with the LGPS in respect of any Eligible LGPS Employee	
	(a) Employer's contributions below a particular percentage of Pensionable Pay (indicate the percentage)	As indicated in the Work Order.
	(b) Employer's contributions above the percentage of Pensionable Pay indicated in item (a)	As indicated in the Work Order.
	(c) Extent to which the Permitted Purchasing Body is obliged to reimburse the Provider for employer's contributions to the extent the increase in Pensionable Pay is due to a pay increase awarded at the discretion of the Provider (or subcontractor which is the transferee employee) and not specifically required by Law and/or by the administrator of the relevant fund	As indicated in the Work Order.

(d) Employer contributions relating to the costs of early retirement benefits arising on the Eligible LGPS Employee's redundancy or as a result of business efficiency under Regulation 30(7) of the LGPS Regulations	As indicated in the Work Order.
(e) Further contributions to the relevant fund on the grounds of the Eligible LGPS Employee's ill health or infirmity of mind and/or body Exception: other than such ill health or infirmity which was diagnosed by a suitably qualified independent medical practitioner and notified to the Permitted Purchasing Body before the date of his/her TUPE Transfer on commencement of the Services.	As indicated in the Work Order.
(f) Employer contributions relating to the costs of the Eligible LGPS Employee's flexible retirement where any of the following applies: <ul style="list-style-type: none">• The actuarial reduction is fully or partly waived• A 'cost neutral' reduction is not applied (with the written consent of the Provider or a relevant subcontractor which is the transferee employer).	As indicated in the Work Order.
(g) Employer contributions relating to the costs of enhanced benefits which the Provider (or a relevant subcontractor which is the transferee employer) offers the Eligible LGPS Employee (on a discretionary basis), including those offered under regulation 31 of the LGPS Regulations	As indicated in the Work Order.
(h) Any other costs arising from any discretion exercised in relation to the pension arrangements of the Eligible LGPS Employee by the Provider (or by a relevant subcontractor which is the relevant transferee) where the Eligible LGPS Employee does not have an entitlement under the LGPS	The Provider.
(i) Any other amounts in respect of which the Permitted Purchasing Body must reimburse the Provider in respect of the pension arrangements of Eligible LGPS Employees	As indicated in the Work Order.

	(j) Whether the Permitted Purchasing Body's obligations to reimburse the Provider under this item 48.6 extends to a direct or indirect subcontractor of the Provider which is the transferee employer of the Eligible LGPS Employee	<p>Only if the Provider can demonstrate all of the following (to the Permitted Purchasing Body's reasonable satisfaction)</p> <ul style="list-style-type: none"> • That it had a genuine legal obligation to reimburse the subcontractor (or any interposed subcontractors) for the relevant amount to which the Provider would have been entitled under this item 48.6 if it had been the transferee employer. • That it had met that legal obligation to the subcontractor.
	(k) Whether the Provider must offer the Eligible LGPS Employees any discretionary benefits under the LGPS	As indicated in the Work Order.
	(l) Obligation of the Provider to enrol any new employee engaged in connection with the Services into a compliant auto enrolment pension scheme	As indicated in the Work Order.
48.7	If the Permitted Purchasing Body is obliged to reimburse the Provider (and/or a relevant subcontractor) under item 48.6	
	(a) How the Provider or subcontractor claims the reimbursement	<ul style="list-style-type: none"> • By notice to the Permitted Purchasing Body to be given according to section 121. • Such notice must be accompanied by reasonable evidence of the amount being claimed.
	(b) Deadline by which the Provider or subcontractor must issue the notice described in item (a)	No later than 30 days after first becoming aware of the relevant cost to be reimbursed.
	(c) Due date by which the Permitted Purchasing Body must make the relevant reimbursement	<p>30 days after the claim is properly made. This is subject to each of the following</p> <ul style="list-style-type: none"> • Any right of set off, counterclaim or deduction or the like which the Permitted Purchasing Body has under these Terms and Conditions (see section 31); and • Any obligation which the Permitted Purchasing Body has to reduce payment by Law.
	(d) Whether the Permitted Purchasing Body is entitled to delay payment under section 30	It may do so.
	(e) Other obligations	The Provider must use reasonable endeavours to mitigate the costs which the Permitted Purchasing Body is obliged to reimburse.
48.8	Indemnity given if the Provider enters into an admission agreement in obtaining admitted body status	<ul style="list-style-type: none"> • The Provider indemnifies the Permitted Purchasing Body and its replacement service providers for their respective Losses resulting from any Claim made or threatened against it • This indemnity only applies to the extent the Claim is the direct result of the Provider's breach of that admission agreement.

<p>48.9 Obligations of the Permitted Purchasing Body in assisting the Provider to obtain 'admitted body status'</p>	<ul style="list-style-type: none"> • The Permitted Purchasing Body must give the Provider (or its direct or indirect subcontractors, if the transferee employer) reasonable and timely assistance to enable the Provider to obtain such status. • This may include doing any of the following: <ul style="list-style-type: none"> - Executing the relevant admission agreement. - Providing the Provider and/or its relevant subcontractors with appropriate information regarding the status of the Scheme (e.g. whether there are any surpluses or deficits etc.). - Ensuring the Provider and/or its relevant subcontractors are credited with a notional fund within the LGPS at the date of the relevant TUPE Transfer (to be determined by the actuary of the LGPS appointed by the relevant administering authority), having regard to the matters described in item 48.14.
<p>48.10 If any local authority other than the Permitted Purchasing Body is the administering authority</p>	<p>The Permitted Purchasing Body must use its reasonable endeavours to ensure that other local authority complies with item 48.9 in a timely manner.</p>
<p>48.11 If the transferee employer of any Eligible LGPS Employee is a direct or indirect subcontractor of the Provider</p>	<ul style="list-style-type: none"> • The Provider must ensure the subcontractor complies with item 48.4 and item 48.5 insofar as relevant to the Eligible LGPS Employee. • The Provider must not allow that subcontractor to commence providing any of the Services until that subcontractor has complied with item 48.4.
<p>48.12 If the Provider or its relevant subcontractor from time to time wishes to offer any Eligible LGPS Employee new or continuing membership of the LGPS for the purposes of meeting its obligations under this section 48</p>	<p>The Provider must satisfy the Permitted Purchasing Body of the following</p> <ul style="list-style-type: none"> • That the Provider (and each of its relevant subcontractors to whom TUPE Transfers apply on commencement of the Services) has 'admitted body status' with the LGPS. This may include entering into a relevant admission agreement. • In relation to employees of the Permitted Purchasing Body who transfer to the Provider (or the relevant subcontractor) under TUPE on the commencement of the Services.
<p>48.13 Who bears the Provider's costs in obtaining admitted body status under item 48.12</p>	<p>The Provider must bear its own costs.</p>

<p>48.14 Matters with which the actuary must be directed by the Permitted Purchasing Body to have regard in making its determinations under item 48.9 (to the extent the Permitted Purchasing Body has the power to give such directions)</p>	<p>All of the following apply:</p> <ul style="list-style-type: none"> • The total of the benefits (whether immediate, prospective or contingent) which would be payable under the LGPS immediately before the TUPE Transfer of the Eligible LGPS Employee • In relation to each Eligible LGPS Employee and his/her spouse, civil partner and dependants. • By reference to the Eligible LGPS Employee's pensionable service in the LGPS up to the date of his/her TUPE Transfer • Making proper allowance for all of the following in relation to each Eligible LGPS Employee, to the extent relevant: <ul style="list-style-type: none"> - Predicted increases in the rate of the Eligible LGPS Employee's Pensionable Pay up to the date of his/her retirement, death or withdrawal. - Increases or decreases in pension payments using demographic and actuarial assumptions used for the most recent valuation.
<p>48.15 Obligation of the Provider to provide any Eligible LGPS Employee with any discretionary benefits (item 48.6(k))</p> <p>(a) If the Provider has admitted body status with the LGPS in connection with the Individual Contract</p> <p>(b) If the Provider from time to time offers broadly comparable arrangements under item 48.4</p>	<div> <ul style="list-style-type: none"> • If permitted, the Provider must award the Eligible LGPS Employee with benefits under any of the following <ul style="list-style-type: none"> - The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011; and/or - The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006; and/or - The LGPS • The Provider must do so <ul style="list-style-type: none"> - If the Eligible LGPS Employees would have received (or been entitled to receive) such benefits if they had been employed by the Permitted Purchasing Body - Subject to any policy of the Permitted Purchasing Body in place when the Individual Contract is entered. </div> <div> <p>The Provider must award benefits to the Eligible LGPS Employees which are identical to or better than the benefits the Eligible LGPS Employees would have received under item (a)</p> <ul style="list-style-type: none"> • If the Eligible LGPS Employees would have received (or been entitled to receive) such benefits if they had been employed by the Permitted Purchasing Body • Subject to any policy of the Permitted Purchasing Body in place when the Individual Contract is entered. </div>

48.16	Indemnity from the Provider to the Permitted Purchasing Body	<p>The Provider shall indemnify the Permitted Purchasing Body according to all of the following:</p> <ul style="list-style-type: none">• For Losses directly incurred by the Permitted Purchasing Body as a result of any Claim made or threatened against it by any Eligible LGPS Employee;• To the extent the Claim relates to any failure by the Provider and/or its subcontractor to properly meet the rights of the Eligible LGPS Employee under the Best Value Authorities Staff Transfer (Pensions) Direction 2007 and/or under this section 48.• Such Losses include any compensation the Permitted Purchasing Body is under a genuine legal obligation to pay any previous direct or indirect previous service providers to the extent the above Claim applies to that previous service provider.• Section 96 applies to this indemnity.
48.17	The Provider must meet all of the following obligations if it offers any Eligible LGPS Employee membership of a broadly comparable pension scheme as described in item 48.4	
	(a) Offer membership	<p>The Provider must offer membership of that scheme to each relevant Eligible LGPS Employee.</p>
	(b) To continue membership	<p>The Provider must continue the Eligible LGPS Employee's membership of the scheme</p> <ul style="list-style-type: none">• From the date of the TUPE Transfer, or• If the Provider had previously had admitted body status with the LGPS in respect of the Eligible LGPS Employee: from the date the Provider discontinued having that status.
	(c) Amendment of benefits	<p>The Provider must not change the benefits of the Eligible LGPS Employee under the scheme in a way that is unfavourable to him/her, except where any of the following applies</p> <ul style="list-style-type: none">• The Provider has the written consent of the Permitted Purchasing Body to do so.• The change is permitted by the LGPS.• The change is to allow for any certificate issued by the Government Actuary's Department (or an actuary appointed by the Permitted Purchasing Body)<ul style="list-style-type: none">- To be renewed, and/or- To comply with statutory requirements.
	(d) Termination	<ul style="list-style-type: none">• If the relevant scheme is terminated, the Provider must promptly offer the relevant Eligible LGPS Employee membership of a replacement scheme that meets the requirements of item 48.4.• The parties shall use reasonable endeavours to promptly agree<ul style="list-style-type: none">- The terms of the transfer of the relevant Eligible LGPS Employee's accrued benefits, and- The value of the assets to be transferred.

(e) Subcontractors	To use reasonable endeavours (including exercising any rights under a relevant contract) to ensure any direct or indirect subcontractor complies with this item 48.17 to the extent relevant.
48.18 Obligations of the Provider if the Eligible LGPS Employee is no longer eligible to be a member of the LGPS	To offer him/her membership of the broadly comparable scheme indicated in item 48.4.
48.19 Duration of the Provider's obligations in item 48.17 and item 48.18 in relation to any Eligible LGPS Employee	<p>The obligations shall continue until the first of the following applies:</p> <ul style="list-style-type: none"> • The Eligible LGPS Employee is no longer an employee of either the Provider or its subcontractor engaged in connection with the Services. • The expiry or earlier termination of the relevant approved list to which these Terms and Conditions relate.
48.20 Further obligations of the Provider	
(a) Provision of information	<ul style="list-style-type: none"> • The Provider must provide (and ensure relevant subcontractors provide) the Permitted Purchasing Body (or other administering authority, if relevant) • The Provider must do so promptly on the request of the Permitted Purchasing Body and at the Provider's own cost • With information relevant to the pension arrangements in relation to any h Eligible LGPS Employee • For as long as that Eligible LGPS Employee is engaged in the LGPS (or broadly equivalent scheme).
(b) Not affect benefits	<p>The Provider must not do anything</p> <ul style="list-style-type: none"> • Outside the ordinary course of business • To affect the benefits of any Eligible LGPS Employee under the LGPS or a comparable scheme <p>Exception: with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.</p>
48.21 Resolving disputes between the Permitted Purchasing Body and the Provider on matters referred to in this section 48.	By an expert under item 119.6.

TUPE on cessation

49. Whether TUPE Transfers are expected on cessation

49.1 Whether any individual is expected to have the rights to a TUPE Transfer on the cessation of any Services	As indicated in the Work Order.
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50. If no TUPE transfers are expected on cessation

50.1 Application of this section 50	It applies if the Work Order indicates that no individual is expected to have any right to a TUPE Transfer on the cessation of any of the Services under the Individual Contract.
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50.2 General obligations of the Provider

- The Provider must not provide the Services in a way that results in any individual obtaining any right to a TUPE Transfer on the cessation of any Services under the Individual Contract.
- Without limiting this, it must not do so in a way that results in the formation of any organised grouping (even a grouping of one person) where the dominant purpose of the grouping is the provision of the relevant Services.

51. Limits on the organised grouping for TUPE purposes

51.1 Application of this section 51

It only applies if the Work Order indicates that the Provider is to be subject to an Agreed Grouping.

51.2 The agreed size and composition of the organised grouping which the Provider may use in providing the relevant Services (the '**Agreed Grouping**' at a particular time) are as follows

(a) Current

As indicated in the Work Order.

(b) From time to time

As changed by the Provider from time to time

- Only with the prior written consent of the Lead Council.
- Such consent shall not be unreasonably withheld.

51.3 Warranties and representations given by the Provider to the Lead Council and its relevant replacement direct or indirect service providers on cessation of the Services

- 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 Transferred occurred at that time the warranty and representation is made.

51.4 Consequences in relation to any individual who

The Provider shall give the indemnity in section 57 in relation to that individual.

- Has (or to claims have) rights to a TUPE Transfer on a Cessation Transfer, but
- Is not a member of the Agreed Grouping at the time

52. TUPE Transfers expected on a Cessation Transfer

52.1 Application of this section 52

If any individual has a right to a TUPE Transfer on a Cessation Transfer, regardless of whether that was expected at the time the Individual Contract was entered.

52.2 When a relevant Cessation Transfer is deemed to take place in relation to the Individual Contract

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

52.3 General obligations of the parties in relation to TUPE Transfers on any Cessation Transfer

To comply with the Law generally in relation to the TUPE Transfers.

53. Providing TUPE information on Cessation Transfers

53.1 The Provider's obligations in providing information to the Permitted Purchasing Body regarding prospective TUPE Transfers in relation to a Cessation Transfer

(a)	What information the Provider must provide the Permitted Purchasing Body	<p>All information indicated in item 53.2</p> <ul style="list-style-type: none"> • In relation to each employee of the Provider and/or its direct or indirect subcontractors • Who is a member of any organised grouping whose dominant purpose is to provide the relevant Services to which the Cessation Transfer relates.
(b)	How the Provider must provide the information	<ul style="list-style-type: none"> • In writing; and • With material accuracy and completeness.
(c)	Deadline by which the Provider must provide the information	<ul style="list-style-type: none"> • No later than 30 days of the written request of the Permitted Purchasing Body; or • Such longer time requested by the Provider and as permitted by the Permitted Purchasing Body, acting reasonably.
(d)	When the Permitted Purchasing Body is permitted to make the request described in item (c)	<ul style="list-style-type: none"> • In good faith; and • Only in genuine contemplation of the cessation of any of the Services which are to transfer back to the Permitted Purchasing Body and/or to a replacement service provider.
(e)	Whether the Provider may provide the information in a manner that does not identify individual to protect any individual's rights under the Data Protection Act 1998	The Provider may take reasonable and proportionate steps to do so, for genuine purposes of complying with that Act.
(f)	Responsibility under the Data Protection Act 1998	<p>The Provider shall retain liability</p> <ul style="list-style-type: none"> • As between the Provider and the Permitted Purchasing Body • To any individual whose personal data is disclosed and used according to (and for the purposes of) this section 53 <p>If such disclosures and use breach that individual's rights under the Data Protection Act 1998.</p>
(g)	The Provider's obligation to provide updates to the information requested by the Permitted Purchasing Body under this section 53	<ul style="list-style-type: none"> • The Provider must provide updates (e.g. significant changes) in writing until the relevant service provision change occurs. • It must do so according to all of the following: <ul style="list-style-type: none"> - Promptly when any significant change occurs, - Regardless of whether the Permitted Purchasing Body has requested the update; and - In any case, promptly on the request of the Permitted Purchasing Body (made reasonably and in good faith in relation to the prospective service provision change).
(h)	Whether the Permitted Purchasing Body is obliged to reimburse the Provider for its costs in carrying out its obligations under this section 53	No.

53.2 **Information which the Provider must supply the Permitted Purchasing Body for the purposes of item 53.1:** all of the following in relation to each relevant individual where relevant to him/her

(a)	Job title	His/her job title
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(b)	Grade	His/her grade
(c)	Date of birth	His/her date of birth
(d)	Commencement	The date of commencement of his/her employment.
(e)	Working hours	His/her working hours.
(f)	Continuous service	His/her level of continuous service, including continuous service for the purposes of relevant Law or his/her contract of employment relating to the calculation of redundancy payments.
(g)	Status of employment	Status of his/her engagement (i.e. whether employee, agency worker, contractor, consultant or otherwise).
(h)	Employer	The identity of his/her employer (or person who engages him/her in any other capacity) if not the Provider (e.g. a subcontractor).
(i)	Termination and redundancy	The main contractual terms relating to the termination of his/her employment, including notice periods, redundancy procedures and redundancy payments.
(j)	Wages etc.	His/her wages, salary, entitlements to bonuses and/or entitlement to any profit sharing (or the like of any of these), as relevant.
(k)	Pension	His/her current pension arrangements with his/her current employment, including (if relevant) his/her membership (or eligibility for membership) for any public sector pension scheme.
(l)	Other benefits	His/her other employment related benefits (e.g. membership of any pension or other retirement benefit scheme or the like, membership of any share option plan, company car, health insurance, life assurance etc.).
(m)	Claims	Any known <ul style="list-style-type: none"> • Liabilities owed to, and/or • Claims made or threatened by Which the relevant individual in connection with this/her employment or other engagement, including liabilities or Claims relating to personal injury, breach of his/her contract of employment, discrimination, equal pay etc.).
(n)	Long term absence	Whether he/she is on any kind of authorised long term absence (e.g. long term sick leave, maternity leave, paternity leave etc.).
(o)	Union membership	His/her union membership, if any.
(p)	Arrangements etc.	Details of any arrangements or understandings (including any collective arrangements) he/she has in place with any trade union, staff body or other representative body of employees.
(q)	Mobility	Whether his/her contract of employment contains any right of his/her employer to change his/her work location.
(r)	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).
(s)	Disciplinary	His/her disciplinary records.

	(t) Grievance, disciplinary	Summary of ongoing disciplinary or grievance matters.
	(u) Other	Any other information which is required as "employee liability information" under regulation 11 of the TUPE Regulations which is not otherwise described above.
53.3	Rights of the Permitted Purchasing Body to deal with information provided to it by the Provider under this section 53	<ul style="list-style-type: none"> The Permitted Purchasing Body may do so for genuine purposes connected with a proposed or actual Cessation Transfer. This includes, without limitation, disclosing the information to actual or prospective replacement service providers (whether in the context of a publicly-advertised competitive tendering exercise or the like, or otherwise).
53.4	Consequence if the Provider fails to supply any of the information whatsoever required in item 53.1 by the deadline described in item 53.1(c)	<p>The Permitted Purchasing Body shall be entitled to assume for all purposes of the Individual Contract (including the Provider's indemnity in section 57)</p> <ul style="list-style-type: none"> For the purposes of any disclosures to prospective replacement service providers, whether or not in a competitive tendering process or the like That the Provider had responded to supply that information by that deadline In the assumed response of the Provider, the Provider had disclosed that no individual is a member of an organised grouping whose dominant purpose is to provide the relevant Services to which the Cessation Transfer relates. <p>This does not limit the Permitted Purchasing Body's rights and remedies in relation to the Provider's failure to supply that information by that deadline.</p>

54. Providing employee records on cessation

54.1	General obligations of the Provider in providing records relating to individuals who are entitled to a TUPE Transfer on a Cessation Transfer	
(a)	What records the Provider must provide the person described in item (b)	<ul style="list-style-type: none"> All records indicated in item 54.2 In relation to each employee of the Provider or its direct or indirect subcontractors who has a right to a TUPE Transfers on the Cessation Transfer.
(b)	To whom the records are to be provided	<ul style="list-style-type: none"> The Permitted Purchasing Body; or Such other replacement service provider of the Permitted Purchasing Body that is the relevant transferee employer <p>As the Permitted Purchasing Body reasonably directs.</p>
(c)	Deadline by which the Provider must provide the records	<ul style="list-style-type: none"> No later than 30 days of the written request of the Permitted Purchasing Body; or Such longer time permitted by the Permitted Purchasing Body, acting reasonably.
(d)	When the Permitted Purchasing Body may make the request described in item (c)	<ul style="list-style-type: none"> In good faith; and Only in genuine contemplation of the cessation of any of the Services which are to transfer back to the Permitted Purchasing Body and/or to a replacement service provider.
(e)	Whether the Provider is entitled to reimbursement of its costs for carrying out its obligations under this section 54.1	No.

54.2 Records which the Provider must supply the Permitted Purchasing Body for the purposes of item 54.1: all of the following in relation to each individual entitled to a TUPE Transfer on any Cessation Transfer

(a)	Pay slip	Data from the individual's most recent payslip.
(b)	Cumulative pay	Details of the individual's cumulative pay (for tax and pension purposes) for the relevant financial year.
(c)	Tax paid	Details of the cumulative tax paid by the individual from his/her pay for the relevant financial year.
(d)	Tax code	The individual's tax code.
(e)	Deductions	Any voluntary deductions to be made from the individual's pay.
(f)	Other deductions	Any deductions to be made from the individual's pay as a result of any court order specifically directed at the individual.
(g)	Pension-related	Records relating to pensions as indicated in item 55.1(a).
(h)	Bank account	Details of any individual's bank or building society account into which he/she wishes to have his/her pay deposited.

54.3	To what the Provider's obligations in this section 54 are subject	Its obligations are subject to the requirements of the Law, (particularly the Data Protection Act 1998, if relevant).
54.4	Responsibility under the Data Protection Act 1998	<p>The Provider shall retain liability</p> <ul style="list-style-type: none"> • As between the Provider and the Permitted Purchasing Body • To any individual whose personal data is disclosed and used according to (and for the purposes of) this section 53 • If such disclosures and use breach that individual's rights under the Data Protection Act 1998.
54.5	How the Permitted Purchasing Body may deal with the records supplied to it under this section 54	<ul style="list-style-type: none"> • If the Cessation Transfer is to the Permitted Purchasing Body itself: the Permitted Purchasing Body may retain them as the successor employer of the relevant individuals. • If the Cessation Transfer is to a replacement service provider of the Permitted Purchasing Body: the Permitted Purchasing Body may supply them to the successor employer off the relevant individuals.

55. Pension obligations on Cessation Transfers

55.1 The Provider must do all of the following in relation to pension matters on cessation of the Services in relation to **any individual who would have a right to a TUPE Transfer on any Cessation Transfer** (at the Provider's separate cost)

(a)	Records	The Provider must maintain appropriate employer-related pension records relating that individual.
(b)	Administrative aspects	<p>The Provider must promptly comply (and to use reasonable endeavours to ensure the trustee of a relevant pension scheme complies) with all of the following</p> <ul style="list-style-type: none"> • With the reasonable requests of the Permitted Purchasing Body • In relation to the administrative aspects of the transfer of pension arrangements in relation to that individual • At around the time of the individual's TUPE Transfer on cessation of the Services. • Which may include, where relevant, a request relating to the bulk transfer of any accrued rights of the individual.

(c) Subcontractors

The Provider must use reasonable endeavours to ensure relevant subcontractors comply with the obligations elsewhere in this item 55.1, where the subcontractor is the transferor employer.

56. Restrictions on the Provider prior to a Cessation Transfer

56.1 The Provider must not (at the times indicated in item 56.4) do any of the following in relation to any organised grouping whose dominant purpose is to provide the relevant Services to which a Cessation Transfer relates

(a) Change size

- The Provider must not increase or decrease the size of that organised grouping.
- **Exception:** with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(b) Change composition

- The Provider must not change its composition of that organised grouping.
- **Exception:** with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(c) Time spent

- The Provider must not change the amount of time spent by that organised grouping in connection with the Services.
- **Exceptions:**
 - As required in these Terms and Conditions and/or a relevant Work Order (e.g. in the Specification); and/or
 - With the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(d) Terms and conditions

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)

Particularly those relating to his/her remuneration and/or his/her rights and entitlements in relation to the termination of his/her employment

Exceptions (any of the following):

- As required by Law.
- As required in these Terms and Conditions and/or a relevant Work Order.
- It is the result of any genuine negotiations with a trade union (or the like) which is then representing the relevant individual.
- With the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(e) Terminate contract

The Provider must not terminate the contract of employment of any member of the organised grouping, subject to any of the following exceptions:

- **Exception 1:** with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.
- **Exception 2:** as a result of any of the following:
 - The individual's serious misconduct.
 - The individual's default under his/her contract of employment.
 - Serious, genuine and long-term health issues affecting the individual (e.g. disability, long term illness) which genuinely affect the individual's ability to continue in his/her normal duties.
- **Exception 3:** if the relevant individual is replaced by an individual
 - Who 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 employer than those of the person he/she replaces (other than changes required by Law).

(f) Legally bound

The Provider must not agree (or otherwise become bound) to do any of the acts described elsewhere in this item 56.1.

56.2 Further obligations of the Provider

- The Provider must not assist or instruct another person (e.g. any subcontractor) to do any act that would breach item 56.1 if done by the Provider directly.
- 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.

56.3 Obligations in relation to subcontractors

The Provider must use reasonable endeavours (including exercising any relevant rights it has under contract) to ensure none of its direct or indirect subcontractors breaches item 56.1 in relation to any of its respective employees who have right to a TUPE Transfer on a Cessation Transfer.

56.4 When the obligations of the Provider in this section 56 apply

At the following times (where relevant)

- Within the **6 month** period immediately before the expiry date of the Individual Contract (see section 22).
- **In any case:** at any time after notice to terminate the relevant Services to which the Cessation Transfer relates has been given according to these Terms and Conditions (whether by the Provider or the Permitted Purchasing Body).

56.5 Keeping informed

- The Provider must keep the Permitted Purchasing Body informed in a proper and timely manner of first becoming aware of the occurrence of any of the events described in item 56.1.
- The Provider must do so regardless of whether it involves affected employees of the Provider or its direct or indirect subcontractors.

57. TUPE Transfers on cessation – Provider indemnity

57.1 The Provider must indemnify and keep indemnified each TUPE Cessation Beneficiary described in item (a), where all of the following requirements are met

- | | | |
|------|--|---|
| (a) | To whom the indemnity is given (each of them is a ' TUPE Cessation Beneficiary ')

(b) The indemnity is given for the TUPE Cessation Beneficiary's Losses which are the direct result of either of the following | <ul style="list-style-type: none">The Permitted Purchasing Body; andA Replacement Contractor of the Permitted Purchasing Body. |
| (i) | Certain Claims | Any Claim made or threatened against the TUPE Cessation Beneficiary which meets all of the requirements described in item 57.2. |
| (ii) | Certain payments of compensation | Compensation payable by the TUPE Cessation Beneficiary in relation to the termination of the employment of any individual where all of the requirements in item 57.3 are met. |
| (c) | Procedures | The TUPE Cessation Beneficiary must have strictly complied with the procedures described in item 57.5. |
| (d) | To what the indemnity is subject | <ul style="list-style-type: none">Section 96 applies to this indemnity.If there is any inconsistency between section 96 and this section 57: this section 57 overrides section 96 to the extent of the inconsistency. |

57.2 The Claim described in item 57.1(b)(i) must meet **all** of the following requirements if this indemnity is to apply to it

- | | | |
|-----|---|--|
| (a) | Who may make or threaten the Claim against the TUPE Cessation Beneficiary (any of the following) | <ul style="list-style-type: none">Any individual who has a right (or who asserts a right) to a TUPE Transfer on a Cessation Transfer.This includes anyone bringing the Claim on his/her behalf. |
| (b) | If the Claim is made or threatened against the TUPE Cessation Beneficiary by or on behalf of an individual described in item (a) , this indemnity only covers the Losses of the TUPE Cessation Beneficiary in respect of each of the following | <ul style="list-style-type: none">Any Pre-TUPE Transfer Liabilities in relation to the individual.This applies regardless of whether or not the individual's identity (whether by name or role) was communicated to the TUPE Cessation Beneficiary before the Cessation Transfer. |
| (i) | Pre-TUPE Transfer Liabilities | |

(ii)	Compensation for transferor employer's breach	<ul style="list-style-type: none"> • Compensation payable according to all of the following <ul style="list-style-type: none"> - By the TUPE Cessation Beneficiary - To the individual - To the extent the TUPE Cessation Beneficiary is held to be liable for the transferor employer's breach of the transferor employer's obligation to consult under the TUPE Regulations - In connection with the individual's right to a TUPE Transfer to the TUPE Cessation Beneficiary on the Cessation Transfer. • This applies regardless of whether or not the individual's identity (whether by name or role) was communicated to the TUPE Cessation Beneficiary before the Cessation Transfer. • But only if the TUPE Cessation Beneficiary had communicated the breach in writing to the Provider's Representative no later than 3 months after the relevant Cessation Transfer.
(iii)	Compensation for TUPE Cessation Beneficiary's breach	<ul style="list-style-type: none"> • Compensation payable according to all of the following <ul style="list-style-type: none"> - By the TUPE Cessation Beneficiary - To the individual - To the extent the TUPE Cessation Beneficiary is held to be liable for the TUPE Cessation Beneficiary's breach of its obligation as the transferee employer to consult under the TUPE Regulations - In connection with the individual's right to a TUPE Transfer to the TUPE Cessation Beneficiary on the Cessation Transfer. • But only in relation to those individuals whose right to a TUPE Transfer on a Cessation Transfer was not disclosed (whether by name or role) <ul style="list-style-type: none"> - In writing; - By the Provider (and/or by its direct or indirect subcontractor if it is the transferor employer); - To the TUPE Cessation Beneficiary (and/or to the other transferee employer, where relevant); and - Before the Cessation Transfer.
(iv)	Legal costs	<p>The TUPE Cessation Beneficiary's legal costs in relation to the Claim</p> <ul style="list-style-type: none"> • To the extent reasonably incurred; and • To the extent reasonably evidenced; and • Having proper regard to the Provider's right to take over the defence of the Claim under item 96.7(b).
(c)	Other pre-conditions	<p>The TUPE Cessation Beneficiary must not have done anything to instruct, encourage or assist any person to bring a Claim described in this item 57.2.</p>

57.3 Requirements of the compensation payable by the TUPE Cessation Beneficiary in relation to **the termination of the employment of any individual by the TUPE Cessation Beneficiary** for the purposes of item 57.1(b)(ii)

(a)	Whose employment is terminated	Any individual who has a right to a TUPE Transfer on the Cessation Transfer against the TUPE Cessation Beneficiary.
(b)	To whom the compensation is payable by the TUPE Cessation Beneficiary for the purposes of this item 57.3	To the relevant individual described in item (a).
(c)	Reasons for the termination of the employment of the individual described in item (a)	It must be due to a genuine and lawful redundancy.
(d)	Any of the following apply to the individual if his/her employment is terminated for the reasons indicated in this item 57.3	
(i)	Agreed Grouping (but only if section 51 applies to the Individual Contract)	<ul style="list-style-type: none"> • He/she is not a member of the Agreed Grouping immediately before the Cessation Transfer. • This applies even if the identity of the individual has been disclosed to the TUPE Cessation Beneficiary before the Cessation Transfer.
(ii)	Failure to disclose	<p>The Provider (and/or any other relevant transferor employer) had failed to disclose according to all of the following</p> <ul style="list-style-type: none"> • To the Permitted Purchasing Body (and/or to the other TUPE Cessation Beneficiary which is the relevant transferee employer) • In writing • Before the Cessation Transfer • That the individual was expected to have a right to a TUPE Transfer in connection with the Cessation Transfer • Having sufficiently identified the individual (e.g. by name, role etc.).
(iii)	Inaccuracies, incompleteness in information provided	<p>All of the following are met in relation to the individual:</p> <ul style="list-style-type: none"> • The Provider (and/or any other relevant transferor employer) had disclosed to the TUPE Cessation Beneficiary (or to a subcontractor which is the relevant transferee employer) that the individual was expected to have a right to a TUPE Transfer in connection with the Cessation Transfer. • There were material inaccuracies and/or material omissions in the disclosures made by the Provider (or other transferor employer) to the TUPE Cessation Beneficiary (or other transferee employer). • Those inaccuracies and/or omissions were not sufficiently remedied before the Cessation Transfer.

(e)	The TUPE Cessation Beneficiary must do the following (where relevant) if it wishes to be indemnified for the compensation described in item 57.1(b)(ii)	
(i)	If there had been a failure to disclose under item (d)(ii) in relation to the relevant individual	The TUPE Cessation Beneficiary must give the Provider a reasonable opportunity (including reasonable cooperation) to enable the Provider to dispute whether the individual has a right to a TUPE Transfer on the relevant Cessation Transfer.
(ii)	In any case	<ul style="list-style-type: none"> • The TUPE Cessation Beneficiary must give the Provider a reasonable opportunity to mitigate 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.). • The TUPE Cessation Beneficiary shall give the relevant individual appropriate releases or the like from his/her employment to enable the Provider to take such mitigating action.
(f)	How the compensation payable to the individual described in item (a) must be calculated	The compensation must be properly and lawfully calculated, having regard to the relevant circumstances (e.g. the individual's remuneration, length of service etc.).
(g)	Deadline: the TUPE Cessation Beneficiary must have commenced the termination procedure described in this item 57.3 no later than 60 days after the following, as relevant	
(i)	If the individual is not a member of the Agreed Grouping immediately before the Cessation Transfer (section 51)	The date of the Cessation Transfer.
(ii)	If the right of the individual to a TUPE Transfer had not been disclosed (item (d)(ii))	After the TUPE Cessation Beneficiary first becomes aware of the right of the individual to a TUPE Transfer on a relevant Cessation Transfer.
(iii)	If item (d)(iii) applies in relation to material inaccuracies and/or material omissions	After the TUPE Cessation Beneficiary first becomes aware of the relevant inaccuracy and/or omission.

(h)	Other requirements	<p>The requirements of this item 57.3 shall not be regarded as having been met in relation to the individual described in item (a) where all of the following apply:</p> <ul style="list-style-type: none"> • If he/she continues to perform any duties for the TUPE Cessation Beneficiary 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 Transfer). • After the end of the following period (whichever is later) after the relevant individual is given notice of his/her termination (assuming that notice is given no later than 30 days after the date on which the TUPE Cessation Beneficiary first became aware of the individual's right to a TUPE Transfer) <ul style="list-style-type: none"> - 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.
57.4	The Permitted Purchasing Body's obligation to repay the Provider for amounts paid under the indemnity for Losses described in item 57.1(b)(ii) and under item 57.3	
(a)	What the TUPE Cessation Beneficiary must repay the Provider	<p>All of the following</p> <ul style="list-style-type: none"> • Any amounts paid to the Permitted Purchasing Body and/or its Affiliate (if the Affiliate is a TUPE Cessation Beneficiary) • Under the indemnity for Losses described in item 57.1(b)(ii) and under item 57.3. • In relation to a particular individual described in item 57.3(a). • Together with interest accruing from the date of payment to the Permitted Purchasing Body or relevant Affiliate and calculated under section 32.
(b)	Circumstances where the Permitted Purchasing Body must make the repayment to the Provider described in item (a)	<p>If the relevant individual is later re-engaged according to all of the following</p> <ul style="list-style-type: none"> • By the Permitted Purchasing Body and/or by its Affiliate • In any capacity (e.g. as an officer, employee, contractor etc.) • Within 12 months from the date on which his/her employment was terminated for the purposes of item 57.3.
(c)	Further obligations of the Permitted Purchasing Body	<p>The Permitted Purchasing Body must keep the Provider informed (in a timely manner on first becoming aware) of the circumstances in item (b).</p>

57.5 The TUPE Cessation Beneficiary must **strictly** follow all of the following procedures if it wishes to claim the indemnity under this section 57

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|-------|---|---|
| (a) | Notice which the TUPE Cessation Beneficiary must give the Provider | <ul style="list-style-type: none"> The TUPE Cessation Beneficiary must give the Provider notice of its intention to enforce the indemnity. This notice must be given strictly according to section 121. |
| (b) | Minimum contents of the notice described in item (a): all of the following | |
| (i) | Name | The name of the individual to whom the claim relates. |
| (ii) | If the individual was an employee of a direct or indirect subcontractor of the Provider | The name of the subcontractor. |
| (iii) | Items being claimed | Details of the claim and/or the obligation to compensate to which the claim for the indemnity relates. |
| (c) | What must accompany the notice described in item (a) | Suitable proof of the claim and/or the obligation to compensate to which the claim for the indemnity relates. |
| (d) | Deadline by which the TUPE Cessation Beneficiary must give the notice described in item (a) | |
| (i) | If the indemnity relates to the threat of a Claim against the TUPE Cessation Beneficiary under this section 57 | No later than 30 days after the TUPE Cessation Beneficiary first becomes aware of the threat. |
| (ii) | If the indemnity relates to an actual Claim brought against the TUPE Cessation Beneficiary under this section 57 | No later than 30 days after the Claim has been issued to the TUPE Cessation Beneficiary. This overrides any deadline indicated in item 96.7(a). |
| (iii) | If the indemnity relates to anything else under this section 57 | No later than 30 days after the TUPE Cessation Beneficiary first becomes liable to pay for the thing to which the indemnity relates. |
| (iv) | In any case | No later than 12 months from the date of the relevant Cessation Transfer. |

58. Pre-TUPE Transfer Liabilities

58.1 A '**Pre-TUPE Transfer Liability**' in relation to any individual who has a right to a TUPE Transfer in relation to a Commencement Transfer and/or a Cessation Transfer is any liability to the extent all of the following apply:

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|-----|---|--|
| (a) | Who owes the liability | It is a liability of the transferor employer of that individual (whether that transferor employer is a party to these Terms and Conditions and/or a relevant Work Order or its direct or indirect contractor). |
| (b) | The liability relates to the transferor employer's employment of that individual up to the date of the Commencement Transfer or Cessation Transfer including any of the following (without limitation and to the extent relevant) | |
| (i) | Remuneration | Liability to pay remuneration and other compensation under the individual's contract of employment, including wages, commissions, bonuses and other benefits. |

(ii)	Pension	Liability to make employer's pension contributions in relation to the individual.
(iii)	Compensation	Liability to compensate the individual for any breach against the individual (e.g. unfair, wrongful or constructive dismissal, personal injury, breaches in relation to harassment, bullying, anti-discrimination, equal pay, and equal treatment of the individual as a part time worker).
(iv)	Holiday pay	<ul style="list-style-type: none"> Any liabilities to the relevant individual relating to holidays (including holiday pay) Exception: any such liability that had accrued in the 12 months prior to the TUPE Transfer.
(v)	PAYE, national insurance etc.	Liability to make payments in relation to PAYE and/or national insurance and/or any other similar liabilities of the transferor employer to HMRC or a similar body attributable to the relevant individuals.
(vi)	Collective agreement	Obligations under any collective agreement affecting the relevant individuals.
(vii)	Custom, practice etc.	Any custom or practice in relation to relevant individuals to which the transferor employer is contractually bound to honour.
(viii)	Penalties etc.	Any penalties, fines, interest (or the like of any of these) payable by the transferor employer in respect of any Claim relating to its employment of the relevant individual.
(ix)	Termination, redundancy	<p>Any liabilities relating to any dismissal, redundancy or other termination procedure which</p> <ul style="list-style-type: none"> Is completed by the transferee employer, but Was commenced by the transferor employer before the Commencement Transfer or Cessation Transfer, as relevant.

(c)	What is not a Pre-TUPE Transfer Liability	<p>All of the following, where relevant</p> <ul style="list-style-type: none"> • Liability of the transferor employer • Arising in connection with a relevant individual with a right to a TUPE Transfer • Arising before the date of the Commencement Transfer or Cessation Transfer (as relevant) • To the extent all of the following apply: <ul style="list-style-type: none"> - The liability relates to the resignation of that individual before the date of the Commencement Transfer or Cessation Transfer (as relevant) - A substantial reason for his/her resignation was <ul style="list-style-type: none"> ➤ Changes proposed by the transferee employer ➤ To the individual's working conditions (including his/her remuneration, pension arrangements or otherwise) ➤ Which are substantial and unfavourable to the individual ➤ Which the transferee employer proposes are to take effect after the date of the Commencement Transfer or Cessation Transfer (as relevant). • Subject to the relevant transferor employer having used reasonable endeavours to mitigate that liability.
(d)	How the liability arises	The liability arises in tort, contract, under statute or otherwise.
(e)	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).
(f)	Does it matter whether the liability is known to the transferor employer at the time of the TUPE Transfer	No.
(g)	TUPE Transfer	The individual's employment must have transferred to the transferee employer (whether that transferee employer is a party to the Individual Contract or its direct or indirect contractor) as a TUPE Transfer on a Commencement Transfer or a Cessation Transfer.

Subcontracting

59. Consents to appointment of subcontractors

- 59.1 The Provider must obtain the **prior written consent** of the Permitted Purchasing Body if the Provider wishes to appoint (directly or indirectly via its other intermediary subcontractors) any of the following subcontractors in relation to the Individual Contract

The consent of Lead Council is not required in relation to subcontractors which the Provider wishes to appoint in relation to the Individual Contract which are **not** indicated below

(a) If the annual value of the subcontract exceeds the following percentage of the annual value of the Individual Contract All subcontracts which the Provider enters in connection with the Services with that subcontractor and that subcontractor's Affiliates shall be added together to determine whether this percentage is met	30%.
(b) Safeguarding (section 35)	In relation to any subcontractor whose activities in connection with the Services reasonably require safeguarding background checks.
(c) Eligible LGPS Employees (section 48)	In relation to any subcontractor which is to be the transferee employer of any Eligible LGPS Employee (as defined in item 48.2) on commencement of relevant Services.
(d) Promised Subcontractor (section 60)	Any subcontractor that later becomes the 'Promised Subcontractor' to carry out the activities described in item 60.1.
(e) If the Permitted Purchasing Body has previously required the Provider to remove the subcontractor (see section 62)	In relation to the reinstatement of that subcontractor in connection with any of the Services.
(f) Processing Client Personal Data (section 82)	In relation to any subcontractor whose activities in connection with the Services involve processing any Client Personal Data.
(g) Agency	Any agency supplying or introducing workers to the Provider (or its other subcontractors) where the involvement of the individual in the Services involves direct contact with Service Users.
59.2 If the Provider has already has the written consent of the Permitted Purchasing Body in relation to a particular subcontractor under another Individual Contract which the Permitted Purchasing Body has with the Provider under this Flexible Purchasing System , whether the Permitted Purchasing Body also needs consent to that subcontractor in relation to this Individual Contract	No additional consent is required, assuming the Permitted Purchasing Body has not subsequently required the removal of the subcontractor under section 62.

59.3	If the Provider has already has the written consent of ANOTHER local authority (or its Affiliate) in relation to a particular subcontractor under any Individual Contract which that other local authority (or its Affiliate) has with the Provider under this Flexible Purchasing System , whether the Permitted Purchasing Body also needs consent to that subcontractor in relation to this Individual Contract	No additional consent is required, assuming the other local authority (or its Affiliate) has not subsequently required the removal of the subcontractor under its relevant Individual Contract.
59.4	The following apply in relation to the consent to a subcontractor described in item 59.1	
	(a) How the Lead Council's consent is to be given	<ul style="list-style-type: none"> • In writing. • Not to be unreasonably withheld. • See section 63 for examples of reasonable grounds for withholding consent.
	(b) Subcontractors in relation to whom the consent of the Lead Council has already been given in relation to particular activities	<ul style="list-style-type: none"> • Each subcontractor indicated in the Provider Submission. • Any Client Required Subcontractor indicated in section 64.

60. Promised Subcontractors

60.1 Current subcontractors which the Provider **must** engage in connection with particular activities in connection with the Services (the current '**Promised Subcontractors**')

Name of Promised Subcontractor		Brief description of required activities of the Promised Subcontractor for as long as those activities remain part of the Services
(a)	Each subcontractor (if any) indicated in the Work Order	Each subcontractor (if any) indicated in the Work Order
60.2	If a Promised Subcontractor discontinues its activities in relation to its required activities, 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)	<ul style="list-style-type: none"> • Either <ul style="list-style-type: none"> - 45 days from the discontinuation of the relevant Promised Subcontractor; or - Such later deadline permitted in writing by the Lead Council (acting reasonably). • This is subject to the Provider obtaining the Lead Council's consent required under item 60.3. The Provider must give the Lead Council enough time to properly consider the Provider's proposed alternative arrangements to ensure those arrangements can be in place before the above deadline. <p>If the Provider fails to do so by that deadline, it shall be a 'Termination Default Event' of the Provider.</p>

60.3	Where the consents of the Permitted Purchasing Body (or the Lead Council under item 60.5) given under item 60.4 are required in relation to Promised Subcontractors	<p>In relation to any of the following:</p> <ul style="list-style-type: none"> • Extending the deadline described in item 60.2. • 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 item 60.1. • Appointing a replacement Promised Subcontractor from time to time (as per this section 60). • Having the required activities of the Promised Subcontractor under item 60.1 to be carried out by the Provider itself.
60.4	How the Permitted Purchasing Body is to give consent under item 60.3	<ul style="list-style-type: none"> • In writing. • Not to be unreasonably withheld.
60.5	If the Permitted Purchasing Body is not also the Lead Council: if the Lead Council consents to a particular subcontractor for the purposes of item 60.4, whether the Provider must also obtain separate consents from the Permitted Purchasing Body	<p>Separate consent is not required.</p> <p>The consent of the Lead Council shall be regarded as having been given on its own behalf and on behalf of each other Permitted Purchasing Body.</p>

61. Paying subcontractors

61.1	Obligation of the Provider to pay certain subcontractors within a certain time	
(a)	Subcontractors to which this obligation of the Provider applies	All subcontractors.
(b)	What the Provider must pay in relation to each subcontractor described in item (a)	The subcontractor's proper charges under the subcontract insofar as they relate to its activities connected with the Services.
(c)	Deadline by which the Provider must pay each subcontractor described in item (a)	<p>The earlier of the following after the Provider's receipt of a relevant invoice from the subcontractor:</p> <ul style="list-style-type: none"> • The following period: 30 days; or • Such shorter payment terms in any contract between the Provider and the subcontractor. <p>To the extent that invoice:</p> <ul style="list-style-type: none"> • Is valid; and • Is not subject to a genuine dispute which the Provider is using reasonable and genuine efforts to attempt to resolve in a timely way.
61.2	Consequences if the Provider breaches its obligations in item 61.1 (as follows)	
(a)	Right of the Permitted Purchasing Body to pay	<p>The Permitted Purchasing Body may pay (but shall not be obliged to pay) the relevant subcontractor all of the following, where relevant:</p> <ul style="list-style-type: none"> • The relevant outstanding charges. • Interest up to the amount permitted at the time under the Late Payment of Commercial Debts (Interest) Act 1998 (and not calculated under section 32).

(b)	Reimbursement by the Provider	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider must reimburse the Permitted Purchasing Body in full for any payment made under item (a). • The Provider must do so no later than 7 days after the written demand of the Permitted Purchasing Body. • That demand must be issued strictly according to section 121.
(c)	Exceptions where the obligation of the Provider to reimburse the Permitted Purchasing Body in item (b) does not apply	<p>If and for as long as any debts or other liabilities are then overdue from the Permitted Purchasing Body to the Provider in connection with the Individual Contract.</p> <p>Exceptions (either of the following):</p> <ul style="list-style-type: none"> • Where the debt or other liability is subject to a genuine dispute which the Permitted Purchasing Body is using reasonable and genuine efforts to attempt to resolve. • The Permitted Purchasing Body is permitted to delay payment under these Terms and Conditions and/or a relevant Work Order.
(d)	Publicity rights	Regardless of anything to the contrary in these Terms and Conditions (especially section 78 relating to confidentiality), the Permitted Purchasing Body may publicise any breach of this section 61 by the Provider.
(e)	Whether anything in this item 61.2 limits the rights and remedies of the Permitted Purchasing Body resulting from the Provider's breach of item 61.1.	No.

62. Removal of subcontractors

62.1	Obligations of the Provider to remove from any of the Services any subcontractor which the Provider has directly or indirectly appointed	The Provider must do so promptly on the request of the Permitted Purchasing Body.
62.2	How the Permitted Purchasing Body must make any request to remove any subcontractor directly or indirectly appointed by the Provider	<p>According to all of the following:</p> <ul style="list-style-type: none"> • With reasonable grounds. See section 63 for examples of reasonable grounds for withholding consent. • Strictly by notice, given according to section 121. • Subject to item 62.3.
62.3	Steps the Permitted Purchasing Body must take before issuing the notice in item 62.2	<ul style="list-style-type: none"> • It must take reasonable steps to consult with the Provider regarding the matter. • Exception: where the request for immediate removal is reasonable in the circumstances.
62.4	Whether the request for removal of a subcontractor under this section 62 relieves the Provider of its obligations in connection with the Individual Contract	No.

63. Grounds to refuse or require removal of subcontractors

63.1 Reasonable grounds for

- The Permitted Purchasing Body (or the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council) to refuse consent to subcontractors (for the purposes of item 59.4(a)) or
- The Permitted Purchasing Body to require removal of subcontractors (for the purposes of item 62.2)
- Where relevant and not to exclude other reasonable grounds that apply at the time

(a) In dispute	<ul style="list-style-type: none"> • The subcontractor and/or any of its Affiliates is then in a genuine, unresolved dispute with the Permitted Purchasing Body and/or any of its Affiliates. • Regardless of whether the dispute relates to the Services or to other dealings with the subcontractor.
(b) Does not have required licences, permits etc. (section 16)	The subcontractor does not at the time meet the requirements referred to in section 16 in relation to relevant licences, permits or the like (to the extent relevant to its activities in connection with the Services).
(c) Insurance	<p>The subcontractor does not have insurance cover that would be reasonably expected of it having regard to:</p> <ul style="list-style-type: none"> • The nature of its activities in connection with the Services; and • The insurance the Provider would be required to have under item 93.1 if it carried out those activities directly.
(d) Person of ill repute	On a reasonable view, the subcontractor and/or any of its Affiliates and/or any of their respective senior Personnel is (at the time) a person of such serious ill repute that association with any of them is reasonably likely to bring significant undesirable publicity to the Permitted Purchasing Body and/or any of its Affiliates and/or to bring any of their respective names into serious disrepute by association with the subcontractor.
(e) Evidence of experience, capability	<p>In relation to giving consent under section 59:</p> <ul style="list-style-type: none"> • The Provider has not provided the Permitted Purchasing Body with reasonable evidence of the subcontractor's capability (including its experience) to carry out the relevant activities to which the subcontract is to relate. • Such evidence may include the provision of appropriate and satisfactory references given for the relevant subcontractor.
(f) Normal grounds for exclusion	In giving consent under section 59: the Lead Council has any mandatory or discretionary grounds for exclusion as a result of the proposed subcontractor's response to any usual business questionnaire or the like of the Lead Council.

(g)	Previous performance	<p>In giving consent under section 59:</p> <ul style="list-style-type: none"> • The Permitted Purchasing Body and/or its Affiliate had received similar services from the subcontractor or its Affiliate in the previous 3 years; and • The Permitted Purchasing Body and/or its Affiliate had reasonable grounds to be seriously dissatisfied with the performance of that subcontractor or its Affiliate in relation to those services.
(h)	Incompetence	<p>In relation to the removal of the subcontractor under section 62: the subcontractor has demonstrated any of the following in carrying out its activities in connection with the Individual Contract (and/or any other contract under the Flexible Purchasing System):</p> <ul style="list-style-type: none"> • Serious incompetence; • Serious lack of professionalism; and/or • Serious misconduct.
(i)	Termination of other contracts	<p>In relation to the removal of the subcontractor under section 62: the Permitted Purchasing Body and/or its Affiliate has validly terminated any other contract it has with the subcontractor (and/or with the subcontractor's Affiliate) due to any event of default or the like of the subcontractor (and/or the Affiliate) under that contract.</p>
(j)	Other contract	<p>The subcontractor has been validly removed under any other contract entered under the Flexible Purchasing System (whether with the Permitted Purchasing Body or another organisation).</p>

64. Client Required Subcontractors

64.1 Indicate any subcontracts which **the Permitted Purchasing Body specifically requires the Provider to enter** to carry out particular activities in connection with any of the Services under the Individual Contract (each of them is a '**Client Required Subcontractor**')

	Subcontractor	Activities	Main terms of subcontract
	As indicated in the Work Order.	As indicated in the Work Order.	As indicated in the Work Order.
64.2	Arrangements regarding payment of the fees, charges, reimbursement of expenses etc. of any Client Required Subcontractor		As indicated in the Work Order.
64.3	Consequences if any Client Required Subcontractor requires amendments to the terms of its subcontract with the Provider (e.g. increase in charges)		As indicated in the Work Order.
64.4	Obligations of the Permitted Purchasing Body to allow the Provider to terminate its subcontract with a particular Client Required Subcontractor if requested to do so by the Provider		As indicated in the Work Order.

64.5 **Provider obligations:** the Provider must do all of the following in relation to each Client Required Subcontractor (to do so lawfully, with reasonable skill, care and diligence and in a reasonably timely manner)

(a)	Enter	<ul style="list-style-type: none"> • The Provider must enter into a subcontract with the relevant Client Required Subcontractor materially reflecting the terms indicated in item 64.1. • The Provider must provide the Permitted Purchasing Body with suitable evidence of it having done so promptly on request.
(b)	Prohibitions on the Provider	<ul style="list-style-type: none"> • The Provider must not carry out (or allow any other person to carry out) any of the activities reserved for the relevant Client Required Subcontractor without the prior written consent of the Permitted Purchasing Body, at discretion. • Such consent is not necessary in circumstances where the Permitted Purchasing Body has permitted the Provider to terminate its subcontract with the relevant Client Required Subcontractor under item 64.4.
(c)	Monitor	<ul style="list-style-type: none"> • The Provider must monitor that Client Required Subcontractor's performance in relation to those activities. • It must do so with reasonable skill, care and diligence.
(d)	Keep informed	<p>The Provider must keep the Permitted Purchasing Body informed of any significant issues of non-compliance by the Client Required Subcontractor.</p>
64.6	If and for as long as that Client Required Subcontractor fails to enter the subcontract described in item 64.5(a) for any reason	<ul style="list-style-type: none"> • It shall be considered a failure by the Lead Council in providing Client Assistance. • See item 73.3 for the consequences of that failure by the Lead Council.
64.7	All of the following consequences apply (to the extent relevant) if any Client Required Subcontractor carries out its activities in relation to the Services negligently, in breach of its subcontract, and/or in breach of the Law	<p>The Provider must report the matter to the Permitted Purchasing Body according to all of the following</p> <ul style="list-style-type: none"> • In a proper and timely manner • On first becoming aware of the matter • But only if the matter is reasonably serious (i.e. this is not required for minor acts or failures to act). • Having monitored the Client Required Subcontractor to the standards required in these Terms and Conditions.
(a)	Reporting obligations of the Provider	<p>The Provider must report the matter to the Permitted Purchasing Body according to all of the following</p> <ul style="list-style-type: none"> • In a proper and timely manner • On first becoming aware of the matter • But only if the matter is reasonably serious (i.e. this is not required for minor acts or failures to act). • Having monitored the Client Required Subcontractor to the standards required in these Terms and Conditions.

(b)	Duty of care of the Provider <ul style="list-style-type: none"> To the Permitted Purchasing Body (and anyone else with rights under the Individual Contract) For the relevant act (or failure to act) by the Client Required Subcontractor 	None. This is subject to the exceptions indicated in item (c).
(c)	Exceptions to the exclusions of liability indicated in item (b)	Item (b) does not in itself exclude the liability of the Provider in any of the following circumstances: <ul style="list-style-type: none"> For breaching its obligations in item (a) to report the matter. Where any of the exceptions to the exclusion of liability in section 100 apply. To the extent the Client Required Subcontractor was acting (or failing to act) according to the express or clearly implied instructions of the Provider or any person acting on the Provider's behalf. In this case, the Permitted Purchasing Body may treat the Client Required Subcontractor's act (or failure to act) as if it were the Provider's own act (or failure to act).
(d)	How the breach of the Client Required Subcontractor's subcontract with the Provider must be treated for the purposes of the Individual Contract (section 73)	<ul style="list-style-type: none"> It shall be considered a failure by the Permitted Purchasing Body to carry out Client Assistance for the purposes of section 73. See item 73.3 for the consequences of that failure by the Permitted Purchasing Body. Exception: to the extent the Client Required Subcontractor was acting (or failing to act) according to the express or clearly implied instructions of Personnel of the Provider or the Provider's own directly or indirectly appointed subcontractors. In this case, the Permitted Purchasing Body may treat the Client Required Subcontractor's act (or failure to act) as if it were the Provider's own act (or failure to act).
64.8	Obligations of the Provider to accept any replacement Client Required Subcontractor requested by the Permitted Purchasing Body to carry out the relevant activities in connection with the Services	The Provider must do so in a proper and prompt manner.

65. Liability for the acts etc. of subcontractors

65.1	Liability of the Provider for the acts or failures to act by any subcontractor directly or indirectly appointed by the Provider in connection any of the Services under the Individual Contract	<ul style="list-style-type: none"> The parties to the Individual Contract must regard any act (or failure to act) by any such subcontractor in connection with the Individual Contract 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.
65.2	Arrangements in relation to the liability for acts or failure to act by any Client Required Subcontractors in connection with the Individual Contract (section 64)	Section 64 (particularly item 64.7) applies to the liability of the Provider for the acts (or failures to act) by the Client Required Subcontractor in connection with the Services.

Intellectual Property

66. Intellectual Property – general statement

66.1 General statement regarding Intellectual Property	<p>A party to the Individual Contract (or its Affiliate) shall not obtain any interest or right (including any right of use) in the separately developed or separately acquired Intellectual Property of the other party or the other party's Affiliate.</p> <p>Exceptions: to the extent otherwise:</p> <ul style="list-style-type: none"> Clearly indicated elsewhere in the terms of the Individual Contract (as described in item 1.3) (e.g. in any licence); or Agreed in writing between the Permitted Purchasing Body and the Provider (and/or their respective Affiliates).
66.2 Interpretation of any license over Intellectual Property granted by a party under the terms of the Individual Contract (as described in item 1.3)	All rights not expressly granted by that party to the relevant licensee are reserved to the party granting the licence.

67. Each party's ownership of Arising Intellectual Property

67.1 Who owns Arising Intellectual Property (as between the Permitted Purchasing Body and the Provider)	Each party (or their respective contractors or third party licensors) shall own whatever Arising Intellectual Property is created, developed or the like by that party or its own separate Personnel, its separate contractors or its other separate agents.
67.2 Right of the Provider to use Arising Intellectual Property which belongs to the Permitted Purchasing Body under item 67.1	<p>The Provider shall have a licence to use the Arising Intellectual Property on these terms:</p> <ul style="list-style-type: none"> Non-exclusive Royalty free Permitted use: only for lawful activities and for purposes which are genuinely connected with the Provider meeting its obligations under the Individual Contract. Right of the Provider to sublicense or assign the benefit of this licence <ul style="list-style-type: none"> It may do so (without requiring the Permitted Purchasing Body's consent) to its genuine direct and indirect subcontractors for use for the above purposes. Any other sub-licence or any assignment requires the prior written consent of the Permitted Purchasing Body, at its discretion.
<p>67.3 Licence for the benefit of the Permitted Purchasing Body and its Affiliates in relation to Arising Intellectual Property which belongs to the Provider under item 67.1</p> <p>(a) The Intellectual Property over which the licence is granted</p>	<ul style="list-style-type: none"> Any and all Arising Intellectual Property to belong to the Provider (and/or its respective third party clients, contractors, licensors or the like). Any Provider Background Intellectual Property of the Provider (and/or its third party contractors, licensors or the like) over which that Arising Intellectual Property depends.

(b)	Who grants the licence	<ul style="list-style-type: none"> The Provider If relevant Intellectual Property belongs to the Provider's third party contractors, licensors or the like: the Provider shall use reasonable endeavours at its own cost to obtain a licence on these terms from that person.
(c)	To whom the licence is granted	To the Permitted Purchasing Body and its Affiliates.
(d)	Commencement of the licence	Immediately when the relevant Arising Intellectual Property is first created, developed or the like.
(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"> To copy or otherwise use that Intellectual Property in any manner Solely to allow the Permitted Purchasing Body and its Affiliates to properly enjoy the benefit of the Services. This includes use of relevant Intellectual Property in any Marketing Materials produced under section 68 to enable the Permitted Purchasing Body or a replacement service provider to continue the marketing of the Services. This includes uses sufficiently connected with genuine research, teaching and/or inclusion in academic publications, but only where relevant to the genuine activities of the licensee.
(g)	Prohibited use of licensed Intellectual Property, even if otherwise permitted in item (f)	<p>Neither the Permitted Purchasing Body nor its Affiliate may use (or cause or assist or instruct anyone else to use) that Intellectual Property for any of the following</p> <ul style="list-style-type: none"> For unlawful activities; and/or 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 the like; and/or For activities which bring (or which create an unreasonable risk of bringing) significant, unjustified and unfavourable publicity to the Provider and/or its Affiliates; and/or For activities which damage the goodwill attaching to the licensed Intellectual Property. <p>If the Permitted Purchasing Body's Affiliate uses that Intellectual Property in breach of the above, the onus shall lie with the Permitted Purchasing Body to prove that use was not done with assistance of the Permitted Purchasing Body, or under the Permitted Purchasing Body's instructions.</p>
(h)	Right to assign or sub-licence	The Permitted Purchasing Body or its relevant Affiliate may not assign and/or sub-licence the licence without the prior written consent of the Provider, not to be unreasonably withheld.
(i)	Breaches by Affiliates of the Permitted Purchasing Body	The Permitted Purchasing Body shall treat any breach of this licence by its Affiliate as if it were the Permitted Purchasing Body's own breach.

Marketing

68. Marketing Materials

68.1	Marketing materials which the Provider is required to produce in connection with the Services ('Marketing Materials')	As indicated in the General Specification and/or in the Individual Specification.
68.2	Approvals of the Permitted Purchasing Body required before the Provider may use any Marketing Materials it has produced for purposes connected with the Services	
(a)	Which Marketing Materials require the approval of the Permitted Purchasing Body under this item 68.2	As indicated in the Work Order.
(b)	How the approval of the Permitted Purchasing Body is to be given	Not to be unreasonably withheld.
(c)	Approvals – if the Permitted Purchasing Body is not also the Lead Council	Any approval given by the Lead Council shall be given on its own behalf, and on behalf of each other Permitted Purchasing Body.
(d)	Deemed approval	<p>The approval of the Permitted Purchasing Body shall be deemed to have been given in relation to particular Marketing Materials if all of the following apply:</p> <ul style="list-style-type: none"> • The Provider has submitted the Marketing Material to the Permitted Purchasing Body's Representative (or such other person as he/she designates from time to time) to obtain such approval. • The Permitted Purchasing Body has not responded to the Provider after more than 14 days from the submission date to do any of the following in relation to those Marketing Materials: <ul style="list-style-type: none"> - To reject them. - To raise further questions in relation to them in good faith - To seek further information in relation to them in good faith.
68.3	Obligations of the Provider in relation to any website, an 'app', a dedicated social media page and/or any special telephone number (e.g. free or memorable telephone number) relating to the Services	The Provider must ensure the Permitted Purchasing Body is at all times supplied with relevant up-to-date passwords, access codes and the like to enable the Lead Council to continue to operate them when the Services are no longer being provided by or on behalf of the Provider.
68.4	Other obligations of the Provider in relation to the production of Marketing Materials in relation to the Individual Contract	As indicated in the General Specification and/or the Individual Specification and/or the Provider Submission, as relevant.

Changes

69. Best value obligations

69.1	‘Best value’ duty of the Permitted Purchasing Body under the Local Government Act 1999: the Provider must provide the Permitted Purchasing Body (in a proper and timely manner) with information and/or other assistance requested in writing and in good faith by the Permitted Purchasing Body for the following purposes	
(a)	Various obligations under the Local Government Act 1999	<p>The Provider must do all of the following in relation to obligations under the Local Government Act 1999 insofar as relevant to the Services:</p> <ul style="list-style-type: none">• Assist the Permitted Purchasing Body in carrying out a best value performance review (section 5 of the Act).• Assist the Permitted Purchasing Body in preparing a best value performance plan (section 6 of the Act).• Assist the auditors of the Permitted Purchasing Body to audit any best value performance plan (section 7 of the Act).• Assist the Permitted Purchasing Body in responding to the audit report in relation to any best value performance plan (section 9 of the Act).• Assist in relation to any best value inspection (sections 10 and 11 of the Act).• Assist the Permitted Purchasing Body in relation to any action taken by the Secretary of State (section 15 of the Act).
(b)	Comprehensive performance assessment	<p>The Provider must assist the Permitted Purchasing Body in relation to any comprehensive performance review of the Permitted Purchasing Body’s services (insofar as the review is relevant to the Services provided under these Terms and Conditions) undertaken by the Audit Commission or any other regulatory body under section 99 of the Local Government Act 2003.</p>
(c)	Publication of information	<p>The Provider must enable the Permitted Purchasing Body to comply with the Publication of Information Direction 2000 (England and Wales) insofar as is relevant to the Services.</p>
69.2	Extent to which the Provider may impose further Charges for carrying out its obligations in this section 69	<p>It may NOT do so.</p>
69.3	Whether this section 69 limits the Provider’s obligations relating to continuous improvement under the Rules of the relevant Flexible Purchasing System	<p>No.</p>

70. Change process requested by the Permitted Purchasing Body

70.1	Definition of a 'Client Change'	<p>A change to any of the following</p> <ul style="list-style-type: none">• The Individual Specification.• The Work Order.• The General Specification applicable to the relevant Flexible Purchasing System (but only insofar as it relates to the Individual Contract).• These Terms and Conditions. <p>Which is requested from time to time by the Permitted Purchasing Body according to this section 70.</p>
70.2	First step if the Permitted Purchasing Body wishes to propose a Client Change: it must give the Provider a notice proposing the Client Change ('Client Change Notice') which must contain all of the following minimum contents	
	(a) Description of Client Change	A description of the proposed Client Change in sufficient detail to allow the Provider to properly evaluate and respond to the Client Change Notice.
	(b) A request for the Provider to supply the Permitted Purchasing Body by the deadline described in item 70.3 (and given strictly in accordance with section 121) with either of the following, as relevant	
	(i) Change Estimate	A 'Change Estimate' meeting the requirements in item 70.4.
	(ii) If the Change Estimate cannot be provided by the relevant deadline	An estimate (made with due care and in good faith) of the estimated date on which the Change Estimate can be provided, on the understanding the Provider is to use reasonable endeavours to provide it promptly.
70.3	Deadline for the Provider to supply either piece of information indicated in item 70.2(b)(i) or item 70.2(b)(ii)	30 days after the Client Change Notice is given (or such longer period indicated in the Client Change Notice).
70.4	Requirements of the Change Estimate in relation to the proposed changes (excluding those the Provider has properly refused according to item 70.7)	
	(a) Writing	It must be in writing.
	(b) Preparation	It must be compiled with due care and in good faith.
	(c) Content	It must (as a minimum) contain ALL of the contents described in item 70.5.
70.5	Minimum contents of the Change Estimate - all of the following	
	(a) Estimate of change	A genuine estimate of the impact proposed changes on the Individual Contract, particularly the Charges in section 24 and the Services.
	(b) Implementation proposal	The Provider's proposal in implementing the relevant proposed changes, including its relevant methods and time periods required.
	(c) The extent to which the Provider requires any of the following to implement the relevant proposed changes (describing the nature of the requirement in sufficient detail)	
	(i) Subcontractor	The assistance of any subcontractor.
	(ii) Client Assistance	Any additional Client Assistance.
	(iii) Consents	Any consent of any arm's length third party, including any regulatory approval.
	(iv) Extension	Any extension of any deadline otherwise applying to the Individual Contract.

	(v) Relief	Any other relief from its obligations under these Terms and Conditions and/or a relevant Work Order (e.g. relief from standards to which the Services are to be provided).
	(d) Amendments	A genuine proposal of amendments reasonably required as a result of the proposed change.
70.6	Grounds on which the Provider may refuse a requested Client Change (in full or part) requested in a particular Client Change Notice: ONLY if at least one of the following applies	
	(a) The requested change involves activities to which any of the following applies	
	(i) Outside normal business	The activities are not sufficiently connected with the Provider's normal business activities at the time.
	(ii) Outside scope etc.	The activities are not sufficiently within the scope, nature and/or risk profile of the Services.
	(b) The requested change, if implemented, would necessarily require the Provider and/or its Personnel to do any of the following which it cannot reasonably avoid	
	(i) Law	Break the Law.
	(ii) Licences, accreditations etc.	In the case of the Provider, breach any licence, permission or the like which it and/or a relevant subcontractor is required to hold according to section 16.
	(iii) Personnel requirements	In the case of any Personnel of the Provider involved in the Services, breach of any requirement (e.g. licence etc.) he/she is required to hold under item 36.1 having regard to the nature of his/her activities in connection with the Services.
	(iv) Standards	Breach standards applicable to the Provider according to good industry or professional practice, professional or industry codes of conduct or the like.
	(v) Hazards	Create unreasonable and not reasonably a safety hazards.
	(vi) Risk to property	Create unreasonable risk of loss, theft, damage or destruction of any of the Provider's property.
	(c) Client Change Notice does not meet requirements	The Client Change Notice does not strictly meet the requirements of this section 70, particularly the content requirements of item 70.5.
70.7	Procedure the Provider must follow if it wishes to partly or fully refuse the proposed Client Change: the Provider must give the Permitted Purchasing Body a notice indicating such refusal according to the following	
	(a) As a notice	The notice must be given strictly in accordance with section 121.
	(b) Deadline	The notice must be given by the relevant deadline described in item 70.3.
	(c) Parts refused	If refusal only applies to part of the requested change, it must indicate reasonably clearly the part being refused.
	(d) Reason for refusal	It must clearly indicate in sufficient detail the reasons for refusal, being at least one of the grounds indicated in item 70.6.
70.8	Next step if the Provider - meeting between Representatives	
	(a) Obligations	The parties shall direct their respective Representatives to meet as soon as reasonably practicable after the Permitted Purchasing Body receives the Change Estimate to discuss the proposed changes and the matters indicated in the Change Estimate.

	(b) Purpose of the meeting	To attempt to agree relevant amendments required, including without limitation and to the extent relevant, changes to the Charges, taking into account the matters described in item 70.9.
70.9	Matters to be taken into account for the purposes of the meeting described in item 70.8: all reasonable and relevant matters, including the following, without limiting the reasonable and relevant grounds which may apply at the time	
	(a) Necessity of the changes to ensure compliance with the Law	The extent the proposed changes are necessary to ensure the Permitted Purchasing Body and/or the Provider complies with any Law introduced or amended after the date on which the Individual Contract was entered.
	(b) Change Estimate	Matters raised by the Provider in the Change Estimate, acting reasonably and in good faith.
	(c) Evidence certain changes are kept to a minimum	Reasonable evidence provided by the Provider that it has used reasonable endeavours to keep to a reasonable minimum any amendments resulting from the proposed changes to the extent such amendments are unfavourable to the Permitted Purchasing Body.
	(d) Continuous improvement	Any suggested improvement raised by the Provider in meeting its obligations if any under the rules of the relevant Flexible Purchasing System relating to continuous improvement.
	(e) Good value for money	<ul style="list-style-type: none"> Reasonable evidence provided by the Provider that it is giving good value for money for implementing the proposed changes having regard (without limitation) to amendments to the terms of the Individual Contract. This may include, where relevant and without limitation, evidence of competitive quotes from subcontractors and other suppliers.
70.10	What happens when the Permitted Purchasing Body and the Provider reach agreement on the proposed change - all of the following	
	(a) Execute documents	The Permitted Purchasing Body and the Provider must promptly execute all such documents to make the appropriate amendments to properly reflect that agreement, according to the formal requirements in section 72.
	(b) Deadline for the Permitted Purchasing Body to execute relevant documents reflecting agreement to the proposed changes	<ul style="list-style-type: none"> 30 days of the documents being properly presented, or such longer period agreed in writing by the Provider. The Provider shall not unreasonably withhold consent to any request by the Permitted Purchasing Body for an extension to this deadline.
	(c) If the Permitted Purchasing Body fails to execute such documents	If the Permitted Purchasing Body (through no fault of the Provider) fails to execute such documents that properly reflect that agreement by the deadline indicated in item (b) of agreement having been reached: the Permitted Purchasing Body shall be deemed to have withdrawn its request for the relevant proposed changes.
70.11	Consequence of withdrawal of the request in relation to a proposed Client Change	It shall not in itself prevent the Permitted Purchasing Body from later recommencing the procedure in relation to the same (or any other) proposed changes.
70.12	Consequences if the parties cannot agree on the proposed Client Change	It shall be considered a dispute for the purposes of section 119.

71. Change process requested by the Provider

71.1	Definition of a 'Provider Change'	<p>A change to any of the following</p> <ul style="list-style-type: none"> • The Individual Specification. • The Work Order. • The General Specification applicable to the relevant Flexible Purchasing System (but only insofar as it relates to the Individual Contract). • These Terms and Conditions. <p>Which is requested from time to time by the Provider according to this section 71.</p>
71.2	First step if the Provider wants to propose a Provider Change	It must give the Permitted Purchasing Body a notice (' Provider Change Notice ') which complies with this section 71.
71.3	How the Provider must give the Provider Change Notice	Strictly according to section 121.
71.4	Minimum contents of the Provider Change Notice: all of the following (such information to be provided with sufficient clarity and sufficient detail to enable proper evaluation)	
	(a) Description	A description of the proposed Provider Change.
	(b) Required amendments	The likely required amendments.
	(c) Reasons	Reasons for requesting the proposed Provider Change.
	(d) Timetable	The proposed timetable for commencing the mobilisation of the proposed Provider Change from the date it is agreed by the parties.
	(e) Increase on Charges (section 24)	If the proposed Provider Change is to result in an increase in Charges, a breakdown of that increase, indicating relevant calculations.
	(f) Deadline for decision	If the Provider requires the decision of the Permitted Purchasing Body on the proposed Provider Change by a particular date, the relevant date and the reason the decision is required by that date.
	(g) Request for consultation	A request for the Permitted Purchasing Body to consult with the Provider for the purpose of considering the proposed Provider Change.
71.5	Next step	
	(a) Obligations of the Permitted Purchasing Body	The Permitted Purchasing Body must evaluate the request for proposed Provider Change contained in the Provider Change Notice in good faith.
	(b) Deadline for the above evaluation	By the deadline (if there is one) described in the Provider Change Notice.
	(c) Matters which the Permitted Purchasing Body must take into account when evaluating the Provider Change Notice - all reasonably relevant issues including the following (where relevant and without limiting other reasonable and relevant issues that apply at the time)	
	(i) Changes to Charges (section 24)	Changes to the Charges and other amounts payable by the Permitted Purchasing Body which are likely to result from the proposed Provider Change.
	(ii) Other changes	Other amendments which are reasonably likely to result from the proposed Provider Change.

(iii)	Undesirable consequences	The extent to which the proposed change is reasonably likely to cause any serious and undesirable consequence for the Permitted Purchasing Body including without limitation, any breach of the Law, breach of any duty of care it owes another person, serious and unjustified unfavourable publicity, further costs, delays etc.
(iv)	Likelihood of change being implemented	The likelihood of the Provider being able to implement the proposed change.
(v)	Impact on other Services	The impact of the proposed change on other parts of the Services.

71.6 **Next step - meeting between Representatives:** the Permitted Purchasing Body and the Provider shall direct their respective Representatives to meet (as soon as reasonably practicable) to discuss the proposed change with a view to agreeing the following

(a)	Whether accepted	Whether the proposed change is to be accepted in full or part.
(b)	Required amendments	Relevant amendments required, including without limitation and to the extent relevant, changes to the Charges.

71.7 Basis of the decision of the Permitted Purchasing Body to accept or reject the Provider's proposed change (e.g. whether 'at discretion' or 'not to be unreasonably withheld')

(a)	In relation to changes in the Law which <ul style="list-style-type: none"> Relates specifically to the business of the Permitted Purchasing Body; and Which would not affect the supply of substantially similar services to substantially similar clients or customers (whether or not involving the Provider and/or the Permitted Purchasing Body) 	Not to be unreasonably withheld.
(b)	In relation to any other changes to the Law not described in item (a)	At discretion.
(c)	In relation to any part of the General Specification and/or the Individual Specification which creates an unreasonable risk of any of the matters indicated in section 13	Not to be unreasonably withheld.
(d)	Other	At discretion.

71.8 Consequences if the proposed changes are to result in a reduction in the cost to the Provider in providing the Services

As indicated in the Work Order.

71.9 Consequences of the parties reaching agreement on the proposed change

(a)	Execute documents	They shall promptly execute all such documents to amend the Individual Contract to properly reflect that agreement.
(b)	Deadline for the Provider to execute relevant documents reflecting agreement to the proposed change	30 days after they are properly presented.

(c)	If the Provider fails to execute	If the Provider (through no fault of the Permitted Purchasing Body fails to execute such documents that properly reflect that agreement by the deadline indicated in item (b) after agreement is reached, the Provider shall be deemed to have withdrawn its request for the relevant proposed Provider Change.
(d)	Consequence of withdrawal under item (c)	It shall not in itself prevent the Provider from later recommencing the procedure in relation to the same (or any other) proposed Provider Changes.

72. Amendment

72.1	How the terms of the Individual Contract (as described in item 1.3) are to be validly amended if the Work Order is NOT a deed	<ul style="list-style-type: none"> By agreement in writing between the Permitted Purchasing Body and the Provider. It must be clearly intended to amend the terms of the Individual Contract.
72.2	If no consideration is otherwise indicated in the relevant document evidencing the amendment to the terms of the Individual Contract (if that document is not a deed)	<ul style="list-style-type: none"> Each party shall be deemed to give the other party consideration of £1.00 if demanded. The parties agree that this consideration is sufficient.
72.3	How the terms of the Individual Contract (as described in item 1.3) are to be validly amended if the Work Order IS a deed	<ul style="list-style-type: none"> By deed of variation executed by the Permitted Purchasing Body and the Provider. The deed of variation must indicate a clear intention of the parties to amend the terms of the Individual Contract.

Events outside the Provider's control

73. Client Assistance

- 73.1 Indicate any assistance which the Permitted Purchasing Body is to provide the Provider to enable the Provider to provide relevant Services ('Client Assistance')

Description of the Client Assistance	Any details (e.g. deadlines, specific requirements etc.)
As indicated in the General Specification.	As indicated in the General Specification.
As indicated in the Individual Specification	As indicated in the Individual Specification
The Lead Council (or its Affiliate) entering into, and carrying out its obligations under any Associate Document described in section 2, where it is expected to be a party to it	
Ensuring Client Required Subcontractors enter into relevant subcontracts to enable the Provider to carry out its obligations in item 64.5(a) (section 64)	To do so promptly.
Providing the Provider with cooperation to enable it to novate the contracts indicated in item 10.1	To do so in a timely manner.
Providing assistance required in item 19.1 in relation to any mobilisation plan	To do so in a timely manner.

Carrying out the Permitted Purchasing Body's obligations in section 45 in relation to the Provider's right to carry out TUPE-related due diligence activities	To do so in a timely manner.
73.2 Steps the Provider must strictly follow if it wants any of the consequences in item 73.3 to apply if the Permitted Purchasing Body fails to provide any particular Client Assistance according to the relevant requirements (e.g. deadlines) in item 73.1	<p>It must raise the matter as follows</p> <ul style="list-style-type: none"> • In writing to the Representative and/or the Escalated Person of the Permitted Purchasing Body. • No later than 5 Business Days from the day on which the Provider first became aware of the matter.
73.3 Consequences if the Permitted Purchasing Body fails to provide any Client Assistance as required: all of the following to the extent relevant (to be read independently, and to limit the rights and remedies of the Provider as a result of the failure by the Permitted Purchasing Body)	
(a) Whether delays substantially caused by the failure to provide the Client Assistance relieve the Permitted Purchasing Body of its obligations to pay Charges indicated in section 24	No.
(b) Right to relief	<p>The Provider shall be relieved of liability according to all of the following</p> <ul style="list-style-type: none"> • To any person with rights under the Individual Contract • For failing to carry out any of its obligations under the Individual Contract • To the extent the Provider's failure to carry out that obligation is substantially and directly caused by the Permitted Purchasing Body's failure to provide that Client Assistance.
(c) If the Permitted Purchasing Body's failure substantially and directly causes the Provider to fail to meet any Contract Standard (section 6)	The Provider shall be deemed to have met that Contract Standard on that occasion for all purposes of the Individual Contract.
(d) Right to take certain steps: the Permitted Purchasing Body shall not unreasonably refuse a proposal from the Provider to take certain steps if the Provider's proposal meets all of the following requirements	
(i) How the proposal must be made	<ul style="list-style-type: none"> • In writing. • Communicated to the Permitted Purchasing Body's Representative.
(ii) Steps that the Provider may propose	<p>Amendments to the terms of the Individual Contract (as described in item 1.3), including (without limitation and where relevant) amendments relating to any of the following to take account of the failure by the Permitted Purchasing Body to provide the relevant Client Assistance:</p> <ul style="list-style-type: none"> • Extending any deadlines of the Provider in connection with the Services. • Changing the financial arrangements between the parties under the Individual Contract (e.g. Charges payable under section 24 etc.). • Changing the General Specification or the Individual Specification and/or the Provider Submission (whether temporarily or permanently) to reduce the burden of the Provider in connection with the Individual Contract.

(iii)	Requirements of the proposal	<ul style="list-style-type: none"> • It must be reasonable and proportionate • In preparing the proposal, the Provider must have proper regard to the extent to which the Permitted Purchasing Body's failure affected the Provider's ability to carry out its obligations.
(iv)	Deadline to submit the proposal	<ul style="list-style-type: none"> • The proposal must be submitted no later than 30 days after the Permitted Purchasing Body has properly fixed its failure to provide the relevant Client Assistance. • If and for as long as the Permitted Purchasing Body continues to fail to remedy that failure, the Provider shall have an ongoing right to submit (and to resubmit, if the Provider wishes to do so) this proposal in relation to that failure by the Permitted Purchasing Body.
(v)	If the parties cannot reach agreement on the proposal	It shall be a dispute between the parties, to be resolved according to section 119.

74. Definition of 'Uncontrollable Circumstances'

74.1 Each of following is to be considered to be an '**Uncontrollable Circumstance**' for the purposes of the Individual Contract (each of them effectively a '**force majeure**' event)

- To the extent each of them is **genuinely outside the Provider's reasonable control** and
- To the extent each of them **directly and substantially disrupts the Provider's ability to meet its affected obligations** under the Individual Contract

(a)	As required by the Permitted Purchasing Body	<ul style="list-style-type: none"> • The Permitted Purchasing Body requires the Provider to suspend the affected obligations, even if the Provider is willing and able to carry them out. • The Permitted Purchasing Body must have reasonable grounds to impose this requirement (e.g. exercise of any statutory or regulatory functions, safety issues, necessary closure of relevant premises, etc.).
(b)	Obligation by Law	The Provider is required by Law to suspend relevant obligations under the Individual Contract.
(c)	Unsafe, impractical	<p>On a reasonable view, it is seriously unsafe and/or seriously impractical for the Provider and/or relevant Personnel to carry out relevant obligations under the Individual Contract due to</p> <ul style="list-style-type: none"> • Severe weather, 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 these.

(d)	Personnel absence	<p>At least 50% of the Personnel usually allocated by the Provider to the affected activity (whether employees of the Provider or otherwise) is unable to come to work (and working from home or elsewhere is not reasonably practicable having regard to their duties) for a substantial continuous period due to reasons outside their control including without limitation any of the following:</p> <ul style="list-style-type: none"> • Severe weather, natural disasters, and security-related issues such as terrorism, war or civil unrest. • Illness affecting those Personnel. • Serious disruptions to transportation (e.g. transport strikes).
(e)	Strikes	<ul style="list-style-type: none"> • Relevant obligations are disrupted by strikes or other industrial action. • Exception: this does not apply to strikes or other industrial action by Personnel of the Provider and/or its directly or indirectly appointed subcontractors.
(f)	Premises becoming unusable	<p>Relevant premises where the Provider is expected to carry out the relevant obligations are substantially unusable for any reason which is not substantially the fault of the Provider.</p>
(g)	Equipment becoming unusable	<p>Relevant equipment (which is significant and necessary to the affected obligations of the Provider and is not easily replaceable)</p> <ul style="list-style-type: none"> • Is substantially unusable • For any reason which is not substantially the fault of the Provider.
(h)	Utility disruption	<ul style="list-style-type: none"> • Disruption in the supply of relevant utility services, such as electricity, gas, water, telephone and internet services <ul style="list-style-type: none"> - For any reason; and - Which is not substantially the fault of the Provider. • Withdrawal of such services on request of the Provider or as a result of any default by the Provider (e.g. failure to pay supplier charges) is not an Uncontrollable Circumstance.
(i)	Key Personnel (section 40)	<p>Absence or temporary discontinuation of a particular Key Personnel</p> <ul style="list-style-type: none"> • For good reasons; and • Outside the reasonable control of the Key Personnel and/or the Provider (e.g. serious illness).
(j)	Client Required Subcontractor (section 64)	<p>Delays or other breaches by any Client Required Subcontractor.</p>
(k)	Default by housing provider	<p>If the relevant premises are occupied by a third party which is giving the Provider access to it to provide the Services, a default by that third party of any contract it has with the Provider relating to the Provider's access to the premises.</p>

75. Continuity plans

75.1 Business or service continuity plans or the like which apply to the Individual Contract if relevant Uncontrollable Circumstances described in section 74 occur

(a)	The Provider's initial obligations	The Provider must submit a first draft of a business or service continuity plan to the Permitted Purchasing Body for its approval.
(b)	Due date for submitting the first draft	6 weeks after the date the Individual Contract is entered.
(c)	Purpose of submission	<ul style="list-style-type: none"> For the approval of the Permitted Purchasing Body. The approval of the Permitted Purchasing Body cannot be unreasonably withheld.
(d)	Obligations of the Permitted Purchasing Body if approval is not given	To give the Provider timely feedback to enable it to submit the next draft.
(e)	Until the approval of the Permitted Purchasing Body is given	<ul style="list-style-type: none"> The Provider must resubmit further drafts of the business or service continuity plan until the approval of the Permitted Purchasing Body is given. The Provider must do so in a timely manner. The Provider must give proper regard to any feedback given to it by the Permitted Purchasing Body.
(f)	If the Provider from time to time wishes to amend the approved business or service continuity plan in place at the time	<ul style="list-style-type: none"> The amendment shall not apply to the Individual Contract unless it has been approved in writing by the Permitted Purchasing Body. Such approval shall not be unreasonably withheld.
(g)	If the parties cannot agree on a particular business or service continuity plan (or any amendment) proposed by the Provider for the approval of the Permitted Purchasing Body	It shall be a dispute for the purposes of section 119.
75.2	Character of any business or service continuity plan described in this section 75	<ul style="list-style-type: none"> It forms part of the Individual Specification. If there is any inconsistency between the business or service continuity plan and the rest of the Individual Specification: the business or service continuity plan overrides the rest of the Individual Specification to the extent of the inconsistency.

76. Uncontrollable Circumstances – general consequences

76.1 **Suspension:** the following apply to the right or obligation of the Provider to suspend obligations under the Individual Contract as a result of relevant Uncontrollable Circumstances (section 74)

(a)	Obligation to communicate	<p>The Provider must communicate its intention to suspend carrying out such obligations as follows</p> <ul style="list-style-type: none"> To the Permitted Purchasing Body's Representative or (in any emergency) other suitable Personnel of the Provider; and In writing where reasonably possible. <p>If suspension is required by the Permitted Purchasing Body under item 74.1(a): this communication is not required.</p>
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(b)	Right or obligation to suspend	<ul style="list-style-type: none"> The Provider may suspend carrying out those of its obligations in relation to the Individual Contract to the extent the relevant Uncontrollable Circumstance substantially and directly prevents the Provider or its subcontractors from otherwise carrying them out. If suspension is required by the Permitted Purchasing Body under item 74.1(a): the Provider must do so.
(c)	Obligations of the Provider to keep informed	The Provider must keep the Permitted Purchasing Body informed in a proper and timely manner of significant events or circumstances in relevant to the suspension of the relevant obligations.
(d)	Resumption	<ul style="list-style-type: none"> The Provider must resume the relevant activities promptly when it is no longer substantially and directly prevented from doing so under the relevant Uncontrollable Circumstance. If suspension is required by the Permitted Purchasing Body under item 74.1(a): the Provider must not do so until permitted by the Representative of the Permitted Purchasing Body.

76.2 **Consequences if the Provider suspends its obligations according to item 76.1:** all of the following (as relevant, to be read independently) (section 74)

(a)	Right to relief	<p>The Provider shall be relieved of liability (all of the following)</p> <ul style="list-style-type: none"> To any person with rights under the Individual Contract For failing to carry out any of its obligations under the Individual Contract To the extent the Provider's failure to carry out that obligation is substantially and directly caused by the relevant Uncontrollable Circumstance.
(b)	If the suspension of obligations according to item 76.1(b) substantially and directly causes the Provider to fail to meet any Contract Standard (section 6)	The Provider shall be deemed to have met that Contract Standard for all purposes of the Individual Contract in relation to activities suspended under item 76.1(b).
(c)	Consequences for the Charges for Services disrupted due to any Uncontrollable Circumstance (section 24)	

(d)	Business or service continuity plans (section 75)	<p>The parties are to carry out their respective obligations under any business or service continuity plan or the like described in section 75, as follows (all of the following)</p> <ul style="list-style-type: none"> • In a proper, timely and lawful manner. • To the extent the business or service continuity plan imposes obligations on them when the relevant Uncontrollable Circumstance arises. • With proper regard to the safety and wellbeing of human beings who are reasonably affected, where appropriate to the relevant Uncontrollable Circumstance. • Bearing their own costs, except to the extent the Permitted Purchasing Body is required to pay the Provider any additional Charges according to the business or service continuity plan or the like.
(e)	<p>Right to take certain steps: the Permitted Purchasing Body shall not unreasonably refuse a proposal from the Provider to take certain steps if the Provider's proposal meets all of the following requirements</p>	
(i)	How the proposal must be made	<ul style="list-style-type: none"> • In writing. • Communicated to the Permitted Purchasing Body's Representative.
(ii)	Steps that may be proposed	<p>The Permitted Purchasing Body and the Provider agreeing to amendments to the terms of the Individual Contract (as described in item 1.3), including (without limitation and where relevant) amendments relating to any of the following to take account of the suspension of activities in connection with the relevant Uncontrollable Circumstance:</p> <ul style="list-style-type: none"> • Extending any deadlines of the Provider in connection with the Services. • Changing the financial arrangements between the parties under the Individual Contract (e.g. Charges payable under section 24 etc.). • Changing the General Specification or the Individual Specification and/or the Provider Submission (whether temporarily or permanently) to reduce the burden of the Provider in connection with the Individual Contract.
(iii)	Requirements of the proposal	<ul style="list-style-type: none"> • It must be reasonable and proportionate • In preparing the proposal, the Provider must have proper regard to the extent to which the Provider's obligations were suspended as a result of the relevant Uncontrollable Circumstance.
(iv)	Deadline to submit the proposal	<p>The proposal must be submitted no later than 30 days after the Uncontrollable Circumstance no longer substantially and directly prevents the Provider from conducting the Concession in the manner as if the Uncontrollable Circumstance had not occurred.</p>
(v)	If the parties cannot reach agreement on the proposal	<p>It shall be a dispute between the parties, to be resolved according to section 119.</p>

76.3	Which party is permitted to terminate the Individual Contract under section 108 if the Services are disrupted for a continuous period due to any Uncontrollable Circumstances	Either party.
76.4	When a party described in item 76.3 may terminate the Individual Contract under section 108 due to the continuation of any Uncontrollable Circumstances	Where all of the following apply: <ul style="list-style-type: none"> • The relevant Services have been suspended due to any Uncontrollable Circumstance for more than 90 continuous days. • The Services are still suspended at the time the notice described in item 108.3 is given.

Information

77. Accuracy of information

77.1	Information relating to the Individual Contract in relation to which the Permitted Purchasing Body gives the warranties and representations in item 77.2 ('Client Warranted Information')	Any information to which and to the extent all of the following applies <ul style="list-style-type: none"> • The information relates to the Individual Contract. • The information was supplied by or on behalf of the Permitted Purchasing Body in writing before the Provider and the Permitted Purchasing Body entered the Individual Contract. • It is reasonable in the circumstances for the Provider to assume that the accuracy and completeness of that information is within the control of the Permitted Purchasing Body; • It is reasonable in the circumstances to assume the Provider has relied on that information in preparing its Provider Submission.
77.2	Warranties and representations given by the Permitted Purchasing Body to the Provider in relation to each piece of Client Warranted Information	All of the following <ul style="list-style-type: none"> • That the information is materially accurate and complete • At the execution date of the Work Order of the Individual Contract. • To the best of the knowledge of the Permitted Purchasing Body (having made reasonably necessary checks). • Exception: to the extent otherwise disclosed beforehand by the Permitted Purchasing Body in writing to the Provider.
77.3	Deadline by which the Provider must raise a breach of warranty and representation in item 77.2 (after that deadline it is not entitled to exercise any rights or remedies against the Permitted Purchasing Body in relation to that breach).	No later than 3 months after the date of the Individual Contract. The Provider must raise the breach in writing with the Permitted Purchasing Body as a notice given strictly under section 121 in these Terms and Conditions.
77.4	In relation to all other information given by the Permitted Purchasing Body to the Provider in relation to the Individual Contract which is not Client Warranted Information	
(a)	No warranty etc.	The Permitted Purchasing Body gives no person any warranty or representation in relation to the accuracy and/or the completeness of that information.
(b)	Exclusion of liability	The liability of the Permitted Purchasing Body and that of its Affiliates or Personnel in connection with the Individual Contract in relation to the accuracy and/or completeness of that information (whether arising in tort, contract or otherwise) 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 Individual Contract for the sole reason that such information is inaccurate and/or incomplete.
(d)	No exclusion	Nothing in this item 77.4 excludes the Permitted Purchasing Body's liability for fraudulent misrepresentation .

78. Confidentiality

78.1 Confidential Information of the respective Disclosers is as follows, subject to item 78.2

(a) Confidential Information of the Permitted Purchasing Body and/or its Affiliates (each of the following to be read independently)

(i)	Business activities	Information relevant to its business activities generally, including without limitation, its business strategies, plans, finances, operations, Personnel and human resources activities generally, products or services, research activities, data (including personal data in relation to which it is the data controller or data processor for the purposes of the Data Protection Act 1998), know how, trade secrets, customers or clients or Service Users identified in item 3.1 or unpublished Intellectual Property.
(ii)	Dispute resolution	Disclosures made in the course of any dispute resolution procedure described in section 119.
(iii)	How the information must be disclosed or made available to be the 'Confidential Information' of the Permitted Purchasing Body or its Affiliate	<p>All of the following</p> <ul style="list-style-type: none"> • It may be disclosed or made available to the Provider (and/or anyone acting on its behalf) • In any manner or in any medium (e.g. in writing, verbally, by observation at the Discloser's premises, contained in any device or material etc.) • In activities reasonably connected with the Individual Contract. • Regardless of whether labelled 'confidential'.

(b) Confidential Information of the Provider (each of the following to be read independently)

(i)	Provider Submission	The contents of a genuinely confidential nature in the Provider Submission.
(ii)	Charges described in section 24	<ul style="list-style-type: none"> • The Provider's Charges. • But only to the extent the Charges have been uniquely determined by the Provider for the purposes of the Individual Contract (e.g. they are not set by the Permitted Purchasing Body, they are not publicly-available etc.).
(iii)	Subcontractor, Personnel	<p>Any information</p> <ul style="list-style-type: none"> • Relating to any Personnel of the Provider, or any subcontractor appointed by the Provider in connection with the Individual Contract. • Disclosed or otherwise made available by the Provider to the Permitted Purchasing Body or to anyone acting on its behalf in connection with the Individual Contract. • Where the Provider indicates in writing it is subject to a genuine duty of confidentiality to that Personnel or subcontractor.

(iv)	Information in reports etc.	<p>All of the following</p> <ul style="list-style-type: none"> Information about the Provider itself (e.g. its financial condition, any significant incident, any prospective internal changes etc.) Given to the Permitted Purchasing Body from time to time in connection with the Individual Contract. Whether in providing regular reports, at meetings or otherwise.
(v)	Inspection (section 86)	Information of a genuinely confidential nature obtained in the course of any inspection carried out by or on behalf of the Permitted Purchasing Body in connection with the Individual Contract.
(vi)	Dispute resolution	Disclosures made in the course of any dispute resolution procedure described in section 119.
(vii)	How the information must be disclosed or made available to be the 'Confidential Information' of the Provider	<p>All of the following</p> <ul style="list-style-type: none"> It may be disclosed or made available to the Permitted Purchasing Body (and/or anyone acting on its behalf) In any manner or in any medium (e.g. in writing, verbally, by observation at the Discloser's premises, contained in any device or material etc.) unless otherwise indicated. In activities reasonably connected with the Individual Contract. Regardless of whether labelled 'confidential'.

78.2 A piece of information of the Discloser is not in any case Confidential Information of the Discloser if any of the following applies to that piece of information at the time

(a)	Public domain	<ul style="list-style-type: none"> It is in the public domain from time to time Exception: as a result of any breach of a duty of confidentiality owed by the Recipient under these Terms and Conditions and/or a relevant Work Order.
(b)	Independently developed	The Recipient can reasonably prove it (or its Affiliates and/or their Personnel) had developed that information independently of its association with the Discloser and/or the Discloser's Affiliates and/or their Personnel.
(c)	Independently acquired	<ul style="list-style-type: none"> The 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 Individual 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.
(d)	Trivial	The information is of a trivial nature.

78.3	Duration of the Recipient's obligations in item 78.4 in relation to each piece of the Discloser's Confidential Information	<p>Either</p> <ul style="list-style-type: none"> 3 years from the date on which the Provider ceases to be obliged to provide any Services whatsoever under the Individual Contract; or Such longer period required by Law in relation to that piece of Confidential Information.
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78.4 **The Recipient's obligations:** the Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the Discloser in the possession of the Recipient from time to time (for the period indicated in item 78.3)

(a)	Non-disclosure (subject to item 78.5)	<p>The Recipient</p> <ul style="list-style-type: none"> Must keep that Confidential Information strictly in confidence, and Must not disclose it or make it available to third parties.
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(b)	Not to misuse	<ul style="list-style-type: none"> 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 relevant Services. Without limiting the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser.
(c)	Comply with the Law	The Recipient must comply with relevant Law in relation to the keeping, disclosure or use of that Confidential Information.
(d)	Storage (where the Recipient is the Provider)	<p>The Recipient must store the Confidential Information as follows:</p> <ul style="list-style-type: none"> According to any requirements in the Specification. To a reasonable standard of security. In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality.
(e)	Return or destroy (where the Recipient is the Provider)	<ul style="list-style-type: none"> The Recipient must promptly return or destroy Confidential Information of the Permitted Purchasing Body or its Affiliate on written request of the Permitted Purchasing Body where (on a reasonable view) the Recipient no longer has a need to retain the Confidential Information. The Recipient may retain records which incidentally contain Confidential Information of the Discloser, or where the Recipient has a genuine professional requirement to retain a copy of records.
(f)	Not to direct others	<ul style="list-style-type: none"> The Recipient must not direct or assist any person to do anything in breach of the rest of this item 78.4. If any Personnel of the Recipient or those of its Affiliate or (if the Recipient is the Provider) any subcontractor directly or indirectly appointed by the Recipient does anything in breach of the rest of this item 78.4, the onus shall lie with the Recipient to prove it was not done at the direction of, or with the assistance of the Recipient.

78.5 Permitted disclosures: the Recipient is permitted to disclose or make available any Confidential Information of the Discloser in **any** of the following circumstances, regardless of item 78.4(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)	To Personnel, advisers etc.	<p>To any of the following</p> <ul style="list-style-type: none"> The Recipient's genuine existing or prospective Personnel, 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. Any public body authorised to review these Terms and Conditions. Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of the Individual Contract. Relevant third parties engaged for the purpose of resolving disputes under section 119. Third parties described in item 124.2 who have rights under the Individual Contract for the purpose of advising them of their rights, powers and benefits under the Individual Contract. <p>These disclosures are subject to item 78.6.</p>
(c)	Other entities connected with the Flexible Purchasing System	To any other entity which is entitled to enter contracts under the Flexible Purchasing System at the time.

(d)	Required by Law	<ul style="list-style-type: none"> To the extent the Recipient is required to disclose or make available the Confidential Information by Law, including without limitation, a court, a regulatory body, a law enforcement body, a genuine public auditor or other genuine public body (if the Recipient is a public body), the UK Parliament, a relevant stock exchange or similar body, where reasonably necessary by the Recipient in exercise of any of its public functions or in relation to any obligations the Recipient has under any FOI Act. These disclosures are subject to item 78.7.
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78.6 Rules regarding the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person described in item 78.5(b) (all of the following)

(a)	Need to know	<ul style="list-style-type: none"> Such disclosures must be in good faith; and Strictly on a 'need to know' basis.
(b)	Treating unauthorised disclosures etc.	The Discloser may regard any unauthorised disclosure or other misuse of such Confidential Information by any such person as if it were the Recipient's own act.
(c)	Separate confidentiality agreement	<ul style="list-style-type: none"> The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms. But only if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances.

78.7 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 (except where disclosure is required under any FOI Act, which is covered in section 79)

(a)	Inform	<p>The Recipient must inform the Discloser of the circumstances</p> <ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> The Recipient must provide the Discloser with reasonable and timely assistance on 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.

79. Freedom of information

79.1	Each party (each of them a ' FOI Party ') which is subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (each of them an ' FOI Act ')	<ul style="list-style-type: none"> The Permitted Purchasing Body. The Provider, but only if it is a public authority which is subject to a relevant FOI Act.
79.2	In relation to the relevant FOI Party: the extent to which the party other than the FOI Party considers any of its information to be 'commercially sensitive' for the purposes of the FOI Acts	<ul style="list-style-type: none"> To the extent indicated by the party other than the FOI Party to the relevant FOI Party in writing from time to time. This is for indicative purposes only, and is not binding on the relevant FOI Party.

79.3	Consequences if the relevant FOI Party receives a request for information under any FOI Act involving information of the other party (all of the following)	
(a)	Rights of the relevant FOI Party	It 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 relevant FOI Party is required to consult etc.	The relevant FOI Party shall be under no obligation to consult the party other than the FOI Party or anyone else in relation to that request for information.
(c)	Consequence if the relevant FOI Party does consult the party other than the FOI Party and/or anyone else	The relevant FOI Party shall be under no obligation to have regard to the views of the party other than the FOI Party and/or anyone else.
(d)	To what this item 79.3 is subject	It is subject to the relevant FOI Party's compliance 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 .
80.	Announcements and publicity	
80.1	Restrictions on the Provider making announcements and/or giving publicity in connection with the Individual Contract (e.g. press releases, public circulars, interviews)	<ul style="list-style-type: none"> The Provider must not do so without the prior written consent of the Permitted Purchasing Body. This consent must not be unreasonably withheld.
80.2	Restrictions on the Provider and/or its Affiliate using any reference to the Permitted Purchasing Body and/or its Affiliates (including use of its logos or other branding) in any publicity materials of the Provider and/or its Affiliate	<ul style="list-style-type: none"> The Provider must not do so without the prior written consent of the Permitted Purchasing Body. This consent must not be unreasonably withheld.
80.3	Other	<ul style="list-style-type: none"> The Provider must not assist or instruct another person to do any act that would breach this section 80 if that act were done by the Provider directly. If the Provider's Affiliate does anything that would breach the main obligations indicated in this section 80 if done by the Lead Council directly, the onus will lie with the Provider to prove it was not done with the Provider's instruction and/or assistance.
81.	Provider's status as data controller	
81.1	Application of this section 81	It applies where the Work Order indicates that the Provider is to be a data controller in relation to any personal data it obtains in connection with the Individual Contract.
81.2	Arrangements regarding the control and processing of personal data of any individual obtained by the Provider in the course of providing the Services under the Individual Contract	<ul style="list-style-type: none"> The Provider (and not the Permitted Purchasing Body) will determine the purposes for which such personal data will be held and used. Therefore, as between the Provider and the Permitted Purchasing Body, the Provider (and not the Permitted Purchasing Body) shall be the 'data controller' in respect of that personal data.
81.3	General obligations of the Provider in relation to personal data described in item 81.2	<ul style="list-style-type: none"> To comply with relevant Law in relation to the holding and processing of that personal data. This includes maintaining necessary registrations with the relevant regulatory body.

81.4 Indemnity given by the Provider in relation to personal data described in item 81.2

(a)	For what the Provider must indemnify the Permitted Purchasing Body	<p>All of the following</p> <ul style="list-style-type: none">• For all Losses incurred by the Permitted Purchasing Body and/or its Affiliate• As a result of any Claim made or threatened by any person• To the extent the Claim alleges any of the following by the Provider and/or anyone acting on its behalf in relation to the personal data of any individual described in item 81.2<ul style="list-style-type: none">- Any breach of the Data Protection Act 1998 (or other relevant Law relating to the holding and processing of that personal data).- Any other wrongdoing in relation to that personal data.
(b)	Exceptions to this indemnity	<p>This indemnity does not apply to the extent either of the following applies to the relevant breach or other wrongdoing:</p> <ul style="list-style-type: none">• The Provider was acting under the written instructions of the Permitted Purchasing Body.• The negligence, breach of Law or other wrongdoing by the Permitted Purchasing Body was involved.
(c)	To what this indemnity is subject	Section 96.

81.5 Handover obligations of the Provider in relation to relevant personal data described in item 81.2

(a)	Main obligations	<p>The Provider shall comply with the reasonable directions of the Permitted Purchasing Body regarding (all of the following)</p> <ul style="list-style-type: none">• Handover of personal data• Held by or on behalf of the Provider• Relating to customers or the like of the Provider (including any Service Users described in item 3.1 and individuals associated with them, such as family members or representatives) who are relevant to the Services.• Such handover is to be to the Permitted Purchasing Body or its nominee (e.g. a replacement provider) for the purposes of the continuation of the relevant services.
(b)	How the Provider must comply with its obligations in this item 81.5	It must do so promptly, and at its own cost.
(c)	To what the Provider's obligations in this item 81.5 are subject	They are subject to the Provider complying with its genuine obligations under Law relating to data protection.
(d)	Whether this item 81.5 limits the Provider's exit obligations under section 110	No.

82. Processing Client Personal Data

82.1 Application of this section 82

It applies where the Work Order indicates that the Provider is to be a data processor in relation to any Client Personal Data.

82.2	Description of the personal data of the Permitted Purchasing Body (or its Affiliate) which the Provider is to process as part of the Services ('Client Personal Data')	<p>As indicated in any of the following</p> <ul style="list-style-type: none"> • The Individual Specification. • A sufficiently-completed Work Order. • The General Specification applicable to the relevant Flexible Purchasing System.
82.3	Definitions of various expressions	<p>Unless the context otherwise requires, the expressions 'data controller', 'data processor', 'data subject', 'processing' and 'personal data' shall have the same meanings in these Terms and Conditions as in the Data Protection Act 1998.</p>
82.4	The Provider must comply with all of the following in the processing of Client Personal Data in the Provider's possession or control in connection with the Services	
(a)	Specification	All relevant and lawful obligations and instructions in the Specification.
(b)	Policies etc.	<p>Reasonable, lawful and adequately communicated policies or instructions of the Permitted Purchasing Body from time to time.</p> <p>The Provider's own policy (to the extent they impose a higher standard than the Permitted Purchasing Body's policies).</p>
(c)	Disclosure	<p>The Provider must not disclose or transfer possession of any Client Personal Data except:</p> <ul style="list-style-type: none"> • With the written permission of the Permitted Purchasing Body (not to be unreasonably withheld where the Provider has reasonable safeguards in place). • As reasonably necessary to provide the Services. • As reasonably necessary to enable the Provider or the Permitted Purchasing Body to comply with the Law.
(d)	Law	In any case, relevant Law, particularly the Data Protection Act 1998 and (where relevant) General Data Protection Regulation as amended from time to time, including where relevant all of the data protection principles indicated in that Act or that Regulation.
82.5	<p>Measures the Provider must have in place when processing relevant Client Personal Data: appropriate technical, operational and organisational measures which comply with relevant Law (in particular, the Seventh Principle of the Data Protection Act 1998 or the equivalent in the General Data Protection Regulation) in place to do all of the following</p>	
(a)	Integrity	To protect integrity of Client Personal Data.
(b)	Prevent undesirable consequences	To prevent it being accessed, copied, modified or otherwise used unlawfully or without authority or otherwise being lost, damaged or destroyed.
(c)	Breaking Law	To prevent any unreasonable risks of the Provider causing the Permitted Purchasing Body and/or its Affiliates to break any Law in relation to that Client Personal Data.
82.6	<p>The Provider's obligations to describe the measures it (or its relevant subcontractor) has in place for the purposes of item 82.5: it must promptly provide the Permitted Purchasing Body on written request (such request not to be made more than once per calendar year unless it has reasonable grounds to suspect significant problems) any of the following (as requested):</p>	
(a)	Description	A written description of those measures.

(b)	Report	A written report indicating compliance with such measures to the extent they relate to the Client Personal Data.
(c)	Copies of documentation	<ul style="list-style-type: none"> • Copies of all documentation of the Provider or its relevant subcontractors. • Which is relevant to its (or its subcontractor's) compliance with those measures, including manuals, procedures, protocols, and training.
82.7	The Provider's obligations in relation to queries of the Permitted Purchasing Body raised in relation to Client Personal Data in the Provider's possession or control for purposes of the relevant Services	It must respond to that query in a prompt and proper manner.
82.8	If the Provider or its subcontractor receives any communication from the Information Commissioner or other regulatory body in connection with the processing of Client Personal Data	<p>The Provider must do all of the following</p> <ul style="list-style-type: none"> • Communicate the matter to the Representative of the Permitted Purchasing Body in 5 Business Days from receiving the communication. • Provide the Permitted Purchasing Body with reasonable cooperation in relation to the response of the Permitted Purchasing Body. This is subject to the Permitted Purchasing Body reimbursing the Provider for its reasonable and sufficiently evidenced costs in providing that cooperation.
82.9	Requests, complaints, communications.: the Provider's obligations <ul style="list-style-type: none"> • In relation to any request (including any access request), complaint or other communication which the Provider or its subcontractor receives • From any person (including a relevant data subject or any other person with a right to access by Law, or the Information Commissioner or other regulatory or law enforcement body) • In relation to Client Personal Data in the Provider's possession or control for the purposes of the relevant Services 	
(a)	Inform: the Provider must inform the Representative of the Permitted Purchasing Body of the relevant matter as follows	
(i)	When	In a prompt manner, and in any case no later than 5 Business Days after first receiving the request., complaint or other communication
(ii)	What it must provide	Providing the Representative with such relevant information the Provider has about the request, complaint or other communication.
(b)	Cooperation: the Provider must provide the Permitted Purchasing Body with reasonable and timely cooperation in relation to the request, complaint or other communication including the following (without limiting what cooperation may be required, and to the extent relevant)	
(i)	If the request, complaint or other communication is made to the Provider or its subcontractors directly	<ul style="list-style-type: none"> • The Provider must inform the Permitted Purchasing Body of the request within 5 Business Days. • In doing so, the Provider must give the Permitted Purchasing Body copies of the relevant request, complaint or other communication.
(ii)	In relation to an access request	<ul style="list-style-type: none"> • The Provider must comply with the access request to the extent it has the relevant requested Client Personal Data in its possession or control, or otherwise assist the Permitted Purchasing Body to do so. • The Provider must do so by relevant deadlines according to relevant Law.

	(iii) Supply Client Personal Data	The Provider must supply the Permitted Purchasing Body with relevant requested Client Personal Data in its possession or control to enable the Permitted Purchasing Body to respond to the access request.
	(iv) Instructions	The Provider must comply with reasonable and relevant instructions of appropriate representatives of the Permitted Purchasing Body.
82.10	Purposes for which the Provider must restrict its processing of the Client Personal Data	<p>Only to those purposes</p> <ul style="list-style-type: none"> Legitimately connected with the relevant Services; and/or To enable the Provider and/or its subcontractors to meet their respective obligations under the Law according to such processing.
82.11	Assistance the Provider must give the Permitted Purchasing Body to enable it to meet its obligations in relation to relevant Client Personal Data	<ul style="list-style-type: none"> It must give the Permitted Purchasing Body prompt and reasonable cooperation (on reasonable written request of the Permitted Purchasing Body) in relation to any obligation under Law or contract which the Permitted Purchasing Body has in relation that Client Personal Data, including any lawful access request. The Provider's obligations under this item 82.11 are subject to the Permitted Purchasing Body paying the Provider a reasonable additional administration fee if requested in writing by the Provider.
82.12	Transferring Client Personal Data outside EEA: the Provider must not cause or allow any Client Personal Data in its possession or control to be transferred and/or otherwise processed outside the European Economic Area without the prior written consent of the Permitted Purchasing Body, such consent to be given as follows:	
	(a) If the country is deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC	Not to be unreasonably refused.
	(b) Where the Provider has provided reasonable evidence that the Client Personal Data will be subject to at least a comparable level of protection	Not to be unreasonably refused.
	(c) Otherwise	At discretion.
82.13	Refusing consent: each of the following is regarded as a reasonable ground for refusing consent to the transfer and/or processing of any Client Personal Data outside the European Economic Area (where relevant and not an exhaustive list of reasonable grounds to refuse consent)	
	(a) Identity	The Provider has not properly disclosed to the Permitted Purchasing Body the identity of the person who will be processing the relevant Client Personal Data.
	(b) Safeguards	The Permitted Purchasing Body is not reasonably satisfied with the adequacy of protection and safeguards in relation to the relevant Client Personal Data.
	(c) Model clauses	The Provider (and any relevant subcontractor) has not entered into an appropriate data handling agreement (or appropriate amendments to these Terms and Conditions and/or a relevant Work Order) which incorporate standard and/or model clauses which are approved by the European Commission.
82.14	Keeping informed – other: additional events or circumstances about which the Provider must inform the Permitted Purchasing Body (promptly and properly on the Provider first becoming aware of them) in relation to any Client Personal Data then in the Provider's possession control	
	(a) Unauthorised access	Any incident of unauthorised access to that Client Personal Data.

	<p>(b) Breach</p> <p>Any incident of processing of that Client Personal Data that is materially in breach of the Individual Contract.</p>
<p>82.15 Warranties and representations given by the Permitted Purchasing Body in relation to its Client Personal Data to be processed by or on behalf of the Provider from time to time</p>	<ul style="list-style-type: none"> • Only those (if any) indicated elsewhere in these Terms and Conditions and/or a relevant Work Order. • All other such warranties and representations shall be excluded to the fullest extent permitted by Law.
<p>82.16 Provider indemnity: the Provider must indemnify (and keep indemnified) the Permitted Purchasing Body and/or its Affiliates in relation to the Provider's processing of relevant Client Personal Data (as follows)</p>	
<p>(a) Losses for which the Provider must indemnify (and keep indemnified) the Permitted Purchasing Body and/or its Affiliates</p>	<p>The respective Losses incurred by the Permitted Purchasing Body and/or its Affiliate as a result of any Claim made or threatened against it in connection with any one or more of the following in relation to any Client Personal Data in the possession or control of the Provider in connection with the Individual Contract:</p> <ul style="list-style-type: none"> • Its loss, and/or • Its misuse, and/or • Any unauthorised access to it.
<p>(b) Exceptions to the indemnity</p>	<p>To the extent either of the following applies:</p> <ul style="list-style-type: none"> • The Provider's act or failure to act is as a result of its proper compliance with the clear and properly authorised written instructions of the Permitted Purchasing Body at the time, including those indicated in the Specification. • The negligence, breach of Law or other wrongdoing by the Permitted Purchasing Body was involved.
<p>(c) Other rules in relation to this indemnity</p>	<p>See section 96.</p>
<p>82.17 Rights of the Permitted Purchasing Body to inspect the Provider or its subcontractors to ensure compliance with its obligations under these Terms and Conditions and/or a relevant Work Order relating to the processing of the Client Personal Data</p>	<p>As indicated elsewhere in these Terms and Conditions (see in particular, section 86).</p>
<p>82.18 Obligation to return or destroy: the Provider's must return or destroy Client Personal Data (including copies) then in its possession or control (regardless of the medium in which the Client Personal Data is held at the time) as follows</p>	
<p>(a) On request</p>	<p>The Provider must do so promptly on the written request of the Permitted Purchasing Body.</p>
<p>(b) Costs</p>	<p>The Provider must bear its own costs in doing so.</p>
<p>(c) When the request cannot be made</p>	<p>The Permitted Purchasing Body must not make that request if the Provider still reasonably requires that Client Personal Data to provide the Services.</p>
<p>82.19 Obligations of the Provider to certify compliance with item 82.18 (to do so at no further charge and without any conditions or qualifications imposed on the certificate)</p>	<ul style="list-style-type: none"> • The Provider must do so within 30 days of the written request of the Permitted Purchasing Body. • The certificate of compliance must be signed by the Provider's Representative (or other person of at least equivalent seniority within the Provider's organisation). • The certificate must be in a form approved by the Lead Council acting reasonably.

82.20	General obligations of the Provider in relation to its (and/or its subcontractor's) Personnel who have access to Client Personal Data from time to time	<p>The Provider must do all of the following:</p> <ul style="list-style-type: none"> • Ensure those individuals are aware of the confidential nature of the Client Personal Data. • Ensure those individuals are suitably trained, resourced and generally supported in their relevant duties in relation to the Client Personal Data. • Ensure those individuals do not do anything in relation to the Client Personal Data (including disclosing it, misusing it, or giving anyone access to it) that would be a breach of the Individual Contract if done by the Provider directly.
82.21	Processing by subcontractors: the Provider must do the following if its directly or indirectly appointed subcontractor processes any relevant Client Personal Data in connection with the relevant Services (without limiting the Provider's obligations in relation to such subcontractor generally)	
	(a) Ensure compliance	The Provider must ensure the subcontractor's compliance with relevant obligations under this section 82 in connection with the subcontractor's processing of relevant Client Personal Data.
	(b) Subcontractor's acts	The Provider must accept any act or failure to act by the subcontractor in relation to such obligations as if it were the Provider's own act or failure to act.
	(c) Exception (section 64)	Item (b) does not apply if the subcontractor is a Client Required Subcontractor indicated in item 64.1.
82.22	Acknowledgements of the Provider and the Permitted Purchasing Body in relation to Client Personal Data	<ul style="list-style-type: none"> • The Permitted Purchasing Body or its Affiliate (and not the Provider) is the data controller. • The Provider and its subcontractors have no right or interest in relation to the Client Personal Data except as indicated in these Terms and Conditions and/or a relevant Work Order.
82.23	Obligation of the Permitted Purchasing Body to pay the Provider further Charges or to reimburse the Provider for its costs in dealing with any complaints and/or access requests in relation to Client Personal Data in the Provider's possession or control from time to time in connection with the Services	No obligation to do so.
82.24	Whether this section 82 limits the confidentiality obligations (if any) owed by the Provider under 78	No.
82.25	Duration of the rights and obligations of the Permitted Purchasing Body and the Provider under this section 82	<ul style="list-style-type: none"> • They continue for as long as the Provider retains possession and/or control of such Client Personal Data in connection with the Individual Contract. • This applies even if the Provider is no longer providing the Services under the Individual Contract.

Monitoring

83. Record keeping

83.1 Records which the Provider is required to keep as part of the Services

(a)	Complaints by Service Users described in section 3	<p>A register of complaints by Service Users and/or their families in relation to Services provided to them, including:</p> <ul style="list-style-type: none"> • Nature of the complaint. • The way in which the complaint was resolved.
(b)	Records which the Provider must keep if any part of the Charges are calculated according to Personnel time spent	Copies of relevant Personnel timesheets evidencing time spent in relation to the Services for which the Permitted Purchasing Body is obliged to pay Charges to the Provider.
(c)	Reporting (section 84)	Data from which the Provider prepares reports it is required to submit to the Permitted Purchasing Body under section 84.
(d)	Personnel	<p>All of the following</p> <ul style="list-style-type: none"> • Records in relation to Personnel of the Provider and/or its direct subcontractors • To the extent such Personnel are engaged in connection with the Individual Contract • To the extent they evidence the Provider's compliance with these Terms and Conditions and/or a relevant Work Order.
(e)	Other specific records	As indicated in the General Specification.

83.2 Requirements of the Provider in keeping the records described in item 83.1

(a)	For how long the Provider must keep the records described in item 83.1	<ul style="list-style-type: none"> • 7 years from the date the record was created; or • Such longer or shorter period required by Law in relation to the record. <p>Exception: the Provider is not required to continue to hold records which the Permitted Purchasing Body requires to be sent elsewhere (e.g. to the Permitted Purchasing Body itself, or to another person).</p>
(b)	How the Provider must keep those records	<ul style="list-style-type: none"> • According to any requirements in the General Specification and/or the Individual Specification. • In any case, to the standards required generally of the Provider in section 12.
(c)	Where the Provider must keep those records in hard copy (i.e. not electronic).	<ul style="list-style-type: none"> • While the Provider is providing the Services: at the relevant premises. • After expiry or early termination of the Individual Contract: at any of its usual places of business in the United Kingdom. • In any case: at such other locations for the genuine purposes of record storage. However, the Provider must be able to access such records in a timely manner for inspection by the Permitted Purchasing Body where relevant (at the relevant premises if the Provider is providing the Services).

84. Reporting by the Provider

84.1 Regular reports which the Provider must supply the Permitted Purchasing Body in connection with the Individual Contract

Description of report, information required	Frequency, period covered	Due date
As indicated in the General Specification.	As indicated in the General Specification.	As indicated in the General Specification.
84.2 Circumstances where the Permitted Purchasing Body may require reports in addition to those indicated in item 84.1	<p>The Permitted Purchasing Body may do so (acting reasonably and proportionately and giving the Provider reasonable advance warning) where any of the following applies</p> <ul style="list-style-type: none"> • There has been a Material Breach of the Individual Contract by the Provider, even if it has been remedied. • There has been a persistent failure by the Provider to meet any of its obligations under the Individual Contract. 	
84.3 Format requirements of reports required under this section 84	<p>As indicated in the General Specification.</p> <p>If there is no indication in the General Specification: as directed by the Permitted Purchasing Body, acting reasonably.</p>	
84.4 How the Provider must provide reports to the Permitted Purchasing Body	<p>By e-mail to the Permitted Purchasing Body's Representative, or as the Permitted Purchasing Body otherwise reasonably instructs.</p>	
84.5 General obligations of the Provider in relation to reports it is required to send	<p>To ensure required reports are:</p> <ul style="list-style-type: none"> • Materially accurate; and • Not materially misleading (or reasonably likely to materially mislead) due to any inaccuracies or omissions. 	

85. Customer surveys

85.1 How the Provider must conduct customer surveys whilst it has Individual Contracts in place from time to time	As indicated in the General Specification.
85.2 Frequency with which the Provider must conduct customer surveys according to item 85.1	As indicated in the General Specification.
85.3 Assistance of the relevant Permitted Purchasing Body required to enable the Provider to carry out its obligations to carry out customer surveys	As indicated in the General Specification.
85.4 How the Provider must report the findings of customer surveys it must carry out under this section 85	As indicated in the General Specification.
85.5 Each due date by which the Provider must report its findings of customer surveys it must carry out under this section 85	As indicated in the General Specification.

86. Inspection

86.1	The Permitted Purchasing Body may inspect any of the following in relation to the Individual Contract if it wishes to do so	
(a)	Records	<ul style="list-style-type: none"> 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 relevant Services. These include any records which the Provider is specifically required to keep according to these Terms and Conditions and/or a relevant Work Order.
(b)	Systems etc.	Any system, ICT environment, process or the like relevant to the provision any of the Services.
(c)	Activities	Activities in relation to the carrying out of any of the Services.
(d)	Premises	Premises where any of the Services are provided (regardless of whether the Provider is the occupier).
86.2	Minimum notice the Permitted Purchasing Body must give before an inspection	<ul style="list-style-type: none"> At least 5 Business Days prior notice. Exceptions (either of the following): <ul style="list-style-type: none"> The Permitted Purchasing Body is not obliged 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.). Shorter notice to the extent the Provider agrees (at its discretion).
86.3	Any third parties who have the same rights of inspection under this section 86	Any genuine auditor of the Permitted Purchasing Body.
86.4	Obligations of the Provider if the Permitted Purchasing Body requires an inspection (having met the requirements in this section 86): the Provider must direct its relevant Personnel (including those of relevant subcontractors) to give reasonable, proper and timely assistance to representatives of the Permitted Purchasing Body (including its external auditor) in connection with the relevant inspection, including the following (without limitation)	
(a)	Access	Ensuring access to relevant premises to representatives of the Permitted Purchasing Body on a non-exclusive licence basis.
(b)	Making things available	Making relevant records or other items which the Permitted Purchasing Body is permitted to inspect available for this purpose.
(c)	Providing facilities	Providing suitable facilities for the purposes of the inspection.
(d)	Providing explanations	Providing open and accurate explanations and discussions from relevant Personnel, as reasonably required by such representatives of the Permitted Purchasing Body.
(e)	Subcontractors	To use reasonable endeavours (including exercising rights under a relevant subcontract) to ensure compliance with the rest of this item 86.4 by each such direct or indirect subcontractor insofar as an inspection is reasonably relevant to that subcontractor's activities in connection with the relevant Services.
86.5	Purposes for which the Permitted Purchasing Body must limit its inspections of the Provider - any of the following, to the extent relevant, to be read independently	
(a)	Compliance with Individual Contract	To ensure the Provider's compliance with the Individual Contract.
(b)	Personnel requirements	To ensure each Personnel allocated to the Services meets all requirements relevant to him/her and his/her duties according to section 36.
(c)	Accuracy of payments	To verify the accuracy of amounts claimed or paid by the parties to each other under the Individual Contract.

	(d) Reports (section 84)	To verify the accuracy of reports which the Provider gives the Permitted Purchasing Body under section 84.
	(e) Use of resources	To enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983, with a view to determining the economy, efficiency and effectiveness of the use of resources by the Permitted Purchasing Body.
	(f) Corrupt Acts (section 114)	To investigate any suspected breach of section 114 by the Provider in relation Corrupt Acts.
	(g) Financial viability	To evaluate the financial viability of the Provider and/or its guarantor (if relevant) to continue to meet its obligations and liabilities under the Individual Contract and/or under the relevant guarantee.
	(h) Client Personal Data (section 82)	To ensure the proper processing of any Client Personal Data in the possession or control of the Provider from time to time.
	(i) Rebates	To verify whether the Permitted Purchasing Body is entitled to any rebate in connection with the Flexible Purchasing System.
86.6	The Permitted Purchasing Body's right to take copies of records in the course of an inspection	It may do so, subject to reimbursing the Provider for its reasonable costs.
86.7	Right of the Permitted Purchasing Body to remove original records or other property of the Provider and/or its Affiliates	It may not do so except with the prior written consent of the Provider, at discretion.
86.8	How inspection costs are to be borne	Each party bears its own costs.
86.9	The inspection rights of the Permitted Purchasing Body under this section 86 continue as follows	
	(a) Records	<ul style="list-style-type: none"> For as long as the Provider is required to keep any records under these Terms and Conditions and/or a relevant Work Order (see section 83). Even if after the Provider is no longer required to provide any Services under the Individual Contract.
	(b) Property	<ul style="list-style-type: none"> Property of the Permitted Purchasing Body still in the possession or control of the Provider in connection with the Services, even if the Services have discontinued for any reason. Even if after the Provider is no longer required to provide any Services under the Individual Contract.
	(c) Where item (a) and item (b) do not apply	The inspection rights of the Permitted Purchasing Body shall discontinue when the Provider is no longer obliged to provide any Services under any Individual Contract whatsoever.

87. Keeping informed

87.1 How the Provider must keep the Permitted Purchasing Body informed of the matters indicated in this section 87

According to all of the following

- In writing where reasonably practicable
- In a proper and timely manner when the Provider first becomes aware of the matter
- Keeping the Representative (or other appropriate Personnel of the Permitted Purchasing Body) informed in a proper and timely manner of significant progress of events as they occur in relation to the relevant matter
- This section 87 is not to be read to limit the Provider's obligations.

87.2 If the Permitted Purchasing Body is **not** the Lead Council

The Provider shall be deemed to have met its obligation to inform the Permitted Purchasing Body on a particular matter required under this section 87 if the Provider provides that information to the Lead Council on the Permitted Purchasing Body's behalf.

Events or circumstances on which the Provider must keep the Permitted Purchasing Body informed under this section 87: as follows

87.3 Breach of warranty or representation

Any event or circumstance that would result in a breach of any warranty or representation given by the Provider in section 18 if the event or circumstance had occurred or arisen on a date when that warranty or representation was given according to section 18.

87.4 Unable to meet obligations

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

87.5 Property issues

The loss, theft, damage, destruction or other serious unfavourable consequence to any significant property of any kind (including without limitation, any documents, files, equipment, premises or data) of the Permitted Purchasing Body or its Affiliate which is then in the possession and/or control of the Provider for purposes reasonably connected with the Services.

87.6 Confidentiality breaches

The unauthorised disclosure, loss or other misuse of any Confidential Information of the Permitted Purchasing Body or its Affiliate which would constitute a breach of the Individual Contract by the Provider.

87.7 Client Personal Data (section 82)

As indicated in item 82.14.

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

(a) Harm to individuals

Death or serious personal injury or other serious harm to any other human being where the Provider knows (or reasonably ought to know) that human being is owed a duty of care by the Permitted Purchasing Body, including any employee of the Permitted Purchasing Body.

(b) Property loss etc.

The loss, theft, damage, destruction or other serious unfavourable consequence to any significant property of the Permitted Purchasing Body or its Affiliate.

(c) Breach Law

The Permitted Purchasing Body breaching any Law.

	(d) Duty of care	The Permitted Purchasing Body breaching any duty of care it owes to any third party (whether under tort, contract, statute or otherwise) where the Provider knows (or reasonably ought to know) about the duty of care owed to that person.
87.9	Any event or circumstance to which both of the following apply	
	(a) Who it affects	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 relevant Services.
	(b) Adverse publicity	If the event or circumstance were publicly known, it would create an unreasonable risk of serious, unjustified and unfavourable publicity to the Permitted Purchasing Body and/or its Affiliates due to its association with the Provider.
87.10	Loss of licences etc. (section 16)	The Provider 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 permission, licence, accreditation or the like which the Provider is required to have under item 16.1.
87.11	Preparation Activities (section 20)	Any of the matters described in item 20.6 in relation to any Preparation Activity for which the Provider is responsible.
87.12	In relation to Personnel	Any event or circumstance in relation to any Personnel of the Provider which would render the individual ineligible to be appointed to particular activities according to item 36.1.
87.13	In relation to any Key Personnel (section 40)	Any of the matters described in item 40.4.
87.14	Any of the following events or circumstances in relation to the Provider if he/she is a human being acting as a sole trader	
	(a) Bankruptcy	His/her bankruptcy and/or Any bankruptcy proceedings being commenced against him/her.
	(b) Charge, conviction	Him/her 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).
	(c) Right to remain	He/she no longer has right to remain in the United Kingdom (or such other country where his/her duties in connection with the Individual Contract are to be carried out).
87.15	Any of the following events or circumstances in relation to the Provider if it is an entity other than a human being (e.g. a company)	
	(a) 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.
	(b) 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.
	(c) Change in Control	Any change in Control of the Provider.

87.16	If the Provider is a consortium, partnership or the like, any of the following	
(a)	Change	Any change in the composition of its membership.
(b)	Events affecting members	Any of the events or circumstances in item 87.14 and/or item 87.15 (as relevant) apply to any of its members.
87.17	Litigation	<ul style="list-style-type: none"> Any litigation, arbitration, adjudication or mediation proceedings Before any court, arbitrator or any agency, inspectorate, ministry or public official or the like of any of these (whether local, national or supra-national) That is (on a reasonable view) likely to significantly and unfavourably affect its ability to carry out its obligations under the Individual Contract.
87.18	Investigations	<ul style="list-style-type: none"> Any non-routine investigation of the Provider by any regulatory or law enforcement body or the like (including the police) for any serious matter That is (on a reasonable view) likely to significantly and unfavourably affect its ability to carry out its obligations under the Individual Contract.
87.19	Corrupt Acts (section 114)	The carrying out of any Corrupt Act in breach of section 114.
87.20	Representative	Changes to the Provider's Representative from time to time.
87.21	In relation to Promised Subcontractors (section 60)	Any notice of termination given by or to any Promised Subcontractor insofar as it is relevant to the Services.
87.22	In relation to Client Required Subcontractors (section 64)	As indicated in item 64.5(d).
87.23	Other	As indicated elsewhere in these Terms and Conditions and/or in the General Specification and/or the Individual Specification.

88. Cooperation with regulatory investigations

88.1	Whether the Provider is required to cooperate with regulatory investigations affecting the Permitted Purchasing Body	It must do so, insofar as the investigations are reasonably connected with the provision of any Services.
88.2	Obligations of the Provider under this section 88: to provide (in a proper and timely manner) the Permitted Purchasing Body with reasonable cooperation (on request) in relation to any investigation to which both of the following apply	
(a)	Against whom the investigation is carried out	<ul style="list-style-type: none"> The investigation is conducted by or on behalf of a regulatory body against the Permitted Purchasing Body and/or its relevant Affiliate. It may be a routine investigation, in response to a particular event or circumstance (e.g. a complaint, major incident etc.) or otherwise.
(b)	Connected with Services	The investigation relates (in part or full) to activities by or on behalf of the Provider in connection with any relevant Services.

88.3 **What is included in the cooperation required under item 88.2:** the Provider must do the following (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 premises, records, property or otherwise to allow it 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 use reasonable endeavours to ensure each of its relevant subcontractors provides comparable cooperation to the extent that subcontractor's activities in relation to the relevant Services are involved.

88.4 Right of the Provider to impose additional charges and/or to claim reimbursement for its third party expenditure in providing the cooperation described in this section 88

No right to do so.

Contract management

89. Recovery of contract management costs

89.1 Amounts payable by the Provider to Permitted Purchasing Body, if demanded by the Permitted Purchasing Body

Item	Charge payable by the Provider to the Permitted Purchasing Body	When payable
(a) Reimbursement of the Permitted Purchasing Body's costs in approving any Remedial Plan (section 91)	Officer time at £50/hour + VAT	Payable in full, 30 days after the Permitted Purchasing Body's written demand
(b) Reimbursement of the Permitted Purchasing Body's costs in carrying out its obligations under any Remedial Plan (section 91)	Officer time at £50/hour + VAT	
(c) Reimbursement of the Permitted Purchasing Body's costs in dealing with Material Breaches of the Provider (e.g. in managing remedial activity)	Officer time at £50/hour + VAT	Payable in full, 30 days after the Permitted Purchasing Body's written demand
(d) Reimbursement of the Permitted Purchasing Body's investigation costs if the Permitted Purchasing Body has reasonable grounds to require the removal of Personnel of the Provider or any subcontractor appointed by the Provider (as permitted in these Terms and Conditions)	Officer time at £50/hour + VAT	Payable in full, 30 days after the Permitted Purchasing Body's written demand
(e) Training provided by the Permitted Purchasing Body for new Personnel of the Provider or its subcontractors on contract compliance Only if required by the Provider Subject to the Permitted Purchasing Body having available staff at the time.	£50/hour + VAT.	

Suspension

90. Right to require suspension of Services due to Provider breaches

90.1	When the Permitted Purchasing Body may require suspension: the Provider shall suspend the provision of relevant Services under one or more Individual Contracts in place at the time if requested to do so by the Permitted Purchasing Body (in addition to any right of the Permitted Purchasing Body to do so in item 74.1(a) as an Uncontrollable Circumstance) if any of the following applies	
(a)	Material Breach	If (and for as long as) the Provider is remedying a Material Breach of the Individual Contract for the purposes of item 104.2.
(b)	Investigations: if (and for as long as) all of the following apply	
(i)	Non-routine investigation	<p>The Provider is subject to any significant, non-routine investigation</p> <ul style="list-style-type: none"> By any regulatory or law enforcement agency (e.g. the police, the Permitted Purchasing Body in exercise of any statutory function etc.); and/or By the Permitted Purchasing Body in relation to any serious 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 business activities of the Provider and/or its Affiliates, whether in the UK or elsewhere.
(iii)	Risks to the Permitted Purchasing Body if it did not require suspension of the Services	<p>If the Permitted Purchasing Body did not require the Services to be suspended, there would be an unreasonable risk of any one or more of the following:</p> <ul style="list-style-type: none"> Serious harm to any individual. Serious adverse consequences for any person's property. The Permitted Purchasing Body and/or its Affiliate breaching any genuine arm's length duty of care to another person. The good name of the Permitted Purchasing Body and/or its Affiliate being brought into serious disrepute without good reason. Serious, unjustified and unfavourable publicity to the Permitted Purchasing Body.
(c)	Other circumstances when the Permitted Purchasing Body may do so	As indicated in the General Specification and the Individual Specification.
90.2	Whether the Permitted Purchasing Body may extend the suspension to other Services which are not affected by the relevant circumstances described in item 90.1 (yes/no)	The Permitted Purchasing Body may do so.
90.3	Consequences of the suspension of any of the Services under this section 90 on the following	
(a)	Consequences for Charges in section 24	<p>The Permitted Purchasing Body shall be required to pay them.</p> <p>If the circumstances in relation to which the suspension relates becomes a Termination Default Event, this item (a) shall not prevent the Permitted Purchasing Body from recovering any Charges paid.</p>
(b)	Consequences for the rest of the Individual Contract (e.g. deadlines, service standards, etc.)	The Provider shall not be liable for breach of contract for failing to carry out the suspended obligations.

90.4	For how long the Permitted Purchasing Body is entitled to require the relevant Services to be suspended under this section 90	Only for as long as any of the circumstances in item 90.1 continue to apply.
90.5	How the Permitted Purchasing Body exercises its rights to suspend the Services in the circumstances described in item 90.1	<ul style="list-style-type: none"> • By communicating the matter in writing to the Representative of the Provider. • The formalities in section 121 are not required.

Defective work

91. Remedial Plans

91.1	Definition of a 'Remedial Plan'	<p>A plan in writing which</p> <ul style="list-style-type: none"> • Is requested by the Permitted Purchasing Body • In the circumstances described in item 91.2 • In the manner described in item 91.3 • Is agreed between the Permitted Purchasing Body and the Provider • Sets out the obligations of the Provider to remedy of any of its breaches of the type described in item 91.2, as requested by the Permitted Purchasing Body.
91.2	Breaches of the Individual Contract by the Provider which allow the Permitted Purchasing Body to give the notice described in item 91.3	<p>Any breach of the Individual Contract which is persistently unresolved by the Provider for a rolling 6 month period</p> <p>But only if it is reasonable in the circumstances for the Permitted Purchasing Body to give the notice in the circumstances.</p>
91.3	When the obligations of the Provider in this section 91 trigger	<p>When the Permitted Purchasing Body gives the Provider a notice which</p> <ul style="list-style-type: none"> • Must be given strictly according to section 121; and • May only be given by the Permitted Purchasing Body if there has been at least one breach of the kind described in item 91.2; and • Must indicate reasonably clearly the relevant breach of the Individual Contract by the Provider to which the notice relates; and • Must indicate that the Permitted Purchasing Body requires the Provider to provide a draft Remedial Plan which addresses the relevant breach of the Individual Contract indicated in the notice.
91.4	Consequences if the Permitted Purchasing Body gives the notice described in item 91.3	
(a)	Provider to give draft Remedial Plan	<p>The Provider must give the Permitted Purchasing Body a first draft of a Remedial Plan for the Permitted Purchasing Body's approval.</p> <p>The draft Remedial Plan must set out as a minimum:</p> <ul style="list-style-type: none"> • Steps the Provider proposes to take to do the following, as relevant <ul style="list-style-type: none"> - If the Provider's breach of the Individual Contract is continuing: to remedy that breach, and - In any case: to prevent the relevant breach from occurring in future. • A proposed deadline by which the Provider is to complete the proposed steps.

(b)	Deadline by which the Provider must give the Permitted Purchasing Body the first draft of the Remedial Plan	<ul style="list-style-type: none"> • Either <ul style="list-style-type: none"> - 30 days from the date the notice described in item 91.3 is given. - Such longer period indicated in the notice. • The Permitted Purchasing Body shall not unreasonably refuse a request from the Provider for an extension where all of the following apply: <ul style="list-style-type: none"> - The request is made in writing - The request is made before the above deadline. - The extension is reasonably necessary due to circumstances genuinely outside the Provider's control.
(c)	Consequence if the first draft (which properly meets the requirements of item (a)) is not provided by the relevant deadline in item (b) (if and as extended)	It shall be a Termination Default Event.
(d)	Obligations of the Permitted Purchasing Body	<ul style="list-style-type: none"> • The Permitted Purchasing Body must not unreasonably withhold its written approval to drafts of the Remedial Plan as submitted. • The Permitted Purchasing Body must provide the Provider with timely feedback if the Permitted Purchasing Body does not approve a particular draft.
(e)	Obligations of the Provider if the Permitted Purchasing Body withholds approval (with reasonable grounds)	<ul style="list-style-type: none"> • The Provider must reissue further drafts of the Remedial Plan to take proper account of any feedback, requests for amendments etc. provided by the Permitted Purchasing Body (acting reasonably and in good faith) to the previous draft. • The Provider must do so until a final draft is approved in writing by the Permitted Purchasing Body.
(f)	Obligations of both the Permitted Purchasing Body and the Provider	To work together in a timely, reasonable and generally cooperative manner to agree a final Remedial Plan.
(g)	Deemed approval of a draft Remedial Plan	<p>If the Permitted Purchasing Body has not communicated in writing to the Provider either</p> <ul style="list-style-type: none"> • Its rejection of a draft, or • Any genuine queries in relation to the draft, or • Any genuine requests for amendments to the draft <p>Within 30 days of the draft being submitted the Permitted Purchasing Body shall be deemed to have approved the draft.</p>
91.5	If the parties cannot agree on the Remedial Plan under item 91.4 more than 60 days after the deadline for submission of the first draft	
(a)	First step	<ul style="list-style-type: none"> • The matter shall be escalated to the Escalated Persons for resolution. • The parties shall direct their respective Escalated Persons to use reasonable endeavours to resolve matters in a timely manner.

	(b) Second step if and for as long as the matter remains unresolved more than 30 days after commencement of the first step described in item (a)	<p>The Permitted Purchasing Body may terminate each affected Individual Contract as follows</p> <ul style="list-style-type: none"> • By notice in writing to the Provider • To be given strictly according to section 121. <ul style="list-style-type: none"> - At any time before the matter is resolved. <p>If the Permitted Purchasing Body gives the termination notice: the effective date of the termination of the Individual Contract will be the date on which the notice is given, or such later date indicated in the notice. That later date cannot be later than the expiry date of the Individual Contract.</p>
91.6	Obligations of the Provider in relation to the Remedial Plan when the Permitted Purchasing Body has approved (or deemed to have approved) the Remedial Plan	
	(a) Obligations	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider must carry out its obligations in the approved Remedial Plan. • The Provider must complete those obligations by any relevant deadlines indicated in the Remedial Plan.
	(b) Right to extension	<p>The Permitted Purchasing Body shall not unreasonably refuse</p> <ul style="list-style-type: none"> • Any reasonable and proportionate request by the Provider <ul style="list-style-type: none"> - Issued to the Permitted Purchasing Body - In writing in a timely manner • To extend any deadlines in the Remedial Plan • If delays to completing the Provider's obligations are substantially and directly caused by events or circumstances outside the Provider's reasonable control. This includes any failure by the Permitted Purchasing Body to carry out its obligations (if any) in the Remedial Plan in a proper and timely way.
	(c) Costs of carrying out the Remedial Plan	<p>The Provider shall bear its own costs in carrying out its obligations in the Remedial Plan.</p>
91.7	Obligations of the Permitted Purchasing Body in relation to the Remedial Plan when the Permitted Purchasing Body has approved (or deemed approved) the Remedial Plan	<p>To carry out any of its obligations (if any) indicated in the Remedial Plan:</p> <ul style="list-style-type: none"> • In a proper and timely manner; and • At its own cost, unless otherwise indicated in the Remedial Plan or elsewhere in these Terms and Conditions and/or a relevant Work Order.
91.8	Character of any Remedial Plan in place from time to time	<ul style="list-style-type: none"> • It forms part of the Specification. • If there is any inconsistency between the Remedial Plan and the rest of the Specification: the Remedial Plan overrides the Specification in relation to that inconsistency
91.9	Whether the Provider's failure to properly complete its obligations under the Remedial Plan described in item 91.1 by the deadline in that Remedial Plan (if and as extended) is a Termination Default Event of the Provider (yes/no)	<p>Yes.</p>

91.10	Extent to which anything in this section 91 in itself limits the rights and remedies of the Permitted Purchasing Body in relation to any breach by the Provider described in item 91.2	<ul style="list-style-type: none"> • Nothing in this section 91 limits the rights and remedies of the Permitted Purchasing Body in connection with that breach. • This includes (where relevant and without limitation) <ul style="list-style-type: none"> - Any right to treat the failure as a Termination Default Event of the Provider if it becomes a Material Breach; and - Any right to claim any credit, compensation or the like of any of these.
92.	Step in Rights	
92.1	Definition of ‘Step in Rights’	The right of the Permitted Purchasing Body under this section 92 to temporarily take over all or a relevant part of the Services which the Provider is otherwise required to provide under the Individual Contract.
92.2	Extent to which the Permitted Purchasing Body is obliged to exercise Step in Rights at any particular time	No obligation.
92.3	Circumstances where a Permitted Purchasing Body is permitted to exercise Step in Rights in relation to the Services	<p>The Permitted Purchasing Body (acting reasonably and in good faith) believes it is necessary to exercise its Step in Rights for any of the following reasons</p> <ul style="list-style-type: none"> • To ensure proper continuity of the Services where there are serious and significant failures or disruptions in the Provider doing so for any reason (whether or not due to the Provider’s fault) <p>Exception: the Permitted Purchasing Body is not permitted to exercise its Step in Rights if the failures or disruptions are substantially and directly due to the failure by the Permitted Purchasing Body to properly provide any Client Assistance described in item 73.1).</p> <ul style="list-style-type: none"> • To protect the safety of individuals, property or the environment generally. • To enable the Permitted Purchasing Body to discharge an obligation it has under Law. • To deal with a situation that involves any of the public emergency services.
92.4	Procedure the Permitted Purchasing Body must follow before exercising its Step-in Rights	
	(a) How it must communicate its intention to exercise its Step in Rights	<ul style="list-style-type: none"> • The Permitted Purchasing Body must communicate the matter to the Provider in writing, subject to item (c). • The Permitted Purchasing Body is not obliged to comply with the formalities in section 121 in making that communication.

	<p>(b) Minimum information the Permitted Purchasing Body must include in its communication</p> <p>(c) Where such written communication is not required</p>	<p>All of the following:</p> <ul style="list-style-type: none"> • The action the Permitted Purchasing Body proposes to take in exercising Step in Rights. • Reasons for taking that action. • Expected consequences if the proposed action were not taken. • When its proposed action is to commence. • Estimated period its action is to last. • Estimated costs to the Permitted Purchasing Body in relation to the proposed action. • Estimated effects on the Services. <p>Where emergency action is reasonable in the circumstances.</p>
92.5	<p>Right of the Permitted Purchasing Body to take action substantially beyond what it has indicated in his/her communication described in item 92.4</p> <p>(a) Usual position</p> <p>(b) Exceptions to item (a)</p>	<p>The Permitted Purchasing Body must not to do.</p> <p>If either applies:</p> <ul style="list-style-type: none"> • It gives a further communication describing his/her proposed further action. • Where emergency action is reasonable in the circumstances to justify the further action.
92.6	<p>If the Permitted Purchasing Body exercises its Step in Rights for reasons other than due to a breach by the Provider</p> <p>(a) Duty of care of the Permitted Purchasing Body</p> <p>(b) Relief from obligation</p> <p>(c) Obligation of the Provider</p> <p>(d) Implications for Charges in section 24</p>	<p>The Permitted Purchasing Body shall exercise its Step in Rights</p> <ul style="list-style-type: none"> • Lawfully; and • With reasonable skill, care and diligence. <p>The Provider shall be relieved of its obligations to provide those parts of the Services which are carried out by the Permitted Purchasing Body in exercising its Step in Rights.</p> <p>The Provider must provide the Permitted Purchasing Body with reasonable assistance in carrying out its Step in Rights.</p> <p>Unaffected.</p>
92.7	<p>If the Permitted Purchasing Body exercises its Step in Rights due to a breach by the Provider</p> <p>(a) Implications for Charges in section 24</p> <p>(b) Whether the Permitted Purchasing Body owes the Provider any duty of care in the way in which the Permitted Purchasing Body carries out its Step in Rights</p> <p>(c) Whether the exercise of Step in Rights is the sole right and remedy of the Permitted Purchasing Body against the Provider (yes/no)</p>	<p>The Permitted Purchasing Body is not obliged to pay Charges during this period.</p> <p>No.</p> <p>No.</p>

Insurance

93. Provider's insurance requirements

93.1 The Provider must have in place

- Insurance of all of the following types
- To the minimum level indicated
- With a reputable insurer
- At all times whilst the Provider is obliged to provide any of the Services under the Individual Contract.

Type of cover		Minimum level of cover required
(a)	Employers' liability	£5 million or such higher level required by Law.
(b)	Public liability	£10 million
(c)	Professional indemnity	£2 million

93.2	Duration for which the Provider must ensure the insurances described in item 93.1 are in place	
(a)	In relation to insurance on a 'claims made' basis	<ul style="list-style-type: none"> • For as long as the Provider is providing any Services whatsoever under the Individual Contract; and • If the Work Order is a deed: For a further 12 years after the Provider has discontinued providing any of the Services whatsoever under the Individual Contract. • If the Work Order is a NOT deed: For a further 6 years after the Provider has discontinued providing any of the Services whatsoever under the Individual Contract.
(b)	In relation to insurance on a 'claims occurred' basis	For as long as the Provider is providing any Services whatsoever under the Individual Contract

93.3	Obligations of the Provider in relation to any subcontractor it appoints in connection with the Individual Contract	It must ensure the subcontractor has in place such cover that the Provider would be reasonably required to have in place under this section 93 if the Provider carried out the relevant activities in connection with the Individual Contract instead of that subcontractor.
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93.4	Obligations of the Provider to provide evidence that the insurance cover required under this section 93 is in place	<ul style="list-style-type: none"> • The Provider must provide the Permitted Purchasing Body with evidence that it has that insurance properly in place. • It must do so promptly on the Permitted Purchasing Body'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.
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93.5	Other obligations of the Provider in relation to the insurance cover required in this section 93	<p>The Provider must not</p> <ul style="list-style-type: none"> • Do anything; and/or • Fail to take reasonable action to do anything within its reasonable power; and/or • Assist or instruct anyone else to do or fail to do any of the above that results in • Such insurance cover being wholly or partly rendered void, voidable, suspended, vitiated, impaired or unenforceable (or the like of any of these), and/or • Any amounts paid under that insurance cover being wholly or partly repayable.
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93.6	Exemptions where the Provider or its relevant subcontractor is not required to have any particular insurance cover otherwise required in item 93.1	<ul style="list-style-type: none"> Only with the written consent of the Permitted Purchasing Body. If the Permitted Purchasing Body is not also the Lead Council: the Lead Council may give this consent on behalf of the Permitted Purchasing Body. Such consent cannot be unreasonably withheld where there are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements).
93.7	Consequences if the Provider does not have any of the insurance cover required in this section 93 at any time during the relevant period described in item 93.2	<ul style="list-style-type: none"> It shall be a Termination Default Event of the Provider. Even if the Provider later obtains that insurance cover during that period. This does not limit the rights and remedies of the Permitted Purchasing Body.

Liability

94. Liability of consortium members

94.1	If a party is a consortium, partnership under the Partnership Act 1890, joint venture or the like: nature of the liability of its members in connection with the Individual Contract	Their liability is 'joint and several'.
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95. Provider indemnity for Claims

95.1	For what the Provider must indemnify (and keep indemnified) the Permitted Purchasing Body and its Affiliates and their respective Personnel	<ul style="list-style-type: none"> For the respective Losses of the Permitted Purchasing Body and/or its Affiliate and/or their respective Personnel In relation to any Claim made or threatened against the Permitted Purchasing Body and/or its Affiliate and/or their respective Personnel Where the person making the Claim is not the Permitted Purchasing Body and/or its Affiliate Including without limitation, Claims for death, personal injury or property damage, or the imposition of any fine or penalty or the like To the extent the Claim relates to any of the matters described in item 95.2 Subject to the rest of this section 95.
95.2	Matters to which the indemnity described in item 95.1 applies: any of the following acts or failures to act <ul style="list-style-type: none"> By the Provider (or by anyone acting on its behalf whom the Provider has directly or indirectly appointed including its Personnel or subcontractors) In connection with the Individual Contract 	
(a)	Law	A breach of the Law by the Provider (or such other person acting on its behalf).
(b)	Negligence	<ul style="list-style-type: none"> Any act or failure to act by the Provider (or such other person acting on its behalf) To the extent it involves the negligence of the Provider (or that other person acting on its behalf) Against the third party claimant described in item 95.1.

(c)	Breach of the Individual Contract	<ul style="list-style-type: none"> Any act or failure to act by the Provider (or such other person acting on its behalf) To the extent that act or failure to act by the Provider (or that other person acting on its behalf) against the third party claimant described in item 95.1 Would be a breach of the Individual Contract if that act were done (or failed to be done) by the Provider against the Permitted Purchasing Body directly. This excludes delay or other failure by the Provider to pay amounts due to the Permitted Purchasing Body under the Individual Contract.
(d)	Use of property	<p>The unauthorised use and/or infringement of the property of the third party claimant described in item 95.1. by the Provider (or such other person acting on its behalf) including without limitation:</p> <ul style="list-style-type: none"> That third party claimant's Intellectual Property; and/or The supply of goods in connection with the Services in which that third party claimant has any interest.
(e)	Misconduct	The deliberate misconduct of the Provider (or such other person acting on its behalf).
(f)	Other duty	A breach of any other duty which the Provider and/or its Affiliate owes that third party claimant (whether arising in tort, contract, statute or otherwise).
95.3	Exceptions to the indemnity described in this section 95 to the extent the indemnity is given to the Permitted Purchasing Body and its Affiliates: to the extent any of the following applies	
(a)	Negligence etc. of the Permitted Purchasing Body	<p>To the extent the Losses were caused by the negligence or other wrongdoing of</p> <ul style="list-style-type: none"> The Permitted Purchasing Body and/or its Affiliates and/or their respective Personnel Any other agents separately appointed by the Permitted Purchasing Body and/or its Affiliates.
(b)	Requirement in Agreement, instruction	<p>To the extent the relevant act or failure to act by or on behalf of the Provider was significantly in compliance with</p> <ul style="list-style-type: none"> Any specific requirement elsewhere in the terms of the Individual Contract (as described in item 1.3); and/or Any written instruction issued by the Representative of the Permitted Purchasing Body.
(c)	In relation to the use of property described in item 95.2(d)	<p>Either of the following applies to the relevant property (including Intellectual Property where relevant)</p> <ul style="list-style-type: none"> The property has been specifically licensed or leased to the Provider and/or its Affiliate (whether under these Terms and Conditions or otherwise); and/or The Permitted Purchasing Body and/or its Affiliate has specifically made the relevant property available for use by the Provider in connection with the Individual Contract.
95.4	To what the indemnity given by the Provider in item 95.1 is subject	
		Section 96.

95.5	Whether the indemnity in this section 95 in itself limits the rights and remedies of the Permitted Purchasing Body and/or its Affiliates and/or their respective Personnel	No.
96.	Indemnities generally	
96.1	Application of this section 96	This section 96 applies to any indemnity one party (' Indemnifier ') gives to the other party and/or its Affiliate (' Indemnity Beneficiary ') under these Terms and Conditions and/or a relevant Work Order (' Relevant Indemnity ').
96.2	Some rules of interpretation in relation to any Relevant Indemnity	
(a)	Nature of obligation	The Indemnifier's obligation to indemnify the Indemnity Beneficiary includes an obligation to keep the Indemnity Beneficiary indemnified.
(b)	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).
(c)	How Relevant Indemnities are to be read	Independently of each other.
96.3	Consequence for any Relevant Indemnity when the Provider is no longer obliged to provide any Services under these Terms and Conditions	Such events or circumstances do not in themselves affect any person's rights or obligations in respect of that Relevant Indemnity.
96.4	Procedure the Indemnity Beneficiary must follow to claim amounts under a Relevant Indemnity	<ul style="list-style-type: none"> The Indemnity Beneficiary must give the Indemnifier a written demand. That demand must be given strictly according to section 121.
96.5	Deadline for payment by the Indemnifier to the Indemnity Beneficiary	30 days after having been given a demand for payment by the Indemnity Beneficiary.
96.6	Obligations of the Indemnity Beneficiary in relation to the indemnity	<ul style="list-style-type: none"> To take all reasonable steps to mitigate such Losses. Exception: to the extent these Terms and Conditions otherwise indicates it is not required to do so.
96.7	Circumstances where the Indemnifier can refuse to meet an indemnity in relation to a Claim made against the Indemnity Beneficiary (any of the following, as relevant)	
(a)	If the Indemnity Beneficiary has failed to give the Indemnifier written notice of the Claim within the following period of the Claim first being communicated to the Indemnity Beneficiary in writing	<ul style="list-style-type: none"> 30 days. This is a strict deadline. If the indemnity covers a threat of a Claim, the indemnity does not cover the Indemnity Beneficiary's Losses incurred before the notice is given. The relevant notice of the Claim must be given strictly in accordance with section 121.
(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), subject to each of the following, to the extent relevant	
(i)	Legal restrictions	This does not apply to the extent there are any legal or other genuine restrictions on the Indemnity Beneficiary giving Indemnifier such control.
(ii)	Consent from third parties	The parties must obtain all necessary consent from insurers and/or other arm's length third parties.

(iii)	Costs	The Indemnifier must bear all costs of that defence.
(iv)	Keeping the Indemnity Beneficiary informed	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	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.	<ul style="list-style-type: none"> The Indemnifier must not do anything (without good reason) to bring the name of the Indemnity Beneficiary into disrepute in the course of conducting the defence. The Indemnifier must not assist or instruct another person to do so.
(vii)	Indemnity Beneficiary's assistance with the defence	<ul style="list-style-type: none"> 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. Examples: such assistance may include (without limitation and as relevant) provision of relevant information, subject to relevant persons accepting reasonable confidentiality obligations.
(viii)	Reimbursement of costs	<p>The Indemnifier must reimburse the Indemnity Beneficiary for its following reasonable and sufficiently evidenced costs:</p> <ul style="list-style-type: none"> The Indemnity Beneficiary's third party disbursements, including external professional costs The time and effort of the Indemnity Beneficiary's Personnel in providing that assistance, at £50 per hour plus VAT.
(c)	Indemnity Beneficiary has failed to defend or settle	<p>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.</p> <p>This applies if the Indemnifier has not taken control of the defence of the Claim for any reason.</p>
(d)	Not to harm defence	<p>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 (without limitation):</p> <ul style="list-style-type: none"> Admitting liability, or Attempting to settle the Claim. <p>Exceptions: any of the following:</p> <ul style="list-style-type: none"> To the extent that act is authorised by the Indemnifier in writing (at its discretion). To the extent that act is required by Law.
(e)	Other compensation	To the extent the Indemnity Beneficiary has received any payment or other benefit (e.g. discount, saving, credit etc.) in relation to the third party Claim.

96.8 **No double recovery:** a party to the Individual Contract ('X') must refund to the other party to the Individual Contract as the Indemnifier any amount paid by the Indemnifier to X and/or its Affiliate and/or its Personnel (as the relevant Indemnity Beneficiary) if that relevant Indemnity Beneficiary and/or its Affiliate receives any amount 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, subject to the following

(a)	The amount to be refunded	X is not obliged to refund any amount greater than the amount paid by the Indemnifier to the Indemnity Beneficiary in relation to that particular Relevant Indemnity.
(b)	Keeping informed	X must inform the Indemnifier in writing (and make payment of the relevant refund) promptly on receipt of the payment from that other source.
(c)	Extent to which X is under any duty to the Indemnifier to seek such payment from that other source	<p>X:</p> <ul style="list-style-type: none"> • Must use reasonable endeavours to do so; 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 <p>In a reasonably proper and timely manner (at the Indemnity Beneficiary's own cost).</p>

97. Caps on the liability of the Provider

97.1 Caps on the liability **of the Provider** for liabilities described in item 101.1 which are **reasonably expected (according to the usual terms of insurance policies of the relevant types) to be covered by insurance** which the Provider is required to have under section 93

These caps are subject to these Terms and Conditions, particularly section 100 and section 101

To the level of the insurance cover which is relevant to the particular liability as required in item 93.1.

97.2 Caps on the liability **of the Provider** for liabilities described in item 101.1 **which are not covered elsewhere in this section 97**

These caps are subject to these Terms and Conditions, particularly section 100 and section 101

- To 125% of the Charges that would be payable by the Permitted Purchasing Body in connection with the Individual Contract in a calendar year, as if the Services were provided for that full calendar year.
- This applies regardless of whether those Charges had accrued or been paid at the time the liability first arose.

98. Caps on the liability of the Permitted Purchasing Body

98.1 Caps on the liability **of the Permitted Purchasing Body** for liabilities described in item 101.1

Other than in the circumstances described in item 98.2.

These caps are subject to these Terms and Conditions, particularly section 100 and section 101

- To £100 in aggregate in relation to the Individual Contract, per calendar year.
- The parties consider this reasonable having regard to the level of the duty of care which the Permitted Purchasing Body owes to the Provider in connection with the Individual Contract.

98.2 Caps on the liability of the Permitted Purchasing Body to the Provider for **loss of profit** of the Provider resulting from breach by the Permitted Purchasing Body in connection with these Terms and Conditions

No cap.

99. Exclusion of liability

99.1	Exclusions of liability of the Provider for acts (or failures to act) by a Client Required Subcontractor (section 64)	See item 64.7(b).
99.2	General exclusions of liabilities of the parties in connection with the Individual Contract This is subject to these Terms and Conditions, particularly section 100 and section 101	Liabilities of the parties for indirect or consequential losses are excluded.

100. Exceptions to caps and exclusions of liability

100.1	The caps and exclusions of a party's liability indicated elsewhere in the terms of the Individual Contract (as described in item 1.3) <ul style="list-style-type: none">• Do not apply and shall not be taken into account in calculating any caps on its liability• To the extent the liability relates to any of the following (each of these is to be read independently)	
(a)	Death etc.	Death or personal injury caused by that party's negligence.
(b)	Deliberate	<ul style="list-style-type: none">• That party's deliberate act or deliberate failure to act.• 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.
(c)	Fraudulent misrepresentation	That party's fraudulent misrepresentation.
(d)	Provider's subcontracting (item 59.1)	In relation to the liability of the Provider (all of the following): <ul style="list-style-type: none">• Any act or negligent failure by a subcontractor• Directly or indirectly appointed by the Provider• In connection with any of the Services to which the relevant liability relates Where all of the following apply: <ul style="list-style-type: none">• The act or negligent failure is in connection with the Services.• The Provider was required under item 59.1 to obtain the Permitted Purchasing Body's consent to that subcontractor.• Either of the following applies, as relevant<ul style="list-style-type: none">- The Provider failed to seek such consent; or- The Provider sought such consent, and the Lead Council refused consent to that subcontractor, in writing and with reasonable grounds.
(e)	Indemnities for third party Claims	Any indemnity that party gives under these Terms and Conditions and/or a relevant Work Order for third party Claims.

(f)	Specific debts	Specific debts arising under or in connection with the Individual Contract including (as relevant and without limitation) any liability to pay Charges under section 24 and any interest accruing on such debts.
(g)	Elsewhere in the terms of the Individual Contract (as described in item 1.3)	As indicated elsewhere in these Terms and Conditions and/or a relevant Work Order.
(h)	Not permitted by Law	Anything else to the extent liability cannot be capped and/or excluded by Law.

101. Caps and exclusions of liability – interpretation

101.1	Interpretation of caps and exclusions of the liability of a party ('X') in section 97 and section 98 and section 99	<ul style="list-style-type: none"> • They apply to X's liabilities of any kind in connection with the Individual Contract. • Regardless of whether the liability arises in tort, contract, under statute or otherwise. • Any cap on X's liability is to be aggregated between <ul style="list-style-type: none"> - The liability X owes to the other party; and - The liability X owes any third party under the Individual Contract.
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102. Apportionment of liability

102.1	Apportionment where the loss of party ('X') is only partly due to the fault of the other party ('Y')	<p>Where X's losses in particular circumstances relevant to the Individual Contract</p> <ul style="list-style-type: none"> • Are partly caused by the fault of Y and/or anyone acting on Y's behalf (whether in tort, contract, under statute or otherwise); and • Are partly due to other factors (including X's own acts and failures to act), <p>Then the liability of Y to X for compensation or the like shall be reduced fairly and proportionately to reflect the extent to which Y's act or failure to act contributed to causing X's losses.</p>
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Termination

103. Termination due to a Termination Default Event

103.1	Termination rights of a party (' Terminating Party ') if and for as long as a Termination Default Event applies to the other party (' Defaulting Party ')	The Terminating Party may terminate the Individual Contract if and for as long as a Termination Default Event applies to the Defaulting Party.
103.2	What are the Termination Default Events of the Provider	See section 104.
103.3	What are the Termination Default Events of the Permitted Purchasing Body	See section 105. i
103.4	Whether the Permitted Purchasing Body may terminate the Individual Contract	
(a)	If the Provider is removed from the Flexible Purchasing System by the Lead Council due to the Provider's Termination Default Event	The Permitted Purchasing Body may do so.

(b) If a Termination Default Event applies to the Provider under another contract which the Permitted Purchasing Body has with the Provider under the Flexible Purchasing System	The Permitted Purchasing Body may do so.
(c) If a Termination Default Event applies to the Provider under another contract which another entity has with the Provider under the Flexible Purchasing System	The Permitted Purchasing Body may do so.
103.5 Whether the Provider may terminate the Individual Contract if a Termination Default Event applies to the Permitted Purchasing Body under another contract which the Provider has with the Permitted Purchasing Body under the Flexible Purchasing System	The Provider may not do so.
103.6 Whether the Terminating Party may terminate only part of the Individual Contract under this section 103 if the Terminating Party wishes to do so	<ul style="list-style-type: none"> Only in relation to a part of the Individual Contract which is reasonably severable from the rest of the Individual Contract. <p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. According to the formal requirements in section 72. Promptly on being requested to do so by the other party.
103.7 How a Terminating Party terminates the Individual Contract (or the relevant part of it, if permitted in item 103.6) under this section 103	<p>By giving the Defaulting Party a notice as follows:</p> <ul style="list-style-type: none"> Strictly according to section 121. Setting out in reasonable detail a description of the Termination Default Event of the Defaulting Party. If partial termination is permitted in item 103.6: the notice must indicate sufficiently clearly the relevant part being terminated.
103.8 Interpretation	<p>If</p> <ul style="list-style-type: none"> 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 notice described in item 103.7 in relation to that Termination Default Event <p>Then the Terminating Party is no longer entitled to give that notice to the Defaulting Party in relation to that particular Termination Default Event.</p>
103.9 Effective date on which the Individual Contract (or the relevant part of it, if permitted in item 103.6) is terminated if a notice is given by the Terminating Party under item 103.7	<ul style="list-style-type: none"> On the date the notice is given, or On any later date indicated in that notice. That later date cannot be later than the expiry date of the Individual Contract.

103.10	Obligations of the parties in relation to their respective exit obligations in section 110 after a notice is given by the Terminating Party under item 103.7	The parties must commence them promptly after that notice is given.
103.11	Whether termination of the Individual Contract (or any part) under this section 103 in itself limits the rights and remedies of the Terminating Party	<ul style="list-style-type: none"> No. Without limiting this, if the Permitted Purchasing Body is the Terminating Party, termination does not in itself limit the Permitted Purchasing Body's rights (if any) to compensation for its increased costs in appointing a replacement service provider on an emergency basis.

104. Provider Termination Default Events

Each of the following is a Termination Default Event of the Provider (to be read independently) if and for as long as they continue to apply

General breaches

104.1	Material Breach not capable of being remedied	<ul style="list-style-type: none"> The Provider is in Material Breach of the Individual Contract. On a reasonable view, that Material Breach is not capable of being remedied by the Provider.
104.2	Material Breach capable of being remedied	<p>All of the following</p> <ul style="list-style-type: none"> The Provider is in Material Breach of the Individual Contract. On a reasonable view the Material Breach is capable of being remedied by the Provider. For as long as the Provider has still not remedied the Material Breach <ul style="list-style-type: none"> To the reasonable satisfaction of the Permitted Purchasing Body At the Provider's own cost More than 30 days after the Permitted Purchasing Body has requested the Provider to do so The Permitted Purchasing Body must have issued its request by notice given strictly according to section 121. The Permitted Purchasing Body shall 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.
104.3	Failure to supply first draft of Remedial Plan (item 91.4(c))	<ul style="list-style-type: none"> The Permitted Purchasing Body has requested the Provider to provide a first draft of a Remedial Plan under item 91.3. For as long as the Provider has not yet supplied that first draft of the Remedial Plan <ul style="list-style-type: none"> Which substantially meets the requirements of item 91.4(a) After the relevant deadline in item 91.4(b) (if and as extended) But only if item 91.4(c) indicates that this is a Termination Default Event of the Provider.

104.4	Failure to complete obligations under Remedial Plan (item 91.9)	<ul style="list-style-type: none"> For as long as the Provider still has not yet fully completed its obligations in the Remedial Plan indicated section 91 <ul style="list-style-type: none"> Properly according to the requirements of the Remedial Plan; and After the expiry of the deadlines (if any) indicated in the Remedial Plan (if and as extended) But only if item 91.9 indicates that this is a Termination Default Event of the Provider.
104.5	Failure to commence the Services in relation to the Individual Contract (item 21.2)	<ul style="list-style-type: none"> For as long as the Provider has not yet commenced to provide the Services under the Individual Contract After the deadline indicated in item 21.2, as extended under item 21.3.
104.6	Failure to pay debts	<p>If and for as long as the Provider has still not yet fully paid the following:</p> <ul style="list-style-type: none"> Any overdue debt owed to the Permitted Purchasing Body or its Affiliate Within 14 days of being demanded to do so Whether or not that debt is connected with the Individual Contract Subject to rights of set off, deduction or counterclaim which the Provider has in relation to that debt (if any) <p>But only where that overdue debt is not subject to a genuine dispute which the Provider or its Affiliate is using reasonable endeavours in good faith to attempt to resolve.</p>
104.7	Promised Subcontractor (section 60)	<p>If and for as long as both of the following apply to a Promised Subcontractor:</p> <ul style="list-style-type: none"> It substantially discontinues its required activities for any reason. The Provider has not proposed a reasonably suitable replacement for approval by the deadline indicated in item 60.2.
104.8	Insurance (item 93.7)	<ul style="list-style-type: none"> The Provider does not have in place the insurance cover required in section 93 at any time (even if it subsequently obtains it). But only to the extent this is a Termination Default Event according to item 93.7.
104.9	If the consent of the Permitted Purchasing Body is required to the assignment or novation of any part of the Individual Contract (section 120)	<p>The Provider assigns or novates any part of the Individual Contract (or becomes legally bound to do so) without having obtained that consent.</p>
General misconduct		
104.10	Serious misconduct	<ul style="list-style-type: none"> The Provider has engaged in serious misconduct Such misconduct includes without limitation, the Provider's involvement in a serious public scandal (whether or not in connection with these Terms and Conditions) In circumstances where a reasonable person would not expect the Permitted Purchasing Body to continue a commercial relationship of this kind with the Provider.

104.11 Misconduct in competitive exercise	<ul style="list-style-type: none"> • The Provider has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Permitted Purchasing Body in awarding to the Provider the contract to which the Individual Contract relates. • That misconduct includes without limitation <ul style="list-style-type: none"> - Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders. - Engaging in any canvassing activity. - Doing any act in connection with that competitive exercise that would breach section 114 in relation to Corrupt Acts if that act were done after these Terms and Conditions is entered. • It makes no difference whether or not the Provider's senior management knew of the misconduct (regardless of anything to the contrary in section 114).
104.12 Corrupt Act (section 114)	<ul style="list-style-type: none"> • The Provider's breach of section 114. • But only if item 114.3 indicates that this is a Termination Default Event of the Provider.
About the Provider	
104.13 Loss of licence, accreditation etc. (section 16)	<ul style="list-style-type: none"> • The Provider substantially discontinues holding any licence, permit, accreditation or the like which it is required to have under item 16.1. • If the Provider is required by Law to hold that licence, permit, accreditation or the like to provide any of the Services: this shall be a Termination Default Event of the Provider even if the Provider later remedies the issue. • Otherwise: this shall be a Termination Default Event only for as long as the Provider has failed to remedy the issue.
104.14 Disposal of assets etc.	<ul style="list-style-type: none"> • The Provider ceases to have title and/or possession to its business and/or other assets; and • On a reasonable view, this creates an unreasonable risk of the Provider being materially unable to carry out its obligations under the Individual Contract.
104.15 Change in Control	<p>Where all of the following apply:</p> <ul style="list-style-type: none"> • The Provider is a company with share capital. • There is a change in the majority underlying Control of the Provider. • That change in Control is not the result of the purchase of shares in the Provider on a public stock exchange. • The Permitted Purchasing Body (or the Lead Council acting on its behalf, if the Permitted Purchasing Body is not the Lead Council) has raised objections (with reasonable grounds) to that change in Control <ul style="list-style-type: none"> - By notice given strictly under section 121 - Not later than 30 days of having first been sufficiently informed of the change - For this purpose, the Lead Council shall not be regarded as being sufficiently informed of the change if the Lead Council has raised genuine questions and/or requests for further information with the Provider about the change.
104.16 Key Personnel (section 40)	<p>If and for as long as the circumstances in item 40.7 continue to apply in relation to the replacement of any Key Personnel.</p>

104.17 Bankruptcy (if the Provider is a human acting as a sole trader)	The Provider becomes bankrupt.
104.18 Certain convictions (if the Provider is a human acting as a sole trader)	The Provider is convicted of any crime of violence or dishonesty, any crime relevant to safeguarding (where the Services involve safeguarding issues) or any other offence resulting in a prison sentence (whether suspended or served).
104.19 Death (if the Provider is a human acting as a sole trader)	The Provider dies.
104.20 Disability (if the Provider is a human acting as a sole trader)	The Provider suffers total and permanent disability.
104.21 Mental Health Act (if the Provider is a human acting as a sole trader)	The Provider becomes a patient within the meanings of sections 94(2) or 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.
104.22 Certain appointments (if the Provider is an entity other than a human being – e.g. a company)	The Provider is subject to a court order (or equivalent) or a resolution 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.
104.23 Winding up (if the Provider is an entity other than a human being – e.g. a company)	<ul style="list-style-type: none"> The Provider is subject to a court order (or equivalent) or a resolution requiring the Provider to be dissolved and/or wound up. Exception: in relation to a genuine solvent reconstruction where <ul style="list-style-type: none"> The replacement entity agrees in writing to become legally bound to the obligations of the Provider under the Individual Contract. The replacement entity accepts in writing liability for the liabilities of the Provider in connection with the Individual Contract. 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 these Terms and Conditions. The replacement entity has the same underlying majority controlling ownership as the Provider.
104.24 Moratorium	If the Provider 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.
104.25 Unable to pay debts	<ul style="list-style-type: none"> If and for as long as the Provider is unable to pay its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law, including section 123 of the Insolvency Act 1986. This applies whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time) as they fall due, and the Provider has no reasonable prospect of paying such debts.
104.26 Composition with creditors	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.

Third party guarantee (e.g. parent company guarantee)

104.27 If the liabilities, obligations etc. of the Provider in connection with the Individual Contract are subject to any guarantee by a third party, **both** item (a) and item (b) apply

(a) Any of the following applies to the guarantor

(i)	If the guarantor is a human being	<p>Any of the following applies to him/her</p> <ul style="list-style-type: none"> • He/she dies. • He/she becomes a patient within the meanings of sections 94(2) or 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)	Certain appointments	The guarantor is subject to a court order (or equivalent) or a resolution 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.
(iii)	Winding up	The guarantor is subject to a court order (or equivalent) or a resolution requiring the guarantor to be dissolved and/or wound up.
(iv)	Unable to pay debts	<ul style="list-style-type: none"> • The guarantor is unable to pay its debts (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 debts. • Whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time
(v)	Composition with creditors	The guarantor enters into a composition or other similar arrangement with its creditors.
(vi)	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.
(vii)	Failure to pay debts	<p>The guarantor has failed to pay the following:</p> <ul style="list-style-type: none"> • Any overdue debt owed to the Permitted Purchasing Body or its Affiliate • Within 14 days of being demanded to do so • Whether or not in connection with the Individual Contract • But only where that overdue debt is not subject to a genuine dispute which the guarantor is using reasonable endeavours in good faith to attempt to resolve.
(viii)	If the guarantor is a partnership, consortium or the like	Any of the above events or circumstances applies to any of its members.

- (b) Failure to provide a replacement

- The Provider has failed to provide the Permitted Purchasing Body (within 14 days of that event or circumstance first occurring) a legally binding written guarantee given by a replacement guarantor, subject to the approval of the Permitted Purchasing Body (or by the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council).

For the purposes of this approval

- The Permitted Purchasing Body (or Lead Council on its behalf) must not require the replacement guarantor to accept terms that are materially more onerous on it than those which applied to the immediately preceding guarantor.
- The Permitted Purchasing Body (or Lead Council on its behalf) must not require the replacement guarantor to have greater comparable financial strength than that which the immediately preceding guarantor had at the time it entered into its guarantee.

104.28 If the Provider is a consortium, partnership or the like, if and for as long as **both** of the following apply

- (a) Certain events apply to a member

Any of the events or circumstances in this section 104 applies to any member at the time of the consortium, partnership or the like.

- (b) Failure to take steps

- The Provider has failed to remove that member from its involvement with the relevant Services within 14 days of the written request of the Permitted Purchasing Body (or Lead Council on its behalf if the Permitted Purchasing Body is not also the Lead Council).
- Such request by the Lead Council must be issued by a notice strictly according to section 121.

105. Permitted Purchasing Body Termination Default Events

105.1 **Non-payment by the Permitted Purchasing Body:** if and for as long as all of the following apply

- (a) Amounts overdue

Any amount owed by the Permitted Purchasing Body to the Provider in connection with the Individual Contract is overdue.

- (b) Not disputed

The amount owed is not subject to a genuine dispute which the Permitted Purchasing Body is using reasonable and genuine efforts to attempt to resolve.

- (c) No right to delay etc.

The Permitted Purchasing Body has no grounds under these Terms and Conditions and/or a relevant Work Order to refuse and/or to delay payment.

- (d) Overdue

The amount (or any part of it) must remain overdue more than **30 days** after the Provider has issued a further demand for payment.

- (e) How the Provider issues the demand described in item (c)

- Strictly according to section 121
- But addressed to the Escalated Person of the Permitted Purchasing Body.

- (f) When the Provider may issue the demand described in item (c)

At any time after the relevant amount first becomes overdue.

106. Termination by the Permitted Purchasing Body without Provider Termination Default Event

106.1	Whether the Permitted Purchasing Body may terminate the Individual Contract where no Termination Default Event applies to the Provider	<ul style="list-style-type: none"> The Permitted Purchasing Body may do so according to this section 106. This section 106 does not limit the termination rights of the Permitted Purchasing Body indicated elsewhere in the terms of the Individual Contract (as described in item 1.3).
106.2	Any initial period when the Permitted Purchasing Body may not terminate the Individual Contract	<p>The Permitted Purchasing Body cannot give the notice described in item 106.4 in the following initial period:</p> <ul style="list-style-type: none"> The first 12 months from the date of the Individual Contract; or Such longer initial period indicated in the Work Order.
106.3	Whether the Permitted Purchasing Body may terminate only part of the Individual Contract under this section 106	<ul style="list-style-type: none"> Only in relation to a part of the Individual Contract which is reasonably severable from the rest of the Individual Contract. <p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. According to the formal requirements in section 72. Promptly on being requested to do so by the other party.
106.4	How the Permitted Purchasing Body terminates the Individual Contract if it wishes to do so under this section 106	<ul style="list-style-type: none"> By notice in writing given to the Provider. The notice must be given strictly according to section 121. If the Permitted Purchasing Body is partially terminating the Individual Contract (and if it is permitted to do so in item 106.3): the notice must clearly indicate the part being terminated.
106.5	Effective termination date if the Individual Contract is terminated under this section 106	<ul style="list-style-type: none"> The Individual Contract shall terminate at the end of the notice period indicated in item 106.6. See section 116 regarding ongoing rights, obligations etc. of the parties after termination, including exit obligations in section 110.
106.6	Notice period if the Permitted Purchasing Body terminates the Individual Contract under section 106 The termination of the Individual Contract becomes effective at the end of this notice period	<p>Either</p> <ul style="list-style-type: none"> 6 months after the date the notice described in item 106.4 is given; or Any later date or event as indicated in the notice. That later date cannot be later than the expiry date of the Individual Contract.
106.7	Whether <ul style="list-style-type: none"> The Provider must continue to provide the Services as normal during the notice period; or The Provider is required to wind them down during the notice period 	It must continue to provide the Services as normal.
106.8	Whether the parties are to commence their respective exit obligations in section 110 during the notice period	Yes, except to the extent otherwise indicated in the exit plan.

107. Termination by the Provider without Permitted Purchasing Body Termination Default Event

107.1	Whether the Provider may terminate any Individual Contract to which it is a party where no Termination Default Event applies to the Permitted Purchasing Body	<ul style="list-style-type: none">• The Provider may do so according to this section 107.• This section 107 does not limit the termination rights of the Provider indicated elsewhere in these Terms and Conditions and/or a relevant Work Order.
107.2	Any initial period when the Provider may not terminate the Individual Contract to which it is a party under this section 107	<p>The Provider cannot give the notice described in item 107.4 in the following initial period:</p> <ul style="list-style-type: none">• The first 12 months from the date of the Individual Contract; or• Such longer initial period indicated in the Work Order.
107.3	Whether the Provider may terminate only part of the Individual Contract under this section 107	Not applicable
107.4	How the Provider terminates the Individual Contract if it wishes to do so under this section 107	<ul style="list-style-type: none">• By notice in writing given to the Permitted Purchasing Body.• The notice must be given strictly according to section 121.
107.5	Effective termination date if the Individual Contract is terminated under this section 106	<ul style="list-style-type: none">• The Individual Contract shall terminate at the end of the notice period indicated in item 107.6.• See section 116 regarding ongoing rights, obligations etc. of the parties after termination, including exit obligations in section 110.
107.6	Notice period if the Provider terminates the Individual Contract under section 107 (at the end of which termination becomes effective)	<ul style="list-style-type: none">• 6 months after the date the notice described in item 107.4 is given.• Such later date or event as indicated in the notice. That later date cannot be later than the expiry date of the Individual Contract.
107.7	Whether <ul style="list-style-type: none">• The Provider is to be required to continue to provide the Services as normal during the notice period; or• The Provider is required to wind them down during the notice period	It must continue to provide the Services as normal.
107.8	Whether the parties are to commence their respective exit obligations in section 110 during the notice period (yes/no)	Yes, except to the extent otherwise indicated in the exit plan.

108. Termination due to Uncontrollable Circumstances

108.1	Which party may terminate the Individual Contract due to Uncontrollable Circumstances	See item 76.3.
108.2	When that party may give the notice described in item 108.3	See item 76.4.
108.3	How the party in item 108.1 may terminate the Individual Contract	<p>By giving a notice to the other party as follows:</p> <ul style="list-style-type: none">• Strictly according to section 121; and• Setting out the relevant Uncontrollable Circumstance.

108.4	Whether partial termination of the Individual Contract is permitted	<ul style="list-style-type: none"> Only in relation to a part of the Individual Contract which is reasonably severable from the rest of the Individual Contract. <p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. According to the formal requirements in section 72. Promptly on being requested to do so by the other party.
108.5	Effective date of termination of the Individual Contract under this section 108	The date the notice is given, or such later date indicated in the notice.

109. Termination – other circumstances

109.1	Other circumstances where the Individual Contract may be terminated early	
(a)	By a party indicated in item 20.7 (section 20)	In the circumstances described in item 20.7 if a Preparation Activity described in item 20.1 remains incomplete after a particular deadline.
(b)	By the Permitted Purchasing Body (section 91)	In the circumstances described in item 91.5 if the parties cannot agree on a particular Remedial Plan described in section 91.
(c)	By the Permitted Purchasing Body	If any of the circumstances in regulation 73 of the Public Contracts Regulations 2015 applies.

Exit arrangements

110. Exit

110.1	Where this section 110 applies: it applies to the exit obligations of the parties under the Individual Contract when the first of the following applies	
(a)	Expiry	On expiry of the Individual Contract (see section 22).
(a)	Early termination	The early termination of the Individual Contract (or relevant part of it, if partial termination is permitted)
110.2	Exit obligations of the parties where this section 110 applies according to item 110.1	
(a)	Main obligations	The parties must comply with their respective obligations in the exit plan described in this section 110.
(b)	If the Individual Contract is only partly terminated (and partial termination is permitted)	The parties shall only carry out those exit obligations relevant to the terminated part which is terminated.

110.3 Exit plan for the purposes of this section 110	<ul style="list-style-type: none"> • As prepared by the Provider and approved by the Permitted Purchasing Body (or by the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council). • That approval must not be unreasonably withheld. • For this purpose, the Provider must submit to the Permitted Purchasing Body (or by the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council) a draft exit plan for Lead Council's consideration no later than 3 months from the date the Individual Contract. • Until the approval is given: <ul style="list-style-type: none"> - The Provider must work in a timely and diligent manner to prepare and submit further drafts of the exit plan if requested to do so by the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant). - The Provider must have proper regard for the reasonable feedback of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant) in preparing those further drafts. 						
110.4 Examples of reasonable grounds for the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant). to refuse approval to a draft exit plan described in item 110.3 (where relevant, and not an exhaustive list, and does not exclude other reasonable grounds for refusing approval)	<table border="1"> <tr> <td data-bbox="236 822 534 880">(a) Transfer of responsibility</td><td data-bbox="582 822 1484 1010">In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the orderly and timely transfer of responsibility to the person (whether the Permitted Purchasing Body or its replacement service provider) who will be continuing to provide the Services, including maintenance of the Services until the transfer is complete.</td></tr> <tr> <td data-bbox="236 1028 534 1086">(b) Returning data etc.</td><td data-bbox="582 1028 1484 1180">In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the return of any data, records or other property of the Permitted Purchasing Body and/or its Affiliates which were then in the possession and/or control of the Provider in connection with the Services.</td></tr> <tr> <td data-bbox="236 1198 534 1314">(c) Imposes certain things on the Permitted Purchasing Body</td><td data-bbox="582 1198 1484 1503"> <p>The draft exit plan proposes imposing any of the following on the Permitted Purchasing Body which are uncontrollable by the Permitted Purchasing Body and/or in any case unreasonable</p> <ul style="list-style-type: none"> • Additional costs. • Additional obligations. • Additional risks of serious adverse consequences for the Permitted Purchasing Body and/or any person to whom the Permitted Purchasing Body owes any duty of care at the time (whether it owes that duty of care under tort, a contract in place at the time or otherwise). </td></tr> </table>	(a) Transfer of responsibility	In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the orderly and timely transfer of responsibility to the person (whether the Permitted Purchasing Body or its replacement service provider) who will be continuing to provide the Services, including maintenance of the Services until the transfer is complete.	(b) Returning data etc.	In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the return of any data, records or other property of the Permitted Purchasing Body and/or its Affiliates which were then in the possession and/or control of the Provider in connection with the Services.	(c) Imposes certain things on the Permitted Purchasing Body	<p>The draft exit plan proposes imposing any of the following on the Permitted Purchasing Body which are uncontrollable by the Permitted Purchasing Body and/or in any case unreasonable</p> <ul style="list-style-type: none"> • Additional costs. • Additional obligations. • Additional risks of serious adverse consequences for the Permitted Purchasing Body and/or any person to whom the Permitted Purchasing Body owes any duty of care at the time (whether it owes that duty of care under tort, a contract in place at the time or otherwise).
(a) Transfer of responsibility	In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the orderly and timely transfer of responsibility to the person (whether the Permitted Purchasing Body or its replacement service provider) who will be continuing to provide the Services, including maintenance of the Services until the transfer is complete.						
(b) Returning data etc.	In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the return of any data, records or other property of the Permitted Purchasing Body and/or its Affiliates which were then in the possession and/or control of the Provider in connection with the Services.						
(c) Imposes certain things on the Permitted Purchasing Body	<p>The draft exit plan proposes imposing any of the following on the Permitted Purchasing Body which are uncontrollable by the Permitted Purchasing Body and/or in any case unreasonable</p> <ul style="list-style-type: none"> • Additional costs. • Additional obligations. • Additional risks of serious adverse consequences for the Permitted Purchasing Body and/or any person to whom the Permitted Purchasing Body owes any duty of care at the time (whether it owes that duty of care under tort, a contract in place at the time or otherwise). 						
110.5 If the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant) refuses to approve any Provider's draft exit plan described in item 110.3	Either party may require the parties to treat the matter as a dispute for the purposes of section 119 if the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant) has not approved it.						
110.6 Character of any approved exit plan	<ul style="list-style-type: none"> • It forms part of the Individual Specification. • If there is any inconsistency between the exit plan and the rest of the Individual Specification: the exit plan overrides the rest of the Individual Specification to the extent of the inconsistency. 						

110.7	Obligations of the Provider on expiry or early termination of these Terms and Conditions in relation to any Operating Manual described in section 7	It must make the latest version (properly updated) available to the Permitted Purchasing Body or its nominee (e.g. a replacement provider) promptly on the Permitted Purchasing Body's request (if the Permitted Purchasing Body does not already have that version)
110.8	How each party is to carry out its respective obligations under the exit plan described in this section 110	<ul style="list-style-type: none"> • In a proper and timely manner. • At its own cost unless otherwise indicated in the exit plan.
110.9	When the parties must commence their respective exit obligations described in the exit plan described in this section 110	<ul style="list-style-type: none"> • When the relevant event or circumstances described in item 110.1 occurs or arises; or • At such earlier time indicated elsewhere in these Terms and Conditions and/or a relevant Work Order and/or in the exit plan.

111. Handover obligations

111.1 **Where this section 111 applies:** it applies to the handover obligations of the Provider when the first of the following applies

(a) Expiry

On expiry of the Individual Contract (see section 22).

(b) Early termination

The early termination of the Individual Contract (or relevant part of it, if partial termination is permitted)

111.2 Specific handover obligations of the Provider where this section 111 applies

As indicated in the Work Order.

111.3 **General handover obligations of the Provider if the Services are to be taken over by the Permitted Purchasing Body or a replacement service provider on expiry or early termination of the Individual Contract:** all of the following to the extent relevant (and without limiting the specific obligations in item 111.2 and/or in any exit plan described in this section 110 or elsewhere in the Individual Contract (as described in item 1.3))

(a) Continued provision

To continue providing the Services as normal until the Permitted Purchasing Body or the replacement service provider is ready to take over the running of the Services.

(b) Service Users (section 3)

To comply with item (a) in a way to ensure the wellbeing of Service Users described in section 3 is maintained, to the extent the Services are relevant to their wellbeing.

(c) Work with Personnel

- To work cooperatively with Personnel of the Permitted Purchasing Body and/or its replacement service provider to provide reasonable assistance and advice concerning the continued provision of any of the Services.
- This includes the timely provision of information relevant to the Services on reasonable request of the Permitted Purchasing Body or the replacement service provider. This is subject to item 111.5.

<p>(d) If the Provider is still at the time a party to any Associated Document described in section 2</p>	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider must comply in a proper and timely manner • To the extent it is within its reasonable control to do so • With reasonable instructions of the Permitted Purchasing Body • Regarding the novation or assignment of that Associated Document • From the Provider to the replacement service provider or such other person as the Permitted Purchasing Body reasonably nominates • To be read subject to the relevant Associated Document (e.g. clauses in it covering novation and/or assignment).
<p>(e) If the Provider is still at the time a party to any contract described in item 10.1</p>	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider must comply in a proper and timely manner • To the extent it is within its reasonable control to do so • With reasonable instructions of the Permitted Purchasing Body • Regarding the novation or assignment of that contract • From the Provider to the Permitted Purchasing Body or the replacement service provider or such other person as the Permitted Purchasing Body reasonably nominates.
<p>111.4 Other obligations of the Provider</p>	<p>The Provider must use reasonable endeavours to ensure compliance with the obligations in this section 111 by its relevant direct and indirect subcontractors.</p>
<p>111.5 Limits on the Provider's obligations to make disclosures in carrying out its handover obligations in this section 111</p>	<p>This section 111 does not require the Provider and/or its subcontractors to disclose information to any person to which any of the following applies:</p> <ul style="list-style-type: none"> • Such disclosure would cause the Provider or its subcontractor to do any of the following <ul style="list-style-type: none"> - Break any Law (e.g. any Law relating to data protection etc.); and/or - Breach any genuine, existing confidentiality obligations it owes to a third party. • Such disclosure involves genuine commercially sensitive information of the Provider or its subcontractor (i.e. information that would genuinely, seriously and unfavourably affect the Provider's or the subcontractor's competitive position with its competitors).
<p>111.6 When the Provider must commence its handover obligations under this section 111</p>	<p>On the expiry or effective early termination date of the Individual Contract.</p>
<p>111.7 For how long the Permitted Purchasing Body can require the Provider to continue with the handover obligations under this section 111</p>	<p>For up to a further 6 months from the date in item 111.6; or Such other period indicated in the Work Order.</p>
<p>111.8 Who bears the Provider's costs in carrying out its handover obligations under this section 111</p>	<p>The Provider shall be entitled to its normal Charges whilst carrying out the handover obligations.</p>

Miscellaneous

112. Health and safety

112.1 **Obligations of the Provider in relation to health and safety when providing Services:** it must comply with the highest of the following standards when providing the Services (and to ensure its relevant Personnel and subcontractors do likewise)

(a)	Law	Requirements of the Law which are relevant to health and safety and the Services at the time.
(b)	Individual Specification, General Specification	Any health and safety requirements in the Individual Specification and/or in the General Specification.
(c)	Provider Submission	Any health and safety standards, procedures etc. contained in the Provider Submission.
(d)	Provider's own policy	Obligations contained in any health and safety policy the Provider has in place from time to time.
(e)	In relation to the Individual Contract	Specific health and safety requirements in the relevant Work Order.
(f)	The Lead Council's policy (section 14)	<ul style="list-style-type: none">• The Permitted Purchasing Body's health and safety policy (if any) from time to time.• But only to the extent the Provider is obliged to comply with it under section 14.

113. Equalities

113.1 Obligations of the Provider relating to **anti-discrimination and equalities** whilst it is providing any Services

- The Provider must have in place (at all times whilst it is providing any Services and in relation to its activities within the United Kingdom)
 - Appropriate policies and procedures relating to equalities and anti-discrimination matters, and
 - Systems in place to monitor and enforce those policies and procedures
- 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 Individual Contract.
This includes (in relation to activities within the UK) complying with the Equality Act 2010.

114. Corrupt Acts

114.1 Obligations of the Provider in relation to Corrupt Acts defined in item 114.2

- The Provider must not do any of the following in connection with the Individual Contract:
- Carry out any Corrupt Act
 - Assist or instruct another person to carry out any Corrupt Act.

114.2 Definition of a '**Corrupt Act**': any of the following acts (to be read independently)

(a) Certain offers	<p>The act is a direct or indirect offer or promise to which all of the following apply</p> <ul style="list-style-type: none"> • It is made to any Personnel of the Permitted Purchasing Body 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 <ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> • Any act which breaches any policy of the Permitted Purchasing Body from time to time regarding gifts to its Personnel • But only to the extent the policy is communicated in writing to the Provider.
(c) Certain offences	<p>In relation to the Provider's dealings with the Permitted Purchasing Body under the Individual Contract</p> <ul style="list-style-type: none"> • Any offence under the Bribery Act. • Any other offence under any Law relating to fraud.
(d) Serious attempts	<p>Any serious attempt by any Personnel of the Provider and/or its Affiliate to do anything indicated elsewhere in this item 114.2.</p>
114.3 Consequence of the Provider's breach of item 114.2	<p>It shall be a Termination Default Event of the Provider. This applies</p> <ul style="list-style-type: none"> • 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. <p>This does not limit the rights or remedies of the Permitted Purchasing Body and/or its Affiliates.</p>

115. Governing law and jurisdiction

115.1 Law under which the terms of the Individual Contract (as described in item 1.3) are to be interpreted and generally governed	English law.
115.2 Jurisdiction to exclusively apply to disputes arising in connection with the Individual Contract. This is subject to the dispute resolution arrangements in section 119	English courts.

116. Consequences of expiry or early termination

116.1 **Circumstances where the consequences in item 116.2 apply:** on the first of the following to occur

(a) Expiry	Expiry of the Individual Contract.
(b) Early termination	Early termination of the Individual Contract.

116.2 Consequences if the circumstances in item 116.1 apply

(a)	In relation to the Individual Contract	The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the Permitted Purchasing Body and the Provider in connection with the Individual Contract shall discontinue .
(b)	Examples	See item 116.3 for examples.
(c)	To what this is subject	This is subject to item 116.4 in relation to those which continue after the circumstances in item 116.1 apply.

116.3 Examples of the rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) which are **to discontinue** for the purposes of item 116.2 to the extent relevant to the Individual Contract

(subject to item 116.4 in relation to those which continue)

(a)	Providing the Services	<ul style="list-style-type: none"> Any obligation of the Provider under the Individual Contract to provide the Services (or relevant part). Exception: any continuing obligations to do so under any exit plan described in section 110 and/or in relation to any handover obligations described in section 111.
(b)	Opportunity	<ul style="list-style-type: none"> Any obligation of the Permitted Purchasing Body to give the Provider the opportunity to provide the Services (or relevant part). Exception: any continuing obligation to give the Provider the right to do so, if the Provider is to continue to provide any of the Services under any exit plan described in section 110 and/or in relation to any handover obligations described in section 111.
(c)	Charges (section 24)	<ul style="list-style-type: none"> Obligations of the Permitted Purchasing Body to pay Charges for any Services (or relevant part) provided after that date. Exception: the Permitted Purchasing Body must continue to pay the Charges for any Services which the Provider is obliged to continue to provide under any exit plan described in section 110 and/or in relation to any handover obligations described in section 111.

116.4 **Continuing rights, obligations etc.:** the following rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties **shall continue** until they are completed, until they expire, or indefinitely (as relevant according to the terms of the Individual Contract (as described in item 1.3) **regardless** of the occurrence of the circumstances described in item 116.1 (each of these are to be read independently)

(a)	Already arisen, accrued	Those in connection with the Individual Contract which had already arisen or accrued at the time the circumstances described in item 116.1 first arose.
(b)	Relating to certain events or circumstances	<p>Those which relate to events or circumstances</p> <ul style="list-style-type: none"> Which are connected with the Individual Contract; and Which occurred on or before the date on which the circumstances described in item 116.1 first arose.
(c)	Interest	Any interest accruing on any debts in connection with the Individual Contract which relate to events or circumstances which had already occurred or arisen on or before the date on which the circumstances described in item 116.1 first arose.

(d) Continuing nature

- Those in connection with the Individual Contract which are expressed (or which are reasonably implied) in these Terms and Conditions and/or a relevant Work Order to continue.
- This includes those under any Individual Contract which is to continue after expiry or early termination of these Terms and Conditions, as indicated in these Terms and Conditions.

117. Entire agreement

117.1 Status of the terms of the Individual Contract (as described in item 1.3)

Subject to this section 117, the terms of the Individual Contract (as described in item 1.3) represent the entire agreement between the parties on its subject matter.

117.2 Status of any previous agreements entered between the parties on the subject matter of the Individual Contract

They are fully extinguished immediately when the Individual Contract is entered.

117.3 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 in the terms of the Individual Contract (as described in item 1.3) and/or any document clearly cross-referenced in those terms (including any Associated Document described in section 2).

To the fullest extent permitted by Law:

- These are excluded from the Individual Contract.
- That party's liability in relation to any of these is excluded.

118. Relationship between the parties

118.1 Relationship between the parties created by the Individual Contract

The relationship of client and independent service provider.

118.2 Relationships **which are not** created by the Individual Contract

Any of the following

- Any partnership between the parties.
- Any relationship of principal and agent authorising one party to do anything (e.g. incur liabilities or obligations, make statements) on behalf of the other party (unless clearly indicated or reasonably implied in the terms of the Individual Contract (as described in item 1.3).
- Any employment relationship (or the like) between a party and/or its Affiliates and the Personnel of the other party and/or that other party's separate contractors and/or Affiliates.

119. Dispute resolution

119.1 Application of this section 119

To any dispute between the Permitted Purchasing Body and/or its Affiliates and the Provider (**'Disputing Parties'**) in connection with the Individual Contract (**'Relevant Dispute'**).

119.2 Obligations of the Permitted Purchasing Body if its Affiliate is a Disputing Party

If an Affiliate of the Permitted Purchasing Body is a Disputing Party, the Permitted Purchasing Body shall use reasonable endeavours to ensure the Affiliate complies with this section 119 in relation to the Relevant Dispute.

119.3	First step - resolution by Representatives	<ul style="list-style-type: none"> The Disputing Parties shall direct their Representatives to use their reasonable endeavours to resolve the Relevant Dispute in a timely manner and in good faith. The Disputing Parties shall bear their own costs in doing so.
119.4	Next step - resolution by Escalated Persons	<ul style="list-style-type: none"> If the Disputing Parties' Representatives cannot resolve the Relevant Dispute within 30 days: they shall escalate the matter to their respective Escalated Persons. The Disputing Parties shall direct their Escalated Persons to use their reasonable endeavours to resolve the Relevant Dispute in a timely manner and in good faith. The Disputing Parties shall bear their own costs in doing so.
119.5	Next step if the Relevant Dispute has not been resolved within 60 days of commencing the previous step: the Disputing Parties must attempt to resolve the Relevant Dispute by mediation, according to all of the following (unless it is reasonable for the Disputing Parties to resolve the Relevant Dispute by engaging an independent expert under item 119.6)	
	(a) How the Disputing Parties are to commence the mediation	<ul style="list-style-type: none"> By either Disputing Party giving the other Disputing Party a notice (strictly according to section 121) requesting mediation. Such notice must summarise in reasonable detail the Relevant Dispute (as understood in good faith by the Disputing Party giving that notice).
	(b) Mediation procedure the Disputing Parties are to use	The Model Mediation Procedure of the Centre for Effective Dispute Resolution or the comparable rules of any successor body ('Centre').
	(c) How the Disputing Parties must appoint the mediator	<ul style="list-style-type: none"> By agreement of the Disputing Parties (acting promptly and in good faith). They shall appoint a suitably qualified, independent mediator. If they cannot agree on a mediator within 7 days of first considering the issue, they shall request the Centre to recommend a mediator. The Disputing Parties must accept the person who is recommended unless there are genuine and serious concerns about that person's independence.
	(d) General obligations of Disputing Parties in the course of the mediation: all of the following	
	(i) Good faith	The Disputing Parties must act generally in good faith in attempting to resolve the Relevant Dispute.
	(ii) Cooperation	The Disputing 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's model agreement in force from time to time) as the mediator reasonably requires.
	(iii) Directions to Personnel	The Disputing 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"> The Disputing Parties must carry out the mediation in strict confidence. A party shall not be regarded as having breached its confidentiality obligations in these Terms and Conditions if it or its Affiliate makes disclosures of Confidential Information of the relevant Discloser for purposes connected with the mediation.
(v)	Without prejudice	The parties acknowledge that anything said or done by a Disputing Party in the course of the mediation shall not in itself prejudice its rights in any later proceedings between it and the other Disputing Party.
(vi)	Engagement	The Disputing Parties shall not engage (in connection with further proceedings involving the Relevant Dispute) the mediator as an advisor and/or to call him/her as a witness.
(e)	How mediation costs are to be borne	The Disputing Parties shall share equally the costs of engaging the mediator but shall otherwise bear their own costs.

119.6 Next step if the Relevant Dispute has not been resolved within 60 days of commencing the previous step (and if the Relevant Dispute is of a kind which (on a reasonable view or as indicated in these Terms and Conditions and/or a relevant Work Order) requires resolution by an independent expert – all of the following apply

(a)	How the Disputing Parties must resolve the Relevant Dispute	By the Disputing 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"> By either Disputing Party giving a notice to the other Disputing Party indicating it wishes this dispute resolution procedure to apply. That notice must be given strictly according to section 121.
(c)	How the expert is to be appointed	<ul style="list-style-type: none"> By agreement. If the Disputing Parties cannot reach agreement within 30 days, <ul style="list-style-type: none"> Either Disputing Party may refer the matter to the President at the time of the Chartered Institute of Arbitrators (or similar replacement body), who shall be instructed to appoint a suitably qualified, independent expert. The Disputing Parties shall accept the person appointed, unless there are genuine and serious concerns about that person's independence.
(d)	Cooperation	The Disputing Parties shall provide the expert with appropriate cooperation (e.g. access to records) to allow him/her to make his/her determination.
(e)	Costs	The Disputing Parties shall bear the costs of the expert's appointment equally.
(f)	Confidentiality	A party shall not be regarded as having breached its confidentiality obligations in these Terms and Conditions if it or its Affiliate makes disclosures of Confidential Information to the expert.
(g)	Without prejudice	The parties acknowledge that anything said or done by a Disputing Party in the course of disclosures to the expert shall not in itself prejudice its rights in any later proceedings between it and the other Disputing Party.

(h)	Engagement	The Disputing Parties shall not engage (in connection with further proceedings involving the Relevant Dispute) the expert as an advisor and/or to call him/her as a witness.
(i)	Accept	The Disputing Parties shall accept the expert's determination on the matter as final and binding until revised by the English courts. Exceptions <ul style="list-style-type: none"> • Where there is a significant and obvious error. • If it is later discovered that the expert was not independent of the Disputing Parties.
(j)	Status of the expert	<ul style="list-style-type: none"> • The expert shall act as an expert and not as an arbitrator. • The Arbitration Act 1996 does not apply to the expert.
119.7	Right of a Disputing Party to commence legal proceedings in relation to the Relevant Dispute	<ul style="list-style-type: none"> • It may do so if the Relevant Dispute is not resolved by mediation after at least 90 days from commencement of mediation. • Nothing in this section 119 shall prevent a Disputing Party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to the Individual Contract.

120. Assignment and novation

120.1	Consent of the Provider required if the Permitted Purchasing Body wishes to assign its rights, powers and benefits under the Individual Contract	All of the following <ul style="list-style-type: none"> • No consent is required. • The Permitted Purchasing Body must give the Provider notice of the assignment. • The Provider shall not be required to recognise the assignment until that notice is given.
120.2	Consent of the Provider required if the Permitted Purchasing Body wishes to novate the Individual Contract	<ul style="list-style-type: none"> • The prior written consent of the Provider is required. • This consent is not to be unreasonably withheld.
120.3	Consent of the Permitted Purchasing Body required if the Provider wishes to assign its rights, powers and benefits under the Individual Contract or wishes to novate the Individual Contract <div> <div>(a)</div> <div>In relation to the assignment of debts owed to the Provider by the Permitted Purchasing Body in connection with the Individual Contract</div> <div>(b)</div> <div>In relation to <ul style="list-style-type: none"> • The assignment of other rights and benefits of the Provider under the Individual Contract; and/or • The novation of the Individual Contract </div> </div>	All of the following <ul style="list-style-type: none"> • No consent is required. • The Provider must give the Permitted Purchasing Body notice of the assignment. • The Permitted Purchasing Body shall not be required to recognise the assignment until that notice is given. <ul style="list-style-type: none"> • The prior written consent of the Permitted Purchasing Body is required. • Such consent shall not be unreasonably withheld.

120.4	Consents of the other party required if a party requires (section 2)	<ul style="list-style-type: none"> The assignment of its rights, powers and benefits under any Associated Document; and/or The novation of any Associated Document. 	<ul style="list-style-type: none"> The same consents that apply to the assignments or novation of the Individual Contract also apply to the Associated Document. This is in addition to any other consents or other requirements indicated in the particular Associated Document.
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121. Notices

121.1	Application of this section 121	<p>It applies to all of the following:</p> <ul style="list-style-type: none"> Communications described in the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) as 'notices'. Other communications described in the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) as being subject to this section 121. <p>The formalities in this section 121 are not required in relation to other communications between the parties in relation to this relevant Work Order.</p>	
121.2	Methods by which notices must be given to be valid (in at least one of the following ways)		
	Method	When notice is deemed to have been given	
	(a) Hand delivery to the recipient's Representative	On the date it is given to him/her.	
	(b) By registered mail or courier to the recipient's last known address (addressed to the recipient's Representative unless otherwise indicated)	2 Business Days (or 5 Business Days if sent internationally if the sender is based in a different country to the recipient) after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered.	
121.3	Whether an exchange of e-mails is sufficient for the relevant notices or other communications described in item 121.1	<ul style="list-style-type: none"> No. This does not prevent use of e-mail for less formal communications between the parties. 	

122. Remedies

122.1	Consequence of the terms of the Individual Contract (as described in item 1.3) referring to a particular remedy in a particular circumstance	It does not in itself exclude the availability of any other remedy in that circumstance (unless otherwise clearly indicated).
122.2	Whether available remedies are cumulative	Yes.
122.3	Consequence if a person with rights under the Individual Contract pursues a particular remedy in a particular circumstance	That shall not in itself constitute a waiver of that person's right to pursue other available remedies in those circumstances (whether under common law, equity, statute or otherwise).
122.4	Rights of a person with rights under the Individual Contract to seek remedies other than damages against a party to these Terms and Conditions and/or a relevant Work Order	<ul style="list-style-type: none"> The parties acknowledge that damages may not always be an adequate remedy of that person in particular circumstances. Accordingly, that person may (without being required to prove special damage) obtain other remedies available to that person (whether arising under common law, equity, statute or otherwise), including without limitation, injunctions and/or specific performance.

123. Waivers

123.1	Strict requirements for a waiver of a party's rights or powers in connection with the Individual Contract to be binding on that party	<p>Only if all of the following apply to the waiver (and not otherwise):</p> <ul style="list-style-type: none"> • It is in writing. • It is clearly indicated to be a waiver of the relevant right or power. • It is properly authorised by that party.
123.2	Other rules regarding waiver of any party's right or power in connection with the Individual Contract	<ul style="list-style-type: none"> • 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, and does not affect any other right or power.

124. Third party rights

124.1	Rights of third parties with rights under the Individual Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999	These are excluded to the fullest extent permitted by Law, subject to item 124.2.
124.2	Third parties whose rights to directly enforce their rights under the Individual Contract under the Contracts (Rights of Third Parties) Act 1999 are retained (all of the following)	
(a)	Affiliates	Affiliates of the Permitted Purchasing Body.
(b)	Personnel	Personnel of the Permitted Purchasing Body and/or its Affiliates.
(c)	Third Party Beneficiaries (section 4)	Each Third Party Beneficiary described in section 4 in relation to Services provided for that person's benefit.
(d)	TUPE on commencement (section 47)	Any previous direct or indirect service provider of the Permitted Purchasing Body described in item 47.1(a) in relation to the indemnity given to it in section 47.
(e)	Provider indemnity in relation to the admissions agreement (section 48)	Any replacement service provider of the Permitted Purchasing Body in relation to the indemnity given by the Provider under item 48.8.
(f)	Helping subcontractors to get 'admitted body status' (section 48)	Any direct or indirect subcontractor of the Provider in relation to cooperation which the Permitted Purchasing Body must provide it under item 48.9 and item 48.10 in getting 'admitted body status'.
(g)	Eligible LGPS Employees (section 48)	Each Eligible LGPS Employee (if any) described in section 48.2.
(h)	Reimbursement of certain subcontractors for pension costs (item 48.6(j))	Any direct or indirect subcontractor of the Provider in relation to any reimbursement of certain pension-related costs, to the extent entitled under item 48.6(j).
(i)	Replacement Contractors	Any Replacement Contractor described in item 57.1 in relation to the indemnity described in section 57.
(j)	Inspection rights (section 86)	Any third party referred to in item 86.3 in relation to its inspection rights.

125. Severance

125.1 Application of this section 125

It applies where any section, item or other part of the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) is held by any court (or equivalent body) to be invalid or unenforceable for any reason.

125.2 First step

- If possible, the relevant provision shall be modified by removing or altering those parts of that provision that create the invalidity or unenforceability.
- Such removal or alteration shall be to the minimum extent necessary to allow the provision to be held to be valid and enforceable, having regard to the purpose of the relevant provision.

125.3 Second step

- If the action required in item 125.2 is not reasonably possible, the entire provision shall be severed from the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) unless it alters the fundamental nature of the Individual Contract or is otherwise against public policy.
- The remaining provisions shall remain in full force and effect.

126. Priority of documents

126.1 Priority of documents in connection with the Individual Contract to the extent of any inconsistency between them: in the following order

- If any arm's length third party is also a party to a particular Associated Document described in section 2:** that Associated Document to the extent it is not described elsewhere in this item 126.1.
- Each policy of the Permitted Purchasing Body with which the Provider must comply according to section 14.
- The exit plan in place at the time according to section 110.
- The business or service continuity plan in place at the time according to section 75.
- The Work Order of the Individual Contract, including the Individual Specification (to the extent not otherwise described elsewhere in this item 126.1).
- The General Specification, except
 - To the extent it is not described elsewhere in this item 126.1; and/or
 - To the extent the Permitted Purchasing Body (at its discretion) regards the Provider Submission as more favourable.
- These Terms and Conditions.
- If NO arm's length third party is also a party to a particular Associated Document described in section 2:** that Associated Document to the extent it is not described elsewhere in this item 126.1.
- The Provider Submission in relation to the Individual Contract.
- The Provider Submission to become a member of the Flexible Purchasing System.

127. Further assurances

127.1 Further obligations of the parties to the Individual Contract

At the request of the other party, each party must do all acts (including executing relevant documents) which (on a reasonable view) are necessary to give proper effect to the meaning of the terms of the Individual Contract (as described in item 1.3).

127.2 How the costs of the activities in item 127.1

By the party making the relevant request.

128. Definitions

The following words and expressions shall be given the meaning given to them respectively below for the purposes of the terms of the Individual Contract (as described in item 1.3), except to the extent the context otherwise requires

Defined term	Definition
Affiliate	<ul style="list-style-type: none"> 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 of that person. For this purpose, 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.
Agreed Grouping	See item 51.1.
Arising Intellectual Property	Any Intellectual Property arising as a result of activities in connection with the Services, whether created by the Provider, its subcontractors or otherwise.
Associated Document	Each of the, contracts, instruments or other documents described as such in section 2.
Business Day	Any day except a Saturday, Sunday or any official bank or public holiday in England.
Centre (item 119.5(b))	The Centre for Effective Dispute Resolution or a successor body.
Cessation Transfer	Any service provision change (for the purposes of the TUPE Regulations) to the Permitted Purchasing Body (or its replacement direct or indirect contractor) from the Provider (or its direct or indirect subcontractors) on the cessation of any of the Services provided under the Individual Contract.
Charges	The charges payable by the Permitted Purchasing Body to the Provider according to section 24.
Claim	A claim, proceedings, action, prosecution (or the like of 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 Purchasing Body and/or their respective Affiliates.
Client Assistance	Each assistance the Permitted Purchasing Body is to provide the Provider as described in item 73.1.
Client Change	See item 70.1.
Client Change Notice	See item 70.2.
Client Personal Data	See item 82.2.
Client Required Subcontractor	Each subcontractor indicated in item 64.1.
Client Warranted Information	See item 77.1.
Commencement Transfer	Any service provision change (for the purposes of the TUPE Regulations) from the Permitted Purchasing Body (or its previous direct or indirect contractors) to the Provider (or its direct or indirect subcontractor) on the commencement of any of the Services under the Individual Contract.
Confidential Information	In relation to a Discloser, as indicated in section 78.
Contract Standards	See item 6.1.

Defined term	Definition
Control	Where a person alone (and without having to refer to another person) has sufficient direct or indirect power to enable a resolution on any matter to be passed in relation to a company (or other entity other than a human being).
Corrupt Act	See item 114.2.
Defaulting Party	See section 103.
Discloser	A party to the Individual Contract (and its relevant Affiliates where indicated) in relation to its respective Confidential Information.
Disputing Party	See item 119.1.
Eligible LGPS Employee	See item 48.2.
Escalated Person	<ul style="list-style-type: none"> • In relation to the Permitted Purchasing Body: the Director of Adult Social Services at the time or his/her delegate. • In relation to the Provider: the most senior executive based in the UK at the time or his/her delegate.
Flexible Purchasing System	<p>The relevant Flexible Purchasing System</p> <ul style="list-style-type: none"> • Indicated in the Work Order • Under which the Individual Contract is entered. <p>Being either of the following established by Liverpool City Council in 2018:</p> <ul style="list-style-type: none"> • Flexible Purchasing System 1: extra care services for people over 55 • Flexible Purchasing System 2: extra care services for adults with support needs under over 55
FOI Act	See item 79.1.
FOI Party	Each party identified as such in item 79.1.
General Specification	<p>The specification applicable generally to the Flexible Purchasing System</p> <ul style="list-style-type: none"> • As that specification stands at the date on which the Work Order is entered • As it is amended (insofar as it relates to the Individual Contract) from time to time by agreement between the parties according to section 72.
Indemnifier	See item 96.1.
Indemnity Beneficiary	See item 96.1.
Individual Contract	The contract entered by the Permitted Purchasing Body and the Provider under the Flexible Purchasing System according to the rules and procedures of the Flexible Purchasing System from time to time.
Individual Specification	<p>The specification applicable to the Individual Contract specifically.</p> <ul style="list-style-type: none"> • As that specification stands at the date on which the Work Order is entered • As it is amended from time to time by agreement between the parties according to section 72.
Intellectual Property	Copyright, trade marks (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, 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 questions so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights.
Key Personnel	See item 40.1.

Defined term	Definition
Law	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> • Any statute, regulation or other subordinate legislation. • Any directive or other European instrument (to the extent it is binding on the party) • Any treaty • Any judgement, rule of common law or equity • Any stock exchange rule • Any order of a competent court, tribunal, arbitrator or the like of any of these • Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or the like of any of these) required by Law and affecting the relevant person and its activities in connection with the Individual Contract from time to time. • Any guidance or the like issued by authorised government bodies (whether legally binding or not) • Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect on the respective activities of any party in connection with the Individual Contract from time to time.
Lead Council	Liverpool City Council or such other entity holding the role from time to time in connection with the Flexible Purchasing System.
LGPS (section 48)	The Local Government Pension Scheme, which is established under regulations made under sections 7 and 12 of the Superannuation Act 1972.
LGPS Regulations (section 48)	The Local Government Pension Scheme Regulations 2013.
Losses	<ul style="list-style-type: none"> • All losses, damages, costs, charges and expenses incurred by the relevant party 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. • Exception: to the extent any of these are capped or excluded in these Terms and Conditions and/or a relevant Work Order.
Marketing Materials	Materials (e.g. brochures, advertisements, websites, apps, dedicated social media pages etc.) to be used by or on behalf of the Provider promote any of the Services, including those described in item 68.1.
Material Breach	<ul style="list-style-type: none"> • In relation to a party, a breach of the Individual Contract by that party (including an anticipatory breach of the Individual Contract by that party or a breach of any warranty or representation given by that party under the terms of the Individual Contract (as described in item 1.3) • Which has significant (and not trivial) consequences for the other party.
Operating Manual	See item 7.1.
Pensionable Pay (section 48)	The same meaning as in the LGPS Regulations.

Defined term	Definition
Personnel	<p>In relation to a firm or other organisation:</p> <ul style="list-style-type: none"> 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 the like of any of these). If that firm or other organisation is the Provider: any individual genuinely appointed or otherwise engaged in any of the capacities described above by a subcontractor which is directly or indirectly appointed by the Provider in connection with the Individual Contract. This includes any such subcontractor which is a human being operating as a sole trader. <p>If a firm is a human being operating as a sole trader, it includes that human being.</p>
Preparation Activity	Each activity indicated as such in item 20.1.
Pre-TUPE Transfer Liability	See item 58.1.
Promised Subcontractor	<ul style="list-style-type: none"> Each current subcontractor indicated in item 60.1. Any replacement subcontractor carrying out the relevant activities applying to such subcontractor indicated in item 60.2.
Provider Background Intellectual Property	<p>Any Intellectual Property:</p> <ul style="list-style-type: none"> Belonging to the Provider and/or its subcontractors and/or their respective third party licensors On which any Arising Intellectual Property depends.
Provider Change	See item 71.1.
Provider Change Notice	See item 71.2.
Provider Submission	<p>Any and all of the following</p> <ul style="list-style-type: none"> The Provider's application to become a member of the Flexible Purchasing System. Any proposal or the like given by Provider if the Individual Contract has been directly awarded to the Provider by the Permitted Purchasing Body, and which is annexed to the Work Order. If the Individual Contract has been awarded as a result of a competitive exercise conducted by the Permitted Purchasing Body: the Provider's response, submission or the like in relation to that competitive process, including its written responses to any clarification questions raised by the Permitted Purchasing Body in the course of that exercise.
Recipient	A party to the Individual Contract in relation to the Confidential Information of the other party and/or its Affiliates.
Relevant Dispute	See item 119.1.
Relevant Indemnity (section 96)	See item 96.1.
Remedial Plan (section 91)	See item 91.1.
Replacement Contractor	A replacement service provider of the Permitted Purchasing Body (or that service provider's direct or indirect subcontractor) which is a transferee employer of any individual who has a right to a TUPE Transfer on a Cessation Transfer.

Defined term	Definition
Representative	<p>In relation to a party to the Individual Contract,</p> <ul style="list-style-type: none"> • The individual identified as such in a particular Work Order, or such replacement individual as communicated to the other party in writing from time to time. • Where the relevant individual is absent from time to time: any other individual deputising for him/her, as decided by the relevant party. • Where the position is vacant from time to time: the Escalated Person of the relevant party.
Service User	Each individual to whom Services are provided who identified or who is a member of the group described in item 3.1.
Services	The services described in item 5.1.
Step in Rights	See item 92.1.
Terminating Party	See section 103.
Termination Default Event	<ul style="list-style-type: none"> • In relation to the Provider: each event or circumstance described in section 104. • In relation to the Permitted Purchasing Body: each event or circumstance described in section 105.
Third Party Beneficiary	Each person (if any) described as such in section 4.
TUPE Cessation Beneficiary	See item 57.1(a).
TUPE Regulations	The Transfer of Undertakings (Protection of Employment) Regulations (2006) and the European Lead Council Directive 77/187/EEC as these may be amended.
TUPE Transfer	<ul style="list-style-type: none"> • A transfer of the employment of a relevant employee under the TUPE Regulations • As a result of a service provision change in connection with any Services • Whether on a Commencement Transfer or a Cessation Transfer.
Uncontrollable Circumstance (section 74)	As indicated in section 74.
Work Order	<p>A document</p> <ul style="list-style-type: none"> • In a form <ul style="list-style-type: none"> - Substantially similar to the template published by the Lead Council from time to time in connection with the Flexible Purchasing System or - As that template is amended from time to time by the Lead Council (acting reasonably to consult the Provider and having reasonable and genuine regard for its views) • Which clearly cross references the relevant Flexible Purchasing System. • Which, when agreed by the Permitted Purchasing Body and the Provider, evidences the Individual Contract entered between them.

129. Interpretation

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in the terms of the Individual Contract (as described in item 1.3). the Work Order and the Terms and Conditions shall be interpreted as follows

129.1 Headings

Headings do not affect the interpretation of the terms of the Individual Contract (as described in item 1.3).

129.2	Reference to a party	<ul style="list-style-type: none"> Reference to any party is a reference to a party to the Individual Contract. It includes reference to that party's successors in title and permitted assignees.
129.3	Consents, approvals	<ul style="list-style-type: none"> Where consent, approval, permission or the like of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions. Where consent, approval, permission or the like of a person is to be at that person's discretion, that person <ul style="list-style-type: none"> 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).
129.4	Deadlines not falling on a Business Day	If a deadline or event is expressed in the terms of the Individual Contract (as described in item 1.3) to fall or occur on a day that is not a Business Day, the deadline or that event shall be extended until the next Business Day.
129.5	When due on a particular day	If an act is required under the Individual Contract to be done (including the giving of notice) by a particular date, it is required to be done by 5.00pm in the United Kingdom.
129.6	Definitions	If a word or phrase is defined in the terms of the Individual Contract (as described in item 1.3), its other grammatical forms have a corresponding meaning.
129.7	Statutes, codes etc.	Reference in the terms of the Individual Contract (as described in item 1.3) to any statute, code or the like includes reference to any amending, replacing, modifying or consolidating statute, code or the like on substantially similar subject matter.
129.8	'In writing'	<ul style="list-style-type: none"> Use of the expression 'in writing' (or a similar word) includes (but is not limited to) an e-mail or facsimile message. It does not include communication by telephone text messages or communication via a social media site (or the like of any of these).
129.9	'Including'	<ul style="list-style-type: none"> Use of the word 'including', 'in particular', 'for example' (or a similar word) at the commencement of a list to illustrate a particular concept does not limit that concept in any way. Use of the abbreviation 'etc.' at the end of a list to illustrate a particular concept does not limit that concept in any way.
129.10	Other references	<ul style="list-style-type: none"> Reference to one gender refers to all genders Reference to the singular includes the plural and vice versa Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.

