



**Northumberland County Council  
Transport Dynamic Purchasing System  
Call-Off Contract Terms and Conditions  
2020 Version**

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## Background

### 1. Background to these terms and conditions

1.1. To what these terms and conditions apply

These terms and conditions apply to each Call-Off Contract

- Entered between the Permitted Purchasing Body and the Operator indicated in the relevant Award Letter
- In connection with the Permitted Purchasing Body's dynamic purchasing system for the provision of transport services within Northumberland reference **DN124758 ('Dynamic Purchasing System')**.

1.2. The terms and conditions of the relevant Call-Off Contract comprise all of the following

- As amended from time to time according to section 91
- According to the following priority if there are inconsistencies
- Which are legally binding on the Permitted Purchasing Body and the Operator when the relevant Call-Off Contract is entered

(a) Call-Off Specification

The Call-Off Specification of the relevant Call-Off Contract if any.

(b) Award Letter

The rest of the Award Letter of the relevant Call-Off Contract which is not otherwise described elsewhere in this list.

(c) General DPS Specification

The General DPS Specification, but only in relation to Call-Off Contracts where Northumberland County Council and/or its Affiliates is the Permitted Purchaser.

(d) Schedules etc.

Any schedules, annexures or anything similar attached to the relevant Award Letter which are not described elsewhere in this item 1.2.

(e) Other documents

Other documents, websites identified by a link, or anything similar to any of these

- Which are cross-referenced in any document described in another document listed elsewhere in this item 1.2; and
- Which that other document indicates are incorporated into the relevant Call-Off Contract; and
- Which are communicated (or in the case of a website, the relevant link has been communicated) between the parties.

(f) Terms and conditions

These terms and conditions.

(g) Operator Call-Off Response

Any Operator Call-Off Response except to the extent the Permitted Purchasing Body at its discretion decides that this is more favourable and should override any other items in this list.

(h) Operator DPS Response

Any Operator DPS Response except to the extent the Permitted Purchasing Body at its discretion decides that this is more favourable and should override any other items in this list.

## What the Permitted Purchasing Body requires

### 2. Description of the Services

- 2.1. Description of the Services which the Operator must provide the Permitted Purchasing Body and the relevant Passengers under the relevant Call-Off Contract

As indicated in the Award Letter, the General DPS Specification and the relevant Call-Off Specification.

### 3. Performance Standards

- 3.1. Indicate the standards, service levels, KPIs (or anything similar to any of these) (each of them is a '**Performance Standard**') which the Operator must ensure are met or exceeded in carrying out the Services

As indicated in the General DPS Specification and/or the relevant Call-Off Specification and/or the Award Letter.

## Duty of care issues

### 4. Passengers

#### Who are the Passengers

- 4.1. Each and any Passengers for whose benefit the Services are to be provided  
These may be individually named, or identified as a group  
Each of them is a '**Passenger**' in relation to Services provided to that person under the relevant Call-Off Contract

As indicated in the relevant Award Letter and/or in the relevant General DPS Specification.

#### Separate business with Passengers

- 4.2. Restrictions on the Operator's right to enter into unrelated business dealings with any Passenger introduced to the Operator in connection with the Services

No restrictions

### 5. Third Party Beneficiaries

- 5.1. Persons in addition to the Permitted Purchasing Body to whom the Operator owes a contractual duty of care under the relevant Call-Off Contract

Each of the following is a '**Third Party Beneficiary**'

(a) Passengers

Each Passenger described in section 4 in relation to Services provided to him/her under the relevant Call-Off Contract.

(b) Affiliates

Each Affiliate of the Permitted Purchasing Body.

## Social value

### 6. Social value obligations

#### Current social value obligations

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

As indicated in the Operator DPS Response.

#### Updates to social value obligations

- 6.2. Arrangements to update the Operator's social value obligations under the relevant Call-Off Contract from time to time

- (a) First step

- The Permitted Purchasing Body may request the Operator to provide the Permitted Purchasing Body with a first draft of a proposal (for the Permitted Purchasing Body's consideration) to update the Operator's social value.
- That request must comply with item (b).
- The Permitted Purchasing Body is not contractually obliged to make that request.

- (b) Requirements for the Permitted Purchasing Body's request under item (a)

- The Permitted Purchasing Body's request must comply with all of the following:
- It must be in writing.
  - In the case of the first request: it cannot be issued in less than **12 months** from the date of the relevant Call-Off Contract.
  - In the case of a subsequent request: it cannot be issued in less than **12 months** from the date on which the Permitted Purchasing Body made its most recent previous request.
  - If the Permitted Purchasing Body wishes to communicate any updates to the Permitted Purchasing Body's social value priorities that apply at the time: the request must be accompanied by that update.
  - If no update accompanies the request, the Operator may assume the Permitted Purchasing Body's most recently communicated social value priorities still apply.

- (c) Next step

- The Operator must issue the Permitted Purchasing Body with a first draft of an updated social value proposal for the Permitted Purchasing Body's consideration and approval.
- The Operator must do so no later than 60 days after the Permitted Purchasing Body has issued the request for the update.

- (d) Obligations of the Permitted Purchasing Body

The Permitted Purchasing Body must not unreasonably reject the Operator's proposal.

<p>(e) Examples of reasonable grounds on which the Permitted Purchasing Body may reject the draft</p> <p>Any of the following</p>	<ul style="list-style-type: none"> <li>• The proposal does not properly address one or more of the Permitted Purchasing Body's social value priorities, as most recently communicated to the Operator by the Permitted Purchasing Body.</li> <li>• The proposal does not describe (with sufficient clarity) activities which the Operator is to carry out and/or the outputs it is to achieve to help meet any such social value priorities.</li> <li>• The proposal does not describe (with sufficient clarity) deadlines, timescales or anything similar over which the Operator is to carry out and complete activities and/or to achieve outputs as described in the proposal.</li> <li>• The proposal does not represent a genuine and sufficient effort by the Operator to help meet any such social value priorities, having regard to the circumstances including (for example) the size of the Operator and the aggregate value of the contracts it then holds with the Permitted Purchasing Body.</li> <li>• <b>If the proposal is a later draft (where the Permitted Purchasing Body has rejected an earlier draft):</b> the proposal does not sufficiently address reasonable feedback given by the Permitted Purchasing Body.</li> </ul>
<p>(f) If the Permitted Purchasing Body rejects the draft</p>	<ul style="list-style-type: none"> <li>• The Permitted Purchasing Body must give the Operator reasonably clear feedback in relation to the rejection.</li> <li>• The Operator must reissue another draft for the Permitted Purchasing Body's consideration no later than <b>60 days</b> after the Permitted Purchasing Body has communicated its rejection in writing.</li> <li>• This process is to be repeated until the Permitted Purchasing Body approves the Operator's proposal.</li> </ul>
<p>6.3. Deemed approval (reference in this section <b>Error! Reference source not found.</b> to the approval of a draft includes the deemed approval)</p>	<p>The Permitted Purchasing Body shall be deemed to have approved a proposal (including any resubmission) if the Permitted Purchasing Body has not done either of the following after more than <b>60 days</b> after that proposal is submitted</p> <ul style="list-style-type: none"> <li>• Rejected it in writing.</li> <li>• Raised genuine queries in relation to it (including seeking further information or clarifications).</li> </ul>
<p>6.4. Consequence of the Permitted Purchasing Body's approval of the Operator's proposal under this section <b>Error! Reference source not found.</b></p>	<p>The Operator must carry out the Operator's social value obligations contained in that approved proposal until it is replaced by a later approved proposal.</p>



## 7. Failure to carry out social value obligations

7.1.	When the Permitted Purchasing Body may take the action described in item 7.2	<p>Only if and for as long as <b>all</b> of the following apply:</p> <ul style="list-style-type: none"> <li>• The Operator's social value obligations under section 6 remain incomplete by any relevant deadlines.</li> <li>• <b>If no deadlines are mentioned:</b> the deadline for each year shall be each anniversary of the date of the relevant Call-Off Contract.</li> <li>• The Permitted Purchasing Body has given the Operator a notice (strictly according to section 80) requiring the Operator to remedy the matter. The Permitted Purchasing Body may give this notice at any time after the relevant obligations first become overdue.</li> <li>• The Operator still has failed to remedy the matter more than <b>30 days</b> after the Permitted Purchasing Body has given that notice.</li> </ul>
7.2.	Action which the Permitted Purchasing Body may take if the circumstances described in item 7.1 apply	<ul style="list-style-type: none"> <li>• The Permitted Purchasing Body may take any or all of the reasonably necessary remedial action itself.</li> <li>• The Permitted Purchasing Body is not contractually obliged to take such action.</li> </ul>
7.3.	Obligation of the Operator to reimburse the Permitted Purchasing Body	<ul style="list-style-type: none"> <li>• The Operator must reimburse the Permitted Purchasing Body for the reasonable and sufficiently evidenced costs of the Permitted Purchasing Body in taking the remedial action described in item 7.2.</li> <li>• The Operator must do so in <b>30 days</b> of the Permitted Purchasing Body's written demand.</li> <li>• The Permitted Purchasing Body must give that demand strictly according to section 80, and must clearly indicate the Permitted Purchasing Body's costs for which it claims reimbursement.</li> </ul>
7.4.	Whether the Permitted Purchasing Body's actions described in item 7.2 in themselves limit its rights and remedies in relation to the Operator's failure to carry out the required obligations	No.

## Operator methods

### 8. Operator methods

8.1.	Methods or techniques (or anything similar to any of these) with which the Operator must comply in providing the Services	As indicated in the Operator DPS Response and in the Operator Call-Off Response and in the General DPS Specification and in the relevant Call-Off Specification.
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## 9. General standards

- 9.1. The Operator must carry out its obligations under the relevant Call-Off Contract according to **at least** each of the following standards

If there is any inconsistency between any of these, the most stringent requirement applies

(a) Performance Standards

According to the Performance Standards indicated in section 3.

(b) Standards of a skilled person

According to the standard of skill, care, diligence, prudence and foresight which would reasonably be expected from an appropriately skilled, diligent and experienced person on the assumption that person is engaged

- In similar circumstances to those to which the relevant Call-Off Contract relates;
- To provide similar services to those required under the relevant Call-Off Contract.

(c) Law

- In any case, in compliance with the standards and other requirements of relevant Law applying to the relevant activities.
- This is a paramount obligation and overrides anything to the contrary elsewhere in the relevant Call-Off Contract.

## 10. General obligations of the Operator not to create certain risks

- 10.1. The Operator 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 other Third Party Beneficiary described in section 5 (each of them a '**Protected Person**') as a result of the way in which the Operator (and anyone acting on its behalf) provides the Services

(a) Death, personal injury etc.

Death, personal injury or other serious harm to any of the following

- The Protected Person, if a human being.
- Any person whom the Operator knows (or reasonably ought to know) is owed a duty of care by the Protected Person (e.g. its Personnel).

(b) Certain breaches etc.

Breaches, infringements or anything similar by the Protected Person of any of the following

- 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 Operator 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)
  - Has been leased or licensed to the Operator or its subcontractors by the Permitted Purchasing Body and/or its Affiliate; or
  - Has otherwise been made available to the Operator by the Permitted Purchasing Body or its nominated agent for purposes connected with the Services.

(c) Disruption

Disruption to the normal activities of the Permitted Purchasing Body and/or its Affiliate beyond reasonable levels having regard to the relevant circumstances (e.g. the nature of the Services etc.).

(d) Bad publicity

- The Protected Person receiving any significant, unjustified and undesirable publicity.
- This does not prevent the Operator 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.

10.2. **Exceptions** where the Operator is not liable to a Protected Person for any act (or failure to act) by the Operator (or anyone acting on the Operator's behalf) which is otherwise in breach of this section 10

To the extent that act (or failure to act) was done (or not done) according to any of the following:

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

## 11. Council Policies

11.1. Current policies of the Permitted Purchasing Body with which the Operator must comply when providing the Services

The Operator is only required to comply with a particular current policy indicated if the Permitted Purchasing Body has communicated it to the Operator in writing

Those if any indicated in the General DPS Specification.

11.2. Policies of the Permitted Purchasing Body from time to time with which the Operator must comply in activities in connection with the Services

Each policy of the Permitted Purchasing Body from time to time to which all of the following apply:

- It must be reasonable, lawful and relevant to the Services; and
- It must have been sufficiently communicated to the Representative of the Operator in writing.

11.3. If the Operator 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 introduced from time to time as described in item 11.2	
(a) If the Operator is required by Law to comply with that obligation anyway	<ul style="list-style-type: none"> <li>The Operator must comply with that obligation in connection with the Services without being entitled to any reimbursement from the Permitted Purchasing Body for those further costs.</li> <li><b>Exception:</b> to the extent the Permitted Purchasing Body otherwise agrees (at its discretion and in writing) to reimburse the Operator.</li> </ul>
(b) If the Operator is NOT required by Law to comply with that obligation anyway	The Operator is not obliged to comply with that obligation in connection with the Services unless the Permitted Purchasing Body has become legally bound in writing to reimburse the Operator for those costs to the extent they are reasonable and appropriately evidenced.
11.4. Character of each policy of the Permitted Purchasing Body with which the Operator must comply under this section 11	<ul style="list-style-type: none"> <li>The policy shall be deemed to form part of the General DPS Specification and/or the relevant Call-Off Specification.</li> <li>If there is any inconsistency between any such policy of the Permitted Purchasing Body and any other part of the General DPS Specification and/or the relevant Call-Off Specification: the policy prevails to the extent of the inconsistency.</li> </ul>

## Duration

### 12. Commencement of the Services

12.1. When the Operator must commence providing the Services	<ul style="list-style-type: none"> <li>As indicated in the relevant Award Letter.</li> <li><b>If no commencement date is indicated in the Award Letter:</b> the Operator must commence the Services promptly after entering into the relevant Call-Off Contract.</li> </ul>
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### 13. Expiry

13.1. Expiry date of the relevant Call-Off Contract	As indicated in the relevant Award Letter, or <b>If the relevant Call-Off Contract is extended:</b> at the end of any extension period (or if there is more than one extension period, the final extension period) according to section 14.
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### 14. Extensions

14.1. Period or periods for which the Permitted Purchasing Body may extend the relevant Call-Off Contract	As indicated in the relevant Award Letter.
14.2. Whether the Permitted Purchasing Body may extend the relevant Call-Off Contract for a shorter period than that indicated in item 14.1	It may do so.

14.3.	Any deadlines or other time restrictions on the Permitted Purchasing Body in exercising its right to extend the relevant Call-Off Contract	As indicated in the relevant Award Letter.
14.4.	Changes to the terms of the relevant Call-Off Contract (as the terms stand at the expiry date) during the extension period	<ul style="list-style-type: none"> <li>• Unchanged unless otherwise agreed by the parties in writing.</li> <li>• In any case, this section 14 shall not apply to the relevant Call-Off Contract in the final extension period (i.e. there shall be no further extension periods).</li> </ul>
14.5.	Procedure the Permitted Purchasing Body must strictly follow if it wishes to extend the relevant Call-Off Contract under this section 14	<p>It must give the Operator a notice as follows:</p> <ul style="list-style-type: none"> <li>• Strictly according to section 80.</li> <li>• Subject to the deadlines and other time restrictions in item 14.3.</li> <li>• The Permitted Purchasing Body must clearly indicate the extension period in the notice.</li> </ul>

## Financial arrangements

### 15. Charges

#### Calculation of Charges

15.1.	<p>Amount or calculation of the Charges which the Permitted Purchasing Body is liable to pay the Operator in consideration for the Operator carrying out its obligations under the relevant Call-Off Contract</p> <p>To be subject to the rest of the relevant Call-Off Contract</p>	<ul style="list-style-type: none"> <li>• As indicated in the relevant Award Letter or as the parties otherwise agree in writing from time to time.</li> <li>• Excluding VAT or anything similar, unless otherwise clearly indicated.</li> </ul>
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#### Passenger absence

15.2.	<p>Effect of Passenger absence on the Permitted Purchasing Body's liability to pay Charges</p> <p>This is only relevant if the Services under the Call-Off Contract are provided to a specifically named Passenger</p>	<ul style="list-style-type: none"> <li>• <b>If the Operator first becomes aware of the absence 12 hours or less before the Operator is expected to provide the relevant Services:</b> the Permitted Purchasing Body is liable to pay the relevant Charges in relation to those Services as if the Operator had properly provided them.</li> <li>• <b>If the Operator first becomes aware of the absence more than 12 hours before the Operator is expected to provide the relevant Services:</b> the Permitted Purchasing Body is not liable to pay the relevant Charges in relation to those Services.</li> </ul>
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#### Charges relating to Passengers

15.3.	Rights and restrictions on the Operator imposing further charges on a Passenger in relation to any Services which the Operator provides to that Passenger	As indicated in the relevant Award Letter.
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## 16. Service credits

16.1.	Service credits applicable to the relevant Call-Off Contract  Indicate how they are to be calculated, including the period over which they are to be measured	As indicated in the General DPS Specification.
16.2.	How the determinations are to be made regarding whether a service credit is to apply E.g. by whom, using what methods etc.	As indicated in the General DPS Specification.
16.3.	How a service credit described in this section 16 is to be made	<ul style="list-style-type: none"><li>• The Permitted Purchasing Body must (if it wishes to claim the service credit) issue the Operator with an invoice for the amount of the relevant service credit.</li><li>• The Operator must pay that invoice in full and without deduction in <b>30 days</b>.</li></ul>
16.4.	Consequences for service credits described in this section 16 if any Uncontrollable Circumstance described in section 64 applies	See item 64.4(e) for those consequences.
16.5.	Other circumstances when service credits described in this section 16 <b>do not apply</b>	As agreed in writing by the Permitted Purchasing Body from time to time.
16.6.	Character of a service credit	<p>A service credit is an adjustment to the Charges to reflect a lower standard of Services provided by the Permitted Purchasing Body as a result of the relevant breach.</p> <p>A service credit is not any of the following</p> <ul style="list-style-type: none"><li>• Compensation to the Permitted Purchasing Body (or any other person) for any loss.</li><li>• A penalty imposed upon the Operator.</li></ul>
16.7.	Extent to which the service credits are the sole remedy of the Permitted Purchasing Body for the relevant breach	<ul style="list-style-type: none"><li>• The service credit shall be its sole right of the Permitted Purchasing Body and/or its Affiliate to financial compensation, damages or anything similar for the relevant breach.</li><li>• It shall not exclude any other remedy of the Permitted Purchasing Body that may apply in relation to the breach (e.g. any right to treat it as a Material Breach, if it becomes one).</li></ul>

## 17. Reimbursement of Operator expenses

17.1.	Liability of the Permitted Purchasing Body to reimburse the Operator for expenses in connection with the relevant Call-Off Contract  In addition to the Permitted Purchasing Body's liability to pay the Charges	Only to the extent indicated in the relevant Award Letter.
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## Claiming and making payments

## 18. Invoicing by the Operator

18.1.	Whether the Operator must submit invoices to the Permitted Purchasing Body to trigger a liability of the Permitted Purchasing Body to pay Charges described in section 15	The Operator must do so according to this section 18.
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18.2.	When the Operator may issue invoices to the Permitted Purchasing Body for Charges described in section 15  (the Permitted Purchasing Body is not obliged to recognise any invoices which the Operator submits earlier than as permitted)	Calendar monthly in arrears.
18.3.	Charges which the Operator is permitted to include in each invoice  (and no other Charges except as agreed by the Permitted Purchasing Body in writing)	Charges in relation to Services which the Operator has provided in the relevant calendar month.
18.4.	If service credits apply according to section 16	The Charges included in a particular invoice shall be reduced by any service credit which applies at the time according to section 16, particularly item 16.3.
18.5.	Deadline by which the Operator must issue a particular invoice	<ul style="list-style-type: none"> <li>• No later than <b>90 days</b> after the date on which the Operator was first entitled to issue that invoice according to this section 18.</li> <li>• <b>If the Operator first issues a particular invoice after the relevant deadline:</b> the Permitted Purchasing Body shall not be liable to pay that invoice, even if the Operator has satisfactorily met its obligations to which the invoice relates. <b>Exceptions:</b> (where any of the following applies to the delay in issuing the invoice): <ul style="list-style-type: none"> <li>– The Permitted Purchasing Body specifically requested that delay, in writing.</li> <li>– The Permitted Purchasing Body has approved an extension to the deadline in writing (not to be unreasonably withheld where delays are substantially outside the Operator's reasonable control).</li> <li>– The delay was substantially caused by the Permitted Purchasing Body.</li> </ul> </li> </ul>
18.6.	Formal requirements a Operator's invoice must meet  (e.g. formats, accompanying documentation etc.)	<ul style="list-style-type: none"> <li>• As instructed by the Permitted Purchasing Body from time to time, acting reasonably.</li> <li>• The Permitted Purchasing Body shall not be required to recognise the invoice if the invoice does not properly meet those requirements in place at the time.</li> <li>• If the Permitted Purchasing Body has not raised any issues of non-compliance with such requirements with the Operator's Representative (in writing) after more than <b>30 days</b> after the invoice has been issued (if issued by the deadline indicated in item 18.5) that invoice shall be deemed to have met the relevant requirements.</li> </ul>
18.7.	How and to where must the Operator send its invoices	<ul style="list-style-type: none"> <li>• As instructed by the Permitted Purchasing Body from time to time, acting reasonably.</li> <li>• The Permitted Purchasing Body shall not be obliged to recognise any invoice if and for as long as the Operator has sent that invoice inconsistently with those instructions.</li> </ul>

## 19. Payment of Charges

- 19.1. Due date by which the Permitted Purchasing Body must pay the Operator the Charges as indicated in an invoice which the Operator has submitted to the Permitted Purchasing Body according to section 18
- 19.2. Whether the Permitted Purchasing Body may delay payment of Charges otherwise due according to this section 19 according to section 20

**30 days** from the proper submission of the invoice submitted in accordance with the relevant Call-Off Contract (see in particular, section 18).

The Permitted Purchasing Body may do so.

## 20. Right to delay payment etc.

- 20.1. Actions which the Permitted Purchasing Body may take if and for as long as any of the circumstances in item 20.3 applies at the time
- 20.2. Recognition of invoices
- 20.3. The Permitted Purchasing Body may delay making any payment which the Permitted Purchasing Body is otherwise liable to make to the Operator under the relevant Call-Off Contract if and for as long as any of the following applies at the time:

For the purposes of this section 20, delaying payment includes delaying recognition of invoices under section 18.

- (a) Overdue report, output etc.

- For as long as any specific report, output, deliverable, proposal, plan or anything similar to any of these (including any report described in section 59) which the Operator is required to deliver to the Permitted Purchasing Body under the relevant Call-Off Contract remains overdue according to any relevant deadline applying to that report, output, deliverable, proposal, plan or anything similar.
- Exception:** to the extent the Operator is relieved from doing so or is entitled to an extension of a relevant deadline as indicated elsewhere in the relevant Call-Off Contract or by written agreement of the Permitted Purchasing Body.

- (b) Overdue liabilities

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

- (c) Remedying Material Breach

The Operator has not yet remedied (to the reasonable satisfaction of the Permitted Purchasing Body) a Material Breach of the relevant Call-Off Contract after the Permitted Purchasing Body has requested the Operator to do so, according to, and for the purposes of item 73.2.

- (d) Removal of subcontractors

The Operator has not properly complied with any request for the removal of a subcontractor which the Permitted Purchasing Body has properly made under and in accordance with section 50.



(e) Removal of Personnel

The Operator has not properly complied with any request for the removal of Personnel which the Permitted Purchasing Body has properly made under and in accordance with section 34.

(f) Inspection requirements

The Operator is not materially complying with its obligations under item 60.4 in relation to an inspection which the Permitted Purchasing Body has requested and is entitled to undertake under section 60.

## 21. Interest on late payment

21.1. Interest which accrues on overdue liabilities owed between the Permitted Purchasing Body and the Operator

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

The relevant debtor shall be liable to pay interest to the relevant creditor as follows:

- In addition to the relevant principal.
- **At the following rate:** 4% per year above the Bank of England base rate at the time (but if the Bank of England base rate falls below zero percent, for this purpose the base rate shall be deemed to be zero percent),
- To compound monthly from the due date until payment, whether before or after judgement.

**Exception:** to the extent and for as long as the liability is subject to a genuine dispute which the debtor is using reasonable and genuine efforts to attempt to resolve.

21.2. Strict procedures which a relevant creditor must follow if it wishes to claim interest that has accrued under this section 21 in relation to a particular overdue liability

The creditor must give the debtor a notice as follows

- Strictly according to section 80.
- Clearly indicating
  - The relevant overdue liability, and
  - The interest accrued at the time the notice is given.

If the overdue liability has been paid at the time the notice is given: the notice must be given no later than **30 days** after that overdue liability 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).

## 22. Set off

22.1. Rules in relation to the rights of any party indicated in this section 22 as a '**Set Off Creditor**'

(a) Liabilities from which the Set Off Creditor may deduct the liabilities described in item (b)

Any liability to which all of the following apply

- It is owed **by** the Set Off Creditor and/or its Affiliate **to** the Set Off Debtor and/or its Affiliate **in connection with the relevant Call-Off Contract**
- Regardless of whether that liability arises in tort, contract or otherwise.

(b) Liabilities which the Set Off Creditor may deduct from the liabilities described in item (a)	<p>Any <b>overdue</b> liability owed <b>by</b> the Set Off Debtor and/or its Affiliate <b>to</b> the Set Off Creditor and/or its Affiliate.</p> <ul style="list-style-type: none"> <li>• Regardless of whether that liability is connected with the relevant Call-Off Contract.</li> <li>• Regardless of whether that liability arises in tort, contract or otherwise.</li> <li>• Including any unliquidated liability as estimated by the Set Off Creditor acting reasonably and in good faith.</li> </ul>
(c) Exceptions in relation to liabilities described in item (a) or in item (b)	<p>Item (a) and item (b) do not apply to any liability which is alleged to be owed by any person to the extent that liability is subject to a genuine dispute which that person is using reasonable and genuine efforts to attempt to resolve.</p>
(d) Whether anything in this section 22 limits the rights and remedies of the Set Off Creditor	<ul style="list-style-type: none"> <li>• No.</li> <li>• However, this section 22 is to fully indicate the Set Off Creditor's rights of set off, counterclaim, deduction or anything similar in connection with the relevant Call-Off Contract.</li> </ul>
(e) Obligation of the Set Off Creditor to <b>communicate its intention</b> to exercise its rights of set off, counterclaim, deduction or anything similar under this section 22	<ul style="list-style-type: none"> <li>• The Set Off Creditor must do so not less than <b>7 days</b> before exercising such rights.</li> <li>• The Set Off Creditor must communicate its intention to do so in writing to the Representative of the Set Off Debtor. The Set Off Creditor is not obliged to observe the formalities in section 80 in relation to this communication.</li> </ul>

## 23. Suspension by the Operator for non-payment

<p>23.1. Right of the Operator to suspend any of the Services as a result of overdue liabilities owed to the Operator by the Permitted Purchasing Body</p> <p>(whether or not those liabilities are connected with the relevant Call-Off Contract)</p>	<ul style="list-style-type: none"> <li>• The Operator may not do so for this reason alone.</li> <li>• The only rights and remedies of the Operator in relation to an overdue liability are as follows: <ul style="list-style-type: none"> <li>– To recover the relevant liability; and</li> <li>– To claim interest as relevant (according to section 21 if the liability relates to the relevant Call-Off Contract); and</li> <li>– To exercise relevant termination rights (if any) if non-payment results in a Termination Default Event of the Permitted Purchasing Body (see section 74).</li> </ul> </li> </ul>
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## 24. Operator lien

<p>24.1. The Operator's lien rights over property of the Permitted Purchasing Body in connection with the relevant Call-Off Contract</p>	<p>These rights are waived to the fullest extent permitted by Law.</p>
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## About the parties

### 25. Required Accreditations

25.1.	Licences, registrations, accreditations, permits, consents (or anything similar to any of these) which the Operator must have in place at all times whilst it is providing the Services Each of them is a <b>'Required Accreditation'</b>	<ul style="list-style-type: none"><li>• As indicated in the General DPS Specification.</li><li>• In addition to any others which the Operator is required by Law to hold to allow the Operator to provide the relevant Services.</li></ul>
25.2.	In relation to any activities in connection with the Services <ul style="list-style-type: none"><li>• Which require any particular Required Accreditation</li><li>• To the extent those activities are carried out on the Operator's behalf <b>by a subcontractor</b></li></ul>	<ul style="list-style-type: none"><li>• The Operator must ensure the subcontractor holds the relevant Required Accreditation, as relevant to those activities.</li><li>• See section 50 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 Required Accreditations in place from time to time whilst carrying out the relevant activities.</li><li>• <b>If and for as long as the subcontractor is carrying out those activities and the Operator itself is not carrying out any of those activities:</b> if and for as long as the subcontractor holds the relevant Required Accreditation, the Operator is deemed to have met its obligations under this section 25 regarding the holding of that Required Accreditation.</li></ul>
25.3.	Obligation of the Operator to provide the Permitted Purchasing Body with evidence of its compliance with this section 25	<ul style="list-style-type: none"><li>• The Operator must provide the Permitted Purchasing Body with appropriate evidence that the Operator and/or relevant subcontractors have the relevant Required Accreditations in place.</li><li>• The Operator must do so promptly on the Permitted Purchasing Body's reasonable request from time to time.</li></ul>

## 26. Factual promises of the Operator

The Operator 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 of the relevant Call-Off Contract, and again on the commencement of the Services under the Call-Off Contract and again on the commencement of any extension period under section 14
- Excluding any exceptions sufficiently disclosed by the Operator to the Permitted Purchasing Body in writing before the relevant date when the factual promise applies
- In addition to other factual promises of the Operator indicated elsewhere in the relevant Call-Off Contract

### About the Operator generally

26.1. Claims made by the Operator

The claims the Operator has made about itself or its subcontractors or their respective Personnel

- In any Operator DPS Response and
- In any Operator Call-Off Response in relation to the relevant Call-Off Contract

Are, to the best of the Operator'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.

26.2. No changes to the Operator since the Operator DPS Response and any Operator Call-Off Response in relation to the relevant Call-Off Contract

- There have been no significant changes to the circumstances of the Operator compared to those disclosed in the Operator Response.
- **Changes to the Operator's circumstances to which this applies:** only to those changes which would (on reasonable view) significantly and unfavourably affect the ability of the Operator to meet its obligations under the relevant Call-Off Contract.

26.3. Not negligently or deliberately withheld information

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

- The Operator has negligently or deliberately withheld that information from the Permitted Purchasing Body; 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 into the relevant Call-Off Contract on these terms.

- 26.4. The Operator is not
- Under any non-routine investigation by any law enforcement or regulatory body for any serious matter; and/or
  - Subject to any Claims or disputes or other actions
- which are reasonably likely to result in any of the following:

(a) Passenger confidence

Any Passenger described in section 4 (or his/her representative if he/she does not have capacity) having good reason **not to have appropriate confidence** in the Operator.

(b) Affects carrying out its obligations

The Operator being significantly and unfavourably affected in its ability to properly carry out its obligations under the relevant Call-Off Contract.

(c) Publicity

Serious, unjustified and unfavourable publicity being brought to the Permitted Purchasing Body and/or to its Affiliates.

- 26.5. The Operator as a human being (e.g. a sole trader)

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

### Financial status of the Operator

- 26.6. Able to pay liabilities

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

- 26.7. The Operator as a human being (e.g. a sole trader)

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

- 26.8. The Operator as a company or other type of entity other than a human being

- The Operator 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 Operator and/or its assets.
- The Operator is not aware (and has no reasonable grounds to be aware) that any of the above is imminent.

### Promised Subcontractors

- 26.9. All of the following apply in relation to each Promised Subcontractor indicated in item 48.1 or its replacement (as in place at the time when the relevant warranty or representation is given)

(a) Contracts in place

The Operator has all reasonably necessary contractual arrangements in place to ensure that Promised Subcontractor is bound to carry out relevant activities in connection with the Services according to item 48.1.

(b) Investigations	<p>The Operator 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"> <li>• That the Promised Subcontractor is under any non-routine investigation by any regulatory or law enforcement body</li> <li>• For any serious matter</li> <li>• That is (on a reasonable view) likely to materially and unfavourably affect the Promised Subcontractor's proper involvement in the relevant activities in connection with the Services according to item 48.1.</li> </ul>
(c) No changes in circumstances	<p>There have been no significant changes (all of the following)</p> <ul style="list-style-type: none"> <li>• To the circumstances of the Promised Subcontractor in place at the time compared to the circumstances disclosed to the Permitted Purchasing Body when its approval of the Promised Subcontractor was first sought by the Operator (whether in the Operator Response or otherwise).</li> <li>• That on a reasonable view would significantly and unfavourably affect the Promised Subcontractor's proper involvement in the relevant activities in connection with the Services according to item 48.1.</li> </ul>
(d) No circumstances preventing involvement	<p>The Operator 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 Services according to item 48.1.</p>

#### Ability to carry out obligations

26.10. Sufficient systems, resources	<p>The Operator has (whether directly or through permitted subcontractors) the necessary and sufficient systems, Personnel and other resources to carry out its obligations under the relevant Call-Off Contract in a proper and punctual manner.</p>
<p>26.11. <b>Due diligence:</b> the Operator has satisfied itself (including making investigations, gathering information, seeking advice or anything similar) of all of the following</p> <p>(except to the extent the Operator has specific due diligence rights elsewhere in the relevant Call-Off Contract)</p>	
(a) Ability to meet obligations	<p>The Operator is able to carry out its obligations under the relevant Call-Off Contract as follows:</p> <ul style="list-style-type: none"> <li>• As required in the relevant Call-Off Contract; and</li> <li>• Without imposing charges or seeking reimbursement from the Permitted Purchasing Body beyond its entitlements which are clearly indicated in the relevant Call-Off Contract.</li> </ul>
(b) Operator's understanding	<p>The Operator understands the risks it faces in entering into the relevant Call-Off Contract and in carrying out its obligations under it.</p>

26.12.	Third party consents, regulatory approvals etc.	<p>The Operator has obtained all necessary third party consents, regulatory approvals or anything similar to enable it to do the following</p> <ul style="list-style-type: none"> <li>• To enter into the relevant Call-Off Contract; and</li> <li>• To carry out its obligations as required under it.</li> </ul>
26.13.	No breaches etc.	<p>By entering into the relevant Call-Off Contract and by carrying out its obligations under it, the Operator will not breach or infringe any of the following (to the best of its knowledge having made reasonably necessary inquiries)</p> <ul style="list-style-type: none"> <li>• The Law.</li> <li>• Any duty it owes a third party (whether arising under tort, contract, statute, or otherwise).</li> <li>• The property rights (including rights in connection with Intellectual Property) of any third party.</li> </ul>

### Competitive procedure

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

(a) Collusion

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

(b) Canvassing

Engaged in any canvassing activity.

(c) Corrupt Act

Done any act in relation to that competitive procedure that would breach item 86.1 in relation to Corrupt Acts if that act were done after the relevant Call-Off Contract is entered.

### Miscellaneous

26.15. If the Operator is a consortium, partnership, joint venture or anything similar

Each factual promise in this section 26 applies to each member of that consortium, partnership, joint venture or anything similar, to the extent reasonably relevant to that member.

26.16. Not acting on behalf of a third party

The Operator is not entering the relevant Call-Off Contract on behalf of any third party whose identity has not been sufficiently disclosed in writing to the Representative of the Permitted Purchasing Body.

## Intellectual Property

### 27. Intellectual Property – general statement

27.1. General statement regarding Intellectual Property

Except to the extent

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

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

27.2. Interpretation of any license over Intellectual Property granted by a party under the relevant Call-Off Contract  
(except to the extent otherwise clearly indicated)

All rights which are **not** expressly granted by the licensor under that licence are reserved to the relevant licensor.

### 28. Each party's ownership of arising Intellectual Property

28.1. Who owns Intellectual Property arising from the Services (as between the Permitted Purchasing Body and the Operator)

Each party (or its contractors, other clients or third party licensors) shall own whatever Intellectual Property is created, developed or anything similar by that party or its own separate Personnel, its separate contractors or its other separate agents in connection with the Services under the relevant Call-Off Contract.

### Licence for the benefit of the Permitted Purchasing Body and its Affiliates

28.2. Who grants the licence

The Operator

28.3. To whom the licence is granted

To the Permitted Purchasing Body and its Affiliates from time to time.

28.4. The Intellectual Property over which the licence is granted

- Intellectual Property to belong to the Operator (and/or its respective third party clients, contractors, licensors or anything similar) arising from the Services according to item 28.1; and
- Any and all relevant background Intellectual Property of the Operator (and/or its third party contractors, licensors or anything similar) over which such arising Intellectual Property (whether belonging to the Operator or the Permitted Purchasing Body) depends.

28.5. Commencement of the licence

Immediately when the relevant arising Intellectual Property is first created, developed or anything similar.

28.6. Main terms of the licence

It shall be a non-exclusive, worldwide, perpetual, royalty-free licence.



28.7.	Permitted use of the licensed Intellectual Property	<ul style="list-style-type: none"> <li>The licensee may use that Intellectual Property in any manner (including modifying, adapting, enhancing, copying, loading, executing, interpreting, storing, transmitting, displaying, reverse compiling, decoding and translating it).</li> <li>The licensee may only do so to enable it to properly enjoy the benefit of the Services.</li> </ul>
28.8.	Prohibited use of licensed Intellectual Property for which any licensee must not use the licenced Intellectual Property, even if otherwise permitted elsewhere in this licence	<p>The Permitted Purchasing Body must not use (or cause or assist or instruct anyone else to use) that Intellectual Property as follows:</p> <ul style="list-style-type: none"> <li>For unlawful activities; and/or</li> <li>For any activities which (on a reasonable view) compete with the Operator according to its business activities at the time when the arising Intellectual Property was created, developed or anything similar; and/or</li> <li>For activities which bring (or which create an unreasonable risk of bringing) significant, unjustified and unfavourable publicity to the Operator and/or its Affiliates; and/or</li> <li>For activities which damage the goodwill attaching to the licensed Intellectual Property.</li> </ul>
28.9.	Right of the licensee to assign or sub-licence	The licensee may not do so without the prior written consent of the Operator, not to be unreasonably withheld.
28.10.	General obligations 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.
28.11.	If relevant Intellectual Property to which this licence relates belongs to the Operator's third party contractors, licensors or anything similar	The Operator must use reasonable endeavours at its own cost to obtain a licence on these terms from that person.

## 29. Use of Council Logo

29.1.	Each logo, trademark, livery or anything similar of the Permitted Purchasing Body and/or its Affiliate which is a ' <b>Council Logo</b> ' for the purposes of the relevant Call-Off Contract	<ul style="list-style-type: none"> <li>Only as indicated in the relevant Award Letter or in the General DPS Specification.</li> <li>The Operator is not otherwise permitted or required to use any Council Logo under the relevant Call-Off Contract.</li> </ul>
29.2.	Whether the Operator <ul style="list-style-type: none"> <li>Is contractually required to use any Council Logo in connection with the Services, or</li> <li>Is simply permitted to do so (i.e. not contractually obliged to do so)</li> </ul>	As indicated in the relevant Award Letter or in the General DPS Specification.
29.3.	Activities in relation to which the Operator's use of each relevant Council Logo is permitted or required (as per item 29.2)	As indicated in the relevant Award Letter or in the General DPS Specification.
29.4.	How the Operator is to use the Permitted Purchasing Body Logo (e.g. whether on vehicles, stationery, signs, uniforms etc.)	As indicated in the relevant Award Letter or in the General DPS Specification.

29.5. Obligations of the Operator in relation to its use of each Council Logo in connection with the Services

- In using that Council Logo, the Operator must comply with the reasonable, lawful and properly communicated policies and/or instructions of the Permitted Purchasing Body in connection with such use.
- The Operator must do so in a proper and timely manner.
- **If such compliance involves the Operator incurring expenditure:** its obligation to comply shall be subject to the Permitted Purchasing Body agreeing to reimburse the Operator for its reasonable and sufficiently evidenced expenditure. only relevant if provider must use it.

## Personnel issues

### 30. General obligations in relation to Operator Personnel

30.1. The Operator's general obligations in relation to its (and its subcontractor's) Personnel engaged in connection with the Services

(a) Sufficient Personnel

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

(b) Suitable

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

(c) Allocation to meet Personnel requirements

The Operator must not allocate activities to any of its Personnel in connection with the Services if that individual does not meet the requirements of section 32 which relate to those activities.

(d) Directions

The Operator must give appropriate directions to ensure each of its Personnel carries out his/her relevant activities in connection with the Services in a competent, timely, professional, safe, ethical, courteous and lawful manner.

(e) Levels of authority

The Operator must ensure its Personnel have been given levels of authority to bind the Operator which are appropriate to the relevant individual's activities in connection with the Services.

(f) Support

The Operator must provide its Personnel with such instructions, supervision, equipment, training and other resources and support that are appropriate and reasonably necessary to the relevant individual's activities in connection with the Services.

(g) Policies

- The Operator must have in place HR policies which meet or exceed standards reasonably expected of comparable firms or organisations.
- The Operator must promptly provide the Permitted Purchasing Body with copies of such policies on request (to be made reasonably and in good faith).

(h) Not to cause breach

The Operator must not give its Personnel directions or assistance that would cause the Operator to breach its obligations under the relevant Call-Off Contract.

### 31. Safeguarding

31.1. Whether safeguarding is relevant to the Services

Yes.

#### General safeguarding obligations

31.2. Comply with Law

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

31.3. Comply with the General DPS Specification and/or the relevant Call-Off Specification.

The Operator must comply with further obligations on this matter (if any) in the General DPS Specification and/or the relevant Call-Off Specification.

#### Safeguarding investigations

31.4. The Operator 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 carrying out any of the Operator's obligations under the relevant Call-Off Contract

(a) To keep informed

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

(b) To comply with directions to suspend etc.

The Operator 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 Operator may reinstate the individual (assuming there are no other grounds at the time to require his/her suspension or removal).

## 32. Operator Personnel requirements

- 32.1. Specific requirements which the Operator must ensure each of its Personnel meets before the Operator may involve the relevant individual in the Services

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

This applies regardless of whether the individual is an employee, a subcontractor or an employee or contractor of the Operator's subcontractor

Activity	Requirement
(a) Lone contact with children and/or vulnerable adults if safeguarding is relevant to the Services	Appropriate DBS (or equivalent) checks.
(b) All Personnel engaged in the Services	Right to work in the UK.
(c) All Personnel engaged in the Services	<p>Neither of the following</p> <ul style="list-style-type: none"> <li>Unspent convictions of any crime involving dishonesty, violence, sexual misconduct or serious property damage (regardless of the penalty) or any other type of offence resulting in a prison sentence (whether suspended or otherwise).</li> <li>Current anti-social behaviour orders (as defined in the Crime and Disorder Act 1998).</li> </ul> <p><b>Exception:</b> to the extent the individual's participation in the Services has been approved by the Permitted Purchasing Body (in writing, at discretion). The Operator must make sufficient disclosures about the matter to the Permitted Purchasing Body to enable it to properly consider the matter.</p>
(d) <b>Others:</b> as indicated in the General DPS Specification and/or the relevant Call-Off Specification and/or in the Award Letter	As indicated in the General DPS Specification and/or the relevant Call-Off Specification and/or in the Award Letter.

### Personnel requirements if TUPE Transfers apply on commencement

- 32.2. An individual
- Engaged in connection with the Services
  - Whose employment has transferred to the Operator or its subcontractor as a TUPE Transfer on a Commencement Transfer

Shall be automatically deemed to meet each requirement in item 32.1 which is relevant to his/her activities in connection with the Services **until the first of the following applies** in relation to that individual

(a) Change in circumstance	<p>An event or circumstance occurs or arises</p> <ul style="list-style-type: none"> <li>After the Commencement Transfer; and</li> <li>Resulting in the individual no longer meeting the requirement in item 32.1 to the extent relevant to his/her activities in connection with the Services.</li> </ul>
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	(b) New activities	The requirement in item 32.1 relates to any new activity which the individual carries out in connection with a relevant part of the Services which that individual did not carry out immediately before the Commencement Transfer in relation to the Services.
	(c) If the transferor employer is NOT the Permitted Purchasing Body or its Affiliate	The expiry of the first <b>3 months</b> from the date of the Commencement Transfer.
32.3.	Consequences after any of the events or circumstances in item 32.2 occurs	<ul style="list-style-type: none"> <li>• After this, the individual will no longer be automatically deemed under item 32.2 to meet the relevant requirement of item 32.1.</li> <li>• The Operator must then make its own checks whether or not the individual meets the relevant requirements.</li> </ul>
<b>33.</b>	<b>Key Personnel</b>	
33.1.	Definition of 'Key Personnel'	<ul style="list-style-type: none"> <li>• Each current Key Personnel indicated in the Award Letter of the relevant Call-Off Contract.</li> <li>• Each replacement appointed according to this section 33.</li> </ul>
33.2.	Indicate the current Key Personnel of the Operator whom the Operator must use in certain activities connected with the Services	<ul style="list-style-type: none"> <li>• Only if there are Key Personnel indicated in the Award Letter of the relevant Call-Off Contract.</li> <li>• This section 33 does not apply to the Call-Off Contract if no Key Personnel is indicated in the Operator Response in relation to the relevant Call-Off Contract.</li> </ul>
33.3.	The Operator must do all of the following in relation to each Key Personnel in place at the time	
	(a) Contracts in place	The Operator must ensure it has appropriate contracts in place to ensure the Key Personnel can have the relevant involvement as required in item 33.2.
	(b) Directions	The Operator 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 33.2.
	(c) Absence	The Operator must ensure suitable cover for the Key Personnel's duties during the Key Personnel's genuine and reasonable absences from work (e.g. illness, disability, jury service, maternity or paternity leave, genuine holidays, bereavement etc.).
	(d) Not to terminate	<p>The Operator must not terminate either of the following during the term of the relevant Call-Off Contract:</p> <ul style="list-style-type: none"> <li>• <b>If the Operator's contract is with the Key Personnel directly (e.g. an employee, officer, worker or direct contractor of the Operator):</b> the Operator's contract with the Key Personnel, except due to his/her serious default.</li> <li>• <b>If the Operator's contract is with the Key Personnel's employer (i.e. as a subcontractor of the Operator):</b> the Operator's contract with the Key Personnel's employer, except due to its serious default.</li> </ul>

33.4.	Right of the Operator 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 Operator	<p>Only with the written consent of the Permitted Purchasing Body.</p> <ul style="list-style-type: none"><li>• The Permitted Purchasing Body must not withhold that consent where the removal of the Key Personnel is made for good reasons. See item 33.5 for examples.</li><li>• In any case, the Permitted Purchasing Body may withhold that consent until it is satisfied (acting reasonably) with arrangements regarding a replacement.</li></ul>
33.5.	Examples of good reasons to remove the Key Personnel under item 33.4 (any of the following, not exhaustive)	<ul style="list-style-type: none"><li>• The removal is for genuine purposes relating to the career development of the individual (e.g. a genuine promotion).</li><li>• 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.</li><li>• Serious illness, maternity, or other factors affecting the individual where his/her continued involvement in the Services is not reasonably practicable.</li></ul>
33.6.	The Operator must replace the Key Personnel from time to time but only if any of the following applies	
	(a) Removal	The Operator removes the Key Personnel under item 33.4.
	(b) If the Operator's contract is with the Key Personnel directly (e.g. he/she is an employee, officer, worker or direct contractor of the Operator)	The Operator's contract with the Key Personnel ends for any reason <b>other than</b> due to termination by the Operator without the Key Personnel's serious default (e.g. due to the Key Personnel's death, resignation or retirement, dismissal for serious default).
	(c) If the Operator's contract is with the Key Personnel's employer (i.e. it is a subcontractor of the Operator)	The Operator's contract with the Key Personnel's employer ends for any reason <b>other than</b> termination by the Operator without the serious default by the Key Personnel's employer.
	(d) Requested removal	The Permitted Purchasing Body has required the removal of the Key Personnel from his/her activities in connection with the Services according to section 34.
	(e) Absence	<p>Either of the following:</p> <ul style="list-style-type: none"><li>• If the Key Personnel is absent from his/her duties in relation to the relevant Call-Off Contract for any reason (e.g. illness) for a continuous period of <b>30 days</b>; or</li><li>• If the Key Personnel (or his/her employer, if the Operator's contract is with his/her employer) has indicated that the Key Personnel expects to be absent during the term of the relevant Call-Off Contract for any reason (e.g. illness, maternity etc.), in which case the Operator must replace the Key Personnel when his/her anticipated absence commences.</li></ul>

<p>33.7. Approval rights of the Permitted Purchasing Body in connection with the appointment of any replacement Key Personnel from time to time</p>	<p>The Permitted Purchasing Body must accept a replacement proposed by the Operator unless</p> <ul style="list-style-type: none"> <li>• The Permitted Purchasing Body has reasonable grounds to object to the proposed replacement; and</li> <li>• The Permitted Purchasing Body has raised the objection no later than the following after the later of the following: <ul style="list-style-type: none"> <li>– <b>If the Permitted Purchasing Body has not requested the cooperation described below more than 7 days after the proposed replacement was first communicated by the Operator to the Permitted Purchasing Body: 7 days</b> after the date of that communication.</li> <li>– <b>If the Permitted Purchasing Body has requested the cooperation described below 7 days or less after the proposed replacement was first communicated by the Operator to the Permitted Purchasing Body: 7 days</b> after the last date on which the Operator provided that cooperation.</li> </ul> </li> <li>• The Operator must provide the Permitted Purchasing Body with reasonable cooperation in relation to the proposed replacement (e.g. providing CVs, allowing an interview) if reasonably requested by the Permitted Purchasing Body to enable the Permitted Purchasing Body to determine whether or not to object to the appointment.</li> </ul>
<p>33.8. Consequence if</p> <ul style="list-style-type: none"> <li>• The Operator is required to replace a Key Personnel under item 33.6; and</li> <li>• The Operator has not proposed a replacement (other than those in relation to whom the Permitted Purchasing Body has objected under item 33.7) within a certain period</li> </ul>	<p>It shall be a Termination Default Event if and for as long as the Operator has not proposed a replacement more than <b>45 days</b> after the Operator was first required to do so under item 33.6.</p>
<p>33.9. The Operator must keep the Permitted Purchasing Body informed promptly on the Operator first becoming aware of any of the following in relation to the Key Personnel at the time</p> <p>(a) Anticipated absence</p> <p>(b) Death, disability</p> <p>(c) Termination notice</p> <p>(d) Termination of subcontractor</p>	<p>The Operator 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 Operator 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 Operator: any notice given by or to that subcontractor to terminate its contract with the Operator.</p>

### 34. Removal of Operator Personnel

34.1.	The Operator's obligation	The Operator must remove any of its (or its subcontractor's) Personnel from involvement in the Services <b>promptly</b> on request of the Permitted Purchasing Body according to this section 34.
34.2.	When the Permitted Purchasing Body may request removal of relevant Personnel	<ul style="list-style-type: none"> <li>Only with reasonable grounds.</li> <li>See item 34.3 for examples of reasonable grounds.</li> </ul>
34.3.	Examples of reasonable grounds for requiring removal of Personnel under this section 34 (where relevant and not to exclude other reasonable grounds that may apply, and to be read independently)	
	(a) Meeting requirements	The individual does not properly meet the requirements indicated in section 32 where relevant to his/her duties.
	(b) Basis to disclose under Data Protection Legislation	The Operator or its subcontractor (as relevant) does not have sufficient basis under the Data Protection Legislation (e.g. the consent of the individual or other basis) to allow the Permitted Purchasing Body to check that the relevant individual properly meets the requirements relevant to him/her in section 32.
	(c) Incompetence	The individual has demonstrated serious incompetence in his/her allocated tasks in connection with the Services.
	(d) Misconduct	The individual's serious misconduct in his/her activities in connection with the Services.
	(e) Corrupt Acts	<ul style="list-style-type: none"> <li>The individual carries out any Corrupt Act described in section 86 in connection with the Services; and/or</li> <li>Directs another person to do so.</li> </ul>
	(f) Person of ill repute	<p>All of the following</p> <ul style="list-style-type: none"> <li>The individual is, or has become, a person of such serious ill repute</li> <li>Whether or not in connection with the Services</li> <li>To such an extent that a reasonable person would not expect either of the following <ul style="list-style-type: none"> <li>The individual to be involved in the Services; and/or</li> <li>The individual to be associated with the Permitted Purchasing Body generally.</li> </ul> </li> </ul>
	(g) Processing Processed Personal Data	In the circumstances described in item 56.25(g) (in which case such removal only relates to that individual's access to, and/or involvement in, the processing of, any Processed Personal Data).
34.4.	Obligations of the Permitted Purchasing Body before requesting removal of Personnel	<ul style="list-style-type: none"> <li>The Permitted Purchasing Body must reasonably consult with the Operator, and</li> <li>The Permitted Purchasing Body must give the Operator a reasonable opportunity to remedy or otherwise deal with the matter.</li> </ul> <p><b>Exceptions:</b> where it is reasonable for the Permitted Purchasing Body to require immediate removal of the individual.</p>



34.5.	Consequences of removal of Personnel under this section 34 on the Operator's obligations	Removal shall not in itself relieve the Operator from its obligations under the relevant Call-Off Contract.
34.6.	The Operator's right to reinstate Personnel who have been removed under this section 34	The Operator 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.
34.7.	Where the Permitted Purchasing Body is not to unreasonably withhold consent to the reinstatement of an individual for the purposes of item 34.6	<ul style="list-style-type: none"> <li>• <b>If removal is for competence-related issues:</b> the individual is allocated to activities better suited to his/her abilities.</li> <li>• <b>In any case:</b> the Permitted Purchasing Body is satisfied (acting reasonably) that appropriate corrective action has been taken (where reasonably possible).</li> </ul>

## TUPE on Commencement

### 35. TUPE Transfers on commencement

35.1.	Where this section 35 applies	<ul style="list-style-type: none"> <li>• This section 35 only applies if any individual has rights to a TUPE Transfer on any Commencement Transfer in connection with the relevant Call-Off Contract.</li> <li>• It applies regardless of whether or not that TUPE Transfer was expected by the parties according to item 35.2.</li> </ul>
35.2.	Whether any individual is expected to have rights to a TUPE Transfer as a result of any Commencement Transfer	Only if and to the extent indicated in the relevant Award Letter.
35.3.	Information regarding each individual who is expected to have a right to a TUPE Transfer in connection a Commencement Transfer	As indicated in the Award Letter or as otherwise supplied by the Permitted Purchasing Body or the relevant transferor employer.
35.4.	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	The Permitted Purchasing Body must use reasonable endeavours to pass on such updates to the Operator if and when the Permitted Purchasing Body receives any from the relevant transferor employer.
35.5.	<p>If any individual has a right to a TUPE Transfer as a result of a Commencement Transfer, obligations of</p> <ul style="list-style-type: none"> <li>• The Permitted Purchasing Body (if it is the transferor employer) and</li> <li>• The Operator (if it is the transferee employer)</li> </ul> <p>Each of them must do all of the following where relevant</p> <p>(a) Comply with Law</p>	<p>The Permitted Purchasing Body and the Operator must comply in a proper and timely manner with their respective obligations under relevant Law in relation to that transfer.</p>

(b) Provide information	<p>The obligations of each party in item (a) include (for example and where relevant) providing (in a proper and timely manner) the other party or the other party's contractor (if the contractor is a transferor employer or the transferee employer)</p> <ul style="list-style-type: none"> <li>• With appropriate information</li> <li>• To enable the other party (or its contractor, as relevant) to properly carry out its obligations under regulation 13 of the TUPE Regulations.</li> </ul>
35.6. If the transferor employer of any individual is a <b>direct or indirect contractor of the Permitted Purchasing Body</b>	<p>The Permitted Purchasing Body must use reasonable endeavours (including proper enforcement of any contractual rights, if relevant) to ensure all of the following</p> <ul style="list-style-type: none"> <li>• Compliance with item 35.5 by that direct or indirect contractor (as transferor employer) in relation to the transfer of the relevant individual's employment.</li> <li>• That the contractor properly meets all of its Pre-TUPE Transfer Liabilities to all of its employees who have rights to a TUPE Transfer on the Commencement Transfer.</li> </ul>
35.7. If the transferee employer of any individual is a <b>direct or indirect contractor of the Operator</b>	<p>The Operator must use reasonable endeavours (including proper enforcement of any contractual rights, if relevant) to ensure compliance with item 35.5 by that direct or indirect contractor (as transferee employer) in relation to the transfer of the relevant individual's employment.</p>
35.8. Whether the Permitted Purchasing Body gives the Operator any promise that any particular individual identified as having a right to a TUPE Transfer will exercise his/her right to a TUPE Transfer on a Commencement Transfer	<p>Due to the nature of this right of the individual, the Permitted Purchasing Body cannot give a promise of this kind.</p>
35.9. When a relevant Commencement Transfer is deemed to take place	<p>At 23.59 hours on the day on which relevant activities transfer.</p>

### 36. Exclusion of Council's liability on a Commencement Transfer

36.1. Liability of the Permitted Purchasing Body to the Operator and/or its 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	<p>The Permitted Purchasing Body's liability in these circumstances is excluded to the fullest extent permitted by Law.</p>
36.2. Why the exclusion of the Permitted Purchasing Body's liability in item 36.1 is reasonable	<ul style="list-style-type: none"> <li>• This is reasonable because the transferor employer is an outgoing service provider of the Permitted Purchasing Body, and not the Permitted Purchasing Body itself.</li> <li>• Therefore, these matters are outside the Permitted Purchasing Body's reasonable control. All of this is suggested only</li> </ul>

### 37. TUPE Transfers on a Commencement Transfer – Operator indemnity

37.1. Who the Operator indemnifies under this section 37 (each of them 'X')

- The Permitted Purchasing Body; or
  - The Permitted Purchasing Body's direct or indirect previous service provider
- As transferor employer of any individual with a right to a TUPE Transfer on any Commencement Transfer.

37.2. For what the Operator must indemnify X

For X's Losses in respect of any one or more of the following, as relevant

- The first item of indemnity in item 37.3.
- The second item of indemnity in item 37.4.
- The third item of indemnity in item 37.6.

37.3. First item of the indemnity for the purposes of item 37.2

(a) For what the Operator must indemnify X under this item 37.3

For X's Losses resulting from any Claim made or threatened against that person as described in this item 37.3.

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

(i) Employment transfers

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

(ii) Employment would have transferred

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

(c) The individual described in item (b)(ii) must have done **any** of the following things for item (b)(ii) to apply to that individual

(i) Object

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

(ii) Resignation

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

(iii) Certain termination of employment

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

- (d) The Claim must relate to **at least one of the following** for the purposes of this item 37.3

- (i) Employment
- (ii) Collective agreement
- (iii) Transfer process

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

37.4. Second item of the indemnity for the purposes of item 37.2

37.5. Requirements of the statement for the purposes of item 37.4

- (a) Purposes of the statement
- (b) When the statement is made
- (c) Without permission

37.6. Third item of the indemnity for the purposes of item 37.2

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

- (a) Who is the claimant
- (b) For what the Claim relates

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

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

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

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

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

- To any statement
- Issued by the Operator and/or its relevant direct or indirect contractor (whichever is the transferee employer)
- Where item 37.5 applies to that statement.

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

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

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

The Claim is made or threatened against X by HMRC or other statutory body.

The Claim relates to X's liabilities

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

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

37.7. **Exceptions:** the indemnity in this section 37 does not apply to X's Losses to the extent any of the following applies to those Losses

(a) Negligence

To the extent X's Losses are caused by

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

(b) Breach of Law

To the extent X's Losses are caused by

- X's breach of the Law (including the TUPE Regulations); or
- The breach of the Law of X's separate agents.

(c) Breach of contract

To the extent X's Losses are caused by

- X's breach of contract or other legally binding arrangement; or
- The breach of contract or other legally binding arrangement of X's separate agents.

37.8. Rules in relation to the indemnity given in this section 37

Section 68 applies to this indemnity.

## Limits on the organised grouping for TUPE purposes

### 38. Agreed Grouping

38.1. Where this section 38

This section 38 only applies if the relevant Award Letter indicates that the Operator must limit the size of the organised grouping which the Operator allocates to provide the Services under the relevant Call-Off Contract.

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

(a) Current

As indicated in the Award Letter of the relevant Call-Off Contract.

(b) From time to time

As changed by the Operator from time to time but only with the Permitted Purchasing Body's prior written consent (not to be unreasonably withheld).

38.3. Promises given by the Operator to the Permitted Purchasing Body and its relevant replacement direct or indirect service providers

The Operator promises 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 Transfer occurred at that time.

38.4. Consequences in relation to any individual who

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

The Operator shall give the indemnity in section 44 in relation to that individual.

## TUPE on cessation

### 39. TUPE Transfers on a Cessation Transfer

39.1.	Where this section 39 applies	<ul style="list-style-type: none"> <li>It applies if any individual has a right to a TUPE Transfer on any Cessation Transfer.</li> <li>It applies regardless of whether or not that individual's right to a TUPE Transfer was expected when the Services commenced.</li> </ul>
39.2.	Whether any individual is expected to have rights to a TUPE Transfer in connection with any Cessation Transfer	As indicated in the relevant Award Letter of the relevant Call-Off Contract.
39.3.	If the Award Letter of the relevant Call-Off Contract indicates that no individual is expected to have any rights to a TUPE Transfer in connection with any Cessation Transfer	The Operator must provide the Services in such a way to ensure that no individual has any right to a TUPE Transfer in connection with any Concession Transfer.
39.4.	When a relevant Cessation Transfer is deemed to take place	At 23.59 hours on the day on which relevant activities transfer.
39.5.	General obligations of the Permitted Purchasing Body and the Operator in relation to TUPE Transfers on any Cessation Transfer	To comply with the Law generally in relation to the TUPE Transfers.

### 40. Providing TUPE information on Cessation Transfers

40.1.	Purpose of this section 40	To set out the Operator's obligations in providing information to the Permitted Purchasing Body regarding prospective TUPE Transfers in relation to a Cessation Transfer if any individual has a right to a TUPE Transfer.
40.2.	What information the Operator must provide the Permitted Purchasing Body	All information indicated in item 40.14 to the extent relevant to each individual who would have a right to a TUPE Transfer if a Cessation Transfer occurred at the date on which the Operator receives the Permitted Purchasing Body's request for that information.
40.3.	How the Operator must provide the information	<ul style="list-style-type: none"> <li>In writing; and</li> <li>With material accuracy and completeness.</li> </ul>
40.4.	Deadline by which the Operator must provide the information indicated in item 40.2	<ul style="list-style-type: none"> <li>No later than <b>30 days</b> after the Permitted Purchasing Body has requested the information from the Operator in writing; or</li> <li>Such longer time requested by the Operator and as permitted by the Permitted Purchasing Body in writing, acting reasonably.</li> </ul>
40.5.	When the Permitted Purchasing Body is permitted to make the request described in item 40.4	<ul style="list-style-type: none"> <li>In good faith; and</li> <li>Only in genuine contemplation of a Cessation Transfer.</li> </ul> <p>This may include the conduct of a competitive invitation to tender exercise (or anything similar) in contemplation of a Cessation Transfer that would occur if the Operator were replaced by another operator.</p>

40.6.	Whether the Operator may provide the information in a manner to protect the rights of relevant individuals under the Data Protection Legislation	<ul style="list-style-type: none"> <li>• The Operator may take reasonable and proportionate steps to do so, for genuine purposes of complying with the Data Protection Legislation.</li> <li>• This may include (if relevant) providing the relevant information in a manner so that no individual can be identified.</li> <li>• <b>Exception:</b> in the circumstances described in item 40.11.</li> </ul>
40.7.	Responsibility under the Data Protection Legislation	As between the Operator and the Permitted Purchasing Body, the Operator shall retain liability to any individual whose personal data is disclosed and used according to (and for the purposes of) this section 40 if such disclosures and use breach that individual's rights under the Data Protection Legislation.
40.8.	<p>Consequence if the Operator fails to supply any of the information whatsoever required in item 40.2 by the deadline described in item 40.4</p> <p>(i.e. the Operator provides no such information at all by the deadline)</p> <p>(a) Deemed disclosure</p> <p>(b) Examples of the consequences of the Operator's failure (examples only, not an exhaustive list)</p>	<p>The Operator shall be deemed to have disclosed to the Permitted Purchasing Body that no individual would have had any right to a TUPE Transfer if a Cessation Transfer had occurred on the deadline for disclosures indicated in item 40.4.</p> <ul style="list-style-type: none"> <li>• The Permitted Purchasing Body may disclose to prospective replacement operators (whether or not in a public tender exercise) that no individual would have had any right to a TUPE Transfer on the Cessation Transfer in reliance on the deemed disclosure by the Operator.</li> <li>• Section 44 sets out an indemnity given by the Operator in relation to any individual who later asserts that he/she has a right to a TUPE Transfer in connection with the Cessation Transfer.</li> </ul>
40.9.	The Operator's obligation to provide updates to the information requested by the Permitted Purchasing Body under this section 40	<ul style="list-style-type: none"> <li>• The Operator must provide updates (e.g. significant changes) in writing until the relevant Cessation Transfer occurs.</li> <li>• It must do so in a way to reflect changes that occur and that would be relevant if the Cessation Transfer occurred at the time the update was made.</li> </ul>
40.10.	How the Operator must carry out its obligations under item 40.9	<p>It must do so according to all of the following:</p> <ul style="list-style-type: none"> <li>• Promptly when any significant change occurs;</li> <li>• Regardless of whether the Permitted Purchasing Body has requested the update; and</li> <li>• In any case, promptly on the request of the Permitted Purchasing Body (made reasonably and in good faith in relation to the prospective Cessation Transfer).</li> </ul>

40.11. Further obligations of the Operator to provide information before the Cessation Transfer

(a) Further information which the Operator must provide the Permitted Purchasing Body or other relevant transferee employer

All of the information of the kind described in item 40.14

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

(b) To whom the Operator must provide the further information described in item (a)

- The relevant transferee employer of the individual on the Cessation Transfer.
- This may be the Permitted Purchasing Body or its direct or indirect replacement service provider, as relevant.

(c) Deadline by which the Operator must provide the further information described in item (a)

Either of the following, as relevant

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

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

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

No later than the minimum deadline in the TUPE Regulations.

(iii) Interpretation

In this item (c), the minimum deadline in the TUPE Regulations means the minimum deadline indicated at the time in the TUPE Regulations by which a transferor employer must provide "employee liability information" where special circumstances do not apply.

40.12. On which date must the information be materially accurate and complete

- As specified by the Operator (or other transferor employer, as relevant) at the time it gives the information.
- But not more than **14 days** before the date on which the Operator provides the information to the Permitted Purchasing Body or other relevant transferee employer.

40.13. Whether the Permitted Purchasing Body is obliged to reimburse the Operator for its costs in carrying out its obligations under this section 40.

No.



40.14. Information which the Operator must supply the Permitted Purchasing Body for the purposes of this section 40

All of the following to the extent relevant to each individual who would have a right to a TUPE Transfer if a Cessation Transfer occurred at the time the Operator provides the information

(a)	Job title	The individual's job title
(b)	Grade	The individual's grade
(c)	Date of birth	The individual's date of birth
(d)	Commencement	The date of commencement of the individual's employment.
(e)	Working hours	The individual's working hours.
(f)	Continuous service	The individual's level of continuous service, including continuous service for the purposes of relevant Law or the individual's contract of employment relating to the calculation of redundancy payments.
(g)	Relationship with Operator	The individual's relationship with the Operator (e.g. whether an employee, or an employee of the Operator's contractor, or otherwise).
(h)	Employer	The identity of the individual's employer (or person who engages him/her in any other capacity) if not the Operator (e.g. a subcontractor).
(i)	Termination and redundancy	The main contractual terms relating to the termination of the individual's employment, including notice periods, redundancy procedures and redundancy payments.
(j)	Leave entitlements	The individual's contractual leave entitlements (e.g. holidays).
(k)	Wages etc.	The individual's wages, salary, entitlements to bonuses and/or entitlement to any profit sharing (or anything similar to any of these), as relevant.
(l)	Pension	The individual's current pension arrangements with the individual's current employment, including (if relevant) the individual's membership (or eligibility for membership) for any public sector pension scheme.
(m)	Other benefits	The individual's other employment related benefits (e.g. membership of any pension or other retirement benefit scheme or anything similar, membership of any share option plan, company car, health insurance, life assurance etc.).

	(n) Claims	<p>Any known</p> <ul style="list-style-type: none"> <li>• Liabilities owed to, and/or</li> <li>• Claims made or threatened by</li> </ul> <p>The relevant individual in connection with this/her employment.</p> <p>These include (for example)</p> <ul style="list-style-type: none"> <li>• Liabilities or Claims relating to personal injury, breach of his/her contract of employment, or breach of the Law in relation to his/her employment (e.g. breaches relating to discrimination, equal pay etc.).</li> <li>• Accrued leave entitlements (e.g. holidays).</li> </ul>
	(o) Long term absence	Whether the relevant individual is on any kind of long-term absence (e.g. long-term sick leave, maternity leave, paternity leave etc.).
	(p) Union membership	The relevant individual's union membership, if any.
	(q) Arrangements etc.	Details of any arrangements or understandings (including any collective arrangements) the relevant individual has in place with any trade union, staff body or other representative body of employees.
	(r) Mobility	Whether the relevant individual's contract of employment contains any right of his/her employer to change his/her work location.
	(s) Termination notice	Whether the relevant individual has given (or been given) a notice to terminate his/her employment, and if so, when any notice period is to end.
	(t) 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).
	(u) Disciplinary	The relevant individual's disciplinary records.
	(v) Grievance, disciplinary	A summary of ongoing disciplinary or grievance matters relating to the relevant individual.
	(w) Other	Any other information which is required as "employee liability information" under regulation 11 of the TUPE Regulations which is not otherwise described above.
40.15.	Rights of the Permitted Purchasing Body to deal with information provided to it by the Operator under this section 40	The Permitted Purchasing Body may do so for genuine purposes connected with a proposed or actual Cessation Transfer.
40.16.	Examples of the rights of the Permitted Purchasing Body to deal with information provided to it under this section 40 (examples only, not an exhaustive list)	The Permitted Purchasing Body may disclose the information to actual or prospective transferee employers (whether in the context of a publicly-advertised competitive tendering exercise or anything similar, or otherwise).

## 41. Providing employee records on a Cessation Transfer

### 41.1. Purpose of this section 41

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

- 41.2. The Operator must supply
- Each record which meet all of the following requirements
  - In relation to each individual (if any) whose employment transfers as a TUPE Transfer on a Cessation Transfer
  - To the relevant transferee employer (whether the Permitted Purchasing Body or its direct or indirect replacement service provider, whichever is the transferee employer)

(a) Reasonably necessary

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

(b) In possession or control

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

- 41.3. Examples of the records which the Operator must supply to the relevant transferee employer under item 41.2

- To the extent the record meets the requirements in item 41.2
- These are examples only, and do not exclude any other records which otherwise meet the requirements in item 41.2

(a) Contract of employment

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

(b) Payroll records

Relevant payroll records, including for example those showing the following

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

(c) Pension-related

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

(d) Right to work

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

(e)	Licences, accreditations etc.	<p>Records evidencing that the transferor employer has sufficiently checked whether the individual has the licences, qualifications, background checks (or anything similar to any of these) which he/she must hold By Law; and/or</p> <ul style="list-style-type: none"> <li>Under the relevant Call-Off Contract (see in particular, item 32.1)</li> <li>To carry out his/her duties in connection with the relevant Services immediately before the Cessation Transfer.</li> </ul>
(f)	Continuing professional development	<p>If the individual is required by Law or the standards of his/her trade or profession to meet continuing professional development requirements to carry out his/her relevant duties in connection with the Services, records on the extent he/she has met those requirements in the year in which his/her TUPE Transfer occurs.</p>
(g)	Leave	<p>Records relating to the following leave-related matters</p> <ul style="list-style-type: none"> <li>Leave entitlements (e.g. holiday leave) of the of the individual attributable to the rest of the year after his/her TUPE Transfer.</li> <li>The individual's sickness records</li> <li><b>If (on the date of the individual's TUPE Transfer) the individual is (or is expected to be) on long term sick leave or on maternity or paternity leave:</b> his/her anticipated return date.</li> <li>Any leave requests (e.g. holidays, maternity or paternity leave etc.) which the individual has made to the transferor employer where any part of that leave is expected to be taken after his/her TUPE Transfer.</li> </ul>
(h)	Disciplinary	<p>The individual's disciplinary records.</p>
(i)	Claims	<p>Records relating to any unresolved claims, proceedings, or anything similar between the individual and the transferor employer.</p>
(j)	Grievances	<p>Records relating to any unresolved grievances, allegations or anything similar formally raised by the individual to the transferor employer.</p>
(k)	Resignation	<p>Any notice of resignation which the individual has given to the transferor employer where the notice period is expected to expire after the individual's TUPE Transfer.</p>
41.4.	Deadline by which the Operator must provide the records described in item 41.2	<p>No later than</p> <ul style="list-style-type: none"> <li><b>30 days</b> of the written request of the transferee employer; or</li> <li>Such longer time as permitted by the transferee employer in writing. If the Permitted Purchasing Body is the transferee employer, it must not unreasonably withhold that permission.</li> </ul> <p>In any case, no later than the date of the relevant TUPE Transfer of the individual as a result of the Cessation Transfer.</p>
41.5.	When the relevant transferee employer may make the request described in item 41.435.4	<ul style="list-style-type: none"> <li>In good faith; and</li> <li>Only for the genuine purposes of the TUPE Transfer of the relevant individual resulting from the relevant Cessation Transfer.</li> </ul>

41.6. How the Operator's costs are borne in complying with its obligations under this section 41

- The Operator must bear its own costs in doing so.
- The Permitted Purchasing Body (or other transferee employee, as relevant) is not liable to reimburse the Operator for those costs.

## 42. Restrictions on the Operator prior to a Cessation Transfer

42.1. The Operator must comply with all of the following obligations in relation to any prospective Cessation Transfer

Subject to the rest of this section 42

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

(i) Change size

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

(ii) Change composition

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

(iii) Change amount of time

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

(iv) Replace

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

(v) Terms and conditions

- The Operator must not change the terms and conditions of any member of the organised grouping (including any customary practice in relation to that individual).
- This includes (for example) those relating to his/her remuneration and/or his/her rights and entitlements in relation to the termination of his/her employment.

(vi) Termination of contract of employment

The Operator must not terminate the contract of employment of any member of the relevant organised grouping.

(b) Keep informed

- The Operator 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 (a).
- The Operator must do so regardless of whether it involves affected employees of the Operator or its direct or indirect subcontractors.

(c) Subcontractors

The Operator must use reasonable endeavours (including exercising any relevant contractual rights) to ensure compliance with item (a) by each of its direct or indirect subcontractors which would be a transferor employer of any individual if a relevant Cessation Transfer occurs.

(d) Not to become legally bound

The Operator must not agree (or otherwise become legally bound) to do any act that would breach any of its obligations described in item (a).

(e) Further obligations	<ul style="list-style-type: none"> <li>• The Operator must not assist or instruct another person (e.g. any subcontractor) to do any act that would breach this section 42 if that act were done by the Operator directly.</li> <li>• If the Operator's Affiliate does any such act, the onus will lie with the Operator to prove it was not done under its assistance or instructions.</li> </ul>
<p>42.2. When the Operator must comply with its obligations under this section 42</p> <p>At the following times (where relevant)</p>	<ul style="list-style-type: none"> <li>• Within the <b>6 month</b> period immediately before the expiry date of the relevant Call-Off Contract (see section 13) or</li> <li>• <b>If the relevant Call-Off Contract (or relevant part to which the Cessation Transfer relates) is terminated early:</b> at any time after the relevant termination notice is given by the terminating party.</li> </ul> <p>The obligations continue until the Operator is no longer required to carry out the relevant activities under the relevant Call-Off Contract.</p>
<p>42.3. Exceptions to the Operator's obligations in item 42.1</p> <p>(any of the following where relevant, to be read independently)</p>	
(a) Required or permitted elsewhere	<p>To the extent the Operator is required or permitted not to comply with those obligations elsewhere in the relevant Call-Off Contract.</p>
(b) Consent of the Permitted Purchasing Body	<ul style="list-style-type: none"> <li>• To the extent the Operator is acting with the written approval of the Permitted Purchasing Body.</li> <li>• The Permitted Purchasing Body must not unreasonably withhold that approval.</li> </ul>
(c) In relation to any changes in the terms and conditions of a member of the organised grouping as described in item 42.1(a)(v)	<p>Any of the following</p> <ul style="list-style-type: none"> <li>• The change is the result of any genuine negotiations with a trade union (or anything similar) which is then representing the relevant individual.</li> <li>• The change is required by Law.</li> </ul>
(d) In relation to the termination of the contract of employment of any member of the organised grouping described in item 42.1(a)(vi), if <b>either</b> of the following applies to the termination	
(i) Certain reasons for the termination	<p>The termination of the relevant individual's contract of employment is for any of the following reasons</p> <ul style="list-style-type: none"> <li>• His/her serious misconduct.</li> <li>• His/her default under his/her contract of employment.</li> <li>• Serious, genuine and long-term health issues affecting him/her (e.g. disability, long term illness) which genuinely affect his/her ability to continue in his/her normal duties.</li> <li>• Any request by the Permitted Purchasing Body to remove the individual from activities under section 34.</li> <li>• Any requirement of the Law.</li> </ul>

(ii) Replaced

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 individual he/she replaces (other than changes required by Law).

#### 43. Pension obligations on Cessation Transfers

43.1. The Operator must comply with all of the following obligations in relation to each individual whose employment transfers as a result of a TUPE Transfer on a Cessation Transfer

The Operator must do so at its own cost

(a) Records

The Operator must ensure appropriate employer-related pension records relating that individual are properly up-to-date.

(b) Administrative tasks

The Operator must promptly comply with all of the following

- 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 the Cessation Transfer.
- Which may include, where relevant, a request relating to the bulk transfer of any accrued rights of the individual.

(c) Subcontractors, trustees

The Operator must use reasonable endeavours (including exercising relevant contractual rights) to ensure compliance with this section 43 by each of the following where relevant:

- Its direct or indirect subcontractor (if the transferor employer).
- The trustee of the relevant pension fund.

#### 44. TUPE Transfers on cessation – Operator indemnity

44.1. To whom the Operator gives the indemnity under this section 44  
(each of them 'X' in this section 44)

- The Permitted Purchasing Body; and/or
- Each of its direct or indirect replacement service providers

Which is the relevant transferee employer of any individual who has (or who asserts) a right to a TUPE Transfer on a Cessation Transfer.

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

(a) Certain Claims by individuals

Any Claim made or threatened against X:

- By or on behalf of any individual who has a right (or who asserts a right) to a TUPE Transfer on a Cessation Transfer.
- Where the Claim is for any of the items described in item 44.3.

But only if **all** of the conditions of item 44.4 are met in relation to the relevant Claim.

(b) Certain payments of compensation

Compensation which X is liable to pay to an individual

- Whose employment is terminated; and
- Where all of the conditions in item 44.5 are met in relation to that individual.

44.3. For the purposes of item 44.2(a), the indemnity in this section 44 applies to Claims made or threatened against X by an individual described in item 44.2(a) for any one or more of the following items

(a) Pre-TUPE Transfer Liabilities

- 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 X before the Cessation Transfer.

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

(i) For what compensation

Compensation which X (as transferee employer) must pay the relevant individual

- To the extent X is liable for the transferor employer's breach of its obligations under the TUPE Regulations to consult the relevant individual
- In connection with the individual's TUPE Transfer on the relevant Cessation Transfer.

(ii) Identification of the individual

This applies regardless of whether or not the individual's identity (whether by name or role) was communicated to X before the Cessation Transfer.

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

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

- In writing
- To the Operator's Representative
- No later than **3 months** after the relevant Cessation Transfer.



	(c) Compensation payable by X to the relevant individual for X's breach in relation to the following	
	(i) For what compensation	<p>Compensation which X (as transferee employer) must pay the relevant individual</p> <ul style="list-style-type: none"> <li>• To the extent X is liable for the X's own breach of its obligations under the TUPE Regulations to consult the relevant individual</li> <li>• In connection with the individual's TUPE Transfer on the relevant Cessation Transfer.</li> </ul>
	(ii) Individuals to whom X's breach applies	<p>Only those individuals whose right to a TUPE Transfer on a Cessation Transfer was not disclosed (whether by name or role)</p> <ul style="list-style-type: none"> <li>• In writing;</li> <li>• By the Operator (and/or by its direct or indirect subcontractor if it is the transferor employer);</li> <li>• To the Permitted Purchasing Body and/or to the other relevant transferee employer; and</li> <li>• Before the Cessation Transfer.</li> </ul>
	(d) Legal costs	<p>X's legal costs in relation to the Claim described elsewhere in this item 44.3</p> <ul style="list-style-type: none"> <li>• To the extent reasonably incurred; and</li> <li>• To the extent reasonably evidenced.</li> </ul> <p><b>If the Operator has any rights to take over the defence of the Claim under item 68.11(b):</b> the Operator has not exercised those rights after a reasonable time of having been given the opportunity to do so.</p>
44.4.	Other conditions for the purposes of item 44.2(a)	<p>The Permitted Purchasing Body must not have done anything to instruct, encourage or deliberately assist the relevant individual to bring a Claim in relation to any of the matters described in item 44.3.</p>
44.5.	Conditions that must be met in relation to the indemnity given to X under this section 44 in relation to compensation which X is liable to pay to an individual in relation to the termination of that individual's employment for the purposes of item 44.2(b)	
	(a) Whose employment is terminated	<p>Any individual who has a right to a TUPE Transfer against X on the Cessation Transfer.</p>
	(b) Who terminates the individual's employment	<p>X, in its capacity as transferee employer on the individual's TUPE Transfer.</p>
	(c) Reasons for the termination of the employment of the individual	<p>It must be due to a genuine and lawful redundancy.</p>

- (d) Any of the following applies to the individual if his/her employment is terminated for any reason indicated elsewhere in this item 44.5

- (i) Failure to disclose

The Operator (and/or any other relevant transferor employer) had failed to disclose to the Permitted Purchasing Body (or to a replacement service provider which is the relevant transferee employer)

- In writing
- By the following deadline
  - **If the role that individual held first became part of the relevant organised grouping after the deadline indicated in item 40.4: 7 days** after the role first became part of the organised grouping, but in any case not after the date of the Cessation Transfer; or
  - **Otherwise:** by the deadline indicated in item 40.4.

That the relevant 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.).

- (ii) Inaccuracies, incompleteness in information provided

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

- The Operator (and/or any other relevant transferor employer) had disclosed to X (or to a replacement service provider 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 Operator (or another transferor employer) to X (or other transferee employer).

- (iii) Agreed Grouping

- The relevant individual is not a member of the Agreed Grouping (according to item 38.2) immediately before the Cessation Transfer.
- This applies even if the identity of the individual has been disclosed to X before the Cessation Transfer.

- 44.6. What X must do if it wants the Operator to indemnify X under this section 44 for the compensation for which X is liable in relation to a relevant individual under item 44.2(b) (all of the following to the extent relevant)

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

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

- (b) In any case

X must give the Operator 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.).

44.7. How the compensation for which X is liable to pay the relevant individual must be calculated for the purposes of the indemnity in this section 44

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

44.8. Deadline by which X must have commenced the procedure to terminate the individual's employment for this indemnity to apply to the compensation described in item 44.2(b)

- (a) If the identity of the individual had been sufficiently disclosed to X before the Cessation Transfer (whether by name or role etc.)
- (b) If the identity of the individual had not been sufficiently disclosed to X before the Cessation Transfer (whether by name or role etc.)
- (c) If the individual is not a member of the Agreed Grouping immediately before the Cessation Transfer according to item 38.2

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

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

No later than **60 days** after the date of the Cessation Transfer.

44.9. X cannot claim the indemnity under this section 44 for the compensation described in item 44.2(b) in relation to a relevant individual if **all** of the following apply

(a) Continues to work

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

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

After the end of the period described in item (b).

(b) Period for purpose of item (a)

The longer of the following

- The minimum notice period which the individual is entitled to receive by Law.
- The minimum notice period which the individual is entitled to receive by under his/her contract of employment.

With the notice of termination to be deemed to have been given according to item (c)

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

On the earlier of the following

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

44.10. **Refund of indemnity payments:** the Permitted Purchasing Body must pay the Operator a refund according to the following

- (a) Circumstances where the Permitted Purchasing Body must pay the Operator the refund described in item (b)

Where all of the following apply

- The Operator has paid X an amounts under the indemnity in this section 44 in relation to compensation payable to an individual described in item 44.2(b).
- That individual is later re-engaged according to all of the following
  - By X or its Affiliate
  - In any capacity (e.g. as an officer, employee, contractor etc.)
  - Within **12 months** from the date on which his/her employment was terminated for the purposes of item 44.5.

- (b) Amounts which the Permitted Purchasing Body must refund to the Operator if the circumstances in item (a) apply in relation to an individual

All of the following

- All amounts which the Operator has paid to X under the indemnity in this section 44 in relation to compensation for which X was liable as described in item 44.2(b); and
- Interest accruing from the date of payment of the relevant amount by Operator to X and calculated under section 21.

- (c) Due date by which the Permitted Purchasing Body must pay the refund it is liable to pay under this item 44.10 to the Operator

- No later than **7 days** after a written demand issued by the Operator.
- The Operator must send that demand strictly according to section 80.

- (d) Further obligations of the Permitted Purchasing Body

It must keep the Operator informed (in a timely manner on first becoming aware) of the circumstances in item (a) as and when they arise in relation to an individual.

- (e) Whether the Permitted Purchasing Body is liable to pay the Operator the refund under this item 44.10 if X is a replacement service provider of the Permitted Purchasing Body (and if the Operator paid the indemnity to that replacement service provider)

- The Permitted Purchasing Body has the liability to the Operator to pay the refund in these circumstances.
- Any liability of the replacement service provider to compensate the Permitted Purchasing Body is a matter between them that does not affect the Operator.

44.11. **Procedures:** X must strictly follow all of the following procedures if it wishes to claim the indemnity under this section 44

- (a) Notice which X must give the Operator

- The Permitted Purchasing Body must give the Operator notice of its intention to enforce the indemnity.
- This notice must be given strictly in accordance with section 80.

- (b) Minimum contents which the of the notice described in item (a) (all of the following)

- (i) Name

The name of the individual to whom the indemnity relates.

(ii) If an employee of an outgoing subcontractor	If the transferor employer was a previous direct or indirect subcontractor of the Operator (and not the Operator itself): the name of that subcontractor.
(iii) Details of Claim etc.	Details of the matter to which the claim for the indemnity relates.
(c) What must accompany the notice described in item (a)	<ul style="list-style-type: none"> <li>• Suitable proof of the matter to which the claim for the indemnity relates (whether relating to a Claim described in item 44.2(a) or a liability to pay compensation under item 44.2(b), as relevant).</li> <li>• <b>If the indemnity relates to X's liability to pay compensation under item 44.2(b):</b> suitable proof that all of the conditions in item 44.5 are met.</li> </ul>
44.12. Rules relating to the indemnity in this section 44	<ul style="list-style-type: none"> <li>• Section 68 applies to this indemnity.</li> <li>• This section 44 overrides section 68 to the extent of any inconsistency.</li> </ul>

## Pre-TUPE Transfer Liabilities

### 45. Definition of Pre-TUPE Transfer Liabilities

45.1. A ' <b>Pre-TUPE Transfer Liability</b> ' is any liability described below in relation to any individual whose employment transfers as a TUPE Transfer	<ul style="list-style-type: none"> <li>• All employment-related liabilities (including those described in item 45.2).</li> <li>• Owed by a relevant transferor employer (whether that transferor employer is the Permitted Purchasing Body or the Operator or any of their direct or indirect contractors).</li> <li>• To that individual or to anyone else in relation to that individual (e.g. HMRC).</li> <li>• In connection with that individual's employment with the transferor employer up to the date of the transfer of his/her employment as a TUPE Transfer.</li> <li>• Subject to the rest of this section 45.</li> </ul>
45.2. Examples of employment-related liabilities in connection with a relevant individual for the purpose of item 45.1  To the extent connected with the relevant individual's employment with the transferor employer up to the date of the transfer of the individual's his/her employment as a TUPE Transfer  Not to exclude other employment-related liabilities described in item 45.1	
(a) Remuneration	Liability to pay remuneration and other compensation under the relevant individual's contract of employment, including wages, commissions, bonuses and other benefits.
(b) Pension	Liability to make employer's pension contributions in relation to the relevant individual.

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

45.3. Further requirements of any liability for the purposes of item 45.1

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

45.4. Regardless of anything elsewhere in this section 45, a liability to which **all** of the following apply is **not** a Pre-TUPE Transfer Liability

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

(c)	To what the liability relates	The liability (even if arising before the date of the relevant service provision change) relates to the resignation of the relevant individual before the date of his/her TUPE Transfer.
(d)	Reason for the resignation	<p>A substantial reason for the individual's resignation was that the relevant transferee proposed changes to the individual's working conditions (including his/her remuneration, pension arrangements or otherwise) which</p> <ul style="list-style-type: none"> <li>• Are substantial and unfavourable to the individual; and</li> <li>• Which the transferee employer proposes to take effect after the date of the relevant TUPE Transfer.</li> </ul>

## Subcontracting

### 46. Liability for the acts etc. of subcontractors

46.1.	Liability of the Operator for the acts or failures to act by any subcontractor directly or indirectly appointed by the Operator in connection any part of the Services	<ul style="list-style-type: none"> <li>• The parties must regard any act (or failure to act) by any such subcontractor in connection with any part of the Services as if it were the Operator's own act or failure to act if the Operator were responsible for those activities directly.</li> <li>• This does not limit any person's rights and remedies against the subcontractor directly.</li> </ul>
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### 47. Paying subcontractors

47.1.	Subcontractors to which the obligations of the Operator in this section 47 apply	All subcontractors.
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#### Operator obligations

47.2.	Main obligations	<ul style="list-style-type: none"> <li>• The Operator must pay each subcontractor described in item 47.1 The charges, fees or the similar which the Operator is liable to pay the subcontractor under the relevant subcontract.</li> <li>• The Operator is only required to do so insofar as those charges, fees or anything similar relate to the subcontractor's activities connected with the Services (and not to unrelated dealings between the Operator and the subcontractor).</li> </ul>
47.3.	Deadline by which the Operator must pay the subcontractor those charges	<p>The earlier of the following after the Operator's receipt of a relevant invoice from the subcontractor:</p> <ul style="list-style-type: none"> <li>• <b>30 days</b>; or</li> <li>• Any shorter period according to the payment terms in the relevant subcontract.</li> </ul>
47.4.	Requirements of the subcontractor's invoice for the purposes of item 47.3	<p>The Operator's obligations under item 47.2 only apply to invoices of the subcontractor to the Operator which are</p> <ul style="list-style-type: none"> <li>• Valid having regard to the terms of the subcontract; and</li> <li>• Not subject to a genuine dispute which the Operator is using reasonable and genuine efforts to attempt to resolve in a timely way.</li> </ul>

## 48. Promised Subcontractors

<p>48.1. Each current subcontractor which the Operator must engage in connection with particular activities in connection with the Services, and the relevant activities which the Operator must allocate to that subcontractors</p> <p>Each of them is a current '<b>Promised Subcontractor</b>'</p>	<ul style="list-style-type: none"> <li>• Only as indicated in the relevant Operator Call-Off Response.</li> <li>• The rest of this section 48 only applies if the Operator Call-Off Response indicates any 'Promised Subcontractor'.</li> </ul>
<p>48.2. If a Promised Subcontractor discontinues its activities in relation to its required activities, the deadline by which the Operator must have suitable alternative arrangements in place</p> <p>E.g. to have found a replacement, to have taken on the responsibility for the relevant activities itself</p>	<ul style="list-style-type: none"> <li>• Either <ul style="list-style-type: none"> <li>– <b>30 days</b> from the discontinuation of the relevant Promised Subcontractor; or</li> <li>– Such later deadline permitted in writing by the Permitted Purchasing Body (acting reasonably).</li> </ul> </li> <li>• These are subject to the consents required in item 48.4.</li> <li>• The Operator must give the Permitted Purchasing Body enough time to properly consider the Operator's proposed alternative arrangements to ensure those arrangements can be in place before this deadline.</li> </ul>
<p>48.3. Consequences if the Operator fails to have suitable alternative arrangements in place by the deadline in item 48.2</p>	<p>It shall be a Termination Default Event of the Operator.</p>
<p>48.4. The Operator requires the prior written consent of the Operator before doing any of the following in relation to a Promised Subcontractor in place from time to time (such consent must not be unreasonably withheld)</p>	
<p>(a) Extending deadline</p>	<p>Extending the deadline described in item 48.2.</p>
<p>(b) Terminating subcontract</p>	<p>Terminating the Operator's contract with the Promised Subcontractor insofar as termination affects the activities for which the Operator must engage the Promised Subcontractor under item 48.1.</p>
<p>(c) Replacement</p>	<p>Appointing a replacement Promised Subcontractor from time to time.</p>
<p>(d) Operator carrying out activities</p>	<p>The Operator itself carrying out the required activities of the Promised Subcontractor under item 48.1.</p>



## 49. Consents to appointment of subcontractors

- 49.1. The Operator must obtain the prior written consent of the Permitted Purchasing Body if the Operator wishes to appoint any of the following subcontractors in relation to the relevant Call-Off Contract
- Whether directly appointed by the Operator or indirectly by any intermediary subcontractor
  - Regardless of whether the proposed subcontractor is also a member provider of the Dynamic Purchasing System
  - The consent of the Permitted Purchasing Body is not required in relation to any other direct or indirect subcontractors which the Operator wishes to appoint in relation to the relevant Call-Off Contract

- (a) If the subcontract is over a certain value as a percentage of the relevant Call-Off Contract

If the total amount payable to the relevant subcontractor and/or its Affiliates

- Aggregated between the subcontractor and its Affiliates in the subcontracts they hold in connection with the relevant Call-Off Contract
- Annualised (calculated as if the subcontract continued for **12 months**)
- Whether payable to the subcontractor by the Permitted Purchasing Body directly or by another subcontractor above it in the supply chain

Is more than **30%** of the total Charges that would be payable by the Permitted Purchasing Body to the Operator at the time, calculated as if the Services continued for **12 months**.

- (b) Safeguarding

In relation to any subcontractor whose activities in connection with the Services reasonably require safeguarding background checks.

- (c) Promised Subcontractor

Any replacement subcontractor from time to time to carry out any activities allocated to any 'Promised Subcontractor' according to item 48.1.

- (d) Sub-processor

- Any Sub-processor defined in item 56.2(e) if the Operator is a data processor for the purposes of section 56.
- See item 56.29(b) for examples of reasonable grounds on which the Permitted Purchasing Body's consent may be withheld to the appointment of a proposed Sub-processor. These do not exclude other reasonable grounds that apply at the time.

- (e) If the Permitted Purchasing Body has previously required the Operator to remove the subcontractor under section 50

In relation to the reinstatement of that subcontractor in connection with any part of the Services.

49.2.	Consent fee	<ul style="list-style-type: none"> <li>If the Operator requests the Permitted Purchasing Body's consent to a subcontractor for the purposes of this section 49 and the Operator wishes to engage that subcontractor in the Services for more than <b>5 consecutive Business Days</b>, the Operator is liable to pay the Permitted Purchasing Body a consent fee of <b>£300.00</b> all inclusive, to meet the Permitted Purchasing Body's administration costs in considering the request.</li> <li>The Permitted Purchasing Body is not liable to refund this fee even if the Permitted Purchasing Body refuses consent.</li> <li>The Permitted Purchasing Body may revoke its consent if and for as long as the Operator has not fully paid this fee after more than <b>30 days</b> after the Permitted Purchasing Body's invoice for payment.</li> </ul>
49.3.	How the Permitted Purchasing Body's consent is to be given in relation to any proposed subcontractor described in item 49.1	<ul style="list-style-type: none"> <li>In writing.</li> <li>Not to be unreasonably withheld.</li> </ul>
49.4.	Examples of reasonable grounds for which the Permitted Purchasing Body may withhold its consent	See section 51.
49.5.	If consent to a subcontractor has been given in relation to one Call-Off Contract of the Operator, whether further consent to the Operator's appointment of that subcontractor is also required for other Call-Off Contracts	<ul style="list-style-type: none"> <li>No.</li> <li><b>Exception:</b> where consent is required to reinstate the subcontractor in item 49.1(e).</li> <li>In any case, the Operator must inform the relevant Permitted Purchaser if it uses the same subcontractor for a different Call-Off Contract. The Permitted Purchaser must do so before it commences using that subcontractor for that different Call-Off Contract.</li> </ul>
49.6.	Whether the consent of the Permitted Purchaser is required if the subcontractor is also a member operator under the Dynamic Purchasing System	Yes.
49.7.	Other obligations to inform the relevant Permitted Purchaser regarding the use of subcontractors	<p>The Operator must inform the relevant Permitted Purchaser if it uses (for the purposes of the relevant Services) a vehicle bearing a brand, logo or similar which is not that of the Operator itself (e.g. a third party from whom the Operator has temporarily hired the vehicle).</p> <p>The Permitted Purchaser must do so before it commences using that vehicle in relation to the relevant Services.</p>

## 50. Removal of subcontractors

50.1.	Obligation of the Operator to remove subcontractors whom the Operator has directly or indirectly engaged in connection with the Core Services and/or any Non-Core Services	The Operator must do so promptly on the Permitted Purchasing Body's request.
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50.2.	How the Permitted Purchasing Body must make any request described in item 50.1	<p>The Permitted Purchasing Body may only make this request</p> <ul style="list-style-type: none"> <li>• In writing (the formal requirements in section 80 are not required).</li> <li>• With reasonable grounds (e.g. serious incompetence, serious misconduct); and</li> <li>• Having given the Operator a reasonable opportunity to fix the issue, if reasonably possible.</li> </ul>
50.3.	Examples of reasonable grounds for the Permitted Purchasing Body to request the removal for the purposes of item 50.2	See section 51.
50.4.	Whether the request for removal of a subcontractor under this section 50 relieves the Operator of its obligations in connection with the relevant Call-Off Contract	No.
50.5.	Right of the Operator to reinstate a subcontractor whose removal has been requested according to this section 50	The Operator shall not do so without the prior written consent of the Permitted Purchasing Body, at its discretion.

## 51. Grounds to refuse consent to or require removal of subcontractors

51.1.	Purpose of this section 51	<p>To set out reasonable grounds for the Permitted Purchasing Body</p> <ul style="list-style-type: none"> <li>• Refusing consent to a subcontractor under section 49; and</li> <li>• Requesting the removal of a subcontractor under section 50.</li> </ul>
51.2.	Grounds for the purposes of this section 51 (where relevant and not an exhaustive list of reasonable grounds)	
	(a) In dispute	<ul style="list-style-type: none"> <li>• The subcontractor and/or any of its Affiliates and/or any of their respective senior Personnel is then in a genuine, unresolved dispute with the Permitted Purchasing Body and/or any of its Affiliates.</li> <li>• This applies regardless of whether or not the dispute relates to the Services.</li> </ul>
	(b) Does not have Required Accreditations	The subcontractor does not at the time meet the requirements referred to in section 25 in relation to Required Accreditations which are relevant to the subcontractor's activities in connection with the Services.
	(c) Person of ill repute	<p>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 do any of the following:</p> <ul style="list-style-type: none"> <li>• To bring significant undesirable publicity to the Permitted Purchasing Body and/or any of its Affiliates and/or</li> <li>• To bring any of their respective names into serious disrepute by association with the subcontractor.</li> </ul>

(d) 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"> <li>• The nature of its activities in connection with the Services; and</li> <li>• The insurance the Operator would be required to have under section 65 if the Operator carried out those activities directly (and is not otherwise exempt).</li> </ul>
(e) Evidence of experience, capability (only relevant when the Operator seeks consent under section 49)	<ul style="list-style-type: none"> <li>• The Operator 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.</li> <li>• Such evidence may include the provision of appropriate and satisfactory references given regarding the relevant subcontractor.</li> </ul>
(f) In the case of the appointment of a Sub-processor defined in item 56.2(e) If the Operator is a data processor under section 56	<p>If and for as long as the Operator has failed to do any of the following</p> <ul style="list-style-type: none"> <li>• Enter into an agreement in writing with the Sub-processor under which the Sub-processor accepts obligations to the Operator which are not materially less onerous to Sub-processor than those which apply to the Operator under section 264 but only to the extent relevant to the relevant Processed Personal Data to be processed by the Sub-processor in connection with the Services; and/or</li> <li>• Provide the Relevant Controller with such information regarding the Sub-processor as the Relevant Controller (or the Permitted Purchasing Body on its behalf if it is not the Relevant Controller) may reasonably require.</li> </ul>
(g) Normal grounds for exclusion	<p>Any mandatory or discretionary grounds for exclusion (according to the Public Contracts Regulations 2015 or otherwise) apply to the proposed subcontractor.</p>
(h) Previous performance (only relevant when the Operator seeks consent under section 49)	<ul style="list-style-type: none"> <li>• The Permitted Purchasing Body and/or its Affiliate had received similar supplies from the subcontractor or its Affiliate in the previous <b>3 years</b>; and</li> <li>• 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 previous supplies.</li> </ul>
(i) Incompetence, lack of professionalism, misconduct (only relevant when the Permitted Purchasing Body requests removal under section 49)	<p>The subcontractor has demonstrated any of the following in carrying out its activities in connection with the Services</p> <ul style="list-style-type: none"> <li>• Serious incompetence; and/or</li> <li>• Serious lack of professionalism; and/or</li> <li>• Serious misconduct.</li> </ul>
(j) Termination of other contracts (only relevant when the Permitted Purchasing Body requests removal under section 49)	<p>The Permitted Purchasing Body and/or its Affiliate has (at any time in the previous <b>3 years</b>) validly terminated any other contract it has with the subcontractor (and/or with the subcontractor's Affiliate) due to any event of default or anything similar of the subcontractor (and/or the Affiliate) under that contract.</p>

## 52. Confidentiality

### What is 'Confidential Information'

52.1. What is Confidential Information of the Permitted Purchasing Body and/or its Affiliates respectively as a 'Discloser'

Each of the following, to be read independently

(a) Business activities

Information relevant to the Discloser's business activities generally, including for example

- The Discloser's operations, business strategies, plans, financial arrangements, financial information and third party disputes
- The Discloser's Personnel and human resources activities generally
- The Discloser's data, including personal data in relation to which it is the data controller or data processor for the purposes of the Data Protection Legislation
- Information relating to any other person to whom the Recipient knows (or reasonably ought to know) the Discloser owes a duty of confidentiality (whether under contract, by Law or otherwise)

(b) Negotiations

Information relating to any private negotiations leading up the relevant Call-Off Contract being amended.

(c) Dispute resolution

Disclosures made in the course of any dispute resolution procedure described in section 81.

52.2. What is Confidential Information of a relevant Passenger for whose benefit the Services as a 'Discloser'

The obligations of a Recipient in relation to that Confidential Information under this section 52 only apply to the Operator

All information relating to that Passenger obtained by or on behalf of the Operator (as the Recipient) in connection with the Services.

Regardless of

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

52.3. What is Confidential Information of the Operator as a 'Discloser'

Each of the following, to be read independently

(a) Charges

- The Operator's Charges from time to time according to section 15.
- But only to the extent the Charges have been uniquely determined by the Operator or privately negotiated between the parties for the purposes of the relevant Call-Off Contract (e.g. they are not set by the Permitted Purchasing Body, they are not publicly-available etc.).

(b) Subcontractor, Personnel	<p>Any information relating to</p> <ul style="list-style-type: none"> <li>Any subcontractor appointed directly or indirectly by the Discloser in connection with the Services; and/or</li> <li>Any Personnel of the Operator or its subcontractors;</li> </ul> <p>To which either of the following apply:</p> <ul style="list-style-type: none"> <li>The Operator and/or its agents have disclosed that information in writing to the Permitted Purchasing Body and/or its other agents in connection with the Services;</li> <li>That information has been made available to the Permitted Purchasing Body and/or its other agents in the course of any inspection described in section 60.</li> </ul>
(c) Monitoring	<p>Information of a confidential nature</p> <ul style="list-style-type: none"> <li>About the Operator and/or its Affiliates and/or its subcontractors (e.g. its financial condition, any significant incident, any prospective internal changes, its costs, Personnel information etc.)</li> <li>Given or made available to the Recipient from time to time</li> <li>in connection with the relevant Call-Off Contract</li> <li>Whether in providing regular reports, at meetings, in the course of any inspection, audit or anything similar conducted by or on behalf of the Recipient, or otherwise.</li> </ul>
(d) Negotiations	<p>Information relating to any private negotiations leading up the relevant Call-Off Contract being amended.</p>
(e) Dispute resolution	<p>Disclosures made in the course of any dispute resolution procedure described in section 81.</p>
(f) Operator Response	<p>The contents of a genuinely confidential nature in the Operator Response in relation to the Dynamic Purchasing System as a whole, and/or in the Operator Response in relation to the relevant Call-Off Contract.</p>

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

(a) How the information must be disclosed or made or available to the relevant Recipient	<ul style="list-style-type: none"> <li>In any manner or in any medium (e.g. in writing, verbally, by observation at the relevant Discloser's premises, contained in any device or material etc.).</li> <li>But only in activities reasonably connected with the Services.</li> </ul>
(b) By whom must the information be disclosed or made available (according to item (a))	<p>It may be disclosed or made available by or on behalf of the relevant Discloser to the relevant Recipient (and/or anyone else acting on its behalf)</p>
(c) Whether the information must be labelled as 'confidential' (yes/no)	<p>Not required.</p>

52.5. A piece of information of a relevant 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

- It is in the public domain at the time.
- **Exception:** if it has first entered the public domain as a result of any breach of a duty of confidentiality owed by the relevant Recipient under the relevant Call-Off Contract.

(a) Independently acquired

- The relevant Recipient and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third party in circumstances unconnected with the relevant Call-Off Contract.
- **Exception:** where the Recipient knows or has reasonable grounds to suspect that the third party is in breach of confidentiality obligations owed to the Discloser and/or its Affiliate.

(b) Trivial

The information is of a trivial nature.

Confidentiality obligations

52.6. 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

To continue for the period indicated in item 52.7

(a) Non-disclosure  
(except to the extent permitted in in item 52.8)

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

(b) Not to misuse

- 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 parts of the Services.
- As examples of the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser.

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

- (i) Reasonable standard
- (ii) Comparable

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.

(d) Comply with the Law

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

(e) Not to direct others

- The Recipient must not direct or assist any person to do any act that would breach this section 52 if the Recipient did that act itself.
- **If any Personnel or Affiliate of the Operator (as Recipient) does such act:** the onus will lie with the Operator to prove the act was **not** done with the Operator's direction and/or assistance.

52.7. Period of the Recipient's obligations in item 52.6 in relation to each piece of the Discloser's Confidential Information

The later of the following

**3 years** after the Contract End of the relevant Call-Off Contract, or such later date as required by Law in relation to that piece of Confidential Information.

### Exceptions to obligations

52.8. **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 52.6(a)

(a) Consent

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

(b) Disclosures to any of the following

(i) Personnel  
Subject to item 52.9

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

(ii) Advisors etc.  
Subject to item 52.9

To the Recipient's genuine existing or prospective advisers, contractors, consultants, agents, insurers, funders, shareholders or other investors, or purchasers of the business of, and/or shares in, the Recipient, auditors and banks.

(iii) Public body  
Subject to item 52.9

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

(iv) Assignment, novation  
Subject to item 52.9

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

(v) Relevant Disputes  
Subject to item 52.9

Relevant third parties engaged for the purpose of resolving Relevant Disputes under section 81.

(vi) Third parties with rights  
Subject to item 52.9

Third parties described in item 90.3 who have rights under the relevant Call-Off Contract for the purpose of advising them of their rights, powers and benefits under the relevant Call-Off Contract.

(vii) Required by Law  
Subject to item 52.10

To the extent the Recipient is required to disclose or make available the Confidential Information by Law to any of the following (for example):

- A court or anything similar body.
- A regulatory body.
- A law enforcement body.
- **If the Recipient is a public body in carrying out its normal public functions:** a genuine public auditor, the UK Parliament or other genuine public body, or as required under any FOI Act (as defined in section 53).



52.9. Rules regarding the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person indicated in item 52.8

- All of the following
- But only in relation to disclosures where it is clearly indicated in item 52.8 that this item 52.9 applies

(a) Need to know

The Recipient may only disclose (or make available) that Confidential Information to that person

- In good faith.
- Only on a strict '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

- The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms.
- The Recipient is only obliged to do so if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances.

52.10. The Recipient must comply with all of the following if it is compelled by Law to disclose or make available any Confidential Information of the Discloser

(a) Inform

The Recipient must inform the Discloser of the circumstances

- With sufficient detail and accuracy and
- Promptly on becoming aware of the obligation to make the compelled disclosure.

(b) Make person aware

The Recipient must make the person compelling the disclosures aware of the duty of confidentiality owed to the Discloser in relation to the relevant information.

(c) Assist the Discloser to challenge

- The Recipient must provide the Discloser with reasonable and timely assistance on the Discloser's request if the Discloser wishes to challenge the compelled disclosure.
- The Discloser must reimburse the Recipient for the Recipient's reasonable and sufficiently evidenced costs in providing that assistance.

(d) Keep to minimum

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

(e) Exceptions to this item 52.10

- The rest of this item 52.10 does not apply If disclosure is required under any FOI Act.
- This is covered in section 53.

52.11. Providing references

Nothing in the relevant Call-Off Contract prevents the Permitted Purchasing Body disclosing (fairly, in good faith and with material accuracy) any information relating to the performance of the Operator in connection with the Services in connection with any genuine request for a reference by another prospective or existing customer or client of the Operator.

52.12. Reporting to police etc.

Nothing in the relevant Call-Off Contract prevents any person disclosing any Confidential Information of a relevant Discloser in connection with the genuine reporting of any breach of the Law of any person (including the Discloser) to the police and/or or to other relevant law enforcement bodies.

### 53. Freedom of information

53.1. What are the FOI Acts for the purposes of this section 53

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

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

- The Permitted Purchasing Body.
- The Operator, but only if it is a public authority which is subject to a relevant FOI Act.

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

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

53.4. Consequences if the 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 FOI Party

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

(b) Extent to which the FOI Party is required to consult etc.

The FOI Party is not obliged under the relevant Call-Off Contract to consult the other party or anyone else in relation to that request for information.

(c) Consequence if the FOI Party does consult the other party and/or anyone else

The FOI Party is not obliged under the relevant Call-Off Contract to have regard to the views of the other party and/or anyone else.

(d) To what this item 53.4 is subject

It is subject to the FOI Party complying with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 to the extent that compliance is permissible and reasonably possible.

### 54. Announcements and publicity

54.1. Restrictions on the Operator making announcements and/or giving itself publicity in connection with the relevant Call-Off Contract (e.g. press releases, public circulars, interviews etc.)

- The Operator must not do so without the prior written consent of the Permitted Purchasing Body.
- The Permitted Purchasing Body must not unreasonably withhold that consent.

54.2. Restrictions on the Operator 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 the publicity materials of the Operator and/or its Affiliate

- The Operator must not do so without the prior written consent of the Permitted Purchasing Body.
- The Permitted Purchasing Body must not unreasonably withhold that consent.

54.3. Other

- The Operator must not assist or instruct another person to do any act that would breach this section 54 if that act were done by the Operator directly.
- If the Operator's Affiliate and/or any Personnel of the Operator or its Affiliate does any such act, the onus will lie with the Operator to prove it was not done with the Operator's instruction and/or assistance.

**55. Data protection - status as controller of personal data**

55.1. Where this section 55 applies

This section 55 applies if the Award Letter indicates that both parties are data controllers (i.e. neither party is acting as a processor for the other party in connection with the relevant Call-Off Contract).

55.2. Status of each party from time to time regarding any personal data in its possession or control in connection with the Services

- Each party is to determine the purposes for which that personal data will be held and used.
- Therefore, each party is to be a '**controller**' (and not a '**processor**' for the other party) in its own right in relation to that personal data.

55.3. General obligations of each party in relation to personal data in its possession or control in connection with the Services in relation to which it is a controller

- Each party must comply with relevant Law (particularly any Data Protection Legislation) in relation to the holding and processing of that personal data.
- This includes maintaining necessary registrations with the Information Commissioner and/or any other relevant regulatory body.
- This is a paramount obligation. This section 55 does not limit or override this obligation.

55.4. Interpretation

The definitions in the Data Protection Act 2018 apply to this section 55 and to the relevant Call-Off Contract, unless otherwise indicated in the relevant Call-Off Contract.

**56. Processing certain Processed Personal Data**

**Definitions**

56.1. Where this section 56 applies

This section 56 applies if the Award Letter indicates that the Operator is acting as a processor for the Permitted Purchasing Body and/or its Affiliates in connection with the relevant Call-Off Contract.

56.2. Some definitions and interpretation

(a) Data Loss Event

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

- Unauthorised access to any Processed Personal Data then in the possession or control of the Operator or its Sub-processors in connection with the relevant Call-Off Contract.
- Loss or destruction of Processed Personal Data which puts the Operator in breach of the relevant Call-Off Contract; including any personal data breach.

(b) Protective Measures

Technical and organisational measures for the purposes of item 56.7.

(c)	Processed Personal Data (in relation to a Relevant Controller)	Any personal data if and for as long as all of the following apply to it <ul style="list-style-type: none"> <li>• A Relevant Controller is a controller according to the Data Protection Legislation.</li> <li>• The Operator and/or its Sub-processor is a processor in connection with the relevant Call-Off Contract according to the Data Protection Legislation.</li> </ul>
(d)	Relevant Controller	The Permitted Purchasing Body and/or its Affiliate.
(e)	Sub-processor	Any third party (including any subcontractor of the Operator) appointed by the Operator to process any Processed Personal Data in connection with the relevant Call-Off Contract.
(f)	Interpretation	The definitions in the Data Protection Act 2018 apply to this section 56 and to the relevant Call-Off Contract, unless otherwise indicated in the relevant Call-Off Contract.

### Roles of the parties

56.3.	Roles of the Relevant Controller and the Operator (for the purposes of the Data Protection Legislation) in relation to any Processed Personal Data which the Operator is to process in connection with the relevant Call-Off Contract	The Relevant Controller is the controller and the Operator is the processor in relation to the Processed Personal Data.
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### General issues with processing

56.4.	Paramount obligation of the Relevant Controller and the Operator in relation to Processed Personal Data of the Relevant Controller	<ul style="list-style-type: none"> <li>• Each of them must comply with their respective obligations under the Law, particularly the Data Protection Legislation in relation to Processed Personal Data of the Relevant Controller.</li> <li>• This overrides anything to the contrary elsewhere in the relevant Call-Off Contract.</li> </ul>
56.5.	<b>Purposes</b> for which the Operator and/or its Sub-processors are authorised to process any Processed Personal Data under the relevant Call-Off Contract	<p>Only for at least one of the following purposes to the extent consistent with the Law (particularly the Data Protection Legislation) (and for no other purposes):</p> <ul style="list-style-type: none"> <li>• To enable the Operator and/or a relevant Sub-processor to meet its obligations: <ul style="list-style-type: none"> <li>– Under the relevant Call-Off Contract.; and</li> <li>– According to Law (particularly the Data Protection Legislation) in relation to the processing of that Processed Personal Data in connection with the relevant Call-Off Contract.</li> </ul> </li> <li>• For any other purpose permitted in writing by the Relevant Controller.</li> <li>• For any other purpose for which the relevant data subject to whom the relevant Processed Personal Data relates has given written consent (subject to the requirements of the Data Protection Legislation relating to the giving of that consent).</li> </ul>

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

- (a) General DPS Specification and/or the relevant Call-Off Specification
- (b) Policies, instructions
- (c) Operator's policy
- (d) Law

All relevant and lawful obligations and instructions in the General DPS Specification and/or the relevant Call-Off Specification.

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

The Operator's own relevant policies in place from time to time.

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

#### Protective Measures

56.7. Obligations of the Operator in relation to Protective Measures

- The Operator must have Protective Measures in place to process the Processed Personal Data in connection with the relevant Call-Off Contract which are appropriate to the processing of Processed Personal Data by the Operator or its Sub-processor.
- Those Protective Measures must be appropriate to the risks to that processing of any serious adverse consequences to the relevant Processed Personal Data, including unlawful access, unlawful processing, accidental loss, modification or destruction.

56.8. Examples of Protective Measures for the purposes of item 56.7  
Where relevant to the processing

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

56.9. Information about Protective Measures

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

(a) Description

A written description of the Operator's Protective Measures.

(b) Report

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

(c) Copies of documentation

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

**Obligations to inform**

56.10. The Operator must inform the Relevant Controller of any of the following events or circumstances in relation to any Processed Personal Data which the Operator is the Processor in connection with the relevant Call-Off Contract

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

(a) Requests, complaints or other communication

As indicated in item 56.20 in relation to certain requests, complaints and other communications.

(b) Unauthorised access

Any incident of unauthorised access to that Processed Personal Data.

(c) Data Loss Event

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

(d) Breach

Any incident of processing of that Processed Personal Data that is materially in breach of any of the following

- This AGTDEED.
- The Data Protection Legislation and/or any other Law.

<p>56.11. In relation to the Operator's obligation to inform the Relevant Controller about any event or circumstance described in item 56.10 (other than item 56.10(a)) if it occurs or arises</p>	
<p>(a) Deadline by which the Operator must inform the Relevant Controller</p>	<p>The earliest of the following:</p> <ul style="list-style-type: none"> <li>• <b>If there is any deadline on the Operator to inform the Relevant Controller according to Law (particularly the Data Protection Legislation):</b> by that deadline.</li> <li>• <b>If there is any deadline on the Relevant Controller to respond to the relevant event of circumstance according to Law (particularly the Data Protection Legislation):</b> no later than <b>2 Business Days</b> before the Relevant Controller's deadline.</li> <li>• Otherwise: promptly (and in any case not more than <b>2 Business Days</b>) after the Operator first becomes aware of the event or circumstance.</li> </ul>
<p>(b) Information the Operator must provide the Relevant Controller All of the following to the extent relevant</p>	<p>A reasonable description of the relevant event or circumstance.</p> <ul style="list-style-type: none"> <li>• The number of data subjects affected.</li> <li>• How the Relevant Controller can obtain further information (e.g. a contact person within the organisation of the Operator or the Sub-processor).</li> <li>• The likely consequences of the relevant event or circumstance</li> <li>• The measures the Operator or the Sub-processor has taken (and/or proposes to take) in response to the event or circumstance to mitigate the harm to the Processed Personal Data and/or to the relevant data subjects and/or to the Relevant Controller.</li> </ul>
<p>56.12. Further obligations of the Operator in relation to its obligations to inform the Relevant Controller under this item 56.10</p>	<ul style="list-style-type: none"> <li>• The Operator must also provide appropriate Personnel of the Relevant Controller with further relevant information on the relevant events or circumstances in phases as details become available.</li> <li>• The Operator must do so promptly on becoming aware of the relevant information.</li> </ul>
<p>56.13. Other obligations of the Operator if any of the events or circumstances described in item 56.10 (other than item 56.10(a)) occurs or arises in relation to any Processed Personal Data which the Operator is the Processor in connection with the relevant Call-Off Contract (all of the following to the extent relevant)</p>	
<p>(a) Assist</p>	<p>The Operator must provide the Relevant Controller with reasonable assistance in relation to the Relevant Controller's response to the relevant event or circumstance.</p>
<p>(b) Preventative steps</p>	<p>The Operator must take appropriate steps (having reasonable regard to the views of the Relevant Controller) to reduce the reoccurrence of the relevant event or circumstance.</p>

	(c) Non-disclosure	<p>The Operator must not disclose any information about the relevant event or circumstance to a data subject, the Information Commissioner (or other regulatory or law enforcement body) or anyone else except to the extent:</p> <ul style="list-style-type: none"> <li>• The Relevant Controller permits the disclosure in writing.</li> <li>• The disclosure is to the Relevant Controller or its other authorised agents.</li> <li>• The Operator is required to make that disclosure by Law.</li> </ul>
	(d) If notification of the relevant event or circumstance is required under the Data Protection Legislation	<p>The Operator must do the following</p> <ul style="list-style-type: none"> <li>• Give the Relevant Controller reasonable assistance in preparing that notification.</li> <li>• Reimburse the Relevant Controller for its reasonable and sufficiently-evidenced costs in giving that notification. The Operator must do so no later than <b>30 days</b> after the Relevant Controller's written demand.</li> <li>• <b>Exception where the Operator is not obliged to comply with the above obligations:</b> where the relevant event or circumstance is substantially caused by the negligence or deliberate misconduct of the Relevant Controller and/or its separate agents.</li> </ul>
	(e) Investigate	<p>The Operator must investigate the relevant event or circumstance.</p>
	(f) Mitigate harm	<ul style="list-style-type: none"> <li>• The Operator must take reasonable action (within its reasonable power and in accordance with the Relevant Controller's reasonable instructions) to mitigate the harm the relevant event or circumstance may cause to the relevant data subjects and/or the Relevant Controller.</li> <li>• The Operator must keep records of any such action which it takes.</li> </ul>
	(g) No offer of compensation etc.	<p>The Operator must not offer any compensation or other remedy to any data subject in relation to the relevant event or circumstance without the Relevant Controller's prior written consent.</p>
	(h) Comply with Law	<p>In any case, the Operator must comply with the Data Protection Legislation and the Law generally in its response to the relevant event or circumstance.</p>
56.14.	How the Operator must inform the Relevant Controller if required to do so anywhere in this section 56	<p>As directed by the Permitted Purchasing Body from time to time, acting reasonably.</p>



## Obligation to assist

56.15. Assistance which the Operator must give the Relevant Controller in relation to the Processed Personal Data	<p>The Operator must give the Relevant Controller reasonable assistance to for any of the following purposes</p> <ul style="list-style-type: none"> <li>• To enable the Relevant Controller to meet its obligations in relation to the Processed Personal Data under Law, particularly the Data Protection Legislation.</li> <li>• To enable the Relevant Controller to respond to any request, complaint or other communication received by the Relevant Controller and/or the Operator relating to the processing of the Processed Personal Data by the Operator and/or its Sub-processor. This request, complaint or other communication may come from <ul style="list-style-type: none"> <li>– The relevant data subject; and/or</li> <li>– The Information Commissioner or other regulatory or law enforcement body.</li> <li>– Any person not described above who is entitled by Law to a response to its request, complaint or other communication.</li> </ul> </li> </ul>												
56.16. When the Operator must give the Relevant Controller the assistance described in item 56.15	<ul style="list-style-type: none"> <li>• In a timely manner on the Relevant Controller's reasonable request having regard to the circumstances (e.g. any deadlines imposed on the Relevant Controller by Law).</li> <li>• The Operator is only required to provide that assistance if the Relevant Controller has made the request for at least one of the purposes indicated in item 56.15.</li> </ul>												
56.17. How the Operator's costs in providing the assistance described in item 56.15 are to be met	The Relevant Controller must reimburse the Operator for the Operator's reasonable and sufficiently evidenced costs in providing that assistance.												
56.18. Examples of assistance which the Operator must provide for the purposes of item 56.15 Each of the following, where relevant Not an exhaustive list of the assistance which the Operator must provide for the purposes of item 56.15	<table> <tr> <td data-bbox="247 1467 774 1534">(a) Supplying Processed Personal Data</td><td data-bbox="774 1467 1503 1534">Supplying the Relevant Controller, at its request, with any of the relevant Processed Personal Data.</td></tr> <tr> <td data-bbox="247 1534 774 1646">(b) Requests, complaints or other communication</td><td data-bbox="774 1534 1503 1646">As indicated in item 56.20 in relation to cooperation required in relation to any requests, complaints, communications etc.</td></tr> <tr> <td data-bbox="247 1646 774 1736">(c) Protective Measures</td><td data-bbox="774 1646 1503 1736">Providing the Relevant Controller with the information regarding Protective Measures according to item 56.9.</td></tr> <tr> <td data-bbox="247 1736 774 1848">(d) Assessment of operations</td><td data-bbox="774 1736 1503 1848">Providing the Relevant Controller an assessment of the necessity and proportionality of the processing operations in relation to the Processed Personal Data.</td></tr> <tr> <td data-bbox="247 1848 774 1937">(e) Risk assessment</td><td data-bbox="774 1848 1503 1937">Providing a risk assessment in relation to the rights and freedoms of data subjects.</td></tr> <tr> <td data-bbox="247 1937 774 2047">(f) Data Loss Event</td><td data-bbox="774 1937 1503 2047">Providing the Relevant Controller with reasonable assistance following any Data Loss Event relating to the Processed Personal Data.</td></tr> </table>	(a) Supplying Processed Personal Data	Supplying the Relevant Controller, at its request, with any of the relevant Processed Personal Data.	(b) Requests, complaints or other communication	As indicated in item 56.20 in relation to cooperation required in relation to any requests, complaints, communications etc.	(c) Protective Measures	Providing the Relevant Controller with the information regarding Protective Measures according to item 56.9.	(d) Assessment of operations	Providing the Relevant Controller an assessment of the necessity and proportionality of the processing operations in relation to the Processed Personal Data.	(e) Risk assessment	Providing a risk assessment in relation to the rights and freedoms of data subjects.	(f) Data Loss Event	Providing the Relevant Controller with reasonable assistance following any Data Loss Event relating to the Processed Personal Data.
(a) Supplying Processed Personal Data	Supplying the Relevant Controller, at its request, with any of the relevant Processed Personal Data.												
(b) Requests, complaints or other communication	As indicated in item 56.20 in relation to cooperation required in relation to any requests, complaints, communications etc.												
(c) Protective Measures	Providing the Relevant Controller with the information regarding Protective Measures according to item 56.9.												
(d) Assessment of operations	Providing the Relevant Controller an assessment of the necessity and proportionality of the processing operations in relation to the Processed Personal Data.												
(e) Risk assessment	Providing a risk assessment in relation to the rights and freedoms of data subjects.												
(f) Data Loss Event	Providing the Relevant Controller with reasonable assistance following any Data Loss Event relating to the Processed Personal Data.												

(g) Information Commissioner

Providing the Relevant Controller with reasonable assistance as requested by the Relevant Controller with respect to any of the following insofar as it relates to the Processed Personal Data

- Any request from the Information Commissioner (or other regulatory body exercising its functions as such)
- Any consultation by the Relevant Controller with the Information Commissioner (or other regulatory body exercising its functions as such).

### Dealing with Relevant Controller's queries

56.19. The Operator's obligations in relation to any query which the Relevant Controller raises from time to time in relation to any Processed Personal Data

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

### Requests, complaints, communications

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

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

(a) Obligation to inform

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

(b) Obligation to cooperate

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

(c) Providing copies

The Operator must provide the Relevant Controller with full copies of the relevant request, complaint or other communication.

(d) If it is an access request

The Operator must either:

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

As requested in writing by the Relevant Controller.

(e)	Instructions	The Operator must comply with reasonable and relevant instructions of authorised representatives of the Relevant Controller in responding to the relevant request, complaint or other communication.
(f)	Supply the Processed Personal Data	If requested by the Relevant Controller, the Operator must supply the Relevant Controller with relevant Processed Personal Data to which the request, complaint or other communication relates, to enable the Relevant Controller to respond to the relevant request, complaint or other communication.
56.21.	Liability of the Relevant Controller to make any additional payment to the Operator in return for the Operator carrying out its obligations in item 56.20	No liability to do so except to the extent otherwise agreed in writing.

### Transferring Processed Personal Data

56.22.	Obligations of the Operator in transferring any Processed Personal Data	<p>The Operator must not host or otherwise transfer any Processed Personal Data outside of the European Economic Area (or the area comprising the United Kingdom and the European Economic Area, if the United Kingdom is not in the European Economic Area at the time) unless both of the following apply:</p> <ul style="list-style-type: none"> <li>• The Operator has the written consent of the Relevant Controller.</li> <li>• All of the conditions in item 56.23 are met.</li> </ul>
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56.23. **All** of the following conditions must be met for the purposes of item 56.22

(a)	Safeguards	The Relevant Controller and/or the Operator and/or its Sub-processor has provided appropriate safeguards in relation to the transfer as decided by the Relevant Controller, whether in accordance with GDPR Article 46 or Article 37 of Law Enforcement Directive (Directive (EU) 2016/680).
(b)	Obligations under the Data Protection Legislation	The Operator complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Processed Personal Data that is hosted or otherwise transferred.
(c)	Rights of the data subject	The data subject has enforceable rights and effective legal remedies which are enforceable and effective in relation to the Processed Personal Data which is hosted or otherwise transferred.
(d)	Standard clauses	<p>If requested by the Relevant Controller in writing, the Operator (or Sub-processor where relevant) has become legally bound (in favour of the Relevant Controller and its Affiliates) to</p> <ul style="list-style-type: none"> <li>• The standard contractual clauses applicable to the hosting or other transfer of Personal Data between Controllers and Processors as set out in the European Commission decision of February 5, 2010 (C (2010) 593), as amended; or</li> <li>• Such other contractual clauses approved by the Relevant Controller (such approval not to be unreasonably withheld where these other contractual clauses provide at least equivalent protection to the Processed Personal Data.</li> </ul>

## About the Operator's Personnel

56.24. Data protection officer

The Operator must have in place a designated data protection officer if it is required to do so by the Data Protection Legislation.

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

(a) Level of access

The Operator may only give the relevant individual access to the Processed Personal Data if he/she has a genuine 'need to know' for the purposes of carrying out his/her duties.

(b) How they process

The Operator must ensure the relevant individual does not do anything to cause the Operator to breach the relevant Call-Off Contract and/or (in any case) the Law.

(c) Understanding of obligations

The Operator must use reasonable endeavours to ensure the individual understands and complies with the Operator's obligations under the relevant Call-Off Contract and under the Law in relation to the processing of the Processed Personal Data.

(d) Training

The Operator must ensure that the individual has undertaken adequate training in the requirements of the Law and the Operator's policies and procedures in the processing of the relevant Processed Personal Data.

(e) If processing of the Processed Personal Data involves the Operator having direct access to any electronic system of the Relevant Controller

All of the following:

- The Operator must make relevant Personnel whom the Operator expects to have access to such system from time to time in connection with the Services available for any training supplied by the Relevant Controller in relation to the access and use of the system.
- The Operator must not give such access to such system to any Personnel who has not completed that training to the reasonable satisfaction of the Relevant Controller.

(f) The Operator must comply with all of the following to the extent requested to do so in writing by the Relevant Controller, acting reasonably:

(i) Confidentiality undertakings

The Operator must ensure the individual has given legally binding confidentiality obligations to the Operator or relevant Sub-processor, as relevant (e.g. under his/her contract of employment) which are sufficient to protect the confidentiality of the Processed Personal Data.

(ii) Informed of confidential nature

The Operator must ensure all of the following:

- That the individual has been informed of the confidential nature of the Processed Personal Data.
- That the individual has undertaken adequate training in the use, care, protection and handling (or anything similar to any of these) of the relevant Processed Personal Data.

(iii) Not to breach confidentiality

The Operator must ensure the individual does not disclose or publish (or anything similar to any of these) any of the relevant Processed Personal Data to any third party except to the extent:

- Permitted elsewhere in the terms of the relevant Call-Off Contract; and/or
- Required by Law; and/or
- Instructed by appropriate Personnel of the Relevant Controller.

(g) Removal

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

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

### Record keeping obligations

56.26. Record keeping obligations of the Operator

- The Operator must keep complete and accurate records and information to demonstrate its compliance with this section 56.
- The Operator is not required to do so if it is exempt in item 56.27.

56.27. Exemptions to item 56.26

The Operator is not obliged to comply with item 56.26 if from time to time the Operator employs **fewer than 250 employees**.

**Exception where the Operator is required to comply with item 56.26 if even if it has fewer than 250 employees:** if the Relevant Controller (or the Relevant Controller on its behalf if it is not the Relevant Controller in relation to the Processed Personal Data) concludes (acting reasonably) that all of the following applies:

- The processing of the relevant Processed Personal Data is not occasional.
- The relevant Processed Personal Data includes any of the following
- Special categories of data as referred to in Article 9(1) of the GDPR.
- Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR.
- The processing of the relevant Processed Personal Data is likely to result in a substantial risk to the rights and freedoms of relevant data subjects.

### Audit and inspection

56.28. Inspection and audit rights of the parties if the Permitted Purchasing Body is a Relevant Controller and the Operator is a Operator while the Operator and/or its Sub-processor is processing any Processed Personal Data in connection with the relevant Call-Off Contract

See section 60.

## Sub-processors

56.29. Processing by Sub-processors: the Operator must do the following if its directly or indirectly appointed Sub-processor Processes any relevant Processed Personal Data in connection with the relevant Call-Off Contract (not to limit the Operator's obligations in relation to such Sub-processor generally)

(a) Consents of the Relevant Controller

- The Operator must not appoint a Sub-processor without the prior written consent of the Relevant Controller.
- The Relevant Controller must not unreasonably withhold that consent.

(b) Examples of reasonable grounds on which the Relevant Controller may refuse consent under item (a) (any of the following)

- The Sub-processor is not legally bound to obligations to the Operator which are at least as onerous to the Sub-processor as those in this section 56 are to the Operator.
- The Relevant Controller has reasonable grounds to believe (having been given a reasonable opportunity to check) that the Sub-processor's Protective Measures are not adequate.

(c) Ensure compliance

The Operator must ensure the Sub-processor's compliance with relevant obligations under this section 56 in connection with the Sub-processor's processing of the relevant Processed Personal Data.

56.30. Rules relating to subcontractors

- The sections elsewhere in the relevant Call-Off Contract relating to subcontractors also apply to its Sub-processors, to the extent relevant to them.
- This includes (for example) section 46 relating to the liability of the Operator for the acts or failures to act by a subcontractor.
- If there is any inconsistency between the sections elsewhere in the relevant Call-Off Contract relating to subcontractors and this section 56, the one more advantageous to the Permitted Purchasing Body shall prevail to the extent of the inconsistency.

## Delete or return

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

- Delete it; or
- Return it (including copies) to the Relevant Controller; or
- Give it to a third party nominated by the Relevant Controller

As the Relevant Controller instructs.

**Exception:** this obligation does not apply to the extent the Operator or its Sub-processor is required by Law to retain the relevant Processed Personal Data.

56.32. When the Relevant Controller must carry out its obligations in item 56.31

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

56.33. Obligations of the Operator to certify compliance with item 56.31

The Operator must do so

- Within **30 days** of the written request of the Relevant Controller.
- Without the Relevant Controller being liable to make any separate payment to the Operator for doing so
- Without any conditions or qualifications in the certificate.

56.34. Form of certificate described in item 56.33

- The certificate must be in a form approved by the Relevant Controller acting reasonably.
- The certificate of compliance must be signed by the Operator's Representative (or other person of at least equivalent seniority within the Operator's organisation).

### **Modifying Processed Personal Data**

56.35. Restrictions on the right of the Operator to modify any of the Processed Personal Data

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

- The Operator is required by Law to do so.
- The Operator is permitted or required elsewhere in the relevant Call-Off Contract to do so.
- The Relevant Controller permits or requires the Operator to do so.

### **Suspension of processing**

56.36. Obligation to suspend processing

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

### **Factual promises given by the Relevant Controller**

56.37. Factual promises given by the Relevant Controller in relation to its Processed Personal Data

That to the best of the Relevant Controller's knowledge (having made reasonably necessary checks), it is permitted by Law to allow the Operator and its permitted Sub-processors to process the Processed Personal Data in connection with the relevant Call-Off Contract.

## Indemnity given by the Operator

### 56.38. Operator indemnity

The Operator must indemnify (and keep indemnified) the Relevant Controller

- In relation to the Losses incurred by the Relevant Controller
- 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 Processed Personal Data in the possession or control of the Operator in connection with the relevant Call-Off Contract
  - Its loss, and/or
  - Its misuse, and/or
  - Any unauthorised access to it.

### 56.39. Exceptions to the indemnity described in item 56.38

The Operator is not required to indemnify the Relevant Controller under item 56.38 for the Relevant Controller's Losses described in item 56.38 to the extent those Losses are caused by any of the following:

- Any act or failure to act by the Relevant Controller and/or its separately appointed agents (e.g. Personnel, other service providers).
- Any act or failure to act by the Operator and/or its Sub-processor which materially complies with any instructions or other requirements of the Relevant Controller
  - Issued from time to time by its authorised representative; and/or
  - Indicated elsewhere in the relevant Call-Off Contract (e.g. in the General DPS Specification and/or the relevant Call-Off Specification) except to the extent they have been prepared by or materially according to any advice of the Operator.

### 56.40. Other rules in relation to the indemnity in item 56.38

See section 68.

## Reimbursing the Operator

### 56.41. Liability of the Permitted Purchasing Body (as the Relevant Controller)

- To pay the Operator (as the Operator) any additional Charges and/or
- To reimburse the Operator (as the Operator) for the Operator's third party expenditure

For the Operator (as the Operator) carrying out its obligations under this section 56

The Permitted Purchasing Body is not liable to do so, except where otherwise clearly indicated in this section 56.

## Miscellaneous issues

### 56.42. Whether this section 56 limits the confidentiality obligations (if any) of either party under the relevant Call-Off Contract (see especially, section 52)

No.



56.43.	Duration of the rights and obligations (or anything similar to any of these) of the Relevant Controller and the Operator under this section 56	Those rights and obligations (or anything similar to any of these) continue for as long as the Operator and/or Its Sub-processor continues to process any Processed Personal Data of the Relevant Controller in connection with the relevant Call-Off Contract, even if after the Contract End.
56.44.	Other obligations of the Operator under this section 56	The Operator must not instruct, assist or knowingly permit any other person (particularly its Personnel and its Sub-processors) to do any act that would breach this section 56 if the act were done by the Operator directly.

## Exclusivity

### 57. No exclusivity for either party

57.1.	Whether either party is obliged under the relevant Call-Off Contract to deal with the other party on an exclusive basis	No.
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## Contract monitoring

### 58. Record keeping

58.1.	Records which the Operator is required to keep under the relevant Call-Off Contract	Those if any indicated in the General DPS Specification and/or in the Call-Off Specification of the Call-Off Contract.
58.2.	Requirements of the Operator in keeping each record described in item 58.1	
	(a) For how long the Operator must keep the record	<ul style="list-style-type: none"> <li>For <b>6 years</b> from the date the record was created; or</li> <li>For such longer or shorter period required by Law in relation to the record.</li> </ul> <p><b>Exception:</b> the Operator 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 Operator must keep those records	To the standards required in section 9.
	(c) Where the Operator must keep those records	<ul style="list-style-type: none"> <li>At any of its usual places of business in the United Kingdom; or</li> <li>At such other locations for the genuine purposes of record storage in circumstances where the Operator can access those records in a timely manner if the Permitted Purchasing Body requires it to do so according to the relevant Call-Off Contract (e.g. in the Permitted Purchasing Body exercising inspection rights).</li> </ul>

## 59. Reporting by the Operator

59.1.	Regular reports which the Operator must supply the Permitted Purchasing Body Indicate for each regular report <ul style="list-style-type: none"><li>• The content required</li><li>• The frequency with which the Operator must supply it to the Permitted Purchasing Body</li><li>• The due date by which the Operator must supply it to the Permitted Purchasing Body</li><li>• Any other requirement</li></ul>	Those if any required in the General DPS Specification and/or in the Call-Off Specification of the Call-Off Contract.
59.2.	Circumstances where the Permitted Purchasing Body may require reports in addition to the regular reports indicated in item 59.1	The Permitted Purchasing Body may do so (acting reasonably and proportionately and giving the Operator reasonable advance warning) where any of the following applies <ul style="list-style-type: none"><li>• There has been a Material Breach of the relevant Call-Off Contract by the Operator, even if it has been remedied.</li><li>• There has been a persistent failure by the Operator to meet any of its obligations under the relevant Call-Off Contract.</li></ul>
59.3.	Format requirements of reports required under this section 59	If and as directed by the Permitted Purchasing Body from time to time, acting reasonably.
59.4.	How the Operator must provide reports to the Permitted Purchasing Body	By e-mail to the Permitted Purchasing Body's Representative, or as the Permitted Purchasing Body otherwise reasonably instructs.
59.5.	General obligations of the Operator in relation to reports it is required to send under this section 59	The Operator must ensure required reports are: <ul style="list-style-type: none"><li>• Materially accurate; and</li><li>• Not materially misleading (or reasonably likely to materially mislead) due to any inaccuracies or omissions.</li></ul>

## 60. Inspection

60.1.	Purpose of this section 60	To set out the Permitted Purchasing Body's inspection rights in relation to the Services.
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### What the Permitted Purchasing Body may inspect

60.2.	The Permitted Purchasing Body may inspect any of the following in relation to the relevant Call-Off Contract if it wishes to do so, according to this section 60 <ul style="list-style-type: none"><li>(a) Records</li></ul>	Any records held by or on behalf of the Operator in any medium (e.g. hard copy, electronic) in connection with the Services. These include <ul style="list-style-type: none"><li>• Any records which the Operator is specifically required to keep under section 58; and</li><li>• Any records to evidence whether relevant Personnel meet relevant requirements under section 32 in relation to their activities in connection with the Services.</li></ul>
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(b)	Systems etc.	Any system, ICT environment, process or anything similar relevant to the Services.
(c)	Processing	Activities in relation to the processing of any Processed Personal Data by or on behalf of the Operator in connection with the Services as described in section 56.
(d)	Activities	Activities in relation to the carrying out of any of the Services.
(e)	Agreements with Sub-processor	Copies of the sub-processing agreement with a relevant Sub-processor described in item 56.2(e).

### Requesting inspections

60.3.	Minimum notice the Permitted Purchasing Body must give before an inspection	<p>At least <b>5 Business Days</b> prior notice.</p> <p>Exceptions (any of the following):</p> <ul style="list-style-type: none"> <li>• The Permitted Purchasing Body is not required to give any notice where it has reasonable grounds to suspect fraud or other misconduct in connection with the things being inspected (e.g. removal or destruction of records etc.).</li> <li>• Shorter notice to the extent the Operator agrees (at its discretion).</li> </ul>
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### Carrying out inspections

60.4.	Main obligations	If the Permitted Purchasing Body requests an inspection according to this section 60, the Operator must give reasonable, proper and timely assistance to representatives of the Permitted Purchasing Body in connection with the relevant inspection
60.5.	Examples of the Operator's obligations under item 60.4	
	To the extent relevant	
(a)	Access	The Operator must give access to relevant premises to the Permitted Purchasing Body's representatives on a non-exclusive licence basis.
(b)	Making things available	The Operator must make relevant records or other items which the Permitted Purchasing Body is permitted to inspect available to the Permitted Purchasing Body's representatives for this purpose.
(c)	Providing facilities	The Operator must provide suitable facilities to the Permitted Purchasing Body's representatives for the purposes of the inspection.
(d)	Providing explanations	The Operator must direct its Personnel to provide open and accurate explanations and discussions from relevant Personnel, as reasonably required by the Permitted Purchasing Body's representative in connection with the inspection.
60.6.	The Operator's obligations to ensure its subcontractors comply with inspection obligations under this section 60	<ul style="list-style-type: none"> <li>• The Operator must use reasonable endeavours (exercising any relevant contractual and other rights) to require its subcontractors used in connection with the Services.</li> <li>• The Operator is only required to do so if relevant to the subcontractor, having regard to what the Permitted Purchasing Body may inspect under item 60.2.</li> </ul>

- 60.7. How inspection costs are to be borne
- 60.8. Duration of inspection rights: the inspection rights of the Permitted Purchasing Body under this section 60

Each party bears its own costs.

Its rights continue for the longest of the following:

- For as long as the Operator continues to be obliged to provide Services under the relevant Call-Off Contract.
- For any ongoing period after the above for as long as any of the following applies:
  - The Operator continues to be required to hold any records under section 58 (i.e. up to the relevant period indicated in item 58.2(a)).
  - The Operator continues to hold any property of the Permitted Purchasing Body and/or its Affiliates in connection with the relevant Call-Off Contract.

## 61. Passenger surveys

- 61.1. How the Operator must conduct Passenger surveys including
- The frequency
  - Roles of the parties
  - The Operator's obligations to report the results (e.g. method, format, due date)

Only as indicated in the General DPS Specification and/or in the Call-Off Specification of the Call-Off Contract.

## 62. Keeping informed

Events or circumstances on which the Operator must keep the Representative of the Permitted Purchasing Body informed under this section 62

- In writing where reasonably practicable
- In a proper and timely manner **when the Operator first becomes aware of the matter**
- The Operator must keep 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
- In addition to any other specific obligations under the relevant Call-Off Contract to inform the Permitted Purchasing Body on a particular matter

- 62.1. Unable to meet obligations

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

- 62.2. Investigations

A Passenger described in section 4 who is in the Operator's care being charged or under serious investigation by the police or any other law enforcement body.

- 62.3. Data protection

Any investigation by the Information Commissioner or the equivalent against the Operator and/or its subcontractors regarding any loss, misuse and/or other serious issue in relation to personal data of the Passenger described in section 4 in relation to which the Operator and/or its subcontractor is a data controller for the purposes of the Services.

62.4.	Any event or circumstance (e.g. accident or other incident) relating to activities of the Operator or its subcontractors in connection with the Services which cause, or creating an unreasonable risk of causing any of the following	
	(a) Harm to Passengers	Death or serious personal injury or other serious harm to any Passenger described in section 4.
	(b) Breach Law	The Permitted Purchasing Body breaching any Law.
	(c) 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 Operator knows (or reasonably ought to know) about the duty of care owed to that person.
62.5.	Any event or circumstance to which both of the following apply	
	(a) Who it affects	The event or circumstance affects the Operator, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with the 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 Operator.
62.6.	Loss of Required Accreditation	The Operator (or a relevant subcontractor) losing, or having imposed on it any significant restrictions or conditions on, or being under a serious threat of losing or having imposed on it, any Required Accreditation which the Operator (or that subcontractor) must have under section 25.
62.7.	Any of the following events or circumstances in relation to the Operator if he/she is a human being acting as a sole trader	
	(a) Bankruptcy	<ul style="list-style-type: none"><li>• His/her bankruptcy and/or</li><li>• Any bankruptcy proceedings being commenced against him/her.</li></ul>
	(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 Services are to be carried out).
62.8.	Any of the following events or circumstances in relation to the Operator 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 Operator 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 Operator and/or its assets.
	(c) Announcements	If the shares of the Operator are listed on a stock exchange, any profit warnings in relation to the Operator which are issued to that stock exchange.
	(d) Change in Control	Any change in Control of the Operator.
62.9.	If the Operator is a consortium, partnership or anything similar, any of the following	
	(a) Change	Any change in the composition of its membership.
	(b) Events affecting members	Any of the events or circumstances indicated elsewhere in this section 62 in relation to any of its members individually.
62.10.	Investigations, prosecutions, disputes	<p>Any</p> <ul style="list-style-type: none"> <li>• Non-routine third party investigation (e.g. by the police, a regulatory body), and/or</li> <li>• Prosecution (or anything similar) and/or</li> <li>• Third party dispute</li> </ul> <p>Affecting the Operator and/or its subcontractors that is (on a reasonable view) likely to significantly and unfavourably affect the Operator's ability to carry out its obligations under the relevant Call-Off Contract.</p>
62.11.	Corrupt Acts	Any breach by the Operator of section 86.
62.12.	Representative	Changes to the Operator's Representative from time to time.
62.13.	In relation to Promised Subcontractors	Any notice of termination given by or to any Promised Subcontractor (in place from time to time according to section 48) insofar as its termination affects any part of the Services.

## Issues outside the Operator's control

### 63. Council Assistance

63.1.	<p>The following are the assistance which the Permitted Purchasing Body is to provide the Operator to enable the Operator to meet its obligations under the relevant Call-Off Contract</p> <p>Each of them is '<b>Council Assistance</b>'</p>	<ul style="list-style-type: none"> <li>• As indicated in the General DPS Specification and/or the relevant Call-Off Specification.</li> <li>• The Operator is not entitled to rely on any other assistance from the Permitted Purchasing Body to enable the Operator to provide the Services.</li> </ul>
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## 64. Uncontrollable Circumstances

### Definition of 'Uncontrollable Circumstances'

- 64.1. Each of following is an 'Uncontrollable Circumstance' for the purposes of the relevant Call-Off Contract but
- Only to the extent each of them is genuinely outside the Operator's reasonable control; **and**
  - Only to the extent each of them directly and substantially disrupts the Operator's ability to meet its affected obligations under the relevant Call-Off Contract

(a) Council Assistance

Failure by the Permitted Purchasing Body to meet any Council Assistance required under section 63, and according to any specific requirements (e.g. deadlines) indicated in section 63.

(b) Required by Law

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

(c) As required by the Permitted Purchasing Body

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

(d) Unsafe, impractical

On a reasonable view, it is seriously unsafe and/or seriously impractical for the Operator and/or relevant Personnel to carry out relevant obligations due to **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 any of these

### Continuity plans

- 64.2. Business or service continuity plans or anything similar which apply to the relevant Call-Off Contract if any Uncontrollable Circumstance occurs

- Only whatever business or service continuity plans the Operator has in place at the time.
- The Operator must have in place suitable business or service continuity plans in place at all times to ensure continuity of Services where reasonably practicable.

### Uncontrollable Circumstances – suspension of activity

- 64.3. The following apply to the right or obligation of the Operator to suspend activities connected with the relevant Call-Off Contract as a result of relevant Uncontrollable Circumstances

(a) Whether the Operator is obliged to suspend or simply permitted to suspend

- The Operator is obliged to suspend the activity if it is required to do so by Law under item 64.1(b) and/or by the Permitted Purchasing Body under item 64.1(c).
- Otherwise, the Operator is simply permitted (but not obliged) to do so.

(b) Obligation to communicate	<p>The Operator must communicate its intention to suspend carrying out such activities as follows</p> <ul style="list-style-type: none"> <li>• To the Permitted Purchasing Body's Representative or (in any emergency) other suitable Personnel of the Permitted Purchasing Body; and</li> <li>• Indicating in sufficient detail the following: <ul style="list-style-type: none"> <li>– The nature of the Uncontrollable Circumstance</li> <li>– The activities to be suspended</li> <li>– Any estimate of the duration of the suspension, if possible</li> </ul> </li> <li>• In writing where reasonably possible.</li> </ul>
(c) Whether the Operator must communicate the matter under item (b) if the Permitted Purchasing Body has required suspension under item 64.1(c).	Not required.
(d) Steps which the Operator if it wants to suspend its activities under this item 64.3 if the Uncontrollable Circumstance is <b>any failure by the Permitted Purchasing Body to meet any Council Assistance</b> described in section 63 according to any requirements in section 63 (e.g. deadlines etc.)	<p>The Operator must raise the matter as follows</p> <ul style="list-style-type: none"> <li>• In writing to the Representative and/or the Escalated Person of the Permitted Purchasing Body.</li> <li>• No later than <b>5 Business Days</b> from the day on which the Operator first became aware of the failure.</li> </ul> <p>The Operator is not entitled to suspend such activities in relation to a particular failure by the Permitted Purchasing Body if the Operator does not strictly follow these steps.</p>
(e) Extent of the suspension	<ul style="list-style-type: none"> <li>• <b>If the Permitted Purchasing Body has required the suspension under item 64.1(c):</b> to the extent required by the Permitted Purchasing Body.</li> <li>• <b>If the Operator is required to suspend its activities by Law:</b> to the extent required by Law.</li> <li>• <b>Otherwise:</b> only in relation to activities of the Operator in connection with the Services to the extent (and only for as long as) they are genuinely, substantially and directly disrupted by the relevant Uncontrollable Circumstance.</li> </ul>
(f) Keeping informed	<ul style="list-style-type: none"> <li>• The Operator 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 activities.</li> <li>• This is not required <ul style="list-style-type: none"> <li>– If the Permitted Purchasing Body has required the suspension under item 64.1(c) and/or</li> <li>– If the suspension is due to any failure by the Permitted Purchasing Body to meet any Council Assistance described in section 63.</li> </ul> </li> </ul>



- (g) When the Operator must resume suspended activities

- **If the Permitted Purchasing Body has required the suspension under item 64.1(c):** promptly when requested to do so in writing by the Permitted Purchasing Body.
- **If the Operator is required to suspend its activities by Law:** promptly when that requirement no longer applies.
- **Otherwise:** promptly after such activities are no longer genuinely, substantially and directly disrupted by the relevant Uncontrollable Circumstance.

64.4. Consequences if the Operator suspends its activities under item 64.3

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

- (a) Business or service continuity plans

The parties are to carry out their respective obligations under any business or service continuity plan or anything similar described in item 64.2 according to all of the following:

- In a proper, timely and lawful manner;
- But only to the extent the business or service continuity plan imposes obligations on them when the relevant Uncontrollable Circumstance arises;
- With proper regard to the welfare of human beings and the protection of property, where appropriate to the relevant Uncontrollable Circumstance;
- With each party bearing its own costs in doing so, other than any additional Charges which the Permitted Purchasing Body is liable to pay the Operator for carrying out such activities according to that business or service continuity plan or anything similar.

- (b) Right to relief

The Operator shall be relieved of all liability (whether for breach of contract or otherwise)

- To any person with rights against the Operator under the relevant Call-Off Contract
- For the Operator's failure to carry out any activities which the Operator is otherwise obliged to carry out under the relevant Call-Off Contract
- To the extent the Operator was permitted or required to suspend those activities under item 64.3.

- (c) If such suspension substantially and directly causes the Operator to fail to meet any Performance Standard described in section 3

The suspension shall not be taken into account for the purpose of determining whether or not that Performance Standard has been met.

<p>(d) Consequences for the liability of the Permitted Purchasing Body to pay the Operator the Charges under section 15 for Services</p> <ul style="list-style-type: none"> <li>• Which the Operator has not provided at all; and/or</li> <li>• Which the Operator has provided, but has provided them below the requirements of the relevant Call-Off Contract</li> </ul> <p>To the extent that non-provision is a substantial and direct result of the relevant suspension</p>	<ul style="list-style-type: none"> <li>• <b>If the Operator first becomes aware of the relevant Uncontrollable Circumstance 12 hours or less before the Operator is expected to provide the relevant Services:</b> the Permitted Purchasing Body is liable to pay the relevant Charges in relation to those Services as if the Operator had properly provided them.</li> <li>• <b>If the Operator first becomes aware of the relevant Uncontrollable Circumstance more than 12 hours before the Operator is expected to provide the relevant Services:</b> the Permitted Purchasing Body is not liable to pay the relevant Charges in relation to those Services.</li> </ul>
<p>(e) Consequences for the <b>service credits</b> described in section 16 to the extent their calculation is affected by the suspension of activities</p>	<p>No breach of the relevant Call-Off Contract by the Operator shall be taken into account in calculating any service credit for the purposes of section 16 to the extent that breach is due to that suspension of activities.</p>

## Insurance

### 65. The Operator's insurance requirements

<p>65.1. The Operator must have in place insurance of all of the following types</p> <ul style="list-style-type: none"> <li>• To the minimum level indicated</li> <li>• With a reputable insurer</li> </ul>	<p>£5 million motor vehicle. £5 million public liability.</p>
<p>65.2. Exemptions where the Operator (or its relevant subcontractor) is not required to have any particular insurance cover otherwise required in item 65.1</p>	<ul style="list-style-type: none"> <li>• Only with the written consent of the Permitted Purchasing Body.</li> <li>• Such consent cannot be unreasonably withheld where there are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements).</li> </ul>
<p>65.3. Duration for which the Operator must ensure all of the insurance cover described in item 65.1 are in place</p> <p>(a) In relation to insurance on a 'claims made' basis</p> <p>(b) In relation to insurance on a 'claims occurred' basis</p>	<ul style="list-style-type: none"> <li>• For as long as the Operator is obliged to provide any Services whatsoever under the relevant Call-Off Contract; and</li> <li>• For a further <b>6 years</b> after the Operator has discontinued providing any Services whatsoever under the relevant Call-Off Contract.</li> </ul> <p>For as long as the Operator is obliged to provide any Services whatsoever under the relevant Call-Off Contract.</p>

65.4.	Obligations of the Operator to provide evidence that the insurance cover required under this section 65 is in place	<ul style="list-style-type: none"> <li>• The Operator must provide the Permitted Purchasing Body with evidence that it has that insurance properly in place.</li> <li>• The Operator 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.</li> <li>• Such evidence may include copies of insurance certificates, cover notes and/or a suitable letter from the Operator's insurance broker.</li> </ul>
65.5.	Consequences if the Operator does not have any of the insurance cover required in this section 65 <b>at any time</b> whilst it is required to have the relevant cover in place according to this section 65	<ul style="list-style-type: none"> <li>• It shall be a Termination Default Event of the Operator, even if the Operator later obtains that insurance cover.</li> <li>• This does not limit the rights and remedies of the Permitted Purchasing Body.</li> </ul>

## Liability issues

### 66. Liability of consortium members

66.1.	If a party is a consortium, partnership under the Partnership Act 1890, joint venture or anything similar: nature of the liability of its members in connection with the relevant Call-Off Contract	Their liability is 'joint and several'.
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### 67. Operator indemnity for Claims

67.1.	For what the Operator must indemnify (and keep indemnified) each of the following (each of them ix ' <b>X</b> ' in this section 67): <ul style="list-style-type: none"> <li>• The Permitted Purchasing Body and</li> <li>• Its Affiliates and</li> <li>• Their respective Personnel</li> </ul> Subject to the rest of this section 67	For their respective Losses <ul style="list-style-type: none"> <li>• In relation to any Claim made or threatened against X</li> <li>• Where claimant is anyone <b>other than</b> the Permitted Purchasing Body and/or its Affiliate</li> <li>• But only to the extent the Claim relates to any of the matters described in item 67.2.</li> </ul>
67.2.	The indemnity described in item 67.1 applies to Claims made or threatened against X to the extent the Claim relates to any of the following: <p>(a) Breach of Law</p> <p>(b) Breach of duty of care</p>	Any breach of the Law by the Operator and/or its separate agents in activities connected with the relevant Call-Off Contract. <ul style="list-style-type: none"> <li>• Any breach of any duty (whether arising in tort, contract or otherwise) owed by the Operator to the relevant claimant to the extent that breach and that duty arise in connection with the activities of the Operator and/or its agents in connection with the relevant Call-Off Contract.</li> <li>• This includes, for example, negligence of the Operator in connection with such activities.</li> </ul>

(c) Use of property	<ul style="list-style-type: none"> <li>• The unauthorised use and/or infringement (or anything similar to these) of the property of the relevant claimant in connection with the activities of the Operator and/or its agents in connection with the relevant Call-Off Contract.</li> <li>• This includes any of the following in connection with such activities: <ul style="list-style-type: none"> <li>– Infringement of that claimant's Intellectual Property; and/or</li> <li>– Infringement of that claimant's right to any goods which Operator supplies.</li> </ul> </li> </ul>
67.3. Whether this indemnity applies if the Claim relates to any act (or failure to act) by or on behalf of the Operator in relation to Processed Personal Data in relation to which the Permitted Purchasing Body and/or its Affiliate is a Relevant Controller (see section 56) (indicate yes/no)	Only to the extent indicated in item 56.38.
67.4. Exceptions to the indemnity described in this section 67 to the extent it is given to the Permitted Purchasing Body and its Affiliate Each of the following: <div> <div>(a) Negligence etc. of the Permitted Purchasing Body</div> <div>(b) Contractual obligation, instruction etc.</div> <div>(c) In relation to the use of property described in item 67.2(c)</div> </div>	<div> <div>To the extent the Losses were caused by the negligence or other wrongdoing of the Permitted Purchasing Body and/or its Affiliate and/or their respective Personnel or other separate agents.</div> <div>To the extent the act (or failure to act) by or on behalf of the Operator to which the relevant Claim relates was in <b>material compliance</b> with any of the following: <ul style="list-style-type: none"> <li>• Any specific requirement elsewhere in the relevant Call-Off Contract; and/or</li> <li>• Any written instruction issued by the Representative of the Permitted Purchasing Body (or any other member of its Personnel of at least equivalent status).</li> </ul> </div> <div>The Permitted Purchasing Body and/or its Affiliate has specifically made the relevant property available for use by the Operator in connection with the relevant Call-Off Contract (whether under any formal lease or licence or otherwise).</div> </div>
67.5. To what the indemnity given by the Operator in this section 67 is subject	It is subject to section 68.
67.6. Whether the indemnity in this section 67 in itself limits X's rights and remedies	No.

## 68. Indemnities generally

68.1. To what this section 68 applies	This section 68 applies to any indemnity which one party (' <b>Indemnifier</b> ') gives to the other party and/or its Affiliate (' <b>Indemnity Beneficiary</b> ') under the relevant Call-Off Contract (' <b>Relevant Indemnity</b> ').
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## General rules regarding Relevant Indemnities

68.2.	Nature of obligation under a Relevant Indemnity	The Indemnifier's obligation to indemnify the Indemnity Beneficiary includes an obligation to keep the Indemnity Beneficiary indemnified.
68.3.	Other rights and remedies	The Indemnifier's obligation to indemnify the Indemnity Beneficiary shall not in itself limit the rights or remedies of the Indemnity Beneficiary or any other person (except to the extent otherwise clearly indicated).
68.4.	How Relevant Indemnities are to be read	Independently of each other.
68.5.	Extent to which any Contract End in itself affects any rights and/or obligations of any Indemnity Beneficiary or any Indemnifier in relation to any Relevant Indemnity	The Contract End does not in itself affect those rights and/or obligations.
68.6.	A Relevant Indemnity is to be reduced to the extent any of the following applies	
	(a) Cause of Losses	The Indemnity Beneficiary's Losses were caused by the negligence or other wrongdoing by the Indemnity Beneficiary and/or its separate agents.
	(b) How acting	The act or failure to act by the Indemnifier which has caused the Indemnity Beneficiary's Losses was in compliance with the written instructions of the Indemnity Beneficiary (or those given by any other person acting on behalf of the Indemnity Beneficiary where the Indemnifier knew or had reasonable grounds to believe had authority to give those instructions on behalf of the Indemnity Beneficiary).
68.7.	Obligations of the Indemnity Beneficiary in relation to the Relevant Indemnity	<ul style="list-style-type: none"> <li>To take reasonable steps to mitigate such Losses to which the Relevant Indemnity relates.</li> <li><b>Exception:</b> to the extent the relevant Call-Off Contract otherwise indicates it is not required to do so.</li> </ul>

## Claiming a Relevant Indemnity

68.8.	Procedure which the Indemnity Beneficiary must strictly follow to claim amounts under a Relevant Indemnity	The Indemnity Beneficiary must give the Indemnifier a written demand.
68.9.	How the Indemnity Beneficiary must give the demand	Strictly according to section 80.
68.10.	Deadline for payment by the Indemnifier to the Indemnity Beneficiary	<b>30 days</b> after having been given a demand for payment by the Indemnity Beneficiary.

## Right to refuse

68.11. Circumstances where the Indemnifier can refuse to meet a Relevant Indemnity in relation to a Claim made against the Indemnity Beneficiary

Any of the following, as relevant (to be read independently)

(a) Failure to give the Indemnifier notice of the Claim by a deadline

- The Indemnity Beneficiary has failed to give the Indemnifier written notice of the Claim more than **30 days** after the Claim has first been communicated in writing to the Indemnity Beneficiary.
- This is a strict deadline.
- The Indemnity Beneficiary must give that notice to the Indemnifier strictly according to section 80.
- **If the Relevant Indemnity covers a threat of a Claim:** the Relevant Indemnity does not cover the Indemnity Beneficiary's Losses incurred before the Indemnity Beneficiary has given that notice to the Indemnifier. Therefore, the Indemnity Beneficiary may give the relevant notice at any time after the relevant claimant has first threatened the relevant Claim.

(b) If the Indemnity Beneficiary has failed to give the Indemnifier proper control over the defence of the Claim

- If the Indemnifier requests in writing
- 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 the 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 to giving the Indemnifier control over the defence of the Claim.

(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.

The Indemnifier must not do (or assist or instruct anyone else to do) anything (without good reason) to bring the name of the Indemnity Beneficiary into disrepute in the course of conducting the defence.

(vii) Indemnity Beneficiary's assistance with the defence	<ul style="list-style-type: none"> <li>• The Indemnifier Beneficiary must give the Indemnifier reasonable and timely assistance with the defence of the Claim if reasonably requested in writing by the Indemnifier.</li> <li>• <b>Examples:</b> such assistance may include (for example and where relevant) provision of relevant information, subject to relevant persons accepting reasonable confidentiality obligations.</li> </ul>
(viii) Reimbursement of costs	<p>The Indemnifier must reimburse the Indemnity Beneficiary for the following reasonable and sufficiently evidenced costs which the Indemnity Beneficiary incurs in connection with the defence:</p> <ul style="list-style-type: none"> <li>• The Indemnity Beneficiary's third party disbursements, including external professional costs; and</li> <li>• The time and effort of the Indemnity Beneficiary's Personnel in providing that assistance, at £50 per hour plus VAT.</li> </ul>
(c) Indemnity Beneficiary has failed to defend or settle	<ul style="list-style-type: none"> <li>• The Indemnity Beneficiary has failed to take reasonable and timely action to defend or settle the Claim if so reasonably requested by the Indemnifier in writing.</li> <li>• This applies if the Indemnifier has not taken control of the defence of the Claim for any reason.</li> </ul>
(d) Harmed defence of Claim	<ul style="list-style-type: none"> <li>• The Indemnity Beneficiary and/or its Affiliate and/or their respective Personnel has done any act to substantially harm the Indemnifier's prospects of defending the Claim including (for example): <ul style="list-style-type: none"> <li>– Admitting liability, or</li> <li>– Attempting to settle the Claim.</li> </ul> </li> <li>• Exceptions: any of the following: <ul style="list-style-type: none"> <li>– To the extent that act is authorised by the Indemnifier in writing (at its discretion).</li> <li>– To the extent that act is required by Law.</li> </ul> </li> </ul>
(e) Other compensation	<p>To the extent the Indemnity Beneficiary has received any payment or other benefit (e.g. discount, saving, credit etc.) in relation to the third party Claim.</p>

#### Refund of amounts paid under a Relevant Indemnity

##### 68.12. Liability of the Indemnity Beneficiary to refund any amounts paid by the Indemnifier under any Relevant Indemnity

This only applies to the Indemnity Beneficiary if it is a party to the relevant Call-Off Contract

<p>The Indemnity Beneficiary is liable to refund the following to the Indemnifier</p> <ul style="list-style-type: none"> <li>• Any amount paid by the Indemnifier to the Indemnity Beneficiary and/or its Affiliate and/or its Personnel (as the relevant Indemnity Beneficiary) under a Relevant Indemnity</li> <li>• To the extent the Indemnity Beneficiary and/or its Affiliate and/or its Personnel (as the relevant) has received any payment or other benefit (e.g. discount, saving, credit etc.) <b>from another source</b> (e.g. proceeds from an insurance claim, or a claim against a third party) in relation to the same event or circumstance to which the Relevant Indemnity related.</li> </ul>
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68.13.	Maximum liability of the Indemnity Beneficiary under item 68.12 to refund	The Indemnity Beneficiary's liability to refund the Indemnifier under item 68.12 must not be greater than the amount paid by the Indemnifier under the Relevant Indemnity.
68.14.	Keeping informed	The Indemnity Beneficiary's described in item 68.12 must inform the Indemnifier in writing (and make payment of the relevant refund) promptly on receipt by the Indemnity Beneficiary and/or its Affiliate and/or its Personnel (as the relevant) of the relevant payment or other benefit from that other source.
68.15.	Duty of the Indemnity Beneficiary to seek the payment or other benefit from the other source for the purposes of item 68.12	<p>The Indemnity Beneficiary:</p> <ul style="list-style-type: none"> <li>• Must use reasonable endeavours to do so on becoming aware of the reasonable prospect of that payment or other benefit; or</li> <li>• Must cause its Affiliate or Personnel to do so, where relevant, and to the extent it is in X's power to do so</li> </ul> <p>In a reasonably proper and timely manner (at the Indemnity Beneficiary's own cost).</p>

## 69. Caps and exclusion of liability

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### Caps on the liability of the Operator

69.1.	Cap on the liabilities of the Operator described in item 69.7 which are reasonably expected to be covered by insurance which the Operator is required to have under item 65.1 (according to the usual terms of insurance policies of the relevant types required in item 65.1)	<p>To the higher of the following</p> <ul style="list-style-type: none"> <li>• To the level of the proceeds paid under the insurance cover which is relevant to the particular liability as required in item 65.1; or</li> <li>• <b>If the Call-Off Contract is for less than 12 months:</b> to <b>125%</b> of the Charges payable by the Permitted Purchasing Body to the Operator if the Call-Off Contract continued for its full duration.</li> <li>• <b>If the Call-Off Contract is for 12 months or more:</b> for each year of the Call-Off Contract (commencing on the date of the Call-Off Contract and each anniversary) to <b>125%</b> of the Charges payable by the Permitted Purchasing Body to the Operator if the Services were provided for that full year.</li> </ul>
69.2.	If the Operator is exempt from having the insurance required in item 65.1 according to item 65.2	For the purposes of item 69.1, , the cap applies as if the exemption were not given according to item 65.2 (i.e. as if the Operator had the insurance required in item 65.1).
69.3.	Cap on the liability of the Operator for liabilities described in item 69.7 which are <b>not</b> otherwise capped elsewhere in this section 69	Such liabilities for each calendar year of the Call-Off Contract are capped to <b>125%</b> of the Charges payable by the Permitted Purchasing Body to the Operator if the Services were provided for that full calendar year.



Exclusion of liability

69.4. Exclusion for compliance with the Permitted Purchasing Body’s instructions

The liability of the Operator (as described in item 69.7) is <b>excluded</b> in relation to any <b>act or failure to act</b> by the Operator or its separate agents (e.g. subcontractors, Personnel) to the extent that act or failure to act was in compliance with any instructions given by the Permitted Purchasing Body which are: <ul style="list-style-type: none"><li>• Contained elsewhere in the relevant Call-Off Contract; and/or</li><li>• Issued in writing by any authorised representative of the Permitted Purchasing Body</li></ul> To the extent any of those instructions were <b>not</b> given according to any advice given by the Operator to the Permitted Purchasing Body.
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69.5. Liability of each party (as described in item 69.7) in connection with the relevant Call-Off Contract is excluded for all of the following

- (a) Indirect, consequential
- (b) Opportunity
- (c) Business

Special, indirect or consequential loss or damage
Loss of opportunity
Loss of business

Where caps and exclusions of liability DO NOT apply

69.6. If and to the extent any of the following applies to a particular liability:

- The caps and exclusions of a party’s liability indicated elsewhere in the relevant Call-Off Contract (especially those in this section 69) do not apply; and
- That liability shall be excluded from any calculation of any cap on that party’s liability indicated elsewhere in the relevant Call-Off Contract (especially those in this section 69)

Each of these are to be read independently

- (a) Death etc.
- (b) Deliberate

Death or personal injury caused by the negligence of that party.
<ul style="list-style-type: none"><li>• That party’s deliberate act or deliberate failure to act.</li><li>• 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.</li><li>• This shall not include that party attempting to give a notice in connection with the relevant Call-Off Contract in good faith where that attempt is later held by a court or anything similar to be (as a technicality) an anticipatory, repudiatory or anything similar breach by that party.</li></ul>
That party’s fraudulent misrepresentation.

- (c) Fraudulent misrepresentation

(d) Operator's subcontracting – consent	<p>In relation to the liability of the Operator, the liability of the Operator relates to any act or negligent failure by a subcontractor</p> <ul style="list-style-type: none"> <li>• Where that subcontractor has been appointed directly by the Operator, or indirectly by any such subcontractor (or any intermediary subcontractors)</li> <li>• Where all of the following apply: <ul style="list-style-type: none"> <li>– The act or negligent failure is in connection with the Services.</li> <li>– The Operator was required under section 49 to obtain the Permitted Purchasing Body's consent to the appointment of that subcontractor; and</li> <li>– Either of the following applies, as relevant <ul style="list-style-type: none"> <li>➤ The Operator failed to seek such consent; or</li> <li>➤ The Operator sought such consent, and the Permitted Purchasing Body refused consent to that subcontractor, in writing and with reasonable grounds.</li> </ul> </li> </ul> </li> </ul>
(e) Operator's subcontracting – removal	<p>In relation to the liability of the Operator, its liability of the Operator relates to any act or negligent failure by a subcontractor</p> <ul style="list-style-type: none"> <li>• Where that subcontractor has been appointed directly by the Operator, or indirectly by any such subcontractor (or any intermediary subcontractors)</li> <li>• Where all of the following apply: <ul style="list-style-type: none"> <li>– The act or negligent failure is in connection with the Services.</li> <li>– The Permitted Purchasing Body had required the removal of the subcontractor under and in accordance with section 50.</li> <li>– The Permitted Purchasing Body had reasonable grounds to request that removal.</li> <li>– The Permitted Purchasing Body had not permitted the reinstatement of the subcontractor according to item 50.5.</li> </ul> </li> </ul>
(f) Indemnities for third party Claims	<p>Any indemnity that party gives under the relevant Call-Off Contract for third party Claims <b>unless</b> clearly indicated in the relevant Call-Off Contract that the relevant caps or exclusions do apply in relation to particular Claims.</p>
(g) Specific liabilities	<ul style="list-style-type: none"> <li>• Specific liabilities arising under or in connection with the relevant Call-Off Contract including interest accruing on any such liabilities.</li> <li>• <b>Examples:</b> Charges under section 15.</li> </ul>
(h) Not permitted by Law	<p>Anything else to the extent liability cannot be capped and/or excluded by Law.</p>

## Caps and exclusions of liability – interpretation

69.7. Interpretation of caps and exclusions of the liability of a party ('X') in this section 69

- (a) Liabilities to which those caps and exclusions apply
- (b) Calculation of any cap on X's liability

- They apply to X's (and X's Affiliates') liabilities of any kind in connection with the relevant Call-Off Contract
- Regardless of whether the liability arises in tort, contract, under statute or otherwise.

- Its liability is to be aggregated between
- The liability X and/or its Affiliates owe to the other party; and
  - The liability X and/or its Affiliates owe any third party under the relevant Call-Off Contract.

## Making changes

### 70. Change process requested by the Permitted Purchasing Body

#### General

70.1. Definition of a '**Council Change**'

A change to the relevant Call-Off Contract which the Permitted Purchasing Body has requested from time to time by the Permitted Purchasing Body according to this section 70.

70.2. Certain changes

If the General DPS Specification indicates any changes to the relevant Call-Off Contract which the Permitted Purchasing Body may unilaterally require (i.e. without requiring the Operator's agreement) then:

- **If the Permitted Purchasing Body requires such a change:** that change shall be immediately incorporated into the Call-Off Contract if requested by the Permitted Purchasing Body in writing. That change overrides anything to the contrary in the Call-Off Contract at the time.
- **Effect on Charges:** the Charges shall not be affected by any such change requested by the Permitted Purchasing Body.
- **This procedure:** the procedure in this section 70 is not required for such changes.

70.3. Whether the Permitted Purchasing Body may include a reduction in the scope of the Services in a Council Change under this section 70  
Indicate yes/no

Yes.

## First step

70.4. If the Permitted Purchasing Body wishes to request a Council Change, the Permitted Purchasing Body must give the Operator a notice proposing the Permitted Purchasing Body Change (**'Council Change Notice'**) which must contain all of the following contents, as a minimum

(a) Description of Council Change

A description of the proposed Council Change in sufficient detail to allow the Operator to properly evaluate and respond to the Permitted Purchasing Body Change Notice.

(b) A request for the Operator to supply the Permitted Purchasing Body with at least one of the following as relevant by the deadline described in the Permitted Purchasing Body Change Notice

(i) If the Operator **can** provide the Permitted Purchasing Body with the Change Estimate by the relevant deadline described in the Permitted Purchasing Body Change Notice

A **'Change Estimate'** meeting the requirements in item 70.7.

(ii) If the Operator **cannot** provide the Permitted Purchasing Body with the Change Estimate by the relevant deadline described in the Permitted Purchasing Body Change Notice

An estimate (made with due care and in good faith) of the date on which the Operator can give the Permitted Purchasing Body the relevant meeting the requirements in item 70.7, on the understanding the Operator is to use reasonable endeavours to provide it promptly.

(c) Deadline

The deadline by which the Operator must supply the Permitted Purchasing Body the response, meeting either item (b)(i) or item (b)(ii), as relevant.

70.5. How the Permitted Purchasing Body must send the Permitted Purchasing Body Change Notice to the Operator (e.g. any formalities which the Permitted Purchasing Body must meet)

No formalities required.

## Second step

70.6. What the Operator must do after it has received a Council Change Notice described in item 70.4 according to the requirements (if any) in item 70.5  
The Operator must do so by the deadline indicated in that Council Change Notice

The Operator must provide the Permitted Purchasing Body with either of the following, as relevant:

- A Change Estimate meeting the requirements in item 70.7; or
- An estimate described in item 70.4(b)(ii) (if the circumstances in item 70.4(b)(ii) apply).

70.7. Requirements of the Change Estimate in relation to each proposed Council Change for the purpose of the Operator's response to the relevant Council Change Notice

(a) Writing

The Change Estimate must be in writing.

(b) Preparation

The Operator must prepare the Change Estimate with reasonable skill, care and diligence and in good faith.

(c) In relation to each proposed Council Change in the Permitted Purchasing Body Change Notice <b>which the Operator wishes to refuse</b> (if at least one of the grounds in item 70.9 applies)	<p>The Operator must indicate:</p> <ul style="list-style-type: none"> <li>• Its refusal of the proposed Council Change;; and</li> <li>• Its reasons for refusal, being at least one of the grounds in item 70.9.</li> </ul>
(d) In relation to each proposed Council Change in the Permitted Purchasing Body Change Notice <b>which the Operator does not wish to refuse</b> The Change Estimate must contain <b>all</b> of the following minimum contents in relation to each proposed Council Change	
(i) Estimate of change	<p>A genuine estimate of the impact of the proposed Council Change (if the Operator accepted it) on the rest of the relevant Call-Off Contract, particularly on the following:</p> <ul style="list-style-type: none"> <li>• The liability of the parties under the relevant Call-Off Contract to pay each other (e.g. Charges under section 15) having regard to the circumstances, particularly increases or decreases to the costs and/or risks of the Operator.</li> <li>• The ability of the Operator to meet its other obligations under the relevant Call-Off Contract (e.g. requirements in the General DPS Specification, Performance Standards in section 3 etc.).</li> </ul>
(ii) Implementation proposal	<p>The Operator's proposal to implement the proposed Council Change and to carry out the resulting additional obligations, including its relevant methods and time periods required.</p>
(iii) Operator requirements	<p>The extent the Operator requires any of the assistance or anything similar described in item 70.8 if it accepts the proposed Council Change.</p>

70.8. Types of assistance which the Operator may require in the Change Estimate in relation to a particular proposed Council Change for the purposes of item 70.7(d)(iii)

(to the extent relevant to the Operator's acceptance of the proposed Council Change and its carrying out of the resulting additional obligations)

(a) Subcontractor	The assistance of any subcontractor.
(b) Council Assistance	Any additional Council Assistance for the purposes of item 63.1.
(c) Consents	Any consent of any arm's length third party, including any regulatory approval.
(d) Extension	Any extension of any deadline otherwise applying to the relevant Call-Off Contract.
(e) Relief	Any reduction in the Operator's other obligations under the relevant Call-Off Contract.
(f) Amendments	A genuine proposal of amendments to the relevant Call-Off Contract reasonably required as a result of the proposed Council Change

70.9. Grounds on which the Operator may refuse a particular proposed Council Change (in full or part) which the Permitted Purchasing Body has requested in a particular Council Change Notice:

ONLY if at least one of the following applies

(a) The proposed Council Change involves activities to which any of the following applies

(i) Outside normal business

The activities are not sufficiently connected with the Operator'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.

(iii) Capacity, expertise

The activities are beyond the Operator's available resources and/or existing experience and/or expertise.

(b) If the Operator took reasonable steps on its acceptance of the proposed Council Change, it would result in (or create an unreasonable risk of resulting in) any of the following

(i) Law

The Operator and/or a relevant subcontractor being in breach of the Law.

(ii) Required Accreditation

The Operator and/or a relevant subcontractor breaching any Required Accreditation which the Operator and/or that subcontractor is required to hold according to section 25.

(iii) Personnel requirements

Any Personnel of the Operator involved in the Services breaching any requirements he/she is required to meet under section 32 having regard to the nature of his/her activities in connection with the Services.

(iv) Standards

The Operator and/or a relevant subcontractor breaching any standards applicable to the Operator according to good industry or professional practice, professional or industry codes of conduct or anything similar.

(v) Death, personal injury

Death or personal injury to any individual to whom the Operator and/or a relevant subcontractor genuinely owes a duty of care.

(vi) Risk to property

Loss or damage to any property of the Operator and/or a relevant subcontractor or that of any other person to whom the Operator and/or that subcontractor owes a duty of care.

(vii) Council Change Notice is insufficient

The Permitted Purchasing Body Change Notice does not describe the proposed Council Change with sufficient clarity and detail to reasonably enable the Operator to respond.

## Next steps

70.10. If

- The Operator **wishes to refuse** a proposed Council Change in the Change Estimate; and
- The Permitted Purchasing Body wishes the Operator to reconsider the matter

The parties shall (promptly on the Permitted Purchasing Body's written request) escalate the matter to their respective Escalated Persons for resolution.

- 70.11. In relation to each proposed Council Change
- Which the Operator had not refused in the Change Estimate, or
  - Which the Operator had originally refused in the Change Estimate, but had reconsidered after taking the action described in item 70.10)

(a) First step

The parties shall direct their respective Representatives to meet:

- As soon as reasonably practicable after the Permitted Purchasing Body receives the Change Estimate (or after the completion of the action described in item 70.10, if relevant)
- To discuss the proposed Council Change and the matters indicated in the Change Estimate and (if relevant) arising from the action described in item 70.10.

(b) Purpose of the meeting described in item (a)

To attempt to agree relevant amendments required to the relevant Call-Off Contract, taking into account the matters indicated in the Change Estimate and/or (if relevant) arising from the action described in item 70.10.

- 70.12. The parties must take into account all **reasonable and relevant matters** for the purposes of the meeting described in item 70.11 (particularly item 70.11(b)), including the following:

These are examples of the reasonable and relevant matters that the parties may take into account, as appropriate

(a) Changes to Law

The extent a proposed Council Change is reasonably necessary to ensure the Permitted Purchasing Body and/or the Operator complies with any Law introduced or amended after the date the relevant Call-Off Contract is entered (to the extent that Law is relevant to the Services.

(b) Change Estimate

Matters raised by the Operator in the Change Estimate and/or (if relevant) during the action described in item 70.10.

(c) Evidence certain changes are kept to a minimum

Reasonable evidence provided by the Operator that it has used reasonable endeavours to keep to any amendments to the relevant Call-Off Contract resulting from a proposed Council Change to a minimum, to the extent such amendments are unfavourable to the Permitted Purchasing Body.

(d) Good value for money

Reasonable evidence provided by the Operator that it is giving the Permitted Purchasing Body good value for money in relation to amendments to the relevant Call-Off Contract resulting from the Operator's acceptance of the Permitted Purchasing Body Change.

## Acceptance of a Council Change

70.13. All of the following: apply when the Permitted Purchasing Body and the Operator have agreed to amendments to the relevant Call-Off Contract relating to a proposed Council Change

(a) Execute documents

- The Permitted Purchasing Body and the Operator must promptly execute all such documents to amend the relevant Call-Off Contract to properly reflect that agreement.
- Those documents must meet the requirements for amending the relevant Call-Off Contract in section 91.

(b) Deadline for the Permitted Purchasing Body to execute relevant documents reflecting agreement to the proposed Council Change

- **30 days** of the documents being properly presented, or such longer period agreed in writing by the Operator.
- The Operator 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 (through no fault of the Operator) fails to execute such documents that properly reflect that agreement by the deadline indicated in item (b)

- The Permitted Purchasing Body shall be deemed to have withdrawn its request for the relevant proposed Council Change.
- This does not in itself prevent the Permitted Purchasing Body from later recommencing the procedure in this section 70 in relation to the same Council Change.

70.14. Consequences if the parties cannot agree on the proposed Council Change  
(other than a proposed Council Change which the Operator has refused under at least one of the grounds in item 70.9)

It shall be a Relevant Dispute for the purposes of section 81.

## 71. Change process requested by the Operator

71.1. Definition of a '**Operator Change**'

A change to the relevant Call-Off Contract requested from time to time by the Operator, according to this section 71.

71.2. First step if the Operator wants to propose a Operator Change

It must give the Permitted Purchasing Body a notice ('**Operator Change Notice**') which complies with this section 71.

71.3. How the Operator must give the Operator Change Notice to the Permitted Purchasing Body

As a notice strictly according to section 80.

71.4. Minimum contents of the Operator Change Notice

- All of the following information
- To be provided with sufficient clarity and sufficient detail to enable proper evaluation

(a) Description

A description of the proposed Operator Change.

(b) Required amendments

The likely required amendments to the relevant Call-Off Contract.

(c) Reasons

Reasons for requesting the proposed Operator Change.



	(d) Timetable	The proposed timetable for commencing the mobilisation of the proposed Operator Change from the date it is agreed by the parties.
	(a) If the proposed Operator Change is to result in any change in Charges (section 15)	A breakdown of that change, indicating relevant calculations.
	(b) Deadline for decision	If the Operator requires the decision of the Permitted Purchasing Body on the proposed Operator Change by a particular date, the relevant date and the reason the decision is required by that date.
	(c) Request for consultation	A request for the Permitted Purchasing Body to consult with the Operator for the purpose of considering the proposed Operator Change.
71.5.	<b>Next step:</b> obligations of the Permitted Purchasing Body	<ul style="list-style-type: none"> <li>The Permitted Purchasing Body must evaluate the request for proposed Operator Change contained in the Operator Change Notice in good faith.</li> <li>The Permitted Purchasing Body must do so taking into account the matters described in item 71.7.</li> </ul>
71.6.	Deadline by which the Permitted Purchasing Body must complete the evaluation in item 71.5	By the deadline (if there is one) described in the Operator Change Notice.
71.7.	Matters which the Permitted Purchasing Body must take into account when evaluating the Operator Change Notice	
	<ul style="list-style-type: none"> <li>All reasonably relevant issues</li> <li>Including the following where relevant and as examples of the reasonable and relevant issues that apply at the time</li> </ul>	
	(a) Changes to Charges (section 15)	Changes to the Charges and other amounts payable by the Permitted Purchasing Body which are likely to result from the proposed Operator Change.
	(b) Other changes	Other changes to the relevant Call-Off Contract which are reasonably likely to result from the proposed Operator Change.
	(c) 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 for example, any breach of the Law, breach of any duty of care it owes another person, serious and unjustified unfavourable publicity, further costs, delays etc.
	(d) Impact on other parts	The impact of the proposed change on other parts of the Services.
	(e) Likelihood of change being implemented	The likelihood of the Operator being able to implement the proposed change.

71.8.	<p>Next step - meeting between Representatives: the Permitted Purchasing Body and the Operator shall direct their respective Representatives to meet</p> <ul style="list-style-type: none"><li>• As soon as reasonably practicable</li><li>• To discuss the proposed change</li><li>• With a view to agreeing the following</li></ul> <p>(a) Whether accepted</p> <p>(b) Required amendments</p>	<table><tr><td>Whether the proposed change is to be accepted in full or part.</td></tr><tr><td>Relevant amendments to the relevant Call-Off Contract required.</td></tr></table>	Whether the proposed change is to be accepted in full or part.	Relevant amendments to the relevant Call-Off Contract required.		
Whether the proposed change is to be accepted in full or part.						
Relevant amendments to the relevant Call-Off Contract required.						
71.9.	<p>Basis of the decision of the Permitted Purchasing Body to accept or reject the Operator's proposed change</p> <p>E.g. whether 'at discretion' or 'not to be unreasonably withheld'</p> <p>(a) In relation to changes in the Law which</p> <ul style="list-style-type: none"><li>• Relates specifically to the business of the Permitted Purchasing Body; and</li><li>• Which would not affect the supply of substantially similar services to substantially similar clients or customers (whether or not involving the Operator and/or the Permitted Purchasing Body)</li></ul> <p>(b) In relation to any other changes to the Law not described in item (a)</p> <p>(c) In relation to any part of the General DPS Specification and/or the relevant Call-Off Specification which creates an unreasonable risk of any of the matters indicated in section 10</p> <p>(d) Other</p>	<table><tr><td>Not to be unreasonably withheld</td></tr><tr><td>Not to be unreasonably withheld</td></tr><tr><td>Not to be unreasonably withheld</td></tr><tr><td>At discretion</td></tr></table>	Not to be unreasonably withheld	Not to be unreasonably withheld	Not to be unreasonably withheld	At discretion
Not to be unreasonably withheld						
Not to be unreasonably withheld						
Not to be unreasonably withheld						
At discretion						
71.10.	<p>Consequences if the proposed changes result in a reduction in the costs to the Operator in providing the Services</p> <p>Indicate how the benefit of that reduction is to be shared between the Permitted Purchasing Body and the Operator</p>	<table><tr><td>Equally or as the parties otherwise agree in writing.</td></tr></table>	Equally or as the parties otherwise agree in writing.			
Equally or as the parties otherwise agree in writing.						
71.11.	<p>Consequences of the parties reaching agreement on the proposed change</p> <p>(a) Execute documents</p> <p>(b) Deadline for the Operator to execute relevant documents reflecting agreement to the proposed change</p>	<table><tr><td>They shall promptly execute all such documents necessary according to section 91 to amend the relevant Call-Off Contract to properly reflect that agreement.</td></tr><tr><td><b>30 days</b> after the Permitted Purchasing Body properly presents them to the Operator for this purpose.</td></tr></table>	They shall promptly execute all such documents necessary according to section 91 to amend the relevant Call-Off Contract to properly reflect that agreement.	<b>30 days</b> after the Permitted Purchasing Body properly presents them to the Operator for this purpose.		
They shall promptly execute all such documents necessary according to section 91 to amend the relevant Call-Off Contract to properly reflect that agreement.						
<b>30 days</b> after the Permitted Purchasing Body properly presents them to the Operator for this purpose.						

71.12. If the Operator (through no fault of the Permitted Purchasing Body) fails to execute such documents that properly reflect that agreement by the deadline indicated in item 71.11(b)

- The Operator shall be deemed to have withdrawn its request for the relevant proposed Operator Change.
- This shall not in itself prevent the Operator from later recommencing the procedure in relation to the same (or any other) proposed Operator Changes.

## Various default issues

### 72. Required Suspensions

72.1. Actions which the Permitted Purchasing Body may take if and for as long as any of the circumstances in item 72.2 applies to the Operator

- The Permitted Purchasing Body may suspend the Operator from the Call-Off Contract.
- Such action is a '**Required Suspension**'

72.2. The Permitted Purchasing Body may impose (but is not obliged to impose) a Required Suspension on the Operator **if and for as long** as long as any of the following events or circumstances applies at the time

Not to limit the rights or remedies of the Permitted Purchasing Body if the event or circumstance arises

(a) Material Breach

If (and for as long as) the Operator is remedying a Material Breach of the relevant Call-Off Contract under item 73.2.

(b) Loss of Required Accreditation

The Operator loses any Required Accreditation described in section 25 where **it is not** required by Law to hold that Required Accreditation to carry out its activities in connection with the Services.

(c) Investigations

If and for as long as all of the following apply

(i) Non-routine investigation

The Operator is subject to any significant, non-routine investigation

- By any regulatory or law enforcement agency (e.g. the police, the Permitted Purchasing Body in exercise of any statutory or other function, regulatory body etc.); and/or
- By the Permitted Purchasing Body in relation to any serious safeguarding issues affecting the Services and involving Personnel of the Operator 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 Operator and/or its Affiliates anywhere in the world.

	(iii) Risks to the Permitted Purchasing Body if it did not require suspension	<p>If the Permitted Purchasing Body did not require the suspension, there would be an unreasonable risk of any of the following:</p> <ul style="list-style-type: none"> <li>• Serious harm to any individual.</li> <li>• Serious adverse consequences for any person's property.</li> <li>• The Permitted Purchasing Body and/or its Affiliate breaching any genuine arm's length duty of care to another person.</li> <li>• Serious, unjustified and unfavourable publicity to the Permitted Purchasing Body.</li> </ul>
	(d) Other	As indicated in the General DPS Specification and/or the relevant Call-Off Specification.
72.3.	Whether the Permitted Purchasing Body may extend the Required Suspension to other parts of the Services which are not affected by the relevant circumstances described in item 72.2 (yes/no)	The Permitted Purchasing Body may do so.
72.4.	Consequences on the following if the Permitted Purchasing Body imposes a Required Suspension under this section 72	
	(a) On Charges in section 15	The Permitted Purchasing Body's liability to pay for the affected Services is unaffected.
	(b) For the rest of the relevant Call-Off Contract (e.g. deadlines, service standards, etc.)	<b>If the Required Suspension is in any way due to the circumstances described in item 72.2(a) and/or item 72.2(b):</b> imposing the Required Suspension does not limit the rights and remedies of the Permitted Purchasing Body (e.g. in relation to any breach of contract) resulting from those circumstances.
72.5.	For how long the Permitted Purchasing Body is entitled to impose a Required Suspension under this section 72	Only for as long as at least one of the circumstances in item 72.2 continues to apply.
72.6.	How the Permitted Purchasing Body exercises its rights to impose a Required Suspension under this section 72	<p>By communicating the matter in writing to the Representative of the Operator.</p> <p>The Permitted Purchasing Body is not required to comply with the formalities for notices indicated in section 80.</p>

## Termination Default Events

### 73. Operator Termination Default Events

Each of the following is a Termination Default Event of the Operator

- To be read independently
- For as long as the relevant circumstances continue to apply to the Operator

#### General breaches

73.1. Material Breach not capable of being remedied	<ul style="list-style-type: none"><li>• The Operator is in Material Breach of the relevant Call-Off Contract.</li><li>• On a reasonable view, that Material Breach is not capable of being remedied by the Operator.</li></ul>
73.2. Material Breach capable of being remedied	<p>All of the following must apply</p> <ul style="list-style-type: none"><li>• The Operator is in Material Breach of the relevant Call-Off Contract.</li><li>• On a reasonable view the Material Breach is capable of being remedied by the Operator.</li><li>• For as long as the Operator has still not remedied the Material Breach</li><li>• To the reasonable satisfaction of the Permitted Purchasing Body</li><li>• At the Operator's own cost</li><li>• More than <b>14 days</b> after the Permitted Purchasing Body has requested the Operator to do so</li></ul> <p>The Permitted Purchasing Body must have issued its request by notice given strictly according to section 80.</p> <p>The Permitted Purchasing Body shall not unreasonably refuse consent to a written request by the Operator to an extension of the above deadline if there are delays to the Operator remedying the Material Breach which are significantly due to factors outside the reasonable control of the Operator.</p>
73.3. Operator's subcontracting – consent	<p>Any of the Services under the Call-Off Contract have been provided by a subcontractor of the Operator where all of the following apply:</p> <ul style="list-style-type: none"><li>• The Operator was required under section 49 to obtain the Permitted Purchasing Body's consent to the appointment of that subcontractor; and</li><li>• Either of the following applies, as relevant<ul style="list-style-type: none"><li>– The Operator failed to seek such consent; or</li><li>– The Operator sought such consent, and the Permitted Purchasing Body refused consent to that subcontractor, in writing and with reasonable grounds.</li></ul></li></ul>

73.4. Operator's subcontracting – removal

Any of the Services under the Call-Off Contract have been provided by a subcontractor of the Operator where all of the following apply:

- The Permitted Purchasing Body had required the removal of the subcontractor under and in accordance with section 50.
- The Permitted Purchasing Body had reasonable grounds to request that removal.
- The Permitted Purchasing Body had not permitted the reinstatement of the subcontractor according to item 50.5.

73.5. Persistent breaches

2 breaches of contract grouped across all Call-Off Contracts which the Operator and/or its Affiliates have in place at the time, in a rolling 4 week period.

73.6. Promised Subcontractor

In the circumstances described in item 48.3.

73.7. Insurance

The Operator does not have in place the insurance cover required in section 65 at any time while the Operator is obliged to provide any of the Services (even if it subsequently obtains it).

But only to the extent this is a Termination Default Event according to item 65.5.

**General misconduct**

73.8. Serious misconduct

The Operator has engaged in serious misconduct  
Such misconduct includes for example

- The Operator's involvement in a serious public scandal (whether or not in connection with the Services).
- Where a reasonable person would not expect the Permitted Purchasing Body to continue a commercial relationship of this kind with the Operator.

73.9. Misconduct in competitive exercise

The Operator has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Permitted Purchasing Body in awarding to the Operator the contract to which the relevant Call-Off Contract relates and/or in awarding the Operator a place on the Dynamic Purchasing System.

This applies regardless of whether the misconduct occurred with the knowledge of the Operator's senior management

Examples of such misconduct:

- Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders.
- Doing any act in connection with that competitive exercise that would breach section 86 in relation to Corrupt Acts if that act were done after the Operator entered into the relevant Call-Off Contract.
- Engaging in any canvassing activity with Personnel of the Permitted Purchasing Body.

73.10. Modern slavery and trafficking

Breaches by the Operator which are to be a Termination Default Event of the Operator according to item 84.3 in relation to modern slavery and trafficking.

73.11. Corrupt Act

The Operator's breach of item 86.1 to the extent item 86.3 indicates the breach is a Termination Default Event of the Operator.

## About the Operator

73.12. Loss of Required Accreditation

The Operator ceases to hold any Required Accreditation which it is required to have under section 25 as follows

- **If the Operator is required by Law to hold that Required Accreditation to carry out any activities in connection with the Services:** this shall be a Termination Default Event of the Operator even if the Operator later acquires that Required Accreditation.
- **Otherwise:** this shall be a Termination Default Event only for as long as the Operator has failed to acquire that Required Accreditation.

This is not in itself a Termination Default Event of the Operator if a subcontractor of the Operator carrying out the affected activities holds the Required Accreditation at the time.

73.13. Change in Control

Where all of the following apply:

- The Operator is a company with share capital.
- There is a change in the majority underlying Control of the Operator.
- That change in Control is not the result of the purchase of shares in the Operator on a public stock exchange.
- The Permitted Purchasing Body has raised objections (with reasonable grounds) to that change in Control as follows
  - By notice given strictly under section 80.
  - No later than **30 days** after the Permitted Purchasing Body has been sufficiently informed of the change in Control.
- For this purpose, the Permitted Purchasing Body shall not be regarded as being sufficiently informed of the change if the Permitted Purchasing Body has raised genuine questions and/or requests for further information with the Operator about the change.

73.14. Key Personnel

As indicated in item 33.8 if the circumstances in item 33.8 apply in relation to the Key Personnel.

73.15. Right to operate

The Operator is not permitted to operate in the UK.

73.16. In relation to the Operator's capacity as a human being operating as a sole trader

- (a) Bankruptcy
- (b) Certain convictions
- (c) Death
- (d) Significant disability

The Operator becomes bankrupt.

The Operator is convicted of any crime of violence or dishonesty, any crime relevant to safeguarding (where the activities in connection with the Services involve safeguarding issues) or any other offence resulting in a prison sentence (whether suspended or served).

The Operator dies.

The Operator suffers total and permanent disability.

(e) Mental Health Act	The Operator 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 Operator in his/her relevant jurisdiction.
73.17. Certain appointments (if the Operator is not a sole trader – e.g. a company)	<p>The Operator is subject to</p> <ul style="list-style-type: none"> <li>• A court order (or equivalent) or</li> <li>• A resolution or anything similar decision</li> </ul> <p>Requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Operator and/or its assets.</p>
73.18. Winding up (if the Operator is not a sole trader – e.g. a company)	<p>The Operator is subject to</p> <ul style="list-style-type: none"> <li>• A court order (or equivalent) or</li> <li>• A resolution (or equivalent)</li> </ul> <p>Requiring the Operator to be dissolved and/or wound up.</p> <p><b>Exception:</b> in relation to a genuine solvent reconstruction where</p> <ul style="list-style-type: none"> <li>• The replacement entity agrees in writing to become legally bound to the obligations of the Operator under the relevant Call-Off Contract.</li> <li>• The replacement entity accepts in writing liability for the liabilities of the Operator in connection with the relevant Call-Off Contract.</li> <li>• The replacement entity (and/or any third party guarantor it wishes to propose at the time) has at least equivalent financial standing as that which the Operator had at the date of the relevant Call-Off Contract.</li> <li>• The replacement entity has the same underlying majority controlling ownership as the Operator.</li> </ul>
73.19. Unable to pay liabilities	<ul style="list-style-type: none"> <li>• If and for as long as the Operator is unable to pay its liabilities (taking into account its contingent and prospective liabilities) as defined in any applicable Law, including section 123 of the Insolvency Act 1986.</li> <li>• This applies whether such liabilities individually or in aggregate equal any minimum required under relevant bankruptcy or anything similar legislation from time to time) as they fall due, and the Operator has no reasonable prospect of paying such liabilities.</li> </ul>
73.20. Composition with creditors	If and for as long as the Operator 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.
73.21. If the Operator is a consortium, partnership or anything similar	
(a) Certain events apply to a member	Any of the events or circumstances described elsewhere in this section 73 applies to any member at the time of the consortium, partnership or anything similar.



- (b) If that member has not been removed from the consortium, partnership or anything similar: failure to take steps

The Operator has failed to remove that member from its involvement with the relevant part of the Services within **14 days** of the written request of the Permitted Purchasing Body.

That request by the Permitted Purchasing Body must be issued by a notice strictly according to section 80.

- (c) Arrangements

The Operator has not taken appropriate steps (where necessary and to the reasonable satisfaction of the Permitted Purchasing Body) to ensure continuity of the Services resulting from the removal of the member of the consortium, partnership or anything similar.

## Other

### 73.22. Other Termination Default Events of the Operator

Any event or circumstances which is a Termination Default Event of the Operator under another Call-Off Contract to which the Operator is a party under the Dynamic Purchasing System.

## 74. Council Termination Default Events

Each of the following is a Termination Default Event of the Permitted Purchasing Body

- To be read independently
- For as long as the relevant circumstances continue to apply to the Permitted Purchasing Body

### 74.1. Non-payment by the Permitted Purchasing Body

If and for as long as all of the following apply

- (a) Amounts overdue
- (b) Not disputed
- (c) No right to delay etc.
- (d) Overdue
- (e) When the Operator may issue the demand described in item (d)
- (f) How the Operator issues the demand described in item (d)

Any amount owed by the Permitted Purchasing Body to the Operator in connection with the relevant Call-Off Contract is overdue.

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.

The Permitted Purchasing Body has no contractual or other right to refuse and/or to delay payment.

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

At any time after the relevant amount first becomes overdue.

- As a notice strictly according to section 80.
- But either hand delivered to, or marked to the attention of, the Escalated Person of the Permitted Purchasing Body.

## Early termination

### 75. Early termination due to a Termination Default Event

75.1.	Termination rights of a party ( <b>‘Terminating Party’</b> ) if and for as long as a Termination Default Event applies to the other party ( <b>‘Defaulting Party’</b> )	The Terminating Party may terminate the relevant Call-Off Contract if and for as long as a Termination Default Event applies to the Defaulting Party.
75.2.	What are the Termination Default Events of the Operator	See section 73.
75.3.	What are the Termination Default Events of the Permitted Purchasing Body	See section 74.
75.4.	<b>Partial termination:</b> whether the Terminating Party may terminate only part of the relevant Call-Off Contract under this section 75 if the Terminating Party wishes to do so	<ul style="list-style-type: none"> <li>• The Terminating Party may terminate part of the relevant Call-Off Contract which is reasonably severable from the rest of the relevant Call-Off Contract.</li> <li>• Each relevant party shall amend the relevant Call-Off Contract as follows <ul style="list-style-type: none"> <li>– Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the relevant Call-Off Contract.</li> <li>– According to the formal requirements in section 91.</li> <li>– Promptly on being requested to do so by the other party.</li> </ul> </li> <li>• <b>Interpretation:</b> reference in this section 75 to the termination of the relevant Call-Off Contract includes reference to the termination of part of the relevant Call-Off Contract.</li> </ul>
75.5.	How a Terminating Party terminates the relevant Call-Off Contract under this section 75	<p>By giving the Defaulting Party a notice as follows:</p> <ul style="list-style-type: none"> <li>• Strictly according to section 80.</li> <li>• Setting out in reasonable detail a description of the Termination Default Event of the Defaulting Party.</li> </ul>
75.6.	Interpretation	<p>If</p> <ul style="list-style-type: none"> <li>• A Termination Default Event applies to a Defaulting Party; and</li> <li>• That Termination Default Event is expressed to continue if and for as long as particular circumstances apply, and</li> <li>• Those circumstances cease to apply (e.g. the Defaulting Party has remedied the Termination Default Event); and</li> <li>• The Terminating Party has not yet given the Defaulting Party the notice described in item 75.5 in relation to that Termination Default Event</li> </ul> <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>
75.7.	Effective date on which the relevant Call-Off Contract is terminated if a notice is given by the Terminating Party under item 75.5	<ul style="list-style-type: none"> <li>• On the date the relevant notice is given, or</li> <li>• On any later date indicated in that notice.</li> </ul>

75.8.	Obligations of the parties in relation to their respective exit obligations in section 79 after a notice is given by the Terminating Party under item 75.5	The parties must commence them promptly after that notice is given.
75.9.	Whether termination of the relevant Call-Off Contract and/or the relevant Call-Off Contract under this section 75 in itself limits the rights and remedies of the Terminating Party  For example, 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 on an emergency basis.	No.

## 76. Early termination without Termination Default Event

### Right to terminate

76.1.	Right of either party ('X' in this section 76) to terminate the relevant Call-Off Contract early <b>without</b> any Termination Default Event of the other party ('Y' in this section 76)	<ul style="list-style-type: none"> <li>It may do so.</li> <li>This does not affect other rights of X to terminate the Call-Off Contract elsewhere in the terms and conditions of the relevant Call-Off Contract.</li> </ul>
76.2.	<b>Partial termination:</b> whether X may terminate only part of the relevant Call-Off Contract under this section 76 if X wishes to do so	Not applicable

### When X may terminate

76.3.	<b>Initial period:</b> any initial period when X may not terminate the relevant Call-Off Contract early under this section 76	Not applicable
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### Termination procedure

76.4.	How X terminates the relevant Call-Off Contract if it wishes to do so under this section 76	<ul style="list-style-type: none"> <li>By notice in writing given to Y.</li> <li>The notice must be given strictly according to section 80.</li> </ul>
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## Effective termination date

76.5. Notice period which X must give Y to terminate the relevant Call-Off Contract under this section 76

(i.e. the effective termination date of the relevant Call-Off Contract is the end of this notice period)

X may give longer notice if it wishes to do so, not in any case going beyond the expiry date of the Call-Off Contract

- (a) If the Permitted Purchasing Body is terminating the Call-Off Contract

**If the Call-Off Contract has been in place for more than 12 months:**

- **If the Services under the Call-Off Contract are for specifically named individuals who no longer require the Services due to change in their circumstances (e.g. death, relocated, changing needs etc.):** such notice indicated in the termination notice (which may be no notice), not to be beyond the expiry date of the Call-Off Contract.
- **Otherwise: 4 weeks'** notice, or such longer period indicated in the termination notice, not to be beyond the expiry date of the Call-Off Contract.

**If the Call-Off Contract has been in place for 12 months or less:** such notice indicated in the termination notice (which may be no notice), not to be beyond the expiry date of the Call-Off Contract.

- (b) If the Operator is terminating the Call-Off Contract

**4 weeks'** notice, or such longer period indicated in the termination notice, not to be beyond the expiry date of the Call-Off Contract.

This applies regardless of when the Operator gives the relevant notice (i.e. more or less than 12 months after the commencement of the Services).

76.6. Indicate whether

- The Operator must continue to provide the Services as normal during the notice period; or
- Wind them down (and if so, indicate what Y is required to do)

The Operator must continue to provide them as normal unless otherwise instructed by the Permitted Purchasing Body in writing.

## Ending the contract

### 77. Consequences of Contract End

77.1. Consequences of a Contract End

- The rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties in connection with the relevant Call-Off Contract shall discontinue.
- **If the Contract End only applies to part of the relevant Call-Off Contract:** the above only applies to that part and not to the rest of the relevant Call-Off Contract.
- This is subject to item 77.2 in relation to those which continue after the relevant Contract End.

77.2. **Continuing rights, obligations etc.:** the following rights, powers, obligations, liabilities, prohibitions and restrictions (or anything similar to any of these) of the parties **shall continue** until they are completed, until they expire, or indefinitely, as relevant according to the relevant Call-Off Contract

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

(a) Already arisen, accrued

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

(b) Relating to certain events or circumstances

Those which relate to events or circumstances

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

(c) Interest

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

(d) Continuing nature

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

## 78. Continuation obligations

78.1. Obligations of the Operator

It must continue to provide the Services after the Contract End of the relevant Call-Off Contract

- If requested to do so by the Permitted Purchasing Body acting reasonably where (for reasons the Permitted Purchasing Body could not reasonably foresee at the date of the relevant Call-Off Contract) there have been delays to the commencement of a replacement service
- For up to the maximum period indicated in item 78.2.

78.2. For how long the Permitted Purchasing Body can require the Operator to continue with the continuation obligations under this section 78

- For up to a further **3 months** after the Contract End of the relevant Call-Off Contract.
- The above period is a maximum. The Permitted Purchasing Body may require the Operator to continue with those obligations for a shorter period.

78.3. Who bears the Operator's costs in carrying out its continuation obligations under this section 78

78.4. In relation to Charges for continuous Services which the Operator provides under this section 78

- The Permitted Purchasing Body shall continue to be liable to pay the Operator the Charges applicable at the time for the relevant Services according to section 15.
- The Permitted Purchasing Body shall also be liable to pay the Operator any increases in such Charges that would apply under section 15 in relation to the continuation obligations.

78.5. Terms and conditions applying during the continuation period

The terms and conditions of the relevant Call-Off Contract continue to apply during the continuation period as if this were an extension of the relevant Call-Off Contract.

## 79. Exit obligations

- 79.1. Exit obligations of the parties on the Contract End of the relevant Call-Off Contract
- Each party must carry out those obligations
- In a timely manner after the Contract End
  - At its own cost

The Operator must do the following:

- Return to the Permitted Purchasing Body or its replacement provider (as relevant) any Processed Personal Data which the Operator is processing for the purposes of section 56.
- Return to the Permitted Purchasing Body any property of the Permitted Purchasing Body and/or its Affiliate in the possession or control of the Operator solely for the purposes of the relevant Call-Off Contract.

## Miscellaneous

### 80. Notices

- 80.1. To what this section 80 applies

It applies to all of the following:

- Communications between the parties described as 'notices' in the relevant Call-Off Contract.
- Any other communications between the parties which are indicated in the relevant Call-Off Contract to be subject to this section 80.

The formalities in this section 80 are not required in relation to other communications between the parties.

- 80.2. To whose attention notices or other communications described in item 80.1 is to be addressed if sent to a party

To the party's Representative at the time.

- 80.3. **Methods:** a notice or other communication described in item 80.1 is only valid if it is given to the relevant recipient in at least one of the following ways

#### Method

- (a) Hand delivery to the recipient's Representative
- (b) By registered mail or courier to the recipient's last known address (addressed to the recipient's Representative unless otherwise indicated)

#### When notice is deemed to have been given

On the date it is given to him/her.

The earlier of the following:

- The date of actual receipt of the notice, as sufficiently evidenced by Royal Mail (or another equivalent postal carrier if delivered outside the UK) or the courier.
- **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.

(c) By e-mail issued as follows:

- **If the notice is given to the Permitted Purchasing Body:** to an e-mail address as nominated by the Permitted Purchasing Body to the Operator from time to time for such communication.
- **If the notice is given to the Operator:** to the usual work e-mail address of the Operator's Representative or such additional or replacement e-mail address as nominated by the Operator to the Permitted Purchasing Body from time to time for such communication.

In any case, with the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address.

On the date and at the time the e-mail is received by the recipient (as the recipient can reasonably prove) subject to the following

- If that date and time is before 9 am on a Business Day, it is deemed to have been received at 9 am on that Business Day.
- If that date and time is after 5 pm on a Business Day or on any day that is not a Business Day, it is deemed to have been received at 9 am on the next Business Day.

## 81. Dispute resolution

81.1. Purpose of this section 81

To set out arrangements for the resolution of any dispute between the Permitted Purchasing Body and/or its Affiliates and the Operator (each of them is a '**Disputing Party**') in connection with the relevant Call-Off Contract (each such dispute is a '**Relevant Dispute**').

81.2. 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 81 in relation to the Relevant Dispute.

81.3. **First step:** resolution by Representatives

- 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.

81.4. **Next step:** if the Disputing Parties' Representatives cannot resolve the Relevant Dispute within **30 days** of commencing the previous step

- The Disputing Parties 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.

81.5. **Next step:** if Disputing Parties have 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 81.6

(a) How the Disputing Parties are to commence the mediation

- By either Disputing Party giving the other Disputing Party a notice (strictly according to section 80) 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

- 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) The Disputing Parties must comply with all of the following in connection with the mediation

(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.
- The Disputing Parties must direct their respective Personnel to attend and cooperate with the mediation properly and in good faith, as reasonably necessary.

(iii) Confidentiality

The Disputing Parties must carry out the mediation in strict confidence.

A Disputing Party shall not be regarded as having breached its confidentiality obligations in the relevant Call-Off Contract (see section 52) if the Disputing Party or its Affiliate or their respective Personnel or other agent makes disclosures of Confidential Information of the relevant Discloser for purposes connected with the mediation.



(iv)	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.
(v)	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	<ul style="list-style-type: none"> <li>• The Disputing Parties shall share equally the costs of engaging the mediator.</li> <li>• They shall otherwise bear their own costs in connection with the mediation.</li> </ul>
(f)	Right of a Disputing Party to commence legal proceedings in relation to the Relevant Dispute	A Disputing Party may do so if the Relevant Dispute is not resolved by mediation after at least <b>90 days</b> from commencement of mediation.

81.6. **Next step:** all of the following apply if the Relevant Dispute has not been resolved within **60 days** of commencing the previous step

If the Relevant Dispute is of a kind which (on a reasonable view or as indicated in the relevant Call-Off Contract) requires resolution by an independent expert

(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"> <li>• By either Disputing Party giving a notice to the other Disputing Party indicating it wishes this dispute resolution procedure to apply.</li> <li>• That notice must be given strictly according to section 80.</li> </ul>
(c)	How the expert is to be appointed	<p>By agreement between the Disputing Parties.</p> <p>If the Disputing Parties cannot reach agreement within <b>30 days</b>:</p> <ul style="list-style-type: none"> <li>• Either Disputing Party may refer the matter to the President at the time of the Chartered Institute of Arbitrators (or anything similar replacement body), who shall be instructed to appoint a suitably qualified, independent expert.</li> <li>• The Disputing Parties shall accept the person appointed, unless there are genuine and serious concerns about that person's independence.</li> </ul>
(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 Disputing Party shall not be regarded as having breached its confidentiality obligations in the relevant Call-Off Contract (see section 52) if the Disputing Party or its Affiliate or their respective Personnel or other agent makes disclosures of Confidential Information of the relevant Discloser for purposes connected with the appointment of 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) Status of the expert	<ul style="list-style-type: none"> <li>• The expert shall act as an expert and not as an arbitrator.</li> <li>• The Arbitration Act 1996 does not apply to the expert.</li> </ul>
(j) Accept report	The Disputing Parties shall accept the expert's report (including its observations and recommendations) on the matter as final and binding until revised by the English courts.
(k) Exceptions to item (j)	<p>Item (j) does not apply:</p> <ul style="list-style-type: none"> <li>• Where there is a significant and obvious error with the report; and/or</li> <li>• If it is later discovered that the expert was not independent of the Disputing Parties.</li> </ul>
(l) Right of to commence legal proceedings in relation to the Relevant Dispute	A Disputing Party may do so any time after the expert issues his/her report.
81.7. Various remedies	Nothing in the relevant Call-Off Contract (including this section 81) prevents a Disputing Party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to the relevant Call-Off Contract.

## 82. Health and safety

82.1. **Health and safety obligations:** the Operator must comply with the highest of the following standards when carrying out its activities in connection with the Services

The Operator must ensure its relevant Personnel and subcontractors do likewise

82.2. Law	Requirements of the Law which are relevant to health and safety and the Services at the time.
82.3. The General DPS Specification and/or the relevant Call-Off Specification	Any health and safety requirements in the General DPS Specification and/or the relevant Call-Off Specification.
82.4. Operator Response	Any health and safety standards, procedures etc. contained in the Operator Response.
82.5. Operator's own policy	Obligations contained in any health and safety policy the Operator has in place from time to time.
82.6. The Permitted Purchasing Body's policy	<ul style="list-style-type: none"> <li>• The Permitted Purchasing Body's health and safety policy (if any) from time to time.</li> <li>• But only to the extent the Operator is obliged to comply with it under section 11.</li> </ul>

### 83. Local authority powers

83.1. Right to carry out powers etc.

Nothing in the relevant Call-Off Contract in any way affects the right of the Permitted Purchasing Body as a local authority to exercise (or to not exercise) any of its statutory powers and/or its statutory functions.

83.2. Examples

This includes (for example) the power of the Permitted Purchasing Body to grant or not to grant any kind of application for planning, any particular licence or anything similar to any of these which is submitted by any other party, even if it results in any activities contemplated in the relevant Call-Off Contract being unable to commence or continue.

83.3. Interpretation

This section 83 shall apply even if the exercise (or non-exercise) of such powers and functions causes either party to breach its obligations under the relevant Call-Off Contract.

### 84. Modern slavery and trafficking

84.1. Obligations of the Operator regarding modern slavery and trafficking

All of the following

(a) Comply with Law

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

(b) Comply with policies

The Operator must comply with any policy of the Permitted Purchasing Body in relation to the issue, to the extent required under section 11.

(c) Supply chain

The Operator must use reasonable endeavours (to the extent it is within its reasonable powers to do so) to ensure its supply chain used in connection with the Services complies with the rest of this item 84.1.

84.2. Keep informed

The Operator must keep the Permitted Purchasing Body informed in a proper and timely manner if the Operator becomes aware of any incident involving slavery and/or trafficking in connection with the Services

- Within the Operator's own organisation, and/or
- Within the Operator's supply chain.

84.3. Breaches of item 84.1 by the Operator which are to be a Termination Default Event of the Operator

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

### 85. Equalities

85.1. Main obligation of the Operator relating to anti-discrimination and equalities

- The Operator must comply with relevant Law relating to equalities and anti-discrimination in each jurisdiction in which it carries out activities connected with the Services.
- This includes (in relation to activities within the UK) complying with the Equality Act 2010 and (in relation to activities in connection with the Services outside the UK) equivalent Law in the relevant country.

85.2. Examples of obligations for the purposes of item 85.1 – protected characteristics

The Operator must (in relation to activities within the UK) comply with the Equality Act in relation to the following protected characteristics (to the extent that Act requires the Operator to do so):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Any additional or replacement protected characteristics included in that Act from time to time.

85.3. What the Operator must have in place

The Operator must have in place (at all times whilst it is carrying out any activities in connection with the Services within the UK)

- Appropriate policies and procedures relating to equalities and anti-discrimination matters, and
- Adequate systems in place to monitor and enforce those policies and procedures.

## 86. Corrupt Acts

86.1. Obligations of the Operator in relation to Corrupt Acts

The Operator must not do any of the following in connection with the relevant Call-Off Contract

- Carry out any Corrupt Act
- Assist or instruct another person to carry out any Corrupt Act.

86.2. Definition of a ‘**Corrupt Act**’

It is any of the following acts (to be read independently)

(a) Certain offers

The act is a direct or indirect offer or promise to which all of the following apply

- It is made to any Personnel of the Permitted 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
  - To encourage that Personnel to carry out his/her duties improperly.
  - To reward that Personnel for having carried out his/her duties improperly.

(b) Policy

- Any act which breaches any policy of the Permitted Purchasing Body from time to time regarding gifts to its Personnel.
- But only to the extent the policy is communicated in writing to the Operator.

(c) Certain offences	<p>In relation to the Operator's dealings with the Permitted Purchasing Body in connection with the Services</p> <ul style="list-style-type: none"> <li>Any offence under the Bribery Act.</li> <li>Any other offence under any Law relating to fraud.</li> </ul>
(d) Serious attempts	<p>Any serious attempt by any Personnel of the Operator and/or its Affiliate to do any act described elsewhere in this item 86.2.</p>
86.3. Consequence of the Operator's breach of item 86.1	<p>It shall be a Termination Default Event of the Operator. This applies</p> <ul style="list-style-type: none"> <li>Regardless of the size of the breach.</li> <li>But only where the breach was done with the assistance or instruction of the Operator's Representative and/or any other member of the Operator's Personnel of at least equivalent seniority.</li> </ul> <p>This does not limit the rights or remedies of the Permitted Purchasing Body and/or its Affiliates in relation to the Operator's breach.</p>

## 87. Relationship between the parties

87.1. Relationship between the parties created by the relevant Call-Off Contract	<p>A relationship of client and independent service provider.</p>
87.2. Relationships between the parties which are NOT created by the relevant Call-Off Contract (each of the following)	
(a) Partnership	<p>Any partnership between the parties.</p>
(b) Principal-agent	<ul style="list-style-type: none"> <li>Any relationship of principal and agent between the parties authorising one party to do anything (e.g. incur liabilities or obligations, make statements) on behalf of the other party.</li> <li><b>Exception:</b> to the extent otherwise clearly indicated or reasonably implied elsewhere in the relevant Call-Off Contract.</li> </ul>
(c) Employment	<p>Any employment relationship (or anything similar) 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.</p>

## 88. Assignment and novation

88.1. If a party ('X') wishes to assign, transfer or anything similar any of X's rights, powers and benefits under the relevant Call-Off Contract to another person, whether the consent of the other party ('Y') is required	<ul style="list-style-type: none"> <li>X may not do so without Y's prior written consent.</li> <li>Y may not unreasonably withhold that consent.</li> </ul>
88.2. If X wishes to novate the relevant Call-Off Contract to a third party, whether Y's consent is required	<ul style="list-style-type: none"> <li>X may not do so without Y's prior written consent.</li> <li>Y may not unreasonably withhold that consent if the third party is X's Affiliate or a public body.</li> <li>Otherwise, Y's consent is at its discretion.</li> </ul>

## 89. Entire agreement

89.1.	Status of the relevant Call-Off Contract	Subject to this section 89, this terms and conditions of the relevant Call-Off Contract described in item 1.2 comprise the entire agreement between the parties on the subject matter of the relevant Call-Off Contract. No other material forms part of it.
89.2.	Status of any previous agreements entered between the parties on the subject matter of the relevant Call-Off Contract	They are fully extinguished immediately when the relevant Call-Off Contract is entered.
89.3.	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 relevant Call-Off Contract and/or any document clearly cross-referenced in it	<p>To the fullest extent permitted by Law:</p> <ul style="list-style-type: none"><li>• These are excluded from the relevant Call-Off Contract.</li><li>• That party's liability in relation to any of these is excluded.</li></ul> <p>This does not exclude any party's liability for fraudulent misrepresentation.</p>

## 90. Third party rights

90.1.	Rights of third parties with rights under the relevant Call-Off Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999	These are excluded to the fullest extent permitted by Law.
90.2.	Rights of third parties with rights under the relevant Call-Off Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999	These are excluded to the fullest extent permitted by Law, subject to item 90.3.
90.3.	<p>Third parties whose rights <b>to directly enforce their rights, powers, benefits</b> (or anything similar to these) under the relevant Call-Off Contract under the Contracts (Rights of Third Parties) Act 1999 are retained</p> <ul style="list-style-type: none"><li>• All of the following (to be read independently)</li><li>• All <b>other</b> rights of these third parties under the Contracts (Rights of Third Parties) Act 1999 in relation to the relevant Call-Off Contract are excluded to the fullest extent permitted by Law</li></ul>	
(a)	Affiliates	Affiliates of the Permitted Purchasing Body.
(b)	Personnel	Personnel of the Permitted Purchasing Body and/or its Affiliates.
(c)	Third Party Beneficiaries	Each Third Party Beneficiary described in section 5 in relation to Services provided for that person's benefit.
(d)	Transferor employer on a Commencement Transfer	A transferor employer (other than the Permitted Purchasing Body) described in item 37.1.
(e)	Transferee employer on a Cessation Transfer	A transferee employer (other than the Permitted Purchasing Body) of any individual whose employment transfers as a result of a Cessation Transfer.

## 91. Amendments

- 91.1. How the relevant Call-Off Contract is to be validly amended  
(no other way is valid)

- By agreement in writing between the Permitted Purchasing Body and the Operator.
- The relevant document must clearly indicate an intention to amend the relevant Call-Off Contract.
- The relevant document must be authorised by a person who has (or it is reasonable for the other party to believe, without making further checks, that the relevant person has) appropriate authority to amend the relevant Call-Off Contract.
- **If no consideration is indicated in the relevant document:** the parties shall pay each other £1.00 as consideration, which they consider reasonable.

## 92. Remedies

- 92.1. If the relevant Call-Off Contract refers to a particular remedy in a particular circumstance
- 92.2. Whether available remedies described in the relevant Call-Off Contract are cumulative
- 92.3. If a person with rights under the relevant Call-Off Contract pursues a particular remedy in particular circumstances
- 92.4. Acknowledgements of the parties in relation to seeking remedies other than damages

This does not in itself exclude the availability of any other remedy in that circumstance (unless otherwise clearly indicated).

Yes.

That shall not in itself prevent that person from pursuing other available remedies in those circumstances (whether those remedies arise under common law, equity, statute or otherwise).

- Damages may not always be an adequate remedy of a person with rights under the relevant Call-Off Contract in particular circumstances.
- Therefore, that person may (without being required to prove special damage, and where permitted by Law) obtain other remedies available to that person (whether arising under common law, equity, statute or otherwise), including for example, injunctions and/or specific performance.

## 93. Severability

- 93.1. If any part of the relevant Call-Off Contract is held by any court (or equivalent body) to be invalid or unenforceable for any reason, the parties must do the following

(a) First step

if reasonably possible, the parties shall use reasonable efforts to agree to modify the affected part to the minimum extent necessary to enable that part (and the rest of the relevant Call-Off Contract) to be valid and enforceable, whilst keeping the original intention of the parties intact as far as reasonably possible.

(b) Second step if the first step is not reasonably possible

The entire part shall be severed from the relevant Call-Off Contract unless

- It alters the fundamental nature of the relevant Call-Off Contract or
- It is against public policy to do so.

93.2. About the remaining parts of the relevant Call-Off Contract which are not described in item 93.1

They shall remain binding.

#### 94. Waivers

94.1. Strict requirements for a waiver of a party's rights or powers in connection with the relevant Call-Off Contract to be binding on that party

The waiver is only legally binding on that party if all of the following apply to the waiver (and not otherwise):

- It is clearly indicated to be a waiver of the relevant right or power.
- It is in writing.
- It is authorised by a person who has (or it is reasonable for the other party to believe, without making further checks, that the relevant person has) appropriate authority to give the waiver on behalf of that party.

94.2. Other rules regarding waiver of any party's right or power in connection with the relevant Call-Off Contract

- Delay or failure to exercise that right or power shall not in itself be a valid waiver of it.
- A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion. That waiver does not in itself affect any other right or power.

#### 95. Governing law and jurisdiction

95.1. Law under which the relevant Call-Off Contract is to be interpreted and generally governed

English law.

95.2. Jurisdiction to exclusively apply to disputes arising in connection with the relevant Call-Off Contract

English courts.

This is subject to the dispute resolution arrangements in section 81

#### Definitions and interpretation

#### 96. Definitions

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in the relevant Call-Off Contract), the following capitalised words or expressions shall have the following meaning when used in the relevant Call-Off Contract

(a word or expression not defined below shall be defined according to 1) if there is a common meaning according to industry or trade, it shall have that meaning, or otherwise 2) it shall have the meaning given in the Oxford English Dictionary)

Defined term	Definition
<b>Affiliate</b>	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.
<b>Award Letter</b>	The document which evidences the supply of Services in connection with the relevant Call-Off Contract and which forms part of the Call-Off Contract, including any attachments, schedules, appendices or the like to that document.
<b>Business Day</b>	Any day except a Saturday, Sunday or any official bank or public holiday in England.



Defined term	Definition
<b>Call-Off Specification</b>	Any specification or the like <ul style="list-style-type: none"> <li>• Which forms part of the Award Letter of the relevant Call-Off Contract;</li> <li>• Which relates to the relevant Call-Off Contract specifically, and not to the Dynamic Purchasing System as a whole.</li> </ul>
<b>Centre</b>	The Centre for Effective Dispute Resolution or a successor body.
<b>Cessation Transfer</b>	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 Operator (or its direct or indirect subcontractors) on the cessation of any part of the Services.
<b>Change Estimate</b>	A document described in item 70.7 which the Permitted Purchasing Body has requested from the Operator under a Council Change Notice which the Permitted Purchasing Body has issued to the Operator from time to time under item 70.4.
<b>Charges</b>	The charges payable by the Permitted Purchasing Body to the Operator according to section 15.
<b>Claim</b>	A claim, proceedings, action, prosecution (or anything similar to any of these) which a third party threatens or makes against a relevant person by a person <b>other than</b> the Operator and/or the Permitted Purchasing Body and/or their respective Affiliates.
<b>Commencement Transfer</b>	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 Operator (or its direct or indirect subcontractor) on the commencement of any part of the Services.
<b>Confidential Information</b>	In relation to a Discloser, as indicated in section 52.
<b>Contract End</b>	In relation to the relevant Call-Off Contract or a relevant part, the earlier of the following: <ul style="list-style-type: none"> <li>• The expiry of the relevant Call-Off Contract according to section 13; or</li> <li>• The earlier termination of the relevant Call-Off Contract (or a relevant part of it) according to the relevant Call-Off Contract. If the relevant Call-Off Contract is partially terminated, this is only a Contract End in relation to that part.</li> </ul>
<b>Control</b>	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.
<b>Corrupt Act</b>	See item 86.2.
<b>Council Assistance</b>	Each assistance the Permitted Purchasing Body is to provide the Operator as described in item 63.1.
<b>Council Change</b>	See item 70.1.
<b>Council Change Notice</b>	See item 70.4.
<b>Council Logo</b>	See item 29.1.
<b>Data Loss Event</b>	See item 56.2(a).
<b>Data Protection Legislation</b>	Each of the following to the extent relevant <ul style="list-style-type: none"> <li>• GDPR.</li> <li>• The Law Enforcement Directive (Directive (EU) 2016/680)</li> <li>• The Data Protection Act 2018</li> <li>• Any additional or replacement Law from time to time relating to the processing and protection of personal data or anything similar of individuals and privacy.</li> </ul>
<b>Defaulting Party</b>	See section 75.

Defined term	Definition
<b>Discloser</b>	A party (and its relevant Affiliate where indicated) in relation to its respective Confidential Information.
<b>Disputing Party</b>	See item 81.1.
<b>Dynamic Purchasing System</b>	See item 1.1.
<b>Escalated Person</b>	<ul style="list-style-type: none"> <li>• <b>In the case of the Permitted Purchasing Body:</b> the relevant director responsible for this contract at the time, or his/her delegate.</li> <li>• <b>In the case of the Operator:</b> the most senior executive located in the UK at the time, or his/her delegate.</li> </ul>
<b>FOI Act</b>	See item 53.1.
<b>FOI Party</b>	Each party identified as such in item 53.2.
<b>GDPR</b>	The General Data Protection Regulation (Regulation (EU) 2016/679).
<b>General DPS Specification</b>	<ul style="list-style-type: none"> <li>• The specification annexed to or cross-referenced in (and forming part of) the relevant Call-Off Contract.</li> <li>• This includes any other document which (according to the relevant Call-Off Contract) is deemed to form part of the General DPS Specification.</li> </ul>
<b>Indemnifier</b>	See item 68.1.
<b>Indemnity Beneficiary</b>	See item 68.1.
<b>Intellectual Property</b>	Copyright, trademarks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, information of a confidential nature, rights to take action for passing off, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the questions so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights.
<b>Key Personnel</b>	See item 33.1.
<b>Law</b>	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> <li>• Any statute, regulation, by-law, order, subordinate legislation or anything similar to any of these.</li> <li>• Any directive or other European instrument (to the extent it is binding on the party)</li> <li>• Any treaty</li> <li>• Any judgement, rule of common law or equity</li> <li>• Any stock exchange rule</li> <li>• Any order of a competent court, tribunal, arbitrator or anything similar to any of these</li> <li>• Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or anything similar to any of these) required by law and affecting the relevant person and its activities in connection with the relevant Call-Off Contract and/or any Call-Off Contract from time to time.</li> <li>• Any guidance or anything similar issued by authorised government bodies (whether legally binding or not)</li> <li>• Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect at the time on the respective activities of any party in connection with the relevant Call-Off Contract.</li> </ul>

Defined term	Definition
<b>Losses</b>	All losses, damages, costs, charges and expenses incurred by the relevant person in the relevant circumstances to which the context refers, whether in tort, contract, by Law or otherwise including, where relevant, third party claims, liabilities, demands, proceedings, interest, penalties and fines, damage to property, death or personal injury, and full legal costs charged on a solicitor-client basis.
<b>Material Breach</b>	<ul style="list-style-type: none"> <li>• In relation to a party, a breach of the relevant Call-Off Contract by that party <b>which has significant (and not trivial) consequences for the other party</b>.</li> <li>• This includes for example an anticipatory breach or anything similar of the relevant Call-Off Contract by that party and any breach of any warranty or representation given by that party under the relevant Call-Off Contract, but only to the extent any of these has significant (and not trivial) consequences for the other party.</li> </ul>
<b>Passenger</b>	Each individual to whom Services are provided, as described in section 4.
<b>Performance Standards</b>	The standards, service levels, KPIs (or anything similar to any of these) described in section 3.
<b>Personnel</b>	<ul style="list-style-type: none"> <li>• <b>In relation to a firm or other organisation:</b> any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or anything similar to these) but other than the other party (if a sole trader).</li> <li>• <b>If that firm or other organisation is the Operator:</b> 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 Operator in connection with the Services. This includes any such subcontractor who is a human being operating as a sole trader.</li> <li>• If a party is a sole trader, it includes that party.</li> </ul>
<b>Pre-TUPE Transfer Liability</b>	See section 45.
<b>Processed Personal Data</b>	See item 56.2(c).
<b>Promised Subcontractor</b>	Each current subcontractor indicated as such in item 48.1; Any replacement subcontractor carrying out the relevant activities from time to time (or a substantial portion of them) applying to such subcontractor indicated in item 48.1.
<b>Protective Measures</b>	See item 56.2(b).
<b>Operator Call-Off Response</b>	<p>The proposal, response to a competitive exercise or application (or anything similar to any of these) which the Operator has submitted to the Permitted Purchasing Body in connection with the relevant Call-Off Contract.</p> <p>This includes the Operator's written responses to any selection procedure in connection with a relevant procurement exercise and any and all written responses which the Operator has given to any clarification questions or anything similar which were raised by the Permitted Purchasing Body during any relevant procurement process to which the relevant Call-Off Contract relates.</p>
<b>Operator Change</b>	See item 71.1.
<b>Operator Change Notice</b>	A notice described in item 71.2.

Defined term	Definition
<b>Operator DPS Response</b>	<p>The proposal, response to a competitive exercise or application (or anything similar to any of these) which the Operator has submitted to the Permitted Purchasing Body in connection with its place on the Dynamic Purchasing System (and not in relation to any particular Call-Off Contract).</p> <p>This includes the Operator's written responses to any selection procedure in connection with a relevant procurement exercise and any and all written responses which the Operator has given to any clarification questions or anything similar which were raised by the Permitted Purchasing Body during any relevant procurement process to which the Dynamic Purchasing System relates.</p>
<b>Recipient</b>	A party in relation to the Confidential Information of a relevant Discloser.
<b>Relevant Controller</b>	See item 56.2(d).
<b>Relevant Dispute</b>	See item 81.1.
<b>Relevant Indemnity</b>	See item 68.1.
<b>Representative</b>	<p>In relation to a party, the individual (and if more than one, each of them individually) who from time to time holds that role as that party's representative in connection with the relevant Call-Off Contract:</p> <ul style="list-style-type: none"> <li>• If and as indicated in the relevant Call-Off Contract, or</li> <li>• As otherwise communicated by that party to the other party in writing from time to time</li> </ul> <p>Including</p> <ul style="list-style-type: none"> <li>• <b>If the relevant individual is absent from time to time:</b> any other individual deputising for him/her, as decided by the relevant party.</li> <li>• <b>Where the position is vacant from time to time:</b> the Escalated Person of the relevant party.</li> </ul>
<b>Required Accreditation</b>	Each licence, accreditation, registration, background check (or anything similar to any of these) described in section 25.
<b>Required Suspension</b>	See item 72.1.
<b>Services</b>	The services which the Operator must provide under the relevant Call-Off Contract as described in item 2.1.
<b>Sub-processor</b>	See item 56.2(e).
<b>Terminating Party</b>	See section 75.
<b>Termination Default Event</b>	<ul style="list-style-type: none"> <li>• <b>In relation to the Operator:</b> each event or circumstance described in section 73.</li> <li>• <b>In relation to the Permitted Purchasing Body:</b> each event or circumstance described in section 74.</li> </ul>
<b>Third Party Beneficiary</b>	Each person described as such in section 5.
<b>TUPE Regulations</b>	The Transfer of Undertakings (Protection of Employment) Regulations (2006) and the European Council Directive 77/187/EEC as these may be amended.
<b>TUPE Transfer</b>	<p>A transfer of the employment of a relevant employee under the TUPE Regulations</p> <ul style="list-style-type: none"> <li>• As a result of a service provision change in connection with any part of the Services.</li> <li>• Whether on the commencement or cessation of that part of the Services.</li> </ul>
<b>Uncontrollable Circumstance</b>	Any event or circumstance described as such in item 64.1.

## 97. Interpretation

The parties agree to interpret the relevant Call-Off Contract as follows

Except to the extent

- The context otherwise requires;
- The parties otherwise agree in writing; and/or
- Otherwise indicated elsewhere in the relevant Call-Off Contract

97.1. Headings

Headings do not affect the interpretation of the relevant Call-Off Contract.

97.2. Reference to a party

- Reference to any party is a reference to a party to the relevant Call-Off Contract.
- It includes reference to that party's successors in title and permitted assignees.

97.3. Consents, approvals

- Where consent, approval, permission or anything similar of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions.
- Where consent, approval, permission or anything similar of a person is to be at that person's discretion, that person
  - Shall not be obliged to respond to a request for it; and
  - Shall not be obliged to give reasons for its decision (including any decision not to respond); and
  - Excludes (to the fullest extent permitted by Law) that person's liability to any person for any reason given for that decision (including any decision not to respond).

97.4. Definitions

If a word or phrase is defined in the relevant Call-Off Contract, its other grammatical forms have a corresponding meaning.

97.5. Statutes, codes etc.

Reference in the relevant Call-Off Contract to any statute, code or anything similar includes reference to any amending, replacing, modifying or consolidating statute, code or anything similar on substantially similar subject matter.

97.6. If any obligation of a party is indicated to be a 'reasonable endeavours' obligation

That party will be considered to have discharged that obligation if all of the following applies

- That party has chosen at least one path to carry out that obligation.
- That path is reasonable in the circumstances (including any reasonable views of the other party expressed on the matter in good faith).
- That party has used reasonable efforts to carry out the obligation using that path, regardless of whether the outcome necessarily met the requirements of the relevant Call-Off Contract.

97.7.	'In writing'	<ul style="list-style-type: none"> <li>• Use of the expression 'in writing' (or a similar word) includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form.</li> <li>• It does not include communication by telephone text messages or communication via a social media site (or anything similar to any of these).</li> </ul>
97.8.	'Including'	<ul style="list-style-type: none"> <li>• Use of the word 'including', 'in particular', 'for example' (or a similar words or expressions) at the commencement of a list to illustrate a particular concept does not limit that concept in any way.</li> <li>• Use of the abbreviation 'etc.' at the end of a list to illustrate a particular concept does not limit that concept in any way.</li> </ul>
97.9.	Items etc.	Reference in this agreement to items, sections, schedules, appendices or annexures is reference to those in the relevant Call-Off Contract.
97.10.	Other references in the relevant Call-Off Contract	<ul style="list-style-type: none"> <li>• Reference to one gender refers to all genders</li> <li>• Reference to the singular includes the plural and vice versa</li> <li>• Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.</li> </ul>