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| **Domiciliary Care** |
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| **Call-Off Contract** |
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| **Terms and Conditions – 2024** |

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| **Domiciliary Care** |
| **Call-Off Contract** |
| **Terms and Conditions – 2024** |

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| **Date of this Call-Off Contract** | The Call-Off Contract is first in place when **the last of all** of the following have occurred:   * The Council has requested the Services to which this Call-Off Contract relates. * The Council has communicated the relevant Care Plan to the Provider. * The Provider has offered to provide the Services. * The Council has accepted that offer in writing. |
| **Parties to this Call-Off Contract** |  |

|  | **Council** | **Provider** |
| --- | --- | --- |
| Name, including any company number or equivalent (as relevant) | The Mayor and Burgesses of the London Borough of Bromley or relevant Affiliate (as indicated in the Care Plan)  **If an Affiliate of the London Borough of Bromley has commissioned the Call-Off Contract:** reference to ‘the Council’ in the terms and conditions of that Call-Off Contract (as described in item 3.4) is reference to that Affiliate | As indicated in the Care Plan of the relevant Call-Off Contract |
| Address for notices | People Department, Civic Centre, Stockwell Close, Bromley BR1 3UH, UK | As indicated in the Care Plan or as otherwise communicated by the Provider to the Council.  Or as communicated by the Provider to the Council from time to time |

# **Definitions and interpretation**

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| **Definitions** |
| Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Call-Off Contract), the following capitalised words or expressions shall have the following meaning when used in this 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** |
| --- | --- |
| **Action Plan** | See item 77.1. |
| **Affiliate** | * In relation to a person, any other entity which controls that person, is controlled by that person or is under the same common underlying control as of that person. * For this purpose, a person (**‘X’**) will be regarded as having control over another person (**‘Y’**) if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters. |
| **Business Day** | Any day except a Saturday, Sunday or any official bank or public holiday in England. |
| **Care Plan** | A sufficiently-completed document in a form used by the Council from time to time which identifies the Service User and indicates the Service User’s specific requirements. |
| **CCG** | The NHS South East London Clinical Commissioning Group or relevant a successor body. |
| **Centre** | The Centre for Effective Dispute Resolution or a successor body. |
| **Cessation Transfer** | Any service provision change (for the purposes of the TUPE Regulations) to the Council (or its replacement direct or indirect contractor) from the Provider (or its direct or indirect subcontractors) on the cessation of any part of the Services. |
| **Charges** | The charges payable by the Council to the Provider according to section 16. |
| **Claim** | A claim, proceedings, action, prosecution (or the like of any of these) which a third party threatens or makes against a relevant person by a person other than the Provider and/or the Council and/or their respective Affiliates. |
| **Commencement Transfer** | Any service provision change (for the purposes of the TUPE Regulations) from the Council (or its previous direct or indirect contractors) to the Provider (or its direct or indirect subcontractor) on the commencement of any part of the Services. |
| **Confidential Information** | In relation to a Discloser, as indicated in section 52. |
| **Corrupt Act** | See item 87.2. |
| **Council Assistance** | Each assistance the Council is to provide the Provider as described in item 61.1. |
| **Council Change** | See item 75.1. |
| **Council Change Notice** | See item 75.3. |
| **CQC** | The Care Quality Commission or any successor body. |
| **Data Protection Legislation** | Each of the following to the extent relevant   * GDPR. * The Law Enforcement Directive (Directive (EU) 2016/680) * The Data Protection Act 2018 * Any additional or replacement Law from time to time relating to the processing and protection of personal data or the like of individuals and privacy. |
| **Defaulting Party** | See section 80. |
| **Discloser** | A party to this Call-Off Contract (and its relevant Affiliate where indicated) in relation to its respective Confidential Information. |
| **Disputing Party** | See item 88.1. |
| **Escalated Person** | * **In the case of the Council:** the Director of Adult Social Care & Health (or equivalent at the time), or his/her delegate. * **In the case of the Provider:** the most senior executive located in the UK at the time, or his/her delegate. |
| **FOI Act** | Each piece of legislation described as such in item 53.1. |
| **FOI Party** | Each party identified as such in item 53.2. |
| **Framework** | The framework hosted by the Council as described in item 3.2. |
| **Framework Agreement** | **If the Provider is a provider under the Framework Arrangement:** the framework agreement entered by the Council and the Provider in relation to the Framework Arrangement, as amended from time to time. |
| **Framework Arrangement** | A framework arrangement established by the Council in 2020 in relation to domiciliary care in the entire Bromley Borough. |
| **GDPR** | The General Data Protection Regulation (Regulation (EU) 2016/679). |
| **Indemnifier** | See item 68.1. |
| **Indemnity Beneficiary** | See item 68.1. |
| **Intellectual Property** | Copyright, trade marks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, rights to take action for passing off, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the questions so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights. |
| **Law** | Any of the following applicable to a party from time to time (to be read independently)   * Any statute, regulation, bye-law, order, subordinate legislation or the like of any of these. * Any directive or other European instrument (to the extent it is binding on the party) * Any treaty * Any judgement, rule of common law or equity * Any stock exchange rule * Any order of a competent court, tribunal, arbitrator or the like of any of these * Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or the like of any of these) required by law and affecting the relevant person and its activities in connection with this Call-Off Contract from time to time. * Any guidance or the like issued by authorised government bodies (whether legally binding or not) * Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect on the respective activities of any party in connection with this Call-Off Contract from time to time. |
| **Losses** | * All losses, damages, costs, charges and expenses incurred by the relevant party in the relevant circumstances to which the context refers, whether in tort, contract, by Law or otherwise including, where relevant, third party claims, liabilities, demands, proceedings, interest, penalties and fines, damage to property, death or personal injury, and full legal costs charged on a solicitor-client basis. * **Exception:** to the extent any of these are capped or excluded in this Call-Off Contract. |
| **Material Breach** | * In relation to a party to this Call-Off Contract, a breach of this Call-Off Contract by that party (including an anticipatory breach of this Call-Off Contract by that party or a breach of any warranty or representation given by that party under this Call-Off Contract) * Which has significant (and not trivial) consequences for the other party. |
| **Patch Agreement** | **If the Provider is a provider under the Patch Arrangement:** the patch agreement entered by the Council and the Provider in relation to the Patch Arrangement, as amended from time to time. |
| **Patch Arrangement** | A patch arrangement established by the Council in 2020 in relation to domiciliary care in certain postcode areas in Bromley Borough. |
| **Performance Standards** | See section 5. |
| **Personnel** | In relation to a firm or other organisation:   * Any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or the like of any of these but other than the other party to this Call-Off Contract). * **If that firm or other organisation is the Provider:** any individual genuinely appointed or otherwise engaged in any of the capacities described above **by a subcontractor** which is directly or indirectly appointed by the Provider in connection with this Call-Off Contract. This includes any such subcontractor who is a human being operating as a sole trader. * If a firm is a human being operating as a sole trader, it includes that human being. |
| **Pre-TUPE Transfer Liability** | See section 44. |
| **Promised Subcontractor** | * Each current subcontractor indicated as such in item 47.1; or * Any replacement subcontractor carrying out the relevant activities applying to such subcontractor indicated in item 47.1. |
| **Provider Response** | The Provider’s response (if any) to both of the following:   * The Council’s invitation to be awarded the Provider’s Framework Agreement. * The Council’s invitation to be awarded this Call-Off Contract. |
| **Recipient** | A party in relation to the Confidential Information of a relevant Discloser. |
| **Relevant Dispute** | See item 88.1. |
| **Relevant Indemnity** | See item 68.1. |
| **Representative** | In relation to a party, the current person (and if more than one, each of them individually) who holds that role according to this Call-Off Contract, or his/her replacement from time to time including:   * **Where the relevant individual is absent from time to time:** any other individual deputising for him/her, as decided by the relevant party. * **Where the position is vacant from time to time:** the Escalated Person of the relevant party. |
| **Required Accreditation** | Each licence, accreditation, registration, background check (or the like of any of these) which a relevant Participant is required to hold according to section 26. |
| **Required Suspension** | See item 76.1. |
| **Service Specification** | The specification applicable to all contracts generally in relation to the Framework, as published by the Council from time to time, and as that specification is amended from time to time. |
| **Service User** | Each individual to whom Services are provided, as described in item 7.1. |
| **Services** | The services which the Provider must provide as described in item 4.1. |
| **Standard Specification** | The specification only applicable to Call-Off Contracts in relation to the Framework, as published by the Council from time to time, and as that specification is amended from time to time. |
| **Terminating Party** | See section 80. |
| **Termination Default Event** | * **In relation to the Provider:** each event or circumstance described in section 78. * **In relation to the Council:** each event or circumstance described in section 79. |
| **Third Party Beneficiary** | Each person described as such in section 9.1. |
| **TUPE Regulations** | The Transfer of Undertakings (Protection of Employment) Regulations (2006) and the European Council Directive 77/187/EEC as these may be amended. |
| **TUPE Transfer** | A transfer of the employment of a relevant employee under the TUPE Regulations   * As a result of a service provision change in connection with any part of the Services. * Whether on the commencement or cessation of that part of the Services. |
| **Uncontrollable Circumstance** | As indicated in section 62. |

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| **Interpretation** |  |
| Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Call-Off Contract), this Call-Off Contract shall be interpreted as follows |  |
| Headings | Headings do not affect the interpretation of this Call-Off Contract. |
| Reference to a party | * Reference to any party is a reference to a party to this Call-Off Contract. * It includes reference to that party’s successors in title and permitted assignees. |
| Consents, approvals | * Where consent, approval, permission or the like of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions. * Where consent, approval, permission or the like of a person is to be at that person’s discretion, that person * 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). |
| Definitions | If a word or phrase is defined in this Call-Off Contract, its other grammatical forms have a corresponding meaning. |
| Statutes, codes etc. | Reference in this Call-Off Contract to any statute, code or the like includes reference to any amending, replacing, modifying or consolidating statute, code or the like on substantially similar subject matter. |
| 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 this Call-Off Contract. |
| ‘In writing’ | * 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. * It does not include communication by telephone text messages or communication via a social media site (or the like of any of these). |
| ‘Including’ | * 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. * Use of the abbreviation ‘etc.’ at the end of a list to illustrate a particular concept does not limit that concept in any way. |
| Items etc. | Reference in this agreement to items, sections, schedules, appendices or annexures is reference to those in this Call-Off Contract. |
| Other references | * Reference to one gender refers to all genders * Reference to the singular includes the plural and vice versa * Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity. |

# **Introduction**

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| **Background to this Call-Off Contract** |  |
| To what these terms and conditions apply | They apply to each Call-Off Contract where the Care Plan or other documentation cross-references these terms and conditions with reasonable clarity. |
| The framework to which this Call-Off Contract relates (**‘Framework’**) | * A Patch Replenishment Arrangement (reserve framework) for Patches within the Bromley Borough   Relating to domiciliary care. The Council established these in 2024. |
| How this Call-Off Contract was awarded by the Council to the Provider | As indicated in the Framework Agreement. |
| **Terms of this Call-Off Contract:** the terms of this Call-Off Contract comprise **all** of the following  * As amended from time to time according to this Call-Off Contract * According to the following priority to the extent of any inconsistencies |  |
| Care Plan | The Care Plan relevant to this Call-Off Contract. |
| Council policies | Each policy of the Council with which the Provider must comply according to section 13. |
| Service Specification | The Service Specification. |
| Schedules etc. | Any schedules, annexures, appendices or the like to this Call-Off Contract which are not described elsewhere in this item 3.4. |
| Other documents | Other documents, websites identified by a link, or the like of any of these   * Which are cross-referenced elsewhere in this Call-Off Contract; and * Which this Call-Off Contract indicates are incorporated into this Call-Off Contract; and * Which are communicated (or in the case of a website, the relevant link has been communicated) between the parties. |
| Terms and conditions | These terms and conditions. |
| Provider Response | The Provider Response unless the Council at its discretion decides from time to time that either of these is more favourable and should override any other items in this list. |

# **About the Services**

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| **Description of the Services** |  |
| Description of the Services which the Provider must provide the Council under this Call-Off Contract | As indicated in the Service Specification and in the Care Plan. |

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| **Performance Standards** |  |
| Indicate the standards, service levels, KPIs (or the like of any of these) (each of them is a **’Performance Standard’)** which the Provider must ensure are met or exceeded in carrying out the Services | As indicated in the Service Specification. |

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| **Fitness for purpose** |  |
| Purposes for which the Provider must ensure the Services are to be fit | The Provider must ensure the Services are fit for the purpose of maintaining the overall wellbeing of the relevant Service User insofar as relevant to the Services which the Provider must provide that Service User. |

# **Duty of care issues**

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| **Service Users** |  |
| Describe each Service User for whose benefit the Services are to be providedEach of them is a **‘Service User’** in relation to Services provided to that person under this Call-Off Contract | As indicated in the Care Plan. |

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| **Separate business with Service Users** |  |
| Right of the Provider’s right to enter into unrelated business dealings with any Service User introduced to the Provider in connection with the Services E.g. right of the Provider to supply the Service User with goods and/or services **other than** the Services the Provider must supply under this Call-Off Contract | No restrictions. |

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| **Third Party Beneficiaries** |  |
| Persons **in addition to the Council** to whom the Provider owes a duty of care under this Call-Off Contract in providing any of the Services Each of the following is a **‘Third Party Beneficiary’** |  |
| Service Users | Each Service User to whom the Services are provided, as described in item 7.1. |
| Affiliates | Each Affiliate of the Council. |
| CCG | The CCG, but only if the Council has indicated to the Provider before the Call-Off Contract is entered that the Call-Off Contract is also to be carried out for the benefit of the CCG. |

# **Provider methods**

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| **Provider methods** |  |
| Methods or techniques (or the like of any of these) with which the Provider must comply in providing the Services | As indicated in any and all of the following   * The Provider Response * The Service Specification * The Care Plan. |

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| **General standards** |  |
| How the Provider must carry out its obligations under this Call-Off Contract  * According to each of the following (to be read as minimum standards) * If there is any inconsistency between any of these, the most stringent requirement applies |  |
| Performance Standards | According to the Performance Standards indicated in section 5. |
| Service Specification, Provider Response | According to any standards indicated in the Service Specification and/or in the Provider Response. |
| Standards of a skilled person | According to the standard of skill, care, diligence, prudence and foresight where all of the following apply   * It is a standard which would reasonably be expected from an appropriately skilled, diligent and experienced person * On the assumption that person is engaged * In similar circumstances to those to which this Call-Off Contract relates; * To provide similar services to those required under this Call-Off Contract. |
| Consents | According to any and all approvals, permits, licences, consents, certificates, agreements, permissions or the like of any of these (whether arising by Law, under contract or otherwise) which are necessary to enable the Provider to carry out its obligations under this Call-Off Contract. |
| Law | * In any case, in compliance with the standards and other requirements of relevant Law applying to the relevant activities. * This is a paramount obligation and overrides anything to the contrary elsewhere in this Call-Off Contract. |

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| **General obligations of the Provider not to create certain risks** |  |
| The Provider must not cause (or create an unreasonable risk of causing) any of the following to be suffered by the Council and/or its Affiliate and/or the Service User described in item 7.1 for whose benefit the relevant Services are provided (each of them a **‘Protected Person’**) as a result of the way in which the Provider (and anyone acting on its behalf) provides the Services |  |
| Death, personal injury etc. | Death, personal injury or other serious harm to the Service User. |
| Property loss etc. | Loss, theft, damage or other significant undesirable consequence to any data, Intellectual Property, equipment, records, land and buildings or other property of any kind of (or used by) any of the following   * The Protected Person. * Any person whom the Provider knows (or reasonably ought to know) is owed a duty of care by the Protected Person (e.g. its Personnel).   **Exception:** any of these result from activities which are genuinely part of the Services. |
| Certain breaches etc. | Breaches, infringements or the like 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 Provider knows (or reasonably ought to know) of that duty. * The property (including Intellectual Property) rights of any third party. * **Exception:** where that property (including Intellectual Property where relevant) * Has been leased or licensed to the Provider or its subcontractors by the Council and/or its Affiliate; or * Has otherwise been made available to the Provider by the Council or its nominated agent for purposes connected with the Services. |
| Bad publicity | * The Protected Person receiving any significant, unjustified and undesirable publicity. * This does not prevent the Provider or anyone else reporting serious and genuinely suspected wrongdoing by the Protected Person (or anyone connected to the Protected Person) to appropriate law enforcement authorities. |
| Exceptions where the Provider is not liable to a Protected Person for any act (or failure to act) by the Provider (or anyone acting on the Provider’s behalf) which is otherwise in breach of this section 12 | To the extent that act (or failure to act) was done (or not done) according to any of the following:   * Any requirements in this Call-Off Contract (particularly the Service Specification and the Care Plan). * Any written instructions given by the Representative of the Council (or any member of its Personnel of at least equivalent seniority within its organisation). |

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| **Council Policies** |  |
| **Current policies** of the Council with which the Provider must comply when providing the Services under this Call-Off Contract (the Provider is only required to comply with a particular current policy indicated if the Council has communicated the policy **to the Provider in writing**) | As indicated in the Service Specification. |
| **Policies of the Council from time to time** with which the Provider must comply in activities in connection with the Services | Each policy of the Council 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 Provider in writing. |
| If the Provider would necessarily need to incur further costs (beyond a trivial level) to comply with any obligation contained in a policy of the Council **introduced from time to time** as described in item 13.2 |  |
| If the Provider is required by Law to comply with that obligation anyway | * The Provider must comply with that obligation in that policy in connection with this Call-Off Contract **without being entitled to any reimbursement** from the Council for those further costs. * **Exception:** to the extent the Council otherwise agrees (at its discretion and in writing) to reimburse the Provider for those further costs. |
| If the Provider is NOT required by Law to comply with that obligation anyway | The Provider is not obliged to comply with that obligation in that policy in connection with this Call-Off Contract **unless** the Council has become legally bound in writing to reimburse the Provider for those costs to the extent they are reasonable and appropriately evidenced. |
| Character of each policy of the Council with which the Provider must comply under this section 13 | * The policy shall be deemed to form part of the Service Specification. * **If there is any inconsistency between any such policy of the Council and any other part of the Service Specification and the Care Plan:** the policy prevails to the extent of the inconsistency. |

# **Duration**

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| **Commencement of the Services** |  |
| When the Provider must commence providing the Services under the Call-Off Contract | As agreed between the Council and the Provider in writing. |

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| **Expiry** |  |
| Expiry date of this Call-Off Contract | * No expiry date. * The Call-Off Contract shall continue until it is terminated according to these terms and conditions, even if after the expiry or termination of the Framework. |

# **Financial arrangements**

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| **Calculation of Charges** |  |
| Amount or calculation of the **current Charges** which the Council is liable to pay the Provider from time to time in consideration for the Provider carrying out its obligations under this Call-Off Contract | The Provider’s rates according to the Patch Agreement or the Framework Agreement (as relevant to the Provider) as they change according to item 16.2, according to the relevant duration of the Services each visit as indicated in the relevant Care Plan. |
| How the Provider’s rates change from time to time during this Call-Off Contract for the purposes of item 16.1This applies regardless of whether the Provider is a under the Patch Arrangement or the Framework Arrangement | The Provider’s rates for **domiciliary care** or **discharge to assess** services automatically change on each date in each April during this Framework Agreement (excluding 2024) on which benefits change according to the following   * **In relation to the ‘hourly wage’ component of the rates:** the percentage increase in the National Living Wage between the previous February and the February 12 months before that. * **In relation to the remaining component of the rates (i.e. other than the hourly wage):** that component of the rates shall increase or decrease annually on each 1st April by the same percentage increase or decrease (if any) as that between the published UK Consumer Price Index figure for the previous February and the that same figure but as published 12 months previously to that figure. |
| VAT issues and other costs | All Charges described or cross-referenced in this section 16 exclude VAT **unless otherwise clearly indicated**. The Provider shall promptly notify the Council in the event of any change in VAT registration.  The Charges are otherwise all-inclusive of the Provider’s costs in providing the Services. |
| Charges which the Council is liable to pay the Provider if the Service User is absent from his/her home (and therefore unable to receive Services on a particular day) | * **If the Council or the Service User has communicated the absence at least 24 hours before the relevant visit:** the Council is not liable to pay for the Services which have not been provided during the absence, even if the Provider’s Personnel visit the relevant premises. * **Otherwise:** the Council is liable to pay the Provider the Charges attributable to the relevant visit, limited to 2 such visits if the Service User’s absence is due to his/her hospitalisation. In any case, the Provider must promptly communicate the Service User’s absence (on the Provider becoming aware of it) in accordance with the No Reply Policy. |

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| **Charges relating to Service Users** |  |
| Whether the Provider may impose further charges on a Service User described in item 7.1 in relation to any Services which the Provider provides to that Service User under this Call-Off Contract | * The Provider may **not** do so. * This does not prevent the Provider from imposing other charges on the Service User for other goods and/or services (i.e. those unconnected with the Services and which are described in item 8.1) which the Provider separately provides the Service User. |
| Arrangements regarding the obligation of the Council to continue paying Charges under section 16 to the Provider if the Service User described in item 7.1 **is absent** for a period for any reason(for example, in hospital, on holidays etc.) | As indicated in the Service Specification. |

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| **Reimbursement of expenses** |  |
| Any liability of the Council to reimburse the Provider for any third party expenditure incurred by the Provider in carrying out its activities in connection with the Services | The Council is **not** liable to do so. |

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| **Invoicing by the Provider** |  |
| Whether the Provider must submit invoices to the Council to trigger a liability of the Council to pay the Charges described in section 16 | The Provider must do so as instructed by Bromley Council from time to time, acting reasonably. |
| Initial instructions from Bromley Council for the purposes of item 19.1 These apply until otherwise instructed by Bromley Council (acting reasonably) to the Provider in writing from time to time |  |
| When the Provider must send its invoices to the Council in relation to the Call-Off Contract | Calendar monthly in arrears for Services which the Provider has provided under the Call-Off Contract in the relevant calendar month. |
| Record keeping | * The Provider must maintain complete and accurate records of the amounts chargeable to the Council in accordance with section 16 * Such records shall be retained for inspection by the Council or its representative under section 58 for a period of 12 years from the date the invoice was first issued to the Council.. |
| To where the Provider must issue its invoices | The Provider must issue its invoice in at least one of the following ways for the invoice to be properly given:  By email to [AccountsPayable@liberata.com](mailto:AccountsPayable@liberata.com); OR   * By post to: London Borough of Bromley Liberata Payments Team 3rd Floor North Block Civic Centre Stockwell Close Bromley BR1 3UH |
| Requirements of each invoice | The Provider shall ensure that each invoice contains all appropriate references and a breakdown of the Services supplied and that it is supported by any documentation reasonably required by the Council to substantiate the invoice. |
| Deadline for the Provider to submit an invoice for a particular calendar month | * If the Provider submits a first invoice to the Council in relation to a particular calendar month more than **6 months** after the end of that calendar month, the Council is not liable to pay that invoice, even if the Services to which it relates have been provided satisfactorily. * **Exception:** this does not apply if the Council (acting reasonably) has agreed in writing to an extension of that deadline if requested in writing by the Provider before the end of that deadline, where delays in the Provider submitting that invoice are due to circumstances outside the Provider’s reasonable control. |
| If the Council has any genuine query or dispute with a particular invoice | Where appropriate, the Council will notify the Provider as soon as practicable of any queries on the invoices and the Council shall be entitled to withhold payment of any such invoice or payment thereof which is in dispute until such dispute is resolved. Subject to receiving such information and being satisfied as to the validity of the invoices, the Council would pay the invoices within **30 days** of receipt. Any disputes about payments will be dealt with under the Dispute Resolution procedures set out in section 88. |

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| **Payment of Charges** |  |
| Due date for payment of Charges described in section 16 by the Council to the Provider(subject to this Call-Off Contract) | **30 days** after the Council’s receipt of a proper invoice according to section 19. |
| Whether the Council may delay payment of Charges otherwise due according to this section 20 according to section 21 | It may do so. |
| How the Council must make payments of Charges to the Provider | By BACS into the Provider's nominated bank account from time to time. |

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| **Right to delay payment** |  |
| The Council may delay payment of Charges otherwise due for payment under section 20 **if and for as long as any** of the following applies at the time(as relevant at the time) |  |
| Overdue report, output etc. | * For as long as the Provider has failed to provide the Council * With any **specific report, output, deliverable, proposal, plan or the like of any of these** * Which the Provider is required to provide according to this Call-Off Contract * After the relevant deadline applying to that report, output, deliverable, proposal, plan or the like. |
| Exception to item (a) (Council Assistance) | To the extent the Provider is relieved from its obligation to provide that report, output, deliverable, proposal, plan or the like under item 61.3(a) due to any failure by the Council to meet any Council Assistance indicated in item 61.1. |
| Exception to item (a) (Uncontrollable Circumstances) | To the extent the Provider is relieved from its obligation to provide that report, output, deliverable, proposal, plan or the like under item 64.3(a) due to any Uncontrollable Circumstance indicated in section 62. |
| Exception to item (a) (by agreement) | To the extent the Council has agreed in writing to any extension. |
| Overdue debts | * Any debt or other liability then owed by the Provider and/or its Affiliate to the Council and/or its Affiliate (whether in connection with this Call-Off Contract or otherwise) remains overdue. * **Exception:** this does not apply to any debt or other liability which is subject to a genuine dispute which the Provider and/or its relevant Affiliate is using reasonable and genuine efforts to attempt to resolve. |
| Remedying Material Breach | The Provider has not yet remedied (to the reasonable satisfaction of the Council) a Material Breach of this Call-Off Contract after the Council has requested the Provider to do so, according to, and for the purposes of item 78.2. |
| Action Plan | **Any** of the following applies   * A first draft of any Action Plan required under section 77 remains overdue according to any deadline in item 77.4(c). * The obligations of the Provider under any Action Plan which has been prepared by the Provider and approved by the Council under section 77 remain overdue according relevant deadlines in that Action Plan (exception: to the extent the Council’s failure to meet any obligations in that Action Plan is a substantial and direct cause of the Provider’s delays). |
| Removal of subcontractors | The Provider has not properly complied with any request for the removal of a subcontractor which the Council has properly made under and in accordance with section 49. |
| Removal of Personnel | The Provider has not properly complied with any request for the removal of Personnel which the Council has properly made under and in accordance with section 34. |
| Inspection requirements | The Provider is not materially complying with its obligations under item 58.4 in relation to an inspection which the Council has requested and is entitled to undertake under section 58. |

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| **Interest on late payment** |  |
| What interest accrues on overdue debts or other liabilities owed between the Council and the Provider  * In connection with this 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 this Call-Off Contract | The relevant debtor shall be obliged 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.   Except to the extent and for as long as the debt or other liability is subject to a genuine dispute which the debtor is using reasonable and genuine efforts to attempt to resolve. |
| Strict procedures which a relevant creditor must follow if it wishes to claim interest that has accrued under item 22.1 in relation to a particular overdue debt or other liability | The creditor must give the debtor a notice as follows   * Strictly according to section 93. * Clearly indicating * The relevant overdue debt or other liability, and * The interest accrued at the time the notice is given. * If the overdue debt has been paid at the time the notice is given: the notice must be given no later than **30 days** after that overdue debt was received by the creditor (and if it is paid in instalments, **30 days** after the creditor’s receipt of payment of the final instalment). |

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| **Set off** |  |
| Extent to which **the Council** has the rights of set off, counterclaim, deduction (or the like of any of these) as the **‘Set Off Creditor’** against the Provider (as the **‘Set Off Debtor’**) under item 23.3 | The Council retains such rights. |
| Extent to which **the Provider** has the rights of set off, counterclaim, deduction (or the like of any of these) as the **‘Set Off Creditor’** against the Council (as the **‘Set Off Debtor’**) under item 23.3 | The Provider waives such rights (and all similar rights conferred by Law) to the fullest extent permitted by Law. |
| Rules in relation to the rights of any party indicated in this section 23 as a **‘Set Off Creditor’** |  |
| Debts and other liabilities from which the Set Off Creditor may deduct the debts or other liabilities described in item (b) | Any debts or other liabilities to which all of the following apply   * Owed by the Set Off Creditor and/or its Affiliate * To the Set Off Debtor and/or its Affiliate * Regardless of whether * In connection with this Call-Off Contract * Whether arising in tort, contract or otherwise. |
| Debts and other liabilities which the Set Off Creditor may deduct from the debts and other liabilities described in item (a) | All of the following   * Any debts or other liabilities owed by the Set Off Debtor and/or its Affiliate to the Set Off Creditor and/or its Affiliate. * Such debts or other liabilities are connected with this Call-Off Contract. * Such debts or other liabilities arise in tort, contract or otherwise. * Including any unliquidated debt as estimated by the Set Off Creditor acting reasonably and in good faith. |
| Exceptions in relation to debts or other liabilities described in item (a) or in item (b) | This item 23.3 **does not** apply to any debt or other liability owed by any person to the extent it is subject to a **genuine dispute** in relation to which the relevant debtor is using reasonable and genuine efforts to attempt to resolve. |
| Whether anything in this section 23 limits the rights and remedies of the Set Off Creditor | * No. * However, this section 23 is to fully indicate the Set Off Creditor’s rights of set off, counterclaim, deduction or the like in connection with this Call-Off Contract. |
| Obligation of the Set Off Creditor to notify the Set Off Debtor of any exercise of the rights of the Set Off Creditor under this section 23 | * The Set Off Creditor must do so not less than **7 days** before exercising such rights. * The communication must be in writing to the Representative of the Set Off Debtor. The Set Off Creditor is not obliged to observe the formalities in section 93 in relation to this communication. |

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| **Suspension by the Provider for non-payment** |  |
| Right of the Provider to suspend Services under this Call-Off Contract as a result of overdue debts or other liabilities owed to the Provider by the Council(whether or not those debt or other liabilities are connected with this Call-Off Contract) | * The Provider **must not** do so for this reason alone. * The only rights and remedies of the Provider in relation to an overdue debt or other liability are as follows: * To claim interest according to section 22; and * To exercise relevant termination rights (if any) if non-payment results in a Termination Default Event of the Council (see section 79). |

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| **Provider lien** |  |
| The Provider’s lien rights over property of the Council in connection with this Call-Off Contract | These rights are waived to the fullest extent permitted by Law. |

# **About the parties**

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| **Required Accreditations** |  |
| Licences, registrations, accreditations, permits, consents (or the like of any of these) which the Provider must have in place at all times whilst it is providing the Services Each of them is a **‘Required Accreditation’** | All of the following   * As indicated in the Service Specification. * Any others required by Law from time to time in relation to the Provider’s activities in carrying out the Services. |
| Obligations of the Provider if any subcontractor which it directly or indirectly appoints carries out any activity in connection with this Call-Off Contract which (on a reasonable view) requires the subcontractor to hold any Required Accreditation | The Provider shall ensure the subcontractor has the relevant Required Accreditation in place at all times while the subcontractor carries out that activity. |
| Consequence if a subcontractor does not have a particular Required Accreditation that is relevant to its activities in connection with this Call-Off Contract | * See section 49 on the rights of the Council 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 relevant activities in connection with this Call-Off Contract. * This does not limit the Council’s rights and remedies. |
| Obligation of the Provider to provide the Council with evidence of its compliance with this section 26 | * The Provider must provide the Council with appropriate evidence that the Provider and/or relevant subcontractors have the relevant Required Accreditations in place. * The Provider must do so promptly on the Council’s reasonable request from time to time. |

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| **Warranties and representations of the Provider** |  |
| The Provider warrants and representsTo the Council and its AffiliatesThat each of the following (to be read independently) is materially true and materially correctAt the date on which the Call-Off Contract is entered, and again on the commencement of the ServicesExcluding any exceptions sufficiently disclosed by the Provider to the Council in writing before the relevant date when the warranty and representation appliesIn addition to other warranties and representations of the Provider indicated elsewhere in this Call-Off Contract |  |
| **About the Provider generally** |  |
| Claims made by the Provider | The claims the Provider has made about itself or its subcontractors or their respective Personnel in any Provider Response submitted in being awarded a place on the Framework and any Provider Response in being awarded this Call-Off Contract are, to the best of the Provider’s knowledge having made reasonably necessary inquiries:   * **True:** materially true; and * **Not misleading:** not reasonably likely to be misleading (whether by omission or otherwise) to a reasonable person. |
| No changes to the Provider since the Provider Response | * There have been no significant changes to the circumstances of the Provider compared to those disclosed in the Provider Response submitted in being awarded a place on the Framework and the Provider Response in being awarded this Call-Off Contract. * **Changes to the Provider’s circumstances to which this applies:** only to those changes which would (on reasonable view) significantly and unfavourably affect the ability of the Provider to meet its obligations under this Call-Off Contract. |
| Not negligently or deliberately withheld information | There is no reasonably significant information about the Provider, its Personnel and/or its subcontractors to which all of the following apply:   * The Provider has negligently or deliberately withheld that information from the Council; and * If that information had been sufficiently disclosed before being awarded this Call-Off Contract, it would be reasonably likely to have significantly affected the decision of the Council (acting reasonably in the circumstances) to execute this Call-Off Contract on these terms. |
| The Provider is notUnder 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: |  |
| Confidence | Any Service User described in section 7 (or his/her representative if he/she does not have capacity) having good reason not to have appropriate confidence in the Provider. |
| Affects carrying out its obligations | The Provider being significantly and unfavourably affected in its ability to properly carry out its obligations under this Call-Off Contract. |
| Publicity | Serious, unjustified and unfavourable publicity being brought to the Council and/or to its Affiliates. |
| **Competitive procedure:** in any competitive procedure in which the Provider was awarded this Call-Off Contract, the Provider has not done any of the following: |  |
| Collusion | Engaged in any collusive or other anti-competitive conduct with other bidders (or potential bidders). |
| Canvassing | Engaged in any canvassing activity. |
| Corrupt Act | Done any act that would breach item 87.1 in relation to Corrupt Acts if that act were done after this Call-Off Contract is entered. |
| If the Provider is a human being (e.g. a sole trader) | The Provider is not aware of any serious issue relating to his/her health or other personal circumstances which is likely to prevent him/her carrying out his/her obligations as required under the terms of this Call-Off Contract. |
| If the Provider is a company or other type of entity other than a human being | * The Provider has the following to enter this Call-Off Contract and to carry out its obligations under it this Call-Off Contract * The Provider has the power to do so under its constituent document. * The Provider has obtained the relevant resolutions and taken the required corporate action to do so. * The Provider validly exists under the Law of the place where it was incorporated or otherwise constituted. |
| **Financial status of the Provider** |  |
| Able to pay debts | The Provider is able to pay its debts (taking into account its contingent and prospective liabilities) when they fall due. |
| If the Provider is a human being (e.g. a sole trader) | * The Provider is not an undischarged bankrupt; and * No procedure is currently underway to put the Provider into bankruptcy. |
| If the Provider is a company or other type of entity other than a human being | All of the following   * The Provider is not subject to any outstanding order from a court (or equivalent) or resolution requiring it to be dissolved, wound up or the equivalent. * No liquidator, provisional liquidator, trustee, administrator, controller, receiver, or receiver and manager (or the equivalent to any of these in any other relevant jurisdiction) is currently appointed in relation to the Provider and/or its assets. * The Provider is not aware (and has no reasonable grounds to be aware) that any of the above is imminent. |
| **Promised Subcontractors** |  |
| All of the following apply in relation to each Promised Subcontractor indicated in item 47.1 or its replacement (as in place at the time when the relevant warranty or representation is given) |  |
| Contracts in place | The Provider 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 47.1. |
| Investigations | The Provider is not aware (and has no reason to be aware having made reasonably necessary checks) of all of the following   * That the Promised Subcontractor is under any non-routine investigation by any regulatory or law enforcement body * For any serious matter * That is (on a reasonable view) likely to materially and unfavourably affect the Promised Subcontractor’s proper involvement in the relevant activities in connection with the Services according to item 47.1. |
| No changes in circumstances | There have been no significant changes (all of the following)   * To the circumstances of the Promised Subcontractor in place at the time compared to the circumstances disclosed to the Council when its approval of the Promised Subcontractor was first sought by the Provider (whether in the Provider Response or otherwise). * 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 47.1. |
| No circumstances preventing involvement | The Provider is not aware (and has no reason to be aware having made due inquiry) of any circumstances preventing the full, punctual and uninterrupted involvement of the Promised Subcontractor in connection with the Services according to item 47.1. |
| **Ability to carry out obligations** |  |
| Sufficient systems, resources | The Provider has (whether directly or through permitted subcontractors) the necessary and sufficient systems, Personnel and other resources to carry out its obligations under this Call-Off Contract in a proper and punctual manner. |
| Intellectual Property | * The Provider either owns or has appropriate licences and other permissions in place to enable it to use any Intellectual Property (including any and all relevant Provider Background Intellectual Property) which it uses in carrying out its obligations under this Call-Off Contract. * **Exception:** this does not apply to any Intellectual Property which the Council has done any of the following to enable the Provider to carry out its obligations under this Call-Off Contract * Has required the Provider to use; and/or * Has licensed or otherwise made available to the Provider and/or its subcontractors to use. |
| **Due diligence:** the Provider has satisfied itself (including making investigations, gathering information, seeking advice or the like) of all of the following(except to the extent the Provider has specific due diligence rights elsewhere in this Call-Off Contract) |  |
| Ability to meet obligations | The Provider is able to carry out its obligations under this Call-Off Contract as follows:   * As required in this Call-Off Contract; and * Without imposing charges or seeking reimbursement from the Council beyond its entitlements which are clearly indicated in this Call-Off Contract. |
| Provider’s understanding | The Provider understands the risks it faces in entering into this Call-Off Contract and in carrying out its obligations under it. |
| Third party consents, regulatory approvals etc. | The Provider has obtained all necessary third party consents, regulatory approvals or the like to enable it to do the following   * To execute this Call-Off Contract; and * To carry out its obligations as required under it. |
| No breaches | By entering into this Call-Off Contract and by carrying out its obligations under it, the Provider will not breach or infringe any of the following (to the best of its knowledge having made reasonably necessary inquiries)   * The Law. * Any duty it owes a third party (whether arising under tort, contract, statute, or otherwise). * The property rights (including rights in connection with Intellectual Property) of any third party. |
| **Miscellaneous** |  |
| If the Provider is a consortium, partnership, joint venture or the like | Each warranty and representation in this section 27 applies to each member of that consortium, partnership, joint venture or the like, to the extent reasonably relevant to that member. |
| Not acting on behalf of a third party | The Provider is not entering this Call-Off Contract on behalf of any third party whose identity has not been sufficiently disclosed in writing to the Representative of the Council. |
| Validly entered | The Provider has validly entered this Call-Off Contract. |

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| **Local authority powers** |  |
| Status of a party (**‘X’**) in its capacity as a local authority |  |
| Right to carry out powers etc. | Nothing in this Call-Off Contract in any way affects the right of X as a local authority to exercise (or to not exercise) any of its statutory powers and/or its statutory functions. |
| Examples | Without limiting this, this includes the power of X to grant or not to grant any kind of application for planning, any particular licence or the like of any of these which is submitted by any other party, even if it results in any activities contemplated in this Call-Off Contract being unable to commence or continue. |
| Interpretation | The above paragraphs shall apply even if the exercise (or non-exercise) of such powers and functions causes either party to breach its obligations under this Call-Off Contract. |

# **Intellectual Property**

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| **Intellectual Property – general statement** |  |
| General statement regarding Intellectual Property | Except to the extent   * Clearly indicated elsewhere in this Call-Off Contract, or * Otherwise separately agreed between them in writing   A party and/or its Affiliate shall not (as a result of entering this Call-Off Contract and/or exercising any rights and/or carrying out any obligations under this 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. |
| Interpretation of any license over Intellectual Property granted by a party under this Call-Off Contract(except to the extent otherwise clearly indicated) | All rights not expressly granted by the licensor under that licence are reserved to the relevant licensor. |

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| **Ownership and use of arising Intellectual Property** |  |
| Who owns Intellectual Property arising from the Services (as between the Council and the Provider) | Each party (or its contractors, other clients or third party licensors) shall own whatever Intellectual Property is created, developed or the like by that party or its own separate Personnel, its separate contractors or its other separate agents in connection with the Services. |

# **Personnel issues**

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| **General obligations in relation to Provider Personnel** |  |
| The Provider’s general obligations in relation to its (and its subcontractor's) Personnel engaged in meeting the Provider’s obligations under this Call-Off Contract |  |
| Sufficient Personnel | The Provider must ensure it and its relevant subcontractors (as between them) must have a sufficient number of Personnel to meet the Provider’s obligations under this Call-Off Contract. |
| Suitable | The Provider must ensure its Personnel are reasonably suitable for the tasks allocated to them in connection with the Provider’s obligations under this Call-Off Contract, having regard to their personal and professional characteristics (e.g. experience, qualifications, training etc.). |
| Meet Personnel requirements | The Provider must not allocate activities to any of its Personnel in connection with the Provider’s obligations under this Call-Off Contract if that individual does not meet the requirements of item 33 which relate to those activities. |
| Directions | The Provider must give appropriate directions to ensure each of its Personnel carries out his/her relevant activities in connection with the Provider’s obligations under this Call-Off Contract **in a competent, timely, professional, safe, ethical, courteous and lawful manner**. |
| Levels of authority | The Provider must ensure its Personnel have been given levels of authority to bind the Provider which are appropriate to the relevant individual’s duties in connection with the Provider’s obligations under this Call-Off Contract. |
| Support | The Provider must provide its Personnel with such instructions, supervision, equipment, training and other resources and support that are appropriate and reasonably necessary to the relevant individual’s activities in connection with the Provider’s obligations under this Call-Off Contract. |
| Policies | * The Provider must have in place HR policies which meet or exceed standards reasonably expected of comparable firms or organisations. * The Provider must promptly provide the Council with copies of such policies on request (to be made reasonably and in good faith). |
| Not to cause breach | The Provider must not give its Personnel directions or assistance that would cause the Provider to breach its obligations connected with this Call-Off Contract. |
| Subcontractors | * The Provider must use reasonable endeavours (including properly exercising relevant contractual rights) to ensure subcontractors **which are significantly involved** in connection with the Provider’s obligations under this Call-Off Contract comply with this section 31 in relation to their own relevant Personnel engaged for such purposes. * This obligation does not apply where the subcontractor only takes a minor role in connection with the Provider’s obligations under this Call-Off Contract. |

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| **Safeguarding investigations** |  |
| The Provider must comply with all of the following obligations in relation to any safeguarding investigation in respect of any of its (and/or its subcontractor’s) Personnel engaged in carrying out any of the Provider’s obligations under this Call-Off Contract |  |
| To keep informed | The Provider must keep the Council informed in a timely manner of developments in relation to the investigation as the Provider becomes aware of them. |
| To comply with directions to suspend etc. | The Provider must (at its own cost) comply in a proper and timely manner with any reasonable requests of the Council to suspend or permanently discontinue the involvement of the relevant individual in safeguarding-related activities in connection with this Call-Off Contract. |
| If the relevant individual is cleared | If and when any investigations discontinue or the relevant individual is cleared (e.g. by a court), the Provider may reinstate the individual (assuming there are no other grounds at the time to require his/her suspension or removal). |
| Other general safeguarding obligations | * The Provider must comply with the relevant Law relating to safeguarding in all its activities, whether or not connected with this Call-Off Contract. * The Provider must comply with further obligations on this matter (if any) in the Service Specification and the Care Plan. |

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| **Provider Personnel requirements** |  |
| Specific requirements which the Provider must ensure its each of its Personnel (including those of its subcontractors) meets before the Provider may involve the relevant individual in the Services As relevant, depending on that individual’s activities in connection with the Services |  |
| **Activity** | **Requirement** |
| Lone contact with children and/or vulnerable adults if safeguarding is relevant to the Services | Appropriate DBS checks |
| All Personnel engaged in the Services | Right to work in the UK. |
| All Personnel engaged in the Services | **Neither** of the following   * 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). * Current anti-social behaviour orders (as defined in the Crime and Disorder Act 1998).   **Exception:** to the extent approved by the Council (in writing, at discretion). The Provider must make sufficient disclosures about the matter to the Council to enable it to properly consider the matter. |
| Others: as indicated in the Service Specification. | As indicated in the Service Specification. |
| **How the requirements in item 33.1 apply to Personnel whose employment transfers as a TUPE Transfer on a Commencement Transfer** The relevant individual shall be deemed to meet each requirement relevant to his/her activities in connection with the Services **until the first of the following** applies in relation to that individual |  |
| Change in circumstance | An event or circumstance occurs or arises   * After the Commencement Transfer; and * Resulting in the individual no longer meeting the requirement in item 33.1 to the extent relevant to his/her activities in connection with the Services. |
| New activities | The requirement in item 33.1 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. |
| If the transferor employer is NOT the Council or its Affiliate | The expiry of the first **3 months** from the date of the Commencement Transfer. |
| Consequences after any of the events or circumstances in item 33.2 occurs | * After this, the individual will no longer be deemed to meet the relevant requirement under item 33.1. * The Provider must make its own checks whether or not the individual meets the relevant requirements. |

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| **Removal of Provider Personnel** |  |
| When the Provider must remove any of its (or its subcontractor’s) Personnel from involvement in the Services | Promptly on request of the Council according to this section 34. |
| When the Council may request removal of relevant Personnel | * Only with reasonable grounds. * See item 34.3 for examples of reasonable grounds. |
| 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) |  |
| Meeting requirements | The individual does not properly meet the requirements indicated in section 33 where relevant to his/her duties. |
| Basis to disclose under Data Protection Legislation | The Provider or its subcontractor (as relevant) does not have sufficient basis under the Data Protection Legislation (e.g. the consent of the individual or other basis) to allow the Council to check that the relevant individual properly meets the requirements relevant to him/her in section 33. |
| Incompetence | The individual has demonstrated serious incompetence in his/her allocated tasks in connection with the Services. |
| Misconduct | The individual’s serious misconduct in his/her activities in connection with the Services. |
| Corrupt Acts | The individual carries out any Corrupt Act described in section 87 and/or directs another person to do so. |
| Person of ill repute | All of the following   * The individual is, or has become, a person of such serious ill repute * Whether or not in connection with the Services * That is sufficiently serious that a reasonable person would not expect either of the following * The individual to be involved in the Services; and/or * The individual to be associated with the Council generally. |
| Obligations of the Council before requesting removal of Personnel | All of the following   * The Council must reasonably consult with the Provider, and * The Council must give the Provider a reasonable opportunity to remedy or otherwise deal with the matter.   **Exceptions:** where it is reasonable for the Council to require immediate removal of the individual. |
| Consequences of removal of Personnel under this section 34 on the Provider’s obligations under this Call-Off Contract | Removal shall not in itself relieve the Provider from its obligations under this Call-Off Contract. |
| Reinstatement of the individual | The Provider must not reinstate (or permit a relevant subcontractor to reinstate) the individual to become involved in the Services again without the prior written consent of the Council. |
| Where the Council is not to unreasonably consent to the reinstatement of an individual for the purposes of item 34.6 | Any of the following   * **If removal is for competence-related issues:** the individual is allocated to activities better suited to his/her abilities. * **In any case:** the Council is satisfied (acting reasonably) that appropriate corrective action has been taken (where reasonably possible). |

# **TUPE on Commencement**

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| **TUPE Transfers on commencement** |  |
| Whether any individual is expected to have rights to a TUPE Transfer as a result of any Commencement Transfer (yes/no) | Only as communicated by the Council to the Provider at the time (having regard to any advice provided by a relevant transferor employer) or as applicable according to Law. |
| Information regarding each individual who is expected to have a right to a TUPE Transfer in connection a Commencement Transfer | As supplied by the relevant transferor employer, whether to the Provider directly or via the Council. |
| Obligation of the Council to update the information regarding individuals who are expected to have a right to a TUPE Transfer in connection a Commencement Transfer | Only if the Council receives such updates from the relevant transferor employer. |
| Obligations of the Council and the Provider if any individual has a right to a TUPE Transfer as a result of a Commencement TransferAll of the following to the extent relevant |  |
| Comply with obligations | To comply in a proper and timely manner with their respective obligations under the TUPE Regulations (and relevant Law generally) in relation to that TUPE Transfer. |
| Provide information | Without limiting anything in this item 35.4, to do the following (in a proper and timely manner)   * Provide the other party (or the other party’s contractor, if it is the transferor employer or the transferee employer) * With appropriate information * To enable the other party (or its contractor, as relevant) to properly carry out its obligations under regulation 13 of the TUPE Regulations. |
| Require compliance by contractors | To use reasonable endeavours (including proper enforcement of any contractual rights, if relevant) to ensure such compliance with their respective direct or indirect contractors, where relevant to that transfer. |
| If the transferor employer is a direct or indirect contractor of the Council | The Council must use reasonable endeavours (enforcing its relevant contractual rights if any) to ensure that contractor properly meet all of its Pre-TUPE Transfer Liabilities to all of its employees who have rights to a TUPE Transfer on the Commencement Transfer. |
| Whether the Council gives the Provider any promise that any particular individual will exercise his/her right to a TUPE Transfer on a Commencement Transfer | Due to the nature of this right of the individual, the Council cannot give a promise of this kind. |
| When a relevant Commencement Transfer is deemed to take place in relation to this Call-Off Contract | At 23.59 hours on the day on which relevant activities transfer. |

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| **Exclusion of Council’s liability on a Commencement Transfer** |  |
| Liability of the Council to the Provider 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 | Its liability is excluded to the fullest extent permitted by Law. |
| Why the exclusion of the Council’s liability is reasonable | * This is reasonable because the transferor employer is an outgoing service provider of the Council, and not the Council itself. * Therefore, these matters are outside the Council’s reasonable control. |

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| **TUPE Transfers on a Commencement Transfer – Provider indemnity** |  |
| Who the Provider indemnifies under this section 37 (each of them **‘X’**) | * The Council; or * Its previous direct or indirect service provider   Whichever is the transferor employer of the relevant individual of any individual who has a right to a TUPE Transfer on a Commencement Transfer. |
| For what the Provider indemnifies 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 37.5. |
| First item of the indemnity for the purposes of item 37.2 |  |
| For what the Provider must indemnify X under this section 37 | * For that person’s respective Losses * Resulting from any Claim made or threatened against that person as described in item (b). |
| The Claim must be made against X by an individual to whom either of the following applies |  |
| Employment transfers | The individual’s employment transfers to the Provider or its direct or indirect subcontractor (whichever is the relevant transferee employer) as a TUPE Transfer as a result of any Commencement Transfer. |
| Employment would have transferred | The individual’s employment would have transferred to the Provider or its direct or indirect subcontractor (whichever is the relevant transferee employer) as a TUPE Transfer as a result of any Commencement Transfer  But **both** of the following apply to the individual   * The individual must have done any 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 **proposed any changes to the individual’s terms and conditions of employment** which are **unfavourable** to the employee. |
| Things the individual must have done for the purposes of item (b)(ii) (any of the following) |  |
| Object | That individual must have raised an objection to the TUPE Transfer. |
| Resignation | That individual must have resigned immediately prior to the Commencement Transfer. |
| Certain termination of employment | That individual must have treated his/her employment as having been terminated under regulation 4(9) of the TUPE Regulations. |
| The Claim must relate to at least one of the following for the purposes of item (a) |  |
| Employment | A breach by the relevant transferee employer of its employment contract with the relevant individual. |
| Collective agreement | A breach by the relevant transferee employer of any collective agreement relevant to the individual (e.g. with his/her union). |
| Transfer process | 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. |
| If the relevant individual has done any of the things described in item (c) | The proposed changes to the relevant individual’s terms and conditions of employment as described in item (b)(ii). |
| **Second item of the indemnity for the purposes of item 37.2:** for X’s Losses to the extent they relate  * To any statement * Issued by the Provider and/or its relevant direct or indirect contractor (whichever is the transferee employer) * Where **all** of the following apply to that statement |  |
| Purposes of the statement | The relevant transferor employer has issued the statement in connection with the proposed TUPE Transfer of any individual in connection with a Commencement Transfer. |
| When the statement is made | The relevant transferor employer has issued the statement **before the date of the Commencement Transfer**. |
| Without permission | The relevant transferor employer has issued the statement without X’s prior written permission. |
| **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 |  |
| Who is the claimant | The Claim is made or threatened against X by HMRC or other statutory body |
| For what the Claim relates | * The Claim relates to X’s liabilities * In respect of any individual whose employment is subject to a TUPE Transfer on a Commencement Transfer. * Including liabilities to pay PAYE and/or national insurance contributions * To the extent those liabilities relate to events or circumstances which occurred or arose arise after the date of the Commencement Transfer. |
| **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 |  |
| Negligence | To the extent X’s Losses are caused by   * X’s negligence, or * The negligence of X’s separate agents. |
| 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. |
| 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. |
| Rules in relation to the indemnity given in this section 37 | * Section 68 applies to this indemnity. * This section 37 overrides section 68 to the extent of any inconsistency. |

# **TUPE on cessation**

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| **TUPE Transfers on a Cessation Transfer** |  |
| Where this section 38 applies | It applies if any individual has a right to a TUPE Transfer on any Cessation Transfer, regardless of whether that individual’s right to a TUPE Transfer was expected when the Services under the Call-Off Contract commenced. |
| Whether any individual is expected to have rights to a TUPE Transfer in connection with any Cessation Transfer | The parties expect TUPE Transfers to apply in connection with any Cessation Transfer. |
| When a relevant Cessation Transfer is deemed to take place in relation to this Call-Off Contract | At 23.59 hours on the day on which relevant activities transfer. |
| General obligations of the Council and the Provider in relation to TUPE Transfers on any Cessation Transfer | To comply with the Law generally in relation to the TUPE Transfers. |
| Obligations of both the Council and the Provider to provide each other with information | Each of them must provide the other party (or the other party’s respective contractor, if it is the transferor employer or the transferee employer)   * With appropriate information * To enable the other party (or its contractor) to properly carry out its consultation obligations under regulation 13 of the TUPE Regulations. |
| Requirements of the Council and the Provider in carrying out their respective obligations in item 38.5 | * Each of them must carry out its respective obligations **in a proper and timely manner**. * It must use reasonable endeavours to require their respective contractors to comply with these obligations, if relevant. |

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| **Providing TUPE information - Cessation Transfers** |  |
| Purpose of this section 39 | To set out the Provider’s obligations in providing information to the Council regarding prospective TUPE Transfers in relation to a Cessation Transfer if any individual unexpectedly has a right to a TUPE Transfer |
| What information the Provider must provide the Council | All information indicated in item 39.14.   * In relation to each employee of the Provider and/or its direct or indirect subcontractors * Who would have a right to a TUPE Transfer if a Cessation Transfer occurred at the date on which the Provider receives the Council’s request for that information. |
| How the Provider must provide the information | * In writing; and * With material accuracy and completeness. |
| Deadline by which the Provider must provide the information indicated in item 39.14 | * No later than **30 days** after the Council has requested the information from the Provider in writing; or * Such longer time requested by the Provider and as permitted by the Council in writing, acting reasonably. |
| When the Council is permitted to make the request described in item 39.4 | * In good faith; and * Only in genuine contemplation of a Cessation Transfer.   This may include the conduct of a competitive invitation to tender exercise (or the like) in contemplation of a Cessation Transfer that would occur if the Provider were replaced by another operator. |
| Whether the Provider may provide the information in a manner to protect the rights of relevant individuals under the Data Protection Legislation | * The Provider may take reasonable and proportionate steps to do so, for genuine purposes of complying with the Data Protection Legislation. * This may include (if relevant) providing the relevant information in a manner so that no individual can be identified. * **Exception:** in the circumstances described in item 39.11. |
| Responsibility under the Data Protection Legislation | The Provider shall retain liability   * As between the Provider and the Council * To any individual whose personal data is disclosed and used according to (and for the purposes of) this section 39. * If such disclosures and use breach that individual’s rights under the Data Protection Legislation. |
| Consequence if the Provider fails to supply any of the information whatsoever required in item 39.14 by the deadline described in item 39.4 (i.e. the Provider provides no such information at all by the deadline) |  |
| Deemed disclosure | The Provider shall be deemed to have disclosed to the Council 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 39.4. |
| Examples of the consequences of the Provider’s failure(examples only, not an exhaustive list) | * The Council 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 Provider. * Section 43 sets out an indemnity given by the Provider in relation to any individual who later asserts that he/she has a right to a TUPE Transfer in connection with the Cessation Transfer. |
| The Provider’s obligation to provide updates to the information requested by the Council under this section 39 | * The Provider must provide updates (e.g. significant changes) in writing until the relevant Cessation Transfer occurs. * 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. |
| How the Provider must carry out its obligations under item 39.9 | It must do so according to all of the following:   * Promptly when any significant change occurs, * Regardless of whether the Council has requested the update; and * In any case, promptly on the request of the Council (made reasonably and in good faith in relation to the prospective Cessation Transfer). |
| Further obligations of the Provider to provide information before the Cessation Transfer |  |
| Further information which the Provider must provide the Council or other relevant transferee employer | All of the information of the kind described in item 39.14   * 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 Provider or its direct or indirect subcontractor is the transferor employer. * Identifying **by name** each individual to whom the information relates. |
| To whom the Provider must provide the further information described in item (a) | * The relevant transferee employer of the individual on the Cessation Transfer. * Who may be the Council or its direct or indirect replacement service provider, as relevant. |
| Deadline by which the Provider must provide the further information described in item (a)Either of the following, as relevant |  |
| 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. |
| In all other cases where item (i) does not apply | No later than the minimum deadline in the TUPE Regulations. |
| 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. * That deadline is currently **28 days**. |
| On which date must the information be materially accurate and complete | * As specified by the Provider (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 Provider provides the information to the Council or other relevant transferee employer. |
| Whether the Council is obliged to reimburse the Provider for its costs in carrying out its obligations under this section 39 | No. |
| Information which the Provider must supply the Council for the purposes of this section 39All 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 Provider provides the information |  |
| Job title | The individual’s job title |
| Grade | The individual’s grade |
| Date of birth | The individual’s date of birth |
| Commencement | The date of commencement of the individual’s employment. |
| Working hours | The individual’s working hours. |
| 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. |
| Relationship with Provider | The individual’s relationship with the Provider (e.g. whether an employee, or an employee of the Provider’s contractor, or otherwise). |
| Employer | The identity of the individual’s employer (or person who engages him/her in any other capacity) if not the Provider (e.g. a subcontractor). |
| Termination and redundancy | The main contractual terms relating to the termination of the individual’s employment, including notice periods, redundancy procedures and redundancy payments. |
| Leave entitlements | The individual’s contractual leave entitlements (e.g. holidays). |
| Wages etc. | The individual’s wages, salary, entitlements to bonuses and/or entitlement to any profit sharing (or the like of any of these), as relevant. |
| 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. |
| Other benefits | The individual’s other employment related benefits (e.g. membership of any pension or other retirement benefit scheme or the like, membership of any share option plan, company car, health insurance, life assurance etc.). |
| Claims | Any known   * Liabilities owed to, and/or * Claims made or threatened by   The relevant individual in connection with this/her employment.  These include (without limitation)   * 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.). * Accrued leave entitlements (e.g. holidays). |
| 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.). |
| Union membership | The relevant individual’s union membership, if any. |
| 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. |
| Mobility | Whether the relevant individual’s contract of employment contains any right of his/her employer to change his/her work location. |
| 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). |
| Disciplinary | The relevant individual’s disciplinary records. |
| Grievance, disciplinary | A summary of ongoing disciplinary or grievance matters relating to the relevant individual. |
| Other | Any other information which is required as "employee liability information" under regulation 11 of the TUPE Regulations which is not otherwise described above. |
| Rights of the Council to deal with information provided to it by the Provider under this section 39 | The Council may do so for genuine purposes connected with a proposed or actual Cessation Transfer. |
| Examples of the rights of the Council to deal with information provided to it under this section 39(examples only, not an exhaustive list) | The Council may disclose the information to actual or prospective transferee employers (whether in the context of a publicly-advertised competitive tendering exercise or the like, or otherwise). |

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| **Providing employee records - Cessation Transfer** |  |
| Purpose of this section 40 | To set out the obligations of the Provider to provide to the relevant transferee employer certain employment-related records relating to each individual whose employment transfers to that transferee employer as a TUPE Transfer on a Cessation Transfer. |
| The Provider must supplyEach record which meet all of the following requirementsIn relation to each individual (if any) whose employment transfers as a TUPE Transfer on a Cessation TransferTo the relevant transferee employer (whether the Council or its direct or indirect replacement service provider, whichever is the transferee employer) |  |
| 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 |
| In possession or control | The record must then be in the possession or control of the relevant transferor employer (whether the Provider or its direct or indirect subcontractor). |
| Examples of the records which the Provider must supply to the relevant transferee employer under item 40.2To the extent the record meets the requirements in item 40.2These are examples only, and do not exclude any other records which otherwise meet the requirements in item 40.2 |  |
| Contract of employment | An up-to-date copy of the individual’s contract of employment with the transferor employer. |
| Payroll records | Relevant payroll records, including without limitation 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. * Records showing detail 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. |
| Pension-related | Records relating to the individual’s pension matters (e.g. contributions, entitlements etc.). |
| 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. |
| Licences, accreditations etc. | Records evidencing that the transferor employer has sufficiently checked whether the individual has the licences, qualifications, background checks (or the like of any of these) which he/she must hold   * By Law; and/or * Under this Call-Off Contract   To carry out his/her duties in connection with the relevant Services immediately before the Cessation Transfer. |
| Continuing professional development | 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. |
| Leave | Records relating to the following leave-related matters   * Leave entitlements (e.g. holiday leave) of the of the individual attributable to the rest of the year after his/her TUPE Transfer. * The individual’s sickness records * **If (on the date of the individual’s TUPE Transfer) the individual is (or is expected to be) on long term sick leave or on maternity or paternity leave:** his/her anticipated return date. * 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. |
| Disciplinary | The individual’s disciplinary records. |
| Claims | Records relating to any unresolved claims, proceedings, or the like between the individual and the transferor employer. |
| Grievances | Records relating to any unresolved grievances, allegations or the like formally raised by the individual to the transferor employer. |
| Resignation | Any notice of resignation which the individual has given to the transferor employer where the notice period is expected to expire after the individual’s TUPE Transfer. |
| Deadline by which the Provider must provide the records described in item 40.2 | No later than   * **30 days** of the written request of the transferee employer; or * Such longer time as permitted by the transferee employer in writing. If the Council is the transferee employer, it must not unreasonably withhold that permission.   In any case, no later than the date of the relevant TUPE Transfer of the individual as a result of the Cessation Transfer. |
| When the relevant transferee employer may make the request described in item 40.4 | * In good faith; and * Only for the genuine purposes of the TUPE Transfer of the relevant individual resulting from the relevant Cessation Transfer. |
| How the Provider’s costs are borne in complying with its obligations under this section 40 | * The Provider must bear its own. * The Council (or other transferee employee, as relevant) is not liable to reimburse the Provider for those costs. |

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| **Restrictions on the Provider prior to a Cessation Transfer** |  |
| The Provider must comply with all of the following obligations in relation to any prospective Cessation TransferThe Provider must comply with these obligations at the times indicated in item 41.2These obligations do not apply to the extent any of the exceptions in item 41.3 applies |  |
| The Provider must not do any of the following in relation to any organised grouping which carries out the relevant activities under this Call-Off Contract |  |
| Change size | The Provider must not increase or decrease the **size** of the grouping. |
| Change composition | The Provider must not materially change the **composition of their roles** within the grouping. |
| Change amount of time | The Provider must not materially change the **amount of time** the grouping spends on the relevant activities. |
| Replace | The Provider must not replace any individual who is then a member of the grouping with another individual, whilst he/she remains an employee of the Provider or its Affiliate or its subcontractor engaged in activities in connection with the Services at the time. |
| Terms and conditions | The Provider must not change the terms and conditions of any member of the organised grouping (including any customary practice in relation to that individual)  This includes (without limitation) those relating to his/her remuneration and/or his/her rights and entitlements in relation to the termination of his/her employment. |
| Terminate contract | The Provider must not terminate the contract of employment of any member of the organised grouping. |
| Keeping informed | * The Provider must keep the Council informed in a proper and timely manner of first becoming aware of the occurrence of any of the events described in item 41.1. * The Provider must do so regardless of whether it involves affected employees of the Provider or its direct or indirect subcontractors. |
| Subcontractors | The Provider must use reasonable endeavours (including exercising any relevant contractual rights) to ensure compliance with this section 41 by each of its direct or indirect subcontractors which would be a transferor employer of any individual if a relevant Cessation Transfer occurs. |
| Not to become legally bound | The Provider must not agree (or otherwise become legally bound) to do any act that would breach any of its obligations described elsewhere in this item 41.1. |
| Further obligations | * The Provider must not assist or instruct another person (e.g. any subcontractor) to do any act that would breach this section 41 if that act were done by the Provider directly. * If the Provider's Affiliate does any such act, the onus will lie with the Provider to prove it was not done under its assistance or instructions. |
| When the Provider must comply with its obligations under this section 41 | At the following times (where relevant)   * Within the **6 month** period immediately before the expiry date of this Call-Off Contract (see section 15). * **If this Call-Off Contract (or relevant part to which the Cessation Transfer relates) is terminated early:** at any time after the relevant termination notice is given by the terminating party.   The obligations continue until the Provider is no longer required to carry out the relevant activities under this Call-Off Contract. |
| Exceptions to the Provider’s obligations in this section 41(any of the following where relevant, to be read independently) |  |
| Required or permitted elsewhere | To the extent the Provider is required or permitted not to comply with those obligations elsewhere in this Call-Off Contract. |
| Consent of the Council | To the extent the Provider is acting with the written approval of the Council.  The Council must not unreasonably withhold that approval. |
| In the case of any change in the terms and conditions of a member of the organised grouping as described in item 41.1(a)(v) | **Any** of the following   * The change is the result of any genuine negotiations with a trade union (or the like) which is then representing the relevant individual. * The change is required by Law. |
| Exception 1 to the obligations in item 41.1(a)(vi) regarding the termination of the contract of employment of any member of the organised grouping | The termination of the individual’s employment is as a result of any of the following:   * The individual’s serious misconduct. * The individual’s default under his/her contract of employment. * Serious, genuine and long-term health issues affecting the individual (e.g. disability, long term illness) which genuinely affect the individual’s ability to continue in his/her normal duties. * Any request by the Council to remove the individual from activities under section 34. * Any requirement of the Law. |
| Exception 2 to the obligation in item 41.1(a)(vi) regarding the termination of the contract of employment of any member of the organised grouping | 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). |

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| **Pension obligations on Cessation Transfers** |  |
| The Provider 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 TransferThe Provider must do so at its own cost |  |
| Records | The Provider must ensure appropriate employer-related pension records relating that individual are properly up-to-date. |
| Administrative tasks | The Provider must promptly comply with all of the following   * With the reasonable requests of the Council * 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. |
| Subcontractors, trustees | The Provider must use reasonable endeavours (including exercising relevant contractual rights) to ensure compliance with this section 42 by each of the following where relevant   * Its direct or indirect subcontractor (if the transferor employer). * The trustee of the relevant pension fund. |

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| **TUPE Transfers on cessation – Provider indemnity** |  |
| To whom the Provider gives the indemnity under this section 43(each of them **‘X’** in this section 43) | * The Council. * 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. |
| The Provider shall indemnify X for X’s Losses which are the direct result of either of the following |  |
| 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 43.3. * But only if all of the conditions of item 43.4 are met in relation to the relevant Claim. |
| 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 43.5 are met in relation to that individual. |
| For the purposes of item 43.2(a), the indemnity in this section 43 applies to Claims made or threatened against X by an individual described in item 43.2(a) for any one or more of the following items |  |
| 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. |
| Compensation payable by X to the relevant individual for the transferor employer’s breach in relation to the following |  |
| 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. |
| 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. |
| 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 Provider’s Representative * No later than 3 **months** after the relevant Cessation Transfer. |
| Compensation payable by X to the relevant individual for X’s breach in relation to the following |  |
| For what compensation | Compensation which X (as transferee employer) must pay the relevant individual   * To the extent X is liable for the **X’s own** breach of its obligations under the TUPE Regulations to consult the relevant individual * In connection with the individual’s TUPE Transfer on the relevant Cessation Transfer. |
| Individuals to whom X’s breach applies | Only those individuals whose right to a TUPE Transfer on a Cessation Transfer **was not disclosed (whether by name or role)**   * In writing; * By the Provider (and/or by its direct or indirect subcontractor if it is the transferor employer); * To the Council and/or to the other relevant transferee employer; and * Before the Cessation Transfer. |
| Legal costs | X’s legal costs in relation to the Claim described elsewhere in this item 43.3   * To the extent reasonably incurred; and * To the extent reasonably evidenced.   **If the Provider has any rights to take over the defence of the Claim under item 68.6(b):** the Provider has **not** exercised those rights after a reasonable time of having been given the opportunity to do so. |
| Other conditions for the purposes of item 43.2(a) | The Council 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 43.3. |
| Conditions that must be met in relation to the indemnity given to X under this section 43 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 43.2(b) |  |
| Whose employment is terminated | Any individual who has a right to a TUPE Transfer against X on the Cessation Transfer. |
| Who terminates the individual’s employment | X, in its capacity as transferee employer on the individual’s TUPE Transfer. |
| Reasons for the termination of the employment of the individual | For any lawful reason. |
| Any of the following applies to the individual if his/her employment is terminated for any reason indicated elsewhere in this item 43.5 |  |
| Failure to disclose | The Provider (and/or any other relevant transferor employer) had failed to disclose   * To the Council (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 39.4: 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 39.4. * 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.). |
| Inaccuracies, incompleteness in information provided | All of the following apply in relation to the relevant individual:   * The Provider (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 Provider (or other transferor employer) to X (or other transferee employer). |
| What X must do if it wants the Provider to indemnify X under this section 43 for the compensation for which X is liable in relation to a relevant individual under item 43.2(b)(all of the following to the extent relevant) |  |
| If there had been a failure by the Provider (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 Provider or its nominee (e.g. any subcontractor which is the transferor employer) a reasonable opportunity (including reasonable cooperation) to enable the Provider to dispute whether the individual has a right to a TUPE Transfer on the service provision change. |
| In any case | X must give the Provider a reasonable opportunity to mitigate the compensation payable to the relevant individual (e.g. by offering the individual suitable alternative employment, giving another person the opportunity to do so etc.). |
| 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 43 | The compensation must be properly and lawfully calculated, having regard to the relevant circumstances (e.g. the individual’s remuneration, length of service etc.). |
| 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 43.2(b) |  |
| If the identity of the individual had been sufficiently disclosed to X before the Cessation Transfer (whether by name or role etc.) | No later than **60 days** after the Cessation Transfer. |
| If the identity of the individual had not been sufficiently disclosed to X before the Cessation Transfer (whether by name or role etc.) | No later than **60 days** after the date on which the individual gives X any indication in writing of the individual’s assertion of a right to a TUPE Transfer as a result of the Cessation Transfer. |
| Where X cannot claim the indemnity under this section 43 for the compensation described in item 43.2(b) in relation to a relevant individualWhere all of the following apply |  |
| 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). |
| 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). |
| When X or its Affiliate is deemed to have given the termination notice for the purposes of item (b) | 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. |
| **Refund of indemnity payments:** the Council must pay the Provider a refund according to the following |  |
| Circumstances where the Council must pay the Provider the refund described in item (b) | Where all of the following apply   * The Provider has paid X an amounts under the indemnity in this section 43 in relation to compensation payable to an individual described in item 43.2(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 43.5. |
| Amounts which the Council must refund to the Provider if the circumstances in item (a) apply in relation to an individual | All of the following   * All amounts which the Provider has paid to X under the indemnity in this section 43 in relation to compensation for which X was liable as described in item 43.2(b); and * Interest accruing from the date of payment of the relevant amount by Provider to X and calculated under section 22. |
| Due date by which the Council must pay the refund it is liable to pay under this item 43.10 to the Provider | * No later than **7 days** after a written demand issued by the Provider. * That demand must be sent strictly according to section 93. |
| Further obligations of the Council | It must keep the Provider 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. |
| Whether the Council is liable to pay the Provider the refund under this item 43.10 if X is a replacement service provider of the Council (and if the Provider paid the indemnity to that replacement service provider) | * The Council has the liability to the Provider to pay the refund in these circumstances. * Whether or not the replacement service provider must then compensate the Council is a matter between them. |
| **Procedures:** X must strictly follow all of the following procedures if it wishes to claim the indemnity under this section 43 |  |
| Notice which X must give the Provider | * The Council must give the Provider notice of its intention to enforce the indemnity. * This notice must be given strictly in accordance with section 93. |
| Minimum contents which the of the notice described in item (a)(all of the following) |  |
| Name | The name of the individual to whom the indemnity relates. |
| If an employee of an outgoing subcontractor | If the transferor employer was a previous direct or indirect subcontractor of the Provider (and not the Provider itself): the name of that subcontractor. |
| Details of Claim etc. | Details of the matter to which the claim for the indemnity relates (whether the Claim under item 43.2(a) or the liability to pay compensation under item 43.2(b), as relevant). |
| What must accompany the notice described in item (a) | * Suitable proof of the matter to which the claim for the indemnity relates (whether the Claim under item 43.2(a) or the liability to pay compensation under item 43.2(b), as relevant). * **If the indemnity relates to X’s liability to pay compensation under item 43.2(b):** suitable proof that all of the conditions in item 43.5 are met. |
| To what the indemnity in this section 43 is subject | * This indemnity is subject to section 68. * This section 43 overrides section 68 to the extent of any inconsistency. |

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| **Pre-TUPE Transfer Liabilities** |  |
| A **‘Pre-TUPE Transfer Liability’** in relation to any individual who has a right to a TUPE Transfer in relation to a service provision change (for the purposes of the TUPE Regulations) in connection with this Call-Off Contract is any liability to the extent all of the following apply: |  |
| Who owes the liability | It is a liability of the transferor employer of that individual (whether that transferor employer is a party to this Call-Off Contract or its direct or indirect contractor). |
| The liability relates to the transferor employer’s employment of that individual up to the date of the individual’s relevant TUPE Transfer, including any of the following (without limitation and to the extent relevant) |  |
| Remuneration | Liability to pay remuneration and other compensation under the individual’s contract of employment, including wages, commissions, bonuses and other benefits. |
| Pension | Liability to make employer’s pension contributions in relation to the individual. |
| Compensation | Liability to compensate the individual for any breach against the individual (e.g. unfair, wrongful or constructive dismissal, personal injury, breaches in relation to harassment, bullying, anti-discrimination, equal pay, and equal treatment of the individual as a part time worker). |
| Holiday pay | Any liabilities to the relevant individual relating to holidays (including holiday pay) that had accrued before the date of the TUPE Transfer. |
| PAYE, national insurance etc. | Liability to make payments in relation to PAYE and/or national insurance and/or any other similar liabilities of the transferor employer to HMRC or a similar body attributable to the relevant individuals. |
| Collective agreement | Obligations under any collective agreement affecting the relevant individuals. |
| Penalties etc. | Any penalties, fines, interest (or the like of any of these) payable by the transferor employer in respect of any Claim relating to its employment of the relevant individual. |
| Termination, redundancy | Any liabilities relating to any dismissal, redundancy or other termination procedure which   * Is completed by the transferee employer, but * Was commenced by the transferor employer before the relevant service provision change. |
| Custom, practice etc. | Any custom or practice in relation to relevant individuals to which the transferor employer is contractually bound to honour. |
| How the liability accrues or arises | The liability arises in tort, contract, under statute or otherwise. |
| 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). |
| Does it matter whether the liability is known to the transferor employer at the time of the TUPE Transfer | No. |
| Requirement of a TUPE Transfer | The individual’s employment must have transferred to the transferee employer (whether that transferee employer is a party to this Call-Off Contract or its direct or indirect contractor) as a TUPE Transfer on the relevant service provision change. |
| Certain liabilities which are **not** a Pre-TUPE Transfer Liability, regardless of item 44.1 (a liability to which **all** of the following apply) |  |
| Whose liability | It Is a liability of the transferor employer |
| To whom the liability is owed | An individual whose employment has transferred as a TUPE Transfer on a Commencement Transfer or a Cessation Transfer |
| To what the liability relates | The liability (even if arising before the date of the relevant service provision change) relates to the resignation of that individual before the date of that service provision change. |
| Reason for the resignation | A substantial reason for the individual’s resignation was   * Changes proposed by the transferee employer * To the individual’s working conditions (including his/her remuneration, pension arrangements or otherwise) * Which are substantial and unfavourable to the individual * Which the transferee employer proposes are to take effect after the date of the relevant service provision change. |

# **Subcontracting**

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

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| **Paying subcontractors** |  |
| Subcontractors to which the obligations of the Provider in this section 46 apply | All subcontractors engaged in connection with the Services. |
| **Provider obligations:** the Provider must pay each subcontractor described in item 46.1The charges, fees or the like which the Provider is liable to pay the subcontractor under the relevant subcontractInsofar as those charges, fees or the like relate to the subcontractor’s activities connected with the Services (and not to unrelated dealings between the Provider and the subcontractor)According to the following |  |
| Deadline by which the Provider must pay the subcontractor those charges | The earlier of the following after the Provider’s receipt of a relevant invoice from the subcontractor:   * The following period: **30 days**; or * Such shorter payment terms in any contract between the Provider and the subcontractor. |
| Requirements of the subcontractor’s invoice for the purposes of item (a) | To the extent that invoice:   * Is valid; and * Is not subject to a genuine dispute which the Provider is using reasonable and genuine efforts to attempt to resolve in a timely way. |
| Publicity rights | Regardless of anything to the contrary in this Call-Off Contract (especially section 52 relating to confidentiality and similar obligations of the Council to the Provider), the Council may publicise any breach of this section 46. by the Provider. |
| Whether anything in this section 46. limits the rights and remedies of the Council resulting from the Provider’s breach of this section 46 | No. |

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| **Promised Subcontractors** |  |
| Current subcontractors which the Provider **must** engage in connection with particular activities in connection with the ServicesEach of them a current 'Promised Subcontractor' |  |
| **Name of Promised Subcontractor** | **Brief description of required activities of the Promised Subcontractor for as long as those activities remain part of the Services** |
| As indicated in the Provider Response | As indicated in the Provider Response |
| If a Promised Subcontractor discontinues its activities in relation to its required activities, the deadline by which the Provider must have suitable alternative arrangements in placeE.g. to have found a replacement, to have taken on the responsibility for the relevant activities itself | Either   * **45 days** from the discontinuation of the relevant Promised Subcontractor; or * Such later deadline permitted in writing by the Council (acting reasonably).   These are subject to the consents required in item 47.4.  The Provider must give the Council enough time to properly consider the Provider’s proposed alternative arrangements to ensure those arrangements can be in place before this deadline. |
| Consequences if the Provider fails to have suitable alternative arrangements in place by the deadline in item 47.2 | It shall be a Termination Default Event of the Provider. |
| The Provider requires the prior written consent of the Provider 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) |  |
| Extending deadline | Extending the deadline described in item 47.2 |
| Terminating subcontract | Terminating the Provider’s contract with the Promised Subcontractor insofar as termination affects the activities for which the Provider must engage the Promised Subcontractor under item 47.1. |
| Replacement | Appointing a replacement Promised Subcontractor from time to time. |
| Provider carrying out activities | The Provider itself carrying out the required activities of the Promised Subcontractor under item 47.1. |

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| **Consents to appointment of subcontractors** |  |
| The Provider must obtain the prior written consent of the Council if the Provider wishes to appoint any of the following subcontractors in relation to this Call-Off ContractWhether directly appointed by the Provider or indirectly by any intermediary subcontractorThe consent of Council is not required in relation to any other direct or indirect subcontractors which the Provider wishes to appoint and which are not indicated below. |  |
| If the subcontract is over a certain value as a percentage of this Call-Off Contract | If the total amount payable to the relevant subcontractor and/or its AffiliatesAggregated between the subcontractor and its Affiliates in the subcontracts they hold in connection with this Call-Off ContractCalculated as follows, as relevant**If the subcontract in connection with this Call-Off Contract is to continue for 12 months or more:** as if the subcontract continued for a full 12 months (i.e. it was not terminated early).**If the subcontract in connection with this Call-Off Contract is to continue for less than 12 months:** as if the subcontract continued for its full duration (i.e. it was not terminated early).Whether payable to the subcontractor by the Council directly or by another subcontractor above it in the supply chainIs **more than 30%** of the following total Charges**If this Call-Off Contract is to continue for 12 months or more:** as if this Call-Off Contract continued for a full 12 months (i.e. it was not terminated early).**If this Call-Off Contract is to continue for less than 12 months:** as if this Call-Off Contract continued for its full duration (i.e. it was not terminated early). |
| Safeguarding | In relation to any subcontractor whose activities in connection with the Services reasonably require safeguarding background checks. |
| Promised Subcontractor | Any subcontractor to carry out any activities allocated to any ‘Promised Subcontractor’ according to item 47.1. |
| If the Council has previously required the Provider to remove the subcontractor under section 49 | In relation to the reinstatement of that subcontractor in connection with any part of the Services. |
| Where the Council’s consent **is not** required in relation to a particular subcontractor | If the subcontractor is already a member of the Framework. |
| How the Council’s consent is to be given | * In writing. * Not to be unreasonably withheld. * See section 50 for examples of reasonable grounds for withholding consent. |
| Subcontractors in relation to whom the consent of the Council has already been given in relation to particular activities | * Each subcontractor indicated in the Provider Response; and/or * Any other member provider on the relevant Framework. |

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| **Removal of subcontractors** |  |
| Obligations of the Provider to remove from activities in connection with the Services any subcontractor which the Provider has directly or indirectly appointed | * The Provider must do so promptly on the request of the Council. * Subject to this section 49. |
| How the Council must make any request to remove any subcontractor directly or indirectly appointed by the Provider(according to all of the following) |  |
| Grounds to require removal | * With reasonable grounds. * See section 50 for examples of reasonable grounds for withholding consent. |
| How the Council requires the removal | Strictly by notice, given according to section 93. |
| Steps the Council must take before issuing the notice in item 49.2(b) | * The Council must take reasonable steps to consult with the Provider regarding the matter. * **Exception where this is not required:** where the request for immediate removal is reasonable in the circumstances. |
| Whether the request for removal of a subcontractor under this section 49 relieves the Provider of its obligations in connection with this Call-Off Contract. | No. |
| Right of the Provider to reinstate a subcontractor whose removal has been requested according to this section 49 | The Provider shall not do so without the prior written consent of the Council, at its discretion. |

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| **Grounds to refuse or require removal of subcontractors** |  |
| Purpose of this section 50 | To set out reasonable grounds for   * Refusal of consent to a subcontractor under section 48; and * Removal of a subcontractor under section 49. |
| Grounds for the purposes of this section 50(where relevant and not an exhaustive list of reasonable grounds) |  |
| In dispute | * 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 Council and/or any of its Affiliates. * Regardless of whether the dispute relates to the Services or to other dealings with the subcontractor. |
| Does not have Required Accreditations | The subcontractor does not at the time meet the requirements referred to in section 26 in relation to Required Accreditations which are relevant to the subcontractor’s activities in connection with the Services. |
| Person of ill repute | On a reasonable view, the subcontractor and/or any of its Affiliates and/or any of their respective senior Personnel is (at the time) a person of such serious ill repute that association with any of them is reasonably likely to bring significant undesirable publicity to the Council and/or any of its Affiliates and/or to bring any of their respective names into serious disrepute by association with the subcontractor. |
| Insurance | The subcontractor does not have insurance cover that would be reasonably expected of it having regard to:   * The nature of its activities in connection with the Services; and * The insurance the Provider would be required to have under section 65 if it carried out those activities directly (and is not otherwise exempt). |
| Evidence of experience, capability | * In seeking the consent of the Council under section 48, the Provider has not provided the Council with reasonable evidence of the subcontractor’s capability (including its experience) to carry out the relevant activities to which the subcontract is to relate. * Such evidence may include the provision of appropriate and satisfactory references given regarding the relevant subcontractor. |
| Zero hours contracts | All of the following apply:   * The subcontractor employs any employee whose duties include direct provision of the Services to the Service User. * The employee’s contract of employment **does not** guarantee him/her a minimum number of hours of work over a particular period (e.g. a week, fortnight, month). * The subcontractor cannot provide (in **30 days** of the Council’s reasonable request) reasonable evidence of the following: * That relevant employer has offered the employee a contract that guaranteed the employee a minimum number of hours over a particular period (e.g. a week, fortnight, month). * That the employee had refused that offer, taking the offer without the guaranteed minimum number of hours instead. |
| Normal grounds for exclusion | * **Where the Provider seeks the Council’s consent to the appointment of the subcontractor under section 48:** any mandatory or discretionary grounds for exclusion (according to the Public Contracts Regulations 2015 or otherwise) apply to the proposed subcontractor. * This is according to any standard business questionnaire or the like issued by the Council for the purpose of considering the appointment. |
| Previous performance | In considering its consent to the proposed subcontractor under section 48:   * The Council and/or its Affiliate had received similar services from the subcontractor or its Affiliate in the previous **3 years**; and * The Council and/or its Affiliate had reasonable grounds to be seriously dissatisfied with the performance of that subcontractor or its Affiliate in relation to those services. |
| Incompetence | **In relation to the removal of the subcontractor under section 49:** the subcontractor has demonstrated any of the following in carrying out its activities in connection with this Call-Off Contract   * Serious incompetence; * Serious lack of professionalism; and/or * Serious misconduct. |
| Termination of other contracts | **In relation to the removal of the subcontractor under section 49:** the Council and/or its Affiliate has validly terminated any other contract it has with the subcontractor (and/or with the subcontractor’s Affiliate) due to any event of default or the like of the subcontractor (and/or the Affiliate) under that contract. |

# **Location**

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| **Location of the Services** |  |
| Any specific office location from which the Provider must provide the Services (or such part of them as indicated) | * A Patch Provider must have a registered office in the London Borough of Bromley * A Framework Provider must have a registered office in the London Borough of Bromley or in a neighbouring borough |

# **Information**

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| **Confidentiality** |  |
| What is Confidential Information of the Council and/or its Affiliates respectively as a **‘Discloser’** Each of the following, to be read independently |  |
| Business activities | Information relevant to the Discloser’s business activities generally, including without limitation   * 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 products or services * The Discloser’s research activities, know-how, trade secrets and other Intellectual Property which is not in the public domain. * The Discloser’s data, including personal data in relation to which it is the data controller or data processor for the purposes of the Data Protection Legislation * Details relating to the Discloser’s customers, clients or the like * Information relating to any other person to whom the Recipient knows (or reasonably ought to know) the Discloser owes a duty of confidentiality (whether under contract, by Law or otherwise) |
| Dispute resolution | Disclosures made in the course of any dispute resolution procedure described in section 88. |
| Rules regarding how the information must be disclosed etc. to be considered Confidential Information of the Council and/or its Affiliates |  |
| How the information must be disclosed or made or available to the Recipient | * In any manner or in any medium (e.g. in writing, verbally, by observation at the Discloser’s premises, contained in any device or material etc.) * But only in activities which are reasonably connected with this Call-Off Contract. |
| By whom must the information be disclosed or made available (according to item (a)) | It may be disclosed or made available by or on behalf of the Discloser to the Provider (and/or anyone acting on its behalf) |
| Whether the information must be labelled as ‘confidential’ (yes/no) | Not required. |
| What is Confidential Information of a relevant Service User for whose benefit the Services as a **‘Discloser’** | All information relating to that Service User obtained by or on behalf of the Provider (as the Recipient) in connection with the Services.  Regardless of   * The medium in which that information is held; and * How information is obtained by or on behalf of the Provider, and * Whether or not that information is labelled ‘confidential’. |
| What is Confidential Information of the Provider as a **‘Discloser’** Each of the following, to be read independently |  |
| Charges | * The Provider’s Charges (see section 16). * But only to the extent the Charges have been uniquely determined by the Provider or privately negotiated between the parties for the purposes of this Call-Off Contract (e.g. they are not set by the Council, they are not publicly-available etc.). |
| Intellectual Property | The Discloser’s Intellectual Property   * Which it has separately developed. * Which is not in the public domain according to item 52.6(a). |
| Subcontractor, Personnel | Any information   * Relating to * Any Personnel of the Discloser, and/or * Any subcontractor appointed by the Discloser in connection with this Call-Off Contract * Disclosed or otherwise made available by the Discloser to the Recipient or to anyone acting on the Recipient’s behalf in connection with this Call-Off Contract. |
| Monitoring | Information of a confidential nature   * About the Discloser and/or its Affiliates (e.g. its financial condition, any significant incident, any prospective internal changes, its costs, etc.) * Given or made available to the Recipient from time to time * in connection with this Call-Off Contract * Whether in providing regular reports, at meetings, in the course of any inspection, audit or the like conducted by or on behalf of the Recipient, or otherwise. |
| Dispute resolution | Disclosures made in the course of any dispute resolution procedure described in section 88. |
| Provider Response | The contents of a genuinely confidential nature in the Provider Response. |
| Rules regarding how the information must be disclosed etc. to be considered the Provider’s Confidential Information under this Call-Off Contract |  |
| How the information must be disclosed or made or available to the Recipient | In any manner or in any medium (e.g. in writing, verbally, by observation at the Provider’s premises, contained in any device or material etc.)  But only in activities reasonably connected with this Call-Off Contract. |
| By whom must the information be disclosed or made available (according to item (a)) | It may be disclosed or made available by or on behalf of the Provider to the Council (and/or anyone acting on its behalf) |
| Whether the information must be labelled as ‘confidential’ (yes/no) | Not required. |
| A piece of information of the Discloser is not in any case Confidential Information of the Discloser if any of the following applies to that piece of information at the time |  |
| Public domain | * It is in the public domain from time to time * **Exception:** as a result of any breach of a duty of confidentiality owed by the Recipient under this Call-Off Contract. |
| Independently developed | The Recipient can reasonably prove it (or its Affiliates and/or their Personnel) had developed that information independently of its association with the Discloser. |
| Independently acquired | * The Recipient and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third party in circumstances unconnected with this 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. |
| Trivial | The information is of a trivial nature. |
| **The Recipient’s obligations:** the Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the Discloser in the possession of the Recipient from time to time To continue for the period indicated in item 52.8 |  |
| Non-disclosure (except to the extent permitted in in item 52.9) | The Recipient   * Must keep that Confidential Information strictly in confidence, and * Must not disclose it or make it available to third parties. |
| 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. * Without limiting the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser. |
| **Storage:** the Recipient (where it is the Provider) must store the Confidential Information as follows: |  |
| Reasonable standard | To a reasonable standard of security. |
| Comparable | In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality. |
| Comply with the Law | The Recipient must comply with relevant Law in relation to the keeping, disclosure or use of that Confidential Information. |
| Not to direct others | The Recipient must not direct or assist any person to do anything in breach of the rest of this item 52.7. |
| If Personnel breach | If any Personnel of the Recipient or those of its Affiliate or (if the Recipient is the Provider) any subcontractor directly or indirectly appointed by the Recipient does anything in breach of the rest of this item 52.7, the onus shall lie with the Recipient to prove it was not done at the direction of, or with the assistance of the Recipient. |
| **Period** of the Recipient’s obligations in item 52.7 in relation to each piece of the Discloser’s Confidential Information The later of the following |  |
| Agreed period | **3 years** from the earlier of the following   * The expiry date of this Call-Off Contract according to section 15; or * Any earlier termination date of this Call-Off Contract. |
| Other | Such longer period required by Law in relation to that piece of Confidential Information. |
| **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 52.7 |  |
| Consent | With the prior written consent of the Discloser, subject to the Recipient’s compliance with any conditions attached to that consent. |
| To any of the following |  |
| Personnel(subject to item 52.10) | To the genuine existing or prospective Personnel of the Recipient and/or its Affiliates. |
| Advisors etc.(subject to item 52.10) | 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. |
| CCG(subject to item 52.10) | The CCG, but only if the Council has indicated to the Provider before the Call-Off Contract is entered that the Call-Off Contract is also to be carried out for the benefit of the CCG. |
| Public body(subject to item 52.10) | Any public body authorised to review this Call-Off Contract. |
| Assignment, novation(subject to item 52.10) | Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of this Call-Off Contract. |
| Disputes(subject to item 52.10) | Relevant third parties engaged for the purpose of resolving disputes under section 88. |
| Third parties(subject to item 52.10) | Third parties described in item 92.2 who have rights under this Call-Off Contract for the purpose of advising them of their rights, powers and benefits under this Call-Off Contract. |
| Required by Law (subject to item 52.11) | To the extent the Recipient is required to disclose or make available the Confidential Information by Law, including without limitation to any of the following:   * A court or similar body. * A regulatory body. * A law enforcement body. * A stock exchange. * **If the Recipient is a public body in carrying out its normal public functions:** a genuine public auditor, the UK Parliament or other genuine public body, or as required under any FOI Act (as defined in section 53). |
| Rules regarding the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person indicated in item 52.9  * To the extent indicated in item 52.9 that this item 52.10 applies * All of the following |  |
| 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. |
| 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. |
| Separate confidentiality agreement | * The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms. * But only if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances. |
| 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 |  |
| Inform | The Recipient must inform the Discloser of the circumstances   * With sufficient detail and accuracy and * Promptly on becoming aware of the obligation to make the compelled disclosure. |
| Make person aware | The Recipient must make the person compelling the disclosures aware of the duty of confidentiality owed to the Discloser in relation to the relevant information. |
| Assist the Discloser to challenge | * The Recipient must provide the Discloser with reasonable and timely assistance on the Discloser’s request if the Discloser wishes to challenge the compelled disclosure. * The Discloser must reimburse the Recipient for the Recipient’s reasonable and sufficiently evidenced costs in providing that assistance. |
| Keep to minimum | The Recipient must keep such disclosures to the minimum it is compelled to disclose or make available. |
| Exceptions to this item 52.11 | * The rest of this item 52.11 does not apply If disclosure is required under any FOI Act. * This is covered in section 53. |
| Reporting breach of the Law etc. | Nothing in this 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. |
| Interpretation in relation to obligations to a Service User | The obligations under this section 52 owed to a Service User as a Discloser only apply to the Provider as a Recipient of the relevant Confidential Information, and not to the Council. |

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| **Freedom of information** |  |
| 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. |
| Each party (each of them a **‘FOI Party’**) which is subject to any FOI Act | * The Council. * The Provider, but only if it is a public authority which is subject to a relevant FOI Act. |
| **In relation to the FOI Party:** the extent to which the other 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, and is not binding on the FOI Party. |
| Consequences if the FOI Party receives a request for information under any FOI Act involving information of the other party (all of the following) |  |
| 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. |
| Extent to which the FOI Party is required to consult etc. | The FOI Party is not obliged under this Call-Off Contract to consult the other party or anyone else in relation to that request for information. |
| Consequence if the FOI Party does consult the other party and/or anyone else | The FOI Party is not obliged under this Call-Off Contract to have regard to the views of the other party and/or anyone else. |
| 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. |

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| **Announcements and publicity** |  |
| Restrictions on the Provider making announcements and/or giving publicity in connection with this Call-Off Contract(e.g. press releases, public circulars, interviews etc.) | * The Provider must not do so without the prior written consent of the Council. * The Council must not unreasonably withhold that consent. |
| Restrictions on the Provider and/or its Affiliate using any reference to the Council and/or its Affiliates (including use of its logos or other branding) in the publicity materials of the Provider and/or its Affiliate | * The Provider must not do so without the prior written consent of the Council. * The Council must not unreasonably withhold that consent. |

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| **Data protection - status as Controller** |  |
| Status of each party to this Call-Off Contract 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. * This section 55 applies to the Provider as a Controller of that Personal Data. |
| General obligations of the Provider in relation to Personal Data in its possession or control in connection with the Services in relation to which it is a Controller | * The Provider 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 affect this obligation. |
| For what the Provider must indemnify the Council and/or its Affiliate | All of the following   * For all Losses incurred by the Council and/or its Affiliate * As a result of any Claim made or threatened by any person * To the extent the Claim alleges any of the following by the Provider and/or anyone acting on its behalf in relation to the Personal Data in relation to which it is the Controller in connection with the Services * Any breach of the Data Protection Legislation (or other relevant Law relating to the holding and processing of that Personal Data). * Any other wrongdoing in relation to that Personal Data. |
| To what the indemnity in item 55.3 is subject | Section 68. |
| Handover obligations of the Provider | * The Provider shall comply with the reasonable directions of the Council regarding the handover of Personal Data described in item 55.1 * Held by or on behalf of the Provider * Relating to customers or the like of the Provider (including any Service Users described in item 7.1 and individuals associated with them, such as family members or representatives) who benefit from the Services. * The Provider must do so * Promptly on the request of the Council * Without further charge to the Council. * Such handover is to be to the Council or its nominee (e.g. a replacement provider) for the purposes of the continuation of the relevant services. |
| Interpretation | The definitions of **‘Controller’, ‘Processor’, ‘Data Subject’, ‘Personal Data’, ‘Personal Data Breach’** and **‘Protection Officer’** in the GDPR also apply to this Call-Off Contract. |

# **Monitoring**

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| **Record keeping** |  |
| Records which the Provider is required to keep under this Call-Off Contract | As indicated in the Service Specification or elsewhere in these terms and conditions. |
| Requirements of the Provider in keeping each record described in item 56.1 |  |
| For how long the Provider must keep the records described in item 56.1 | * For **7 years** from the date the record was created; or * Such longer or shorter period required by Law or these terms and conditions in relation to the record. * **Exception:** the Provider is not required to continue to hold records which the Council requires to be sent elsewhere (e.g. to the Council itself, or to another person). |
| How the Provider must keep those records | * According to any requirements in the Service Specification and the Care Plan. * In any case, to the standards required generally of the Provider in section 11. |
| Where the Provider must keep those records | * At any of its usual places of business in the United Kingdom; or * At such other locations for the genuine purposes of record storage in circumstances where the Provider can access those records in a timely manner if the Council requires it to do so according to this Call-Off Contract (e.g. in the Council exercising inspection rights). |

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| **Reporting by the Provider** |  |
| Regular reports which the Provider must supply the Council Indicated for each regular report   * The content required * The frequency with which the Provider must supply it to the Council * The due date by which the Provider must supply it to the Council * Any other requirement | As indicated in the Service Specification. |
| Circumstances where the Council may require reports **in addition** to the regular reports indicated in item 57.1 | The Council may do so (acting reasonably and proportionately and giving the Provider reasonable advance warning) where **any** of the following applies   * There has been a Material Breach of this Call-Off Contract by the Provider, even if it has been remedied. * There has been a persistent failure by the Provider to meet any of its obligations under this Call-Off Contract. |
| Format requirements of reports required under this section 57 | As directed by the Council from time to time, acting reasonably (e.g. completing any reporting template as required by the Council from time to time, acting reasonably). |
| How the Provider must provide reports to the Council | By e-mail to the Council’s Representative, or as the Council otherwise reasonably instructs. |
| General obligations of the Provider in relation to reports it is required to send under this section 57 | The Provider must ensure required reports are:   * Materially accurate; and * Not materially misleading (or reasonably likely to materially mislead) due to any inaccuracies or omissions. |

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| **Inspection** |  |
| **What may be inspected:** the Council may inspect any of the following in relation to this Call-Off Contract if it wishes to do so |  |
| Records | * Any records held by or on behalf of the Provider in any medium (e.g. hard copy, electronic) in connection with the Services. * These include any records which the Provider is specifically required to keep under this Call-Off Contract. |
| Systems etc. | Any system, ICT environment, process or the like relevant to the Services. |
| Activities | Activities in relation to the carrying out of any of the Services. |
| Minimum notice the Council must give before an inspection | At least **5 Business Days** prior notice.  **Exceptions** (any of the following):   * The Council 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.). * Shorter notice to the extent the Provider agrees (at its discretion). |
| Third parties who have the same rights of inspection under this section 58 | Any genuine auditor of the Council. |
| Obligations of the Provider if the Council requires an inspection (the Council having met the requirements in this section 58)  * The Provider must direct its relevant Personnel (including those of relevant subcontractors) * To give reasonable, proper and timely assistance to representatives of the Council in connection with the relevant inspection * And to give such assistance to relevant third parties described in item 58.3 * Including the following (without limitation) |  |
| Access | Ensuring access to relevant premises to representatives of the Council on a non-exclusive licence basis. |
| Making things available | Making relevant records or other items which the Council is permitted to inspect available for this purpose. |
| Providing facilities | Providing suitable facilities for the purposes of the inspection. |
| Providing explanations | Providing open and accurate explanations and discussions from relevant Personnel, as reasonably required by such representatives of the Council. |
| Subcontractors | Ensuring (on a reasonable endeavours basis) compliance with the rest of this item 58.4 by each such direct or indirect subcontractor insofar as an inspection is reasonably relevant to that subcontractor’s activities in connection with the Services. |
| Appointing third party representatives to conduct the inspection | * The Council may appoint genuine third party representatives professional advisors, contractors or the like to conduct an inspection on its behalf under this section 58. * But only with the prior written approval of the Provider, not to be unreasonably withheld. |
| The Council's right to take copies of records in the course of an inspection | It may do so, subject to reimbursing the Provider for its reasonable costs. |
| Right of the Council to remove original records or other property of the Provider and/or its Affiliates from the premises where they are usually kept | It may not do so except with the prior written consent of the Provider, at discretion. |
| How inspection costs are to be borne | Each party bears its own costs. |
| **Duration of inspection rights:** the inspection rights of the Council under this section 58 continue as follows | * For as long as the Provider is required to keep any records under this Call-Off Contract (see section 56), or the Provider holds any property of the Council and/or its Affiliates in connection with this Call-Off Contract. * Even if after the Provider is no longer carrying out any activities in connection with the Services. |

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| **Service User surveys** |  |
| How the Provider must conduct Service User surveys | As indicated in the Service Specification. |
| Frequency with which the Provider must conduct Service User surveys in the manner described in item 59.1 | As indicated in the Service Specification. |
| Assistance which the Council must provide the Provider to enable the Provider to carry out its obligations to carry out Service User surveys | As indicated in the Service Specification. |
| How the Provider must report the findings of Service User surveys it must carry out under this section 59(method, format etc.) | As indicated in the Service Specification. |
| Each due date by which the Provider must report its findings of Service User surveys it must carry out under this section 59 | As indicated in the Service Specification. |

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| **Keeping informed** |  |
| Events or circumstances on which the Provider must keep the Representative of the Council informed under this section 60In writing where reasonably practicableIn a proper and timely manner when the Provider first becomes aware of the matterThe Provider must keep the Representative (or other appropriate Personnel of the Council) informed in a proper and timely manner of significant progress of events as they occur in relation to the relevant matter |  |
| Unable to meet obligations | The Provider being unable to significantly meet its obligations in connection with the Services. |
| Slavery, trafficking | Any of the matters indicated in item 85.1(d) regarding any slavery and/or trafficking in the Provider’s organisation, and/or within its supply chain in connection with the Services. |
| Any event or circumstance (e.g. accident or other incident) relating to activities of the Provider or its subcontractors in connection with the Services which cause, or creating an unreasonable risk of causing any of the following |  |
| Harm to individuals | Death or serious personal injury or other serious harm to the Service User and/or to any other human being where the Provider knows (or reasonably ought to know) that human being is owed a duty of care by the Council, including any employee of the Council. |
| Damage to property | Loss, damage or the like to property supplied by the Council or the NHS to the Service User for purposes relevant to the Services (e.g. hoists). |
| Breach Law | The Council breaching any Law. |
| Duty of care | The Council breaching any duty of care it owes to any third party (whether under tort, contract, statute or otherwise) where the Provider knows (or reasonably ought to know) about the duty of care owed to that person. |
| Any event or circumstance to which both of the following apply |  |
| Who it affects | The event or circumstance affects the Provider, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with the Services. |
| Adverse publicity | If the event or circumstance were publicly known, it would create an unreasonable risk of serious, unjustified and unfavourable publicity to the Council and/or its Affiliates due to its association with the Provider. |
| Loss of Required Accreditation | Any of the following where relevant   * The Provider losing or having imposed on it any significant restrictions or conditions on, or being under a serious threat of losing or having imposed on it, any Required Accreditation which the Provider must have under section 26. * Any of the above in relation to any relevant subcontractor which the Provider has appointed in connection to the Services (to the extent relevant to its activities in connection with the Services). |
| In relation to Personnel | Any event or circumstance in relation to any Personnel of the Provider which would render the individual ineligible to be allocated to particular activities according to section 33. |
| Any of the following events or circumstances in relation to the Provider if he/she is a human being acting as a sole trader |  |
| Bankruptcy | His/her bankruptcy and/or  Any bankruptcy proceedings being commenced against him/her. |
| 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). |
| 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 this Call-Off Contract are to be carried out). |
| Any of the following events or circumstances in relation to the Provider if it is an entity other than a human being (e.g. a company) |  |
| Winding up | Any order of a court (or equivalent) being made or any resolution being passed requiring the Provider to be dissolved and/or wound up. |
| Appointments | The appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Provider and/or its assets. |
| Announcements | If the shares of the Provider are listed on a stock exchange, any profit warnings in relation to the Provider which are issued to that stock exchange. |
| Change in Control | Any change in Control of the Provider. |
| If the Provider is a company listed on a stock exchange from time to time | Any profit warning or the like which the Provider has issued to that stock exchange. |
| If the Provider is a consortium, partnership or the like, any of the following |  |
| Change | Any change in the composition of its membership. |
| Events affecting members | Any of the events or circumstances indicated elsewhere in this section 60 in relation to the Provider applies to any of its members individually. |
| Conflict | Any conflict of interest between the Provider (and/or its Affiliates and/or their Personnel) and the Council or its Affiliates. |
| Litigation | Any litigation, arbitration, adjudication or mediation proceedings before any court, arbitrator or any agency, inspectorate, ministry or public official or the like of any of these (whether local, national or supra-national) that is (on a reasonable view) likely to significantly and unfavourably affect its ability to carry out its obligations under this Call-Off Contract. |
| Investigations | Any non-routine investigation of the Provider by any regulatory or law enforcement body or the like (including the police) for any serious matter that is (on a reasonable view) likely to significantly and unfavourably affect its ability to carry out its obligations under this Call-Off Contract. |
| Stage 6 CQC notification | The Provider receiving a stage 6 formal notification (or the equivalent) from the CQC. |
| Corrupt Acts | Any breach by the Provider of section 87. |
| Representative | Changes to the Provider's Representative from time to time. |
| Other | As indicated elsewhere in this Call-Off Contract. |
| Whether this section 60 in itself limits the Provider's obligations to keep the Council informed | No. |

# **Issues outside the Provider’s control**

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| **Council Assistance** |  |
| Indicate any assistance which the Council is to provide the Provider to enable the Provider to carry out its activities in connection with the Services Each of them is ‘**Council Assistance’** | Only as indicated in the Care Plan and/or the Service Specification. |
| Steps the Provider must strictly follow if it wants any of the consequences in item 61.3 to apply if the Council fails to provide any particular Council Assistance according to the relevant requirements (e.g. deadlines) in item 61.1 | It must raise the matter as follows   * In writing to the Representative and/or the Escalated Person of the Council. * No later than **5 Business Days** from the day on which the Provider first became aware of the matter. |
| Consequences if the Council fails to provide any Council Assistance as required:  * All of the following to the extent relevant * To be read independently * These limit the rights and remedies of the Provider as a result of the failure by the Council |  |
| Right to relief | The Provider shall be relieved of its liability to any person with rights under this Call-Off Contract   * For failing to carry out any of its obligations under this Call-Off Contract * To the extent the Provider’s failure to carry out that obligation is substantially and directly caused by the Council’s failure to provide that Council Assistance.   The Provider must act reasonably to mitigate the delays caused by the Council’s failure (e.g. continue to provide Services not affected by the Council’s failure). |
| Whether delays substantially caused by the failure to provide the Council Assistance relieve the Council of its obligations to pay Charges indicated in section 16 | The Council is not liable to pay the Provider any Charges for Services not performed. |
| If the Council’s failure substantially and directly causes the Provider to fail to meet any Performance Standard in section 5 | The Provider shall be deemed to have met that Performance Standard for all purposes of this Call-Off Contract. |

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| **Definition of ‘Uncontrollable Circumstances’** |  |
| Each of following is to be considered to be an ‘Uncontrollable Circumstance’ for the purposes of this Call-Off Contract Each of them effectively a ‘force majeure’ event   * To the extent each of them is genuinely outside the Provider's reasonable control and * To the extent each of them directly and substantially disrupts the Provider's ability to meet its affected obligations under this Call-Off Contract |  |
| Required by Law | The Provider is required by Law to suspend any relevant obligations under this Call-Off Contract. |
| As required by the Council | * The Council requires the Provider to suspend the affected obligations, even if the Provider is willing and able to carry them out. * The Council must have reasonable grounds to impose this requirement (e.g. exercising any statutory or regulatory functions, safety issues, necessary closure of relevant premises, etc.). |
| Unsafe, impractical | On a reasonable view, it is seriously unsafe and/or seriously impractical for the Provider 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 these. |
| Personnel absence | At least **50%** of the Personnel usually allocated by the Provider to the affected activity (whether employees of the Provider or otherwise) is unable to come to work (and working from home is not reasonably practicable having regard to their duties) for a substantial continuous period due to reasons outside their control including without limitation any of the following:   * Severe weather, natural disasters, and security-related issues such as terrorism, war or civil unrest. * Illness affecting those Personnel. * Serious disruptions to transportation (e.g. public transport or petrol strikes). |

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| **Continuity plans** |  |
| Service continuity plans or the like which apply to this Call-Off Contract if any Uncontrollable Circumstance described in section 62 occurs | * The Provider must have a suitable service continuity plan relevant to the Services in place at all times. * The Provider must test that plan at regular intervals. * The Provider must supply the Council with a copy of the Provider’s up-to-date service continuity plan. The Provider must do so promptly on the Council’s reasonable request. |

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| **Uncontrollable Circumstances – consequences** |  |
| Purpose of this section 64 | To set out the consequences if any Uncontrollable Circumstance arises to reasonably prevent the Provider from carrying out relevant obligations under this Call-Off Contract. |
| **Suspension:** the following apply to the right or obligation of the Provider to suspend obligations under this Call-Off Contract as a result of relevant Uncontrollable Circumstances |  |
| Whether the Provider is **obliged to suspend** or simply **permitted to suspend** | * The Provider is only required to suspend the activity if it is required to do so by the Council under item 62.1(b) and/or by Law. * Otherwise, it is simply permitted to do so, and is not otherwise required to do so under this Call-Off Contract. |
| Obligation to communicate | The Provider must communicate its intention to suspend carrying out such obligations as follows   * To the Council’s Representative or (in any emergency) other suitable Personnel of the Council; and * In writing where reasonably possible. |
| If suspension is required by the Council under item 62.1(b) | * The Provider is not required to communicate the suspension under item (b). * The Provider must suspend carrying out those of its obligations in relation to this Call-Off Contract to the extent the relevant Uncontrollable Circumstance substantially and directly prevents the Provider or its subcontractors from otherwise carrying them out. * The Provider must not resume the affected activities until permitted to do so by the Representative of the Council. |
| Keeping informed | The Provider must keep the Council informed in a proper and timely manner of significant events or circumstances in relevant to the suspension of the relevant obligations. |
| Resumption | The Provider must resume the relevant activities promptly when it is no longer substantially and directly prevented from doing so under the relevant Uncontrollable Circumstance. |
| Consequences if the Provider suspends its obligations according to item 64.2  * All of the following * As relevant * To be read independently |  |
| Right to relief | The Provider shall be relieved of liability (all of the following)   * To any person with rights under this Call-Off Contract * For failing to carry out any of its obligations under this Call-Off Contract * To the extent those obligations are suspended under item 64.2. |
| Business or service continuity plans | The parties are to carry out their respective obligations under any service continuity plan or the like described in section 63, as follows (all of the following)   * In a proper, timely and lawful manner. * To the extent the service continuity plan imposes obligations on them when the relevant Uncontrollable Circumstance arises. * With proper regard to the safety and wellbeing of human beings who are reasonably affected, where appropriate to the relevant Uncontrollable Circumstance. * Bearing their own costs, except to the extent the Council is required to pay the Provider any additional Charges according to the service continuity plan or the like. |
| If the suspension of obligations substantially and directly causes the Provider to fail to meet any Performance Standard described in section 5 | The Provider shall be deemed to have met that Performance Standard for all purposes of this Call-Off Contract in relation to the relevant suspended activities. |
| Consequences for the Charges described in section 16 in relation to any part of the Services which is disrupted due to any Uncontrollable Circumstance | The Council is liable to pay the Provider the Charges for Services which the Provider has not provided but which were scheduled to be provided on the relevant day. |

# **Insurance**

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| **The Provider’s insurance requirements** |  |
| The Provider must have in place insurance of all of the following types  * To the minimum level indicated * With a reputable insurer |  |
| **Type of cover** | **Minimum level of cover required (per claim)** |
| Employers' liability | £5 million or such higher level required by Law. |
| Public liability | £10 million |
| Duration for which the Provider must ensure all of the insurance cover described in item 65.1 are in place | For as long as the Provider is providing any Services whatsoever under this Call-Off Contract. |
| Obligations of the Provider to provide evidence that the insurance cover required under this section 65 is in place | * The Provider must provide the Council with evidence that it has that insurance properly in place. * The Provider must do so promptly on the Council’s written request. That request must be made in good faith and not at unreasonable frequency. * Such evidence may include copies of insurance certificates, cover notes and/or a suitable letter from the Provider’s insurance broker. |
| Obligations of the Provider in relation to any subcontractor it appoints in connection with this Call-Off Contract | It must ensure the subcontractor has in place such cover that the Provider would be reasonably required to have in place under this section 65 if the Provider carried out the relevant activities in connection with this Call-Off Contract instead of that subcontractor. |
| Other obligations of the Provider in relation to the insurance cover required in this section 65 | The Provider must not   * Do anything; and/or * Fail to take reasonable action to do anything within its reasonable power; and/or * Assist or instruct anyone else to do or fail to do any of the above   that results in **any** of the following   * Such insurance cover being wholly or partly rendered void, voidable, suspended, vitiated, impaired or unenforceable (or the like of any of these). * Any amounts paid under claims properly made under that insurance cover being wholly or partly repayable. |
| Exemptions where the Provider (or its relevant subcontractor) is not required to have any particular insurance cover otherwise required in item 65.1 | * Only with the written consent of the Council. * Such consent cannot be unreasonably withheld where there are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements). |
| Consequences if the Provider does not have any of the insurance cover required in this section 65 at any time whilst it is required to have it in place according to this section 65 | * It shall be a Termination Default Event of the Provider. * Even if the Provider later obtains that insurance cover during that period. * This does not limit the rights and remedies of the Council. |

# **Liability issues**

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| **Liability of consortium members** |  |
| If a party is a consortium, partnership under the Partnership Act 1890, joint venture or the like: nature of the liability of its members in connection with this Call-Off Contract | Their liability is ‘joint and several’. |

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| **Provider indemnity for Claims** |  |
| For what the Provider must indemnify (and keep indemnified)  * The Council and * Its Affiliates and * Their respective Personnel | * For their respective Losses * In relation to any Claim made or threatened against the Council and/or its Affiliate and/or their respective Personnel * Where the person making the Claim is not the Council and/or its Affiliate * Including without limitation, Claims for death, personal injury or property damage, or the imposition of any fine or penalty or the like * To the extent the Claim relates to any of the matters described in item 67.2. * Subject to the rest of this section 67. |
| **Matters to which the indemnity described in item 67.1 applies:** any of the following acts or failures to act  * By the Provider (or by anyone acting on its behalf whom the Provider has directly or indirectly appointed including its Personnel or its appointed subcontractors) * In connection with this Call-Off Contract |  |
| Law | A breach of the Law by the Provider (or such other person acting on its behalf). |
| Negligence | Any act or failure to act by the Provider (or such other person acting on its behalf)   * To the extent it involves **the negligence of the Provider** (or that other person acting on its behalf) * **Against the third party claimant** described in item 67.1.   This includes (in particular) Claims for death or personal injury and/or property loss and/or damage by a third party to the extent caused by the negligence of the Provider (or such other person acting on its behalf). |
| Breach of Call-Off Contract | * Any act or failure to act by the Provider (or such other person acting on its behalf) * To the extent that act or failure to act by the Provider (or that other person acting on its behalf) against the third party claimant described in item 67.1 **would be a breach of this Call-Off Contract** if that act were done (or failed to be done) by the Provider against the Council directly. * This excludes delay or other failure by the Provider to pay amounts due to the Council under this Call-Off Contract. |
| Use of property | The unauthorised use and/or infringement of the property of the third party claimant described in item 67.1 by the Provider (or such other person acting on its behalf)  This includes without limitation:   * That third party claimant’s Intellectual Property; and/or * The supply of goods in connection with the Services in which that third party claimant has any property-related interest. |
| Misconduct | The deliberate misconduct of the Provider (or such other person acting on its behalf). |
| Other duty | A breach of any other duty which the Provider and/or its Affiliate owes that third party claimant (whether arising in tort, contract, statute or otherwise). |
| Exceptions to the indemnity described in this section 67 to the extent it is **given to the Council and its** Affiliate To the extent any of the following applies |  |
| Negligence etc. of the Council | To the extent the Losses were caused by the negligence or other wrongdoing of   * The Council and/or its Affiliates and/or their respective Personnel * Any other agents separately appointed by the Council and/or its Affiliates. |
| Contractual obligation, instruction etc. | To the extent the relevant act or failure to act by or on behalf of the Provider was significantly in compliance with   * Any specific requirement elsewhere in this Call-Off Contract; and/or * Any written instruction issued by the Representative of the Council (or any other member of its Personnel of at least equivalent status). |
| In relation to the use of property described in item 67.2(d) | Either of the following applies to the relevant property (including Intellectual Property where relevant)   * The property has been specifically licensed or leased to the Provider and/or its Affiliate (whether under this Call-Off Contract or otherwise); and/or * The Council and/or its Affiliate has specifically made the relevant property available for use by the Provider in connection with this Call-Off Contract. |
| To what the indemnity given by the Provider in this section 67 is subject | Section 68. |
| Whether the indemnity in this section 67 in itself limits the rights and remedies of the Council and/or its Affiliates and/or their respective Personnel | No. |

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| **Indemnities generally** |  |
| Application of this section 68 | This section 68 applies to any indemnity which one party (**'Indemnifier'**) gives to the other party and/or its Affiliate (**'Indemnity Beneficiary'**) under this Call-Off Contract (**'Relevant Indemnity'**). |
| Some rules of interpretation in relation to any Relevant Indemnity |  |
| Nature of obligation | The Indemnifier’s obligation to indemnify the Indemnity Beneficiary includes an obligation to keep the Indemnity Beneficiary indemnified. |
| Other rights and remedies | The Indemnifier’s obligation to indemnify the Indemnity Beneficiary shall not in itself limit the rights or remedies of the Indemnity Beneficiary or any other person (except to the extent otherwise clearly indicated). |
| How Relevant Indemnities are to be read | Independently of each other. |
| Consequence for any Relevant Indemnity when the Provider is no longer obliged to provide any Services whatsoever under this Call-Off Contract | Such events or circumstances do not in themselves affect any person’s rights or obligations in respect of that Relevant Indemnity. |
| **Exceptions:** the Relevant Indemnity is to be reduced to the extent any of the following applies |  |
| Cause of Losses | The Indemnity Beneficiary’s Losses were caused by the negligence or other wrongdoing by the Indemnity Beneficiary and/or its separate agents |
| How acting | The act or failure to act by the Indemnifier which has caused the Indemnity Beneficiary’s Losses was in compliance with the written instructions of the Indemnity Beneficiary (or those given by any other person acting on behalf of the Indemnity Beneficiary where the Indemnifier knew or had reasonable grounds to believe had authority to give those instructions on behalf of the Indemnity Beneficiary). |
| 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 |  |
| How the Indemnity Beneficiary must give the demand | Strictly according to section 93. |
| Deadline for payment by the Indemnifier to the Indemnity Beneficiary | **30 days** after having been given a demand for payment by the Indemnity Beneficiary. |
| Obligations of the Indemnity Beneficiary in relation to the Relevant Indemnity | * To take reasonable steps to mitigate such Losses to which the Relevant Indemnity relates. * **Exception:** to the extent this Call-Off Contract otherwise indicates it is not required to do so. |
| 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) |  |
| If the Indemnity Beneficiary has failed to give the Indemnifier written notice of the Claim within the following period of the Claim first being communicated to the Indemnity Beneficiary in writing | * **30 days** * This is a strict deadline. * If the Relevant Indemnity covers a threat of a Claim, the Relevant Indemnity does not cover the Indemnity Beneficiary’s Losses incurred before the notice is given. * The relevant notice of the Claim must be given strictly according to section 93. |
| 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 |  |
| 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. |
| Consent from third parties | The parties must obtain all necessary consent from insurers and/or other arm’s length third parties. |
| Costs | The Indemnifier must bear all costs of that defence. |
| 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. |
| 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. |
| Not bringing the Indemnity Beneficiary’s name into disrepute etc. | * The Indemnifier must not do anything (without good reason) to bring the name of the Indemnity Beneficiary into disrepute in the course of conducting the defence. * The Indemnifier must not assist or instruct another person to do so. |
| Indemnity Beneficiary’s assistance with the defence | * The Indemnity Beneficiary must give the Indemnifier reasonable and timely assistance with the defence of the Claim if reasonably requested in writing by the Indemnifier. * **Examples:** such assistance may include (without limitation and as relevant) provision of relevant information, subject to relevant persons accepting reasonable confidentiality obligations. |
| Reimbursement of costs | The Indemnifier must reimburse the Indemnity Beneficiary for the following reasonable and sufficiently evidenced costs which the Indemnity Beneficiary incurs in connection with the defence:   * The Indemnity Beneficiary’s third party disbursements, including external professional costs * The time and effort of the Indemnity Beneficiary’s Personnel in providing that assistance, at **£50 per hour plus VAT**. |
| Indemnity Beneficiary has failed to defend or settle | * The Indemnity Beneficiary has failed to take reasonable and timely action to defend or settle the Claim if so reasonably requested by the Indemnifier in writing. * This applies if the Indemnifier has not taken control of the defence of the Claim for any reason. |
| Harmed defence of Claim | The Indemnity Beneficiary and/or its Affiliate and/or their respective Personnel has done any act to substantially harm the Indemnifier’s prospects of defending the Claim including (without limitation):   * Admitting liability, or * Attempting to settle the Claim.   **Exceptions:** any of the following:   * To the extent that act is authorised by the Indemnifier in writing (at its discretion). * To the extent that act is required by Law. |
| Other compensation | To the extent the Indemnity Beneficiary has received any payment or other benefit (e.g. discount, saving, credit etc.) in relation to the third party Claim. |
| No double recovery: a party to this Call-Off Contract which is not the Indemnifier (**‘X’**) must refund to the Indemnifier  * Any amount paid by the Indemnifier to X and/or its Affiliate and/or its Personnel (as the relevant Indemnity Beneficiary) * If that relevant Indemnity Beneficiary and/or its Affiliate receives any amount or other benefit (e.g. discount, saving, credit etc.) * From another source (e.g. proceeds from an insurance claim, or a claim against a third party) in relation to the same event or circumstance * Subject to the following |  |
| Maximum to be refunded | X is not obliged to refund any amount greater than the amount paid by the Indemnifier to the Indemnity Beneficiary in relation to that particular Relevant Indemnity. |
| Keeping informed | X must inform the Indemnifier in writing (and make payment of the relevant refund) promptly on receipt of the payment from that other source. |
| Extent to which X is under any duty to the Indemnifier to seek such payment from that other source | X:   * Must use reasonable endeavours to do so; or * Must cause its Affiliate or Personnel to do so, where relevant, and to the extent it is in X’s power to do so   In a reasonably proper and timely manner (at the Indemnity Beneficiary’s own cost). |

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| **Caps on the liability of the Provider** |  |
| Purpose of this section 69 | To set out the caps of the liability of the Provider in connection with this Call-Off Contract.  All such caps of the Provider’s liability:   * Do not limit the exclusions of the Provider’s liability in section 71. * Are subject to the exceptions in section 72. * Are to be interpreted according to item 73. |
| Cap on the liabilities of the Provider described in item 73.1 which are reasonably expected **to be covered by insurance** which the Provider is required to have under section 65 (according to the usual terms of insurance policies of the relevant types required in section 65) | To the level of the insurance cover which is relevant to the particular liability as required in section 65. |
| If the Provider is exempt from having the insurance required in item 65.1 according to item 65.6 | For the purposes of item 69.2, the cap applies as if the exemption were not given according to item 65.6 (i.e. as if the Provider had the insurance required in item 65.1). |
| Cap on the liability of the Provider for liabilities described in item 73.1 which are not covered elsewhere in this section 69 | For each calendar year of this Call-Off Contract, to **125%** of the Charges (including VAT) that would be payable by the Council to the Provider in that calendar year on the assumption that the Call-Off Contract continued for that full calendar year and on the assumption that the Services were provided as required in that calendar year. |

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| **Caps on the liability of the Council** |  |
| Purpose of this section 70 | To set out the caps of the liability of the Council in connection with this Call-Off Contract.  All such caps of the Council’s liability:   * Do not limit the exclusions of the Council’s liability in section 71. * Are subject to the exceptions in section 72. * Are to be interpreted according to item 73. |
| Cap on the liability of the Council for liabilities described in item 73.1Which are not covered elsewhere in this section 70 | * The Council does not have any duty of care to the Provider or its Personnel in relation to the Provider carrying out the Services under the Call-Off Contract. * In light of the above: * The Council expects the Provider to carry out such due diligence as the Provider regards as necessary to carry out the Services. * The Council’s cap on liability to the Provider under the Call-Off Contract is **£100.00 per calendar year of the Call-Off Contract**. * The parties consider this reasonable having regard to the low level of the duty of care which the Council owes to the Provider in connection with this Call-Off Contract. |

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| **Exclusion of liability** |  |
| Purpose of this section 71 | To set out the **full exclusion** of the liability of the respective parties in connection with this Call-Off Contract.  All such exclusions of liability:   * Are subject to the exceptions in section 72. * Are to be interpreted according to item 73. |
| The liability of the Provider  * Is excluded * To the extent any of the following applies | For any losses, costs or damages incurred by the Council and/or anyone else to whom the Provider owes any duty under this Call-Off Contract   * To the extent caused by **any act or failure to act** by the Provider; **and** * To the extent that act or failure to act was in compliance with any instructions given by the Council, whether in this Call-Off Contract or otherwise. |
| Liability of each party in connection with this Call-Off Contract is excluded for all of the following |  |
| Indirect, consequential | Special, indirect or consequential loss or damage |
| Profits | Loss of actual or anticipated profits (including loss of profits on contracts) |
| Opportunity | Loss of opportunity |
| Reputation etc. | Loss of reputation or goodwill |
| Use of money etc. | Loss of use of money or other property |

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| **Exceptions to caps and exclusions of liability** |  |
| The caps and exclusions of a party’s liability indicated elsewhere in this Call-Off Contract  * Do not apply and shall not be taken into account in calculating any caps on its liability * To the extent the liability relates to any of the following (each of these is to be read independently) |  |
| Death etc. | Death or personal injury caused by the negligence of that party. |
| Deliberate | * That party’s deliberate act or deliberate failure to act. * A party shall be regarded as having deliberately acted or failed to act where that act as done (or failed to be done) where there is reasonable evidence that the act was done (or not done) under the instruction of that party’s Representative and/or any other member of its senior management. * This shall not include that party attempting to give a notice in connection with this Call-Off Contract in good faith where that attempt is later held by a court or the like to be (as a technicality) an anticipatory, repudiatory or similar breach by that party. |
| Fraudulent misrepresentation | That party’s fraudulent misrepresentation. |
| Provider’s subcontracting – consent | In relation to the liability of the Provider, the liability of the Provider relates to any act or negligent failure by a subcontractor   * Where that subcontractor has been appointed directly by the Provider, or indirectly by any such subcontractor (or any intermediary subcontractors) * Where **all** of the following apply: * The act or negligent failure is in connection with the Services. * The Provider was required under section 48 to obtain the Council’s consent to the appointment of that subcontractor. * Either of the following applies, as relevant * The Provider failed to seek such consent; or * The Provider sought such consent, and the Council refused consent to that subcontractor, in writing and with reasonable grounds. |
| Provider’s subcontracting – removal | In relation to the liability of the Provider, its liability of the Provider relates to any act or negligent failure by a subcontractor   * Where that subcontractor has been appointed directly by the Provider, or indirectly by any such subcontractor (or any intermediary subcontractors) * Where **all** of the following apply: * The act or negligent failure is in connection with the Services. * The Council had required the removal of the subcontractor under and in accordance with section 49. * The Council had reasonable grounds to request that removal. * The Council had not permitted the reinstatement of the subcontractor according to item 49.5. |
| Indemnities for third party Claims | * Any indemnity that party gives under this Call-Off Contract for third party Claims. * **Exception where the exclusion of liability of the Provider still applies:** in relation to exclusion of liability to the extent item 71.2 (in relation to complying with instructions of the Council) applies. |
| Specific debts | * Specific debts arising under or in connection with this Call-Off Contract including interest accruing on any such debts. * **Examples:** Charges under section 16. |
| Elsewhere in this Call-Off Contract | As indicated elsewhere in this Call-Off Contract. |
| Not permitted by Law | Anything else to the extent liability cannot be capped and/or excluded by Law. |

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| **Caps and exclusions of liability – interpretation** |  |
| Interpretation of caps and exclusions of the liability of a party (**‘X’**) in  * Section 69 (caps on the liability of the Provider) and * Section 70 (caps on the liability of the Council) and * Section 71 (exclusion of liability). | * They apply to X’s liabilities of any kind in connection with this Call-Off Contract. * Regardless of whether the liability arises in tort, contract, under statute or otherwise. * Any cap on X’s liability is to be aggregated between * The liability X owes to the other party; and * The liability X owes any third party under this Call-Off Contract. |

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| **Apportionment of liability** |  |
| Apportionment where the loss of party (‘**X’**) is only partly due to the fault of the other party (**‘Y’**) | Where X’s losses in particular circumstances relevant to this Call-Off Contract   * Are partly caused by the fault of Y and/or anyone acting on Y’s behalf (whether in tort, contract, under statute or otherwise); and * Are partly due to other factors (including X’s own acts and failures to act),   Then the liability of Y to X for compensation or the like shall be reduced fairly and proportionately to reflect the extent to which Y’s act or failure to act contributed to causing X’s losses. |

# **Making changes**

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| **Change process requested by the Council** |  |
| Definition of a **'Council Change'** | A change to the Service Specification requested from time to time by the Council according to this section 75. |
| Whether the Council may include a reduction in the scope of the Services in a Council Change under this section 75Indicate yes/no | It may do so. |
| **First step** if the Council wishes to propose a Council Change: The Council must give the Provider a notice proposing the Council Change (**'Council Change Notice’**) which must contain all of the following minimum contents |  |
| Description of Council Change | A description of the proposed Council Change in sufficient detail to allow the Provider to properly evaluate and respond to the Council Change Notice. |
| A request for the Provider to supply the Council with at least one of the following as relevantBy the deadline described in item 75.4To be given as a notice strictly according to section 93 |  |
| Change Estimate | A **‘Change Estimate’** meeting the requirements in item 75.5. |
| If the Change Estimate cannot be provided by the relevant deadline | An estimate (made with due care and in good faith) of the estimated due date on which the Change Estimate can be provided, on the understanding the Provider is to use reasonable endeavours to provide it promptly. |
| Deadline for the Provider for the purposes of item 75.3(b) | **30 days** after the Council Change Notice is given (or such longer period indicated in the Council Change Notice). |
| Requirements of the Change Estimate in relation to the proposed changes**Excluding** those the Provider has properly refused according to this section 75 |  |
| Writing | It must be in writing. |
| Preparation | It must be compiled with due care and in good faith. |
| Minimum contents | It must contain the minimum contents described in item 75.6. |
| Minimum contents of the Change Estimate All of the following |  |
| Estimate of change | A genuine estimate of the impact proposed changes on this Call-Off Contract, particularly on the financial arrangements between the parties, and the Services (e.g. the Service Specification and the Care Plan, deadlines etc.). |
| Implementation proposal | The Provider’s proposal in implementing the relevant proposed changes, including its relevant methods and time periods required. |
| The extent to which the Provider requires any of the following to implement the relevant proposed changes (describing the nature of the requirement in sufficient detail) |  |
| Subcontractor | The assistance of any subcontractor. |
| Council Assistance | Any additional Council Assistance for the purposes of item 61.1. |
| Consents | Any consent of any arm’s length third party, including any regulatory approval. |
| Extension | Any extension of any deadline otherwise applying to this Call-Off Contract. |
| Relief | Any other relief from its obligations under this Call-Off Contract (e.g. relief from standards to which the Services are to be provided). |
| Amendments | A genuine proposal of amendments to this Call-Off Contract reasonably required as a result of the proposed change. |
| Grounds on which the Provider may refuse a requested Council Change (in full or part) which the Council has requested in a particular Council Change Notice:ONLY if at least one of the following applies |  |
| The requested change involves activities to which any of the following applies |  |
| Outside normal business | The activities are not sufficiently connected with the Provider’s normal business activities at the time. |
| Outside scope etc. | The activities are not sufficiently within the scope, nature and/or risk profile of the Services. |
| If the Provider took reasonable steps to implement the change the Council has requested, it would result in (or create an unreasonable risk of resulting in) any of the following |  |
| Law | The Provider and/or a relevant subcontractor being in breach of the Law. |
| Required Accreditation | The Provider and/or a relevant subcontractor breaching any Required Accreditation which the Provider and/or that subcontractor is required to hold according to section 26. |
| Personnel requirements | Any Personnel of the Provider involved in the Services breaching any requirements he/she is required to meet under section 33 having regard to the nature of his/her activities in connection with the Services. |
| Standards | The Provider and/or a relevant subcontractor breaching any standards applicable to the Provider according to good industry or professional practice, professional or industry codes of conduct or the like. |
| Death, personal injury | Death or personal injury to any individual to whom the Provider and/or a relevant subcontractor owes a duty of care. |
| Risk to property | Loss or damage to any property of the Provider and/or a relevant subcontractor or that of any other person to whom the Provider and/or that subcontractor owes a duty of care. |
| Council Change Notice is insufficient | The Council Change Notice does not describe the proposed Council Change with sufficient clarity and detail to reasonably enable the Provider to respond. |
| Procedure the Provider must follow if it wishes to partly or fully refuse the proposed Council Change: The Provider must give the Council a notice indicating such refusal according to the following |  |
| As a notice | The notice must be given strictly according to section 93. |
| Parts refused | If refusal only applies to part of the proposed Council Change, the notice must indicate reasonably clearly the part being refused. |
| Reason for refusal | The notice must clearly indicate in sufficient detail the reasons for refusal, being at least one of the grounds indicated in item 75.7. |
| Deadline | The Provider must give the Council the notice no later than the deadline indicated in item 75.4. |
| **Next step – a meeting:** if the Provider gives the Council a notice described in item 75.8, the following apply |  |
| Obligations regarding a meeting | The parties shall direct their respective Representatives to meet as soon as reasonably practicable after the Council receives the Change Estimate to discuss the proposed changes and the matters indicated in the Change Estimate. |
| Purpose of the meeting described in item (a) | To attempt to agree relevant amendments required to this Call-Off Contract, taking into account the matters described in item 75.10. |
| Matters to be taken into account for the purposes of the meeting described in item 75.9 All reasonable and relevant matters, including the following, without limiting the reasonable and relevant grounds which may apply at the time |  |
| Necessity of the changes to ensure compliance with the Law | The extent the proposed changes are necessary to ensure the Council and/or the Provider complies with any Law introduced or amended after the execution date of this Call-Off Contract. |
| Change Estimate | Matters raised by the Provider in the Change Estimate, acting reasonably and in good faith. |
| Evidence certain changes are kept to a minimum | Reasonable evidence provided by the Provider that it has used reasonable endeavours to keep to a reasonable minimum any amendments to this Call-Off Contract resulting from the proposed changes to the extent such amendments are unfavourable to the Council. |
| Continuous improvement | Any suggested improvements raised by the Provider in any report it supplied under the ‘continuous improvement’ requirements in the Framework Agreement. |
| Good value for money | * Reasonable evidence provided by the Provider that it is giving good value for money for implementing the proposed changes having regard (without limitation) to amendments to this Call-Off Contract. * This may include, where relevant and without limitation, evidence of competitive quotes from subcontractors and other suppliers. |
| What happens when the Council and the Provider reach agreement on the proposed change (all of the following) |  |
| Execute documents | The Council and the Provider must promptly execute all such documents to amend this Call-Off Contract to properly reflect that agreement. |
| Deadline for the Council to execute relevant documents reflecting agreement to the proposed changes | * **30 days** of the documents being properly presented, or such longer period agreed in writing by the Provider. * The Provider shall not unreasonably withhold consent to any request by the Council for an extension to this deadline. |
| If the Council (through no fault of the Provider) fails to execute such documents that properly reflect that agreement by the deadline indicated in item 75.11(b) | The Council shall be deemed to have withdrawn its request for the relevant proposed changes. |
| Consequence of withdrawal of the request in relation to a proposed Council Change | It shall not in itself prevent the Council from later recommencing the procedure in relation to the same (or any other) proposed changes. |
| Consequences if the parties cannot agree on the proposed Council Change | It is a Relevant Dispute for the purposes of section 88. |

# **Various default issues**

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| **Required Suspensions** |  |
| Action which the Council may take if and for as long as any of the circumstances in item 76.2 applies to the Provider  * Any of the following * Such action is a **‘Required Suspension’** action | The Council may suspend the Provider from carrying out any of the Services under this Call-Off Contract. |
| **Circumstances when the Council may impose the Required Suspension on the Provider:** if and for as long as any of the following applies  * Not to limit the Council’s right to do so elsewhere in this Call-Off Contract * This is the Council’s right to suspend the Provider. It does not impose any obligation on the Council to do so |  |
| Material Breach | If (and for as long as) the Provider is remedying a Material Breach of this Call-Off Contract for the purposes of item 78.2. |
| Loss of Required Accreditation | The Provider loses any Required Accreditation described in section 26. |
| InvestigationsIf and for as long as all of the following apply |  |
| Non-routine investigation | The Provider is subject to any significant, non-routine investigation   * By any regulatory or law enforcement agency (e.g. the police, the Council in exercise of any regulatory function etc.); and/or * By the Council in relation to any serious safeguarding issues affecting the Services and involving Personnel of the Provider and/or its subcontractors. |
| To what the investigation relates | That investigation may relate to the Services and/or to other unrelated business activities of the Provider and/or its Affiliates, whether in the UK or elsewhere. |
| Risks to the Council if it did not require suspension of the Services | If the Council did not require the Services to be suspended, there would be an unreasonable risk of any one or more of the following:   * Serious harm to any individual. * Serious adverse consequences for any person’s property. * The Council and/or its Affiliate breaching any genuine arm’s length duty of care to another person. * The good name of the Council and/or its Affiliate being brought into serious disrepute without good reason. * Serious, unjustified and unfavourable publicity to the Council. |
| Whether the Council may extend the Required Suspension to other parts of the Services which are not affected by the relevant circumstances described in item 76.2 (yes/no) | The Council may not do so. |
| Consequences of the Required Suspension of any of the Services under this section 76 on the following |  |
| On Charges in section 16 | The Council is not liable to pay the Provider for Services not provided. |
| For the rest of this Call-Off Contract (e.g. deadlines, service standards, etc.) | The Provider is not in breach of contract for failure to provide the relevant Services to which the Required Suspension relates. |
| For how long the Council is entitled to require the Services (or relevant part) to be suspended under this section 76 | Only for as long as at least one of the circumstances in item 76.2 continues to apply. |
| How the Council exercises its rights to require the Services (or relevant part) to be suspended under this section 76 | * By communicating the matter in writing to the Representative of the Provider. * The Council is not required to comply with the formalities for notices indicated in section 93. |

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| **Action Plans** |  |
| Definition of a **‘Action Plan’** | A plan in writing which   * Is requested by the Council if any of the breaches by the Provider as described in item 77.2 occurs * Is prepared by the Provider for the approval of the Council according to this section 77. * Sets out the obligations of the Provider to remedy the Provider’s breaches of the type described in item 77.2. |
| Breaches of this Call-Off Contract by the Provider which allow the Council to give the notice described in item 77.3 | * Any breaches. * This includes the Provider’s CQC rating falling below the requirement in item 26.1. |
| When the Provider must prepare an Action Plan | When the Council gives the Provider a notice which   * Must be given strictly according to section 93. * Must indicate reasonably clearly the relevant breaches of the kind described in item 77.2 to which the notice relates. * Must indicate that the Council requires the Provider to provide an Action Plan which addresses the relevant breach indicated in the notice. * Must indicate a reasonable deadline for remedying the relevant breaches. |
| Consequences if the Council gives the notice described in item 77.3 |  |
| An Action Plan | The Provider must give the Council an Action Plan. |
| Minimum content requirements of the Action Plan(all of the following) | * Steps the Provider proposes to take to do the following, as relevant * **If the Provider’s breach of this Call-Off Contract is continuing:** to remedy that breach, and * **In any case:** to prevent the relevant breach from occurring in future. * A proposed deadline by which the Provider is to complete the proposed steps. |
| Deadline by which the Provider must give the Council the Action Plan | Either   * **7 days** from the date the notice described in item 77.3 is given. * Such longer period indicated in the notice. * As extended by agreement with the Council in writing, subject to item (d). |
| The Council must not unreasonably refuse a request from the Provider for an extension where all of the following apply: | * The request is made in writing * The request is made before the above deadline. * The extension is reasonably necessary due to circumstances genuinely outside the Provider’s control. |
| Obligations of the Provider in relation to the Action Plan when the Provider has submitted the Action Plan(all of the following) | * The Provider must carry out its obligations in the Action Plan. * The Provider must complete those obligations by any relevant deadlines required in the Council’s notice indicated in item 77.3. |
| Right of the Provider to an extension to the deadline to complete its obligations in the approved Action Plan | The Council shall not unreasonably refuse   * Any reasonable and proportionate request by the Provider to **extend any deadlines in the Action Plan** * Issued to the Council * In writing in a timely manner * If delays to completing the Provider’s obligations in the Action Plan are substantially and directly caused by events or circumstances outside the Provider’s reasonable control. This includes any failure by the Council to carry out its obligations (if any) in the Action Plan in a proper and timely way. |
| Who bears the Provider’s costs in carrying out its obligations in the approved Action Plan | The Provider shall bear its own costs in carrying out its obligations in the Action Plan. |
| Whether the Provider’s failure to properly complete its obligations under the approved Action Plan by the deadline required in the notice given by the Council under item 77.3 (if and as that deadline is extended) is a **Termination Default Event of the Provider**(yes/no) | Yes. |
| Extent to which anything in this section 77 in itself limits the rights and remedies of the Council in relation to any breach by the Provider described in item 77.2 | Nothing in this section 77 limits the rights and remedies of the Council in connection with that breach including without limitation:   * Any right to treat the failure as a Termination Default Event of the Provider if it becomes a Material Breach; and * Any right to claim any credit, compensation or the like of any of these. |

# **Early termination**

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| **Provider Termination Default Events** |  |
| Each of the following is a Termination Default Event of the ProviderTo be read independentlyFor as long as the relevant circumstances continue to apply to the Provider |  |
| **General breaches** |  |
| Material Breach not capable of being remedied | * The Provider is in Material Breach of this Call-Off Contract. * On a reasonable view, that Material Breach is **not capable of being remedied** by the Provider. |
| Material Breach capable of being remedied | All of the following must apply   * The Provider is in Material Breach of this Call-Off Contract. * On a reasonable view the Material Breach is capable of being remedied by the Provider. * For as long as the Provider has still not remedied the Material Breach * To the reasonable satisfaction of the Council * At the Provider’s own cost * More than **7 days** after the Council has requested the Provider to do so (or such longer period as the Council permits, acting reasonably having regard to the circumstances such as the nature of the Material Breach).   The Council must have issued its request by notice given strictly according to section 93.  The Council shall not unreasonably refuse consent to a written request by the Provider to an extension of the above deadline if there are delays to the Provider remedying the Material Breach which are significantly due to factors outside the reasonable control of the Provider. |
| Termination of another Call-Off Contract | Termination by the Council and/or its Affiliate of **another call-off contract** then held by the Provider and/or its Affiliate in connection with the Framework Arrangement or the Patch Arrangement due to a Termination Default Event of the Provider under that other call-off contract. |
| Failure to complete obligations under Action Plan | For as long as the Provider still has not yet fully completed its obligations in the Action Plan indicated in section 77:   * Properly according to the requirements of the Action Plan; and * After the expiry of the deadlines (if any) indicated in the Action Plan (if and as extended) * But only if item 77.8 indicates that this is a Termination Default Event of the Provider. |
| Failure to pay debts | If and for as long as the Provider has still not yet fully paid the following:   * Any overdue debt owed to the Council or its Affiliate * Within **14 days** of being demanded to do so * Whether or not that debt is connected with this Call-Off Contract * Subject to rights of set off, deduction or counterclaim which the Provider has in relation to that debt (if any) * But only where that overdue debt is not subject to a genuine dispute which the Provider is using reasonable endeavours in good faith to attempt to resolve. |
| Promised Subcontractor | In the circumstances described in item 47.3. |
| Insurance | * The Provider does not have in place the insurance cover required in section 65 at any time while the Provider 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 65.7. |
| **General misconduct** |  |
| Serious misconduct | * The Provider has engaged in serious misconduct * Such misconduct includes without limitation * The Provider’s involvement in a serious public scandal (whether or not in connection with this Call-Off Contract) * Where a reasonable person would not expect the Council to continue a commercial relationship of this kind with the Provider. |
| Misconduct in competitive exercise: the Provider has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Council in awarding to the Provider the contract to which this Call-Off Contract relatesRegardless of whether the misconduct occurred with the knowledge of the Provider’s senior managementIncluding the following without limitation |  |
| Collusion | Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders. |
| Corrupt Act | Doing any act in connection with that competitive exercise that would breach section 87 in relation to Corrupt Acts if that act were done after this Call-Off Contract is entered. |
| Canvassing | Engaging in any canvassing activity. |
| Modern slavery and trafficking | Breaches by the Provider which are to be a Termination Default Event of the Provider according to item 85.2 in relation to modern slavery and trafficking. |
| Corrupt Act | * The Provider’s breach of section 87. * But only if item 87.3 indicates that this is a Termination Default Event of the Provider. |
| **About the Provider** |  |
| Loss of Required Accreditation | The Provider ceases to hold any Required Accreditation which it is required to have under item 26 as follows   * **If the Provider is required by Law to hold that Required Accreditation to provide any of the Services:** this shall be a Termination Default Event of the Provider even if the Provider later acquires that Required Accreditation. * **Otherwise:** this shall be a Termination Default Event only for as long as the Provider has failed to acquire that Required Accreditation. |
| Disposal of assets etc. | * The Provider ceases to have title and/or possession to its business and/or other assets; and * On a reasonable view, this creates an unreasonable risk of the Provider being materially unable to carry out its obligations under this Call-Off Contract. |
| Change in Control | Where all of the following apply:   * The Provider is a company with share capital. * There is a change in the majority underlying Control of the Provider. * That change in Control is not the result of the purchase of shares in the Provider on a public stock exchange. * The Council has raised objections (with reasonable grounds) to that change in Control as follows * By notice given strictly under section 93. * Not later than **30 days** of having first been sufficiently informed of the change in Control. * For this purpose, the Council shall not be regarded as being sufficiently informed of the change if the Council has raised genuine questions and/or requests for further information with the Provider about the change. |
| In relation to the Provider’s capacity as a human being operating as a sole trader |  |
| Bankruptcy | The Provider becomes bankrupt. |
| Certain convictions | The Provider 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). |
| Death | The Provider dies. |
| Significant disability | The Provider suffers total and permanent disability. |
| Mental Health Act (if the Provider is a human acting as a sole trader) if relevant | The Provider becomes a patient within the meanings of sections 94(2) or 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Provider in his/her relevant jurisdiction. |
| Certain appointments (if the Provider is not a sole trader – e.g. a company) | The Provider is subject to a court order (or equivalent) or a resolution requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Provider and/or its assets. |
| Right to operate | The Provider is not permitted to operate in the UK, if a physical presence in the UK is reasonably necessary to enable the Provider to meet its obligations under this Call-Off Contract. |
| Stage 6 CQC notification | The Provider receives a stage 6 formal financial notification (or the equivalent) from the CQC. |
| Winding up (if the Provider is not a sole trader – e.g. a company) | * The Provider is subject to a court order (or equivalent) or a resolution requiring the Provider to be dissolved and/or wound up. * **Exception:** in relation to a genuine solvent reconstruction where * The replacement entity agrees in writing to become legally bound to the obligations of the Provider under this Call-Off Contract. * The replacement entity accepts in writing liability for the liabilities of the Provider in connection with this Call-Off Contract. * The replacement entity (and/or any third party guarantor it wishes to propose at the time) has at least equivalent financial standing as that which the Provider had at the date of this Call-Off Contract. * The replacement entity has the same underlying majority controlling ownership as the Provider. |
| Unable to pay debts | * If and for as long as the Provider is unable to pay its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law, including section 123 of the Insolvency Act 1986. * This applies whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time) as they fall due, and the Provider has no reasonable prospect of paying such debts. |
| Composition with creditors | If and for as long as the Provider is a party to a composition or other similar arrangement with its creditors, including any voluntary arrangement within Part I of the Insolvency Act 1986. |
| **Third party guarantee (e.g. parent company guarantee)** |  |
| If the liabilities, obligations etc. of the Provider in connection with this Call-Off Contract are subject to any guarantee by a third party, both item (a) and item (b) apply |  |
| Any of the following events or circumstances applies to the guarantor |  |
| If the guarantor is a human being | Any of the following applies to him/her   * He/she dies. * He/she becomes a patient within the meanings of sections 94(2) or 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Provider in his/her relevant jurisdiction. * He/she becomes bankrupt. * He/she receives a prison sentence. |
| If the guarantor is an entity other than a human being (e.g. a company) | * The guarantor is subject to a court order (or equivalent) or a resolution requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the guarantor and/or its assets. * The guarantor is subject to a court order (or equivalent) or a resolution requiring the guarantor to be dissolved and/or wound up. |
| Unable to pay debts | The guarantor is unable to pay its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law   * As they fall due, and the guarantor has no reasonable prospect of paying such debts. * Whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time |
| Composition with creditors | The guarantor enters into a composition or other similar arrangement with its creditors. |
| Moratorium | If the guarantor is a ‘small company’ under section 382(3) of the Companies Act 2006: if and for as long as a moratorium (or any equivalent in its relevant jurisdiction) is in force under Schedule A1 of the Insolvency Act 1986. |
| Failure to pay debts | The guarantor has failed to pay the following:   * Any overdue debt owed to the Council or its Affiliate * Within **14 days** of being demanded to do so * Whether or not in connection with this Call-Off Contract * But only where that overdue debt is not subject to a genuine dispute which the guarantor is using reasonable endeavours in good faith to attempt to resolve. |
| If the guarantor is a partnership, consortium or the like | Any of the above events or circumstances applies to any of its members. |
| Failure to provide a replacement: the Provider has failed to provide the Council with a replacement guarantee as follows |  |
| Strict deadline by which the Provider must provide the Council with the replacement guarantee | No later than   * **14 days**, or * Such longer period permitted in writing by the Council, at its discretion.   After the relevant event or circumstance described in item (a) occurs or first arises. |
| Whether the approval of the Council is required to the proposed replacement guarantee | * Yes, to be given in writing, * The Council may not withhold that approval unless at least one of the circumstances in item (a) applies. |
| Where the Council may withhold approval of the proposed replacement guarantee | Only if **at least one** of the following applies:   * The terms of the guarantee are materially less advantageous to the Council and/or to any person for whose benefit the immediately preceding guarantee was given. * The replacement guarantor **does not on a reasonable view have** at least equivalent financial strength than that which the immediately preceding guarantor had at the time it entered into its guarantee. |
| If the Provider is a consortium, partnership or the likeIf and for as long as all of the following apply |  |
| Certain events apply to a member | Any of the events or circumstances described elsewhere in this section 78 applies to any member at the time of the consortium, partnership or the like. |
| If that member has not been removed from the consortium, partnership or the like: failure to take steps | * The Provider 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 Council. * That request by the Council must be issued by a notice strictly according to section 93. |
| Arrangements | The Provider has not taken appropriate steps (where necessary and to the reasonable satisfaction of the Council) to ensure continuity of the Services resulting from the removal of the member of the consortium, partnership or the like. |

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| **Council Termination Default Events** |  |
| Each of the following is a Termination Default Event of the Council To be read independently  * For as long as the relevant circumstances continue to apply to the Council |  |
| **Non-payment by the Council**If and for as long as all of the following apply |  |
| Amounts overdue | Any amount owed by the Council to the Provider in connection with this Call-Off Contract is overdue. |
| Not disputed | The amount owed is not subject to a genuine dispute which the Council is using reasonable and genuine efforts to attempt to resolve. |
| No right to delay etc. | The Council has no grounds under this Call-Off Contract to refuse and/or to delay payment. |
| Overdue | The amount (or any part of it) must remain overdue more than **30 days** after the Provider has issued a further demand for payment. |
| When the Provider may issue the demand described in item (d) | At any time after the relevant amount first becomes overdue. |
| How the Provider issues the demand described in item (d) | * As a notice strictly according to section 93. * But either hand delivered to, or marked to the attention of, the Council’s ‘Section 151 officer or the equivalent’. * Clearly indicating the relevant outstanding liability, the relevant payment period and cross-referencing this Call-Off Contract and the name of the Service User. |

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| **Early termination due to a Termination Default Event** |  |
| Termination rights of a party (**‘Terminating Party’**) if and for as long as a Termination Default Event applies to the other party (**‘Defaulting Party’**) | The Terminating Party may terminate this Call-Off Contract if and for as long as a Termination Default Event applies to the Defaulting Party. |
| What are the Termination Default Events of the Provider | See section 78. |
| What are the Termination Default Events of the Council | See section 79. |
| **Partial termination:** whether the Terminating Party may terminate only part of this Call-Off Contract under this section 80 if the Terminating Party wishes to do so | Not applicable. |
| How a Terminating Party terminates this Call-Off Contract under this section 80 | By giving the Defaulting Party a notice as follows:   * Strictly according to section 93. * Setting out in reasonable detail a description of the Termination Default Event of the Defaulting Party. |
| Interpretation | If   * A Termination Default Event applies to a Defaulting Party; and * That Termination Default Event is expressed to continue if and for as long as particular circumstances apply, and * Those circumstances cease to apply (e.g. the Defaulting Party has remedied the Termination Default Event); and * The Terminating Party has not yet given the Defaulting Party the notice described in item 80.5 in relation to that Termination Default Event   Then the Terminating Party is no longer entitled to give that notice to the Defaulting Party in relation to that particular Termination Default Event. |
| Effective date on which this Call-Off Contract is terminated if a notice is given by the Terminating Party under item 80.5 | * On the date the relevant notice is given, or * On any later date indicated in that notice. |
| Consequences for Charges under section 16 after the Terminating Party gives the notice described in item 80.5 | * The Council shall remain liable for Charges in relation to Services provided up to the effective termination date indicated in item 80.7. * This does not limit the Council’s rights if any to make delay payment or make deductions from payment as indicated elsewhere in this Agreement. |
| Whether termination of this Call-Off Contract under this section 80 in itself limits the rights and remedies of the Terminating Party | * No. * Without limiting this, if the Council is the Terminating Party, termination does not in itself limit the Council’s rights (if any) to compensation for its increased costs in appointing a replacement service provider on an emergency basis. |

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| **Early termination without a Termination Default Event of the other party** |  |
| Whether a party may terminate early this Call-Off Contract **where no Termination Default Event applies** to the other party | * Either party may do so according to this section 81. * This section 81 does not limit the termination rights of a party indicated elsewhere in this Call-Off Contract. |
| **Initial period:** any initial period when a party may not terminate this Call-Off Contract early under this section 81 | No, either party may terminate this Call-Off Contract under this section 81 at any time |
| **Partial termination:** whether the terminating party may terminate early only part of this Call-Off Contract under this section 81 | * Only in relation to a part of this Call-Off Contract which is reasonably severable from the rest of this Call-Off Contract. * Each relevant party shall amend this Call-Off Contract according to all of the following * Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of this Call-Off Contract. * According to the formal requirements in section 94. * Promptly on being requested to do so by the other party. |
| How the terminating party terminates this Call-Off Contract if it wishes to do so under this section 81 | * By notice in writing given to the other party. * The notice must be given strictly according to section 93. * **If the terminating party is partially terminating this Call-Off Contract (and if it is permitted to do so in item 81.3):** the notice must clearly indicate the part being terminated. |
| Effective termination date if this Call-Off Contract is terminated under this section 81 **by the Council**  (i.e. the **notice period** which the Council must give the Provider to terminate this Call-Off Contract under this section 81 | * **On the Service User’s death:** immediate. * **If the Service User no longer requires the Services for any reason:** 24 hours. * **If in the reasonable opinion of the Council, the Provider is unable to meet the changed needs of the Service User:** immediate. * **In all other circumstances:** 48 hours excluding weekends. * **Any other reason not indicated above where the Council terminates 10 or more Call-Off Contracts in place at the time within a rolling 30-day period:** 90 days from the date on which the Council gives notice for the last of the Call-Off Contract to be terminated.   Or such longer notice period indicated in the notice or such longer or shorter period as the Council and the Provider agree in writing. |
| Effective termination date if this Call-Off Contract is terminated under this section 81 **by the Provider**  (i.e. the **notice period** which the Provider must give the Council to terminate this Call-Off Contract under this section 81 | * **On the Service User’s death:** immediate. * **The Provider (acting reasonably) is unable to meet the changed needs of the Service User as indicated in an updated Care Plan:** 7 days. * **If the Service User is hospitalised:** immediate if the hospitalisation has continued for more than **7 continuous days** * **In all other circumstances not indicated elsewhere in this list:** 28 days (or such shorter period as required by the Council if it has made other arrangements). * **Any other reason not indicated above where the Provider terminates 10 or more Call-Off Contracts in place at the time within a rolling 30-day period:** 90 days from the date on which the Provider gives notice for the last of the Call-Off Contract to be terminated.   Or such longer notice period indicated in the notice or such longer or shorter period as the Council and the Provider agree in writing. |
| WhetherThe Provider must continue to provide the Services as normal during the notice period; orThe Provider is required to wind them down during the notice period | The Provider must continue to provide them as normal until the end of the notice period indicated in item 81.6 **unless**   * The Council otherwise instructs (if the Provider has given the termination notice), or * The Service User no longer requires the Services for any reason (e.g. he/she has died, relocated etc.). |
| Restrictions on the Provider replacing (or to permit its subcontractors to replace) Personnel from their roles in relation to the Services during the notice periodThese restrictions only apply whilst the relevant Personnel remains an employee of the other party or subcontractor (or their respective Affiliates) | None, except as indicated in section 41 if relevant. |

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| **Consequences of termination etc.** |  |
| Consequences of the termination of the Call-Off Contract |  |
| Discontinue | The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties in connection with this Call-Off Contract shall discontinue. |
| To what this is subject | This is subject to item 82.3 in relation to those which continue after the termination of this Call-Off Contract. |
| Examples of the rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) which are to discontinue for the purposes of item 82.1 to the extent relevant to this Call-Off Contract Other than those which continue under item 82.3 |  |
| Providing the Services | Any obligation of the Provider under this Call-Off Contract to provide the Services (or relevant part). |
| Opportunity | Any obligation of the Council to give the Provider the opportunity to provide the Services (or relevant part). |
| Charges | * Obligations of the Council to pay Charges (or relevant part). * See section 16. |
| Continuing rights, obligations etc.: the following rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties to this Call-Off Contract  * Shall continue until they are completed, until they expire, or indefinitely (as relevant according to this Call-Off Contract) * Regardless of the termination of this Call-Off Contract * Each of these are to be read independently |  |
| Already arisen, accrued | Those in connection with this Call-Off Contract which had already arisen or accrued at the time of the termination of this Call-Off Contract. |
| Relating to certain events or circumstances | Those which relate to events or circumstances   * Which are connected with this Call-Off Contract; and * Which occurred on or before the date of the termination of this Call-Off Contract. |
| Interest | Any interest accruing on any debts in connection with this Call-Off Contract which relate to events or circumstances which had already occurred or arisen on or before the date of the termination of this Call-Off Contract. |
| Continuing nature | Those in connection with the Call-Off Contract which are expressed (or which are reasonably implied) in this Call-Off Contract to continue after the date of the termination of this Call-Off Contract. |

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| **Continuation obligations** |  |
| General continuation obligations of the Provider if the relevant part of the Services is to be taken over by the Council or by another person appointed by the Council on the termination of this Call-Off Contract |  |
| Continued provision | The Provider must continue providing the Services as normal until   * The Council or * The Council’s replacement service provider   Is ready to take over the provision of the Services. |
| Service Users | The Provider must comply with this item 83.1 in a way to ensure the wellbeing of Service Users described in section 7 is maintained, to the extent the Services are relevant to their wellbeing. |
| Work with Personnel | * The Provider must work cooperatively with Personnel of the Council and/or its replacement service provider to provide reasonable assistance and advice concerning the continued provision of any of the Services. * This includes the timely provision of information relevant to the Services on reasonable request of the Council or the replacement service provider. * This is subject to limits on the obligations of the Provider to make disclosures in item 83.2. |
| Limits on the Provider’s obligations to make disclosures in carrying out its continuation obligations in this section 83 | This section 83 does not require the Provider and/or its subcontractors to disclose information to any person to which any of the following applies:   * Such disclosure would cause the Provider or its subcontractor to do any of the following * Break any Law (e.g. any Law relating to data protection etc.); and/or * Breach any genuine, existing confidentiality obligations it owes to a third party. * Such disclosure involves genuine commercially sensitive information of the Provider or its subcontractor (i.e. information that would genuinely, seriously and unfavourably affect the Provider’s or the subcontractor’s competitive position with its competitors). |
| When the Provider must commence its continuation obligations under this section 83 | * On termination of the Call-Off Contract. * But only if the Council requests the Provider to do so, in writing. |
| For how long the Council can require the Provider to continue with the continuation obligations under this section 83 | Until the first of the following to occur   * The Council has alternative service provision in place for the relevant Service User. * The Service User no longer requires the Services for any reason.   In any case, not for more than **3 months** after the termination date of the Call-Off Contract. |
| Who bears the Provider’s costs in carrying out its continuation obligations under this section 83 | The Council shall continue to be liable to pay the Provider the Charges applicable at the time for Services which the Provider provides during the continuation period. |
| Other obligations of the Provider relating to subcontractors | The Provider must use reasonable endeavours to ensure compliance with the obligations in this section 83 by its relevant direct and indirect subcontractors. |

# **Miscellaneous**

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| **Health and safety** |  |
| **Health and safety obligations:** the Provider must comply with the highest of the following standards when carrying out its activities in connection with the Services The Provider must ensure its relevant Personnel and subcontractors do likewise |  |
| Law | Requirements of the Law which are relevant to health and safety and the Services at the time. |
| Service Specification | Any health and safety requirements in the Service Specification. |
| Provider Response | Any health and safety standards, procedures etc. contained in the Provider Response. |
| Provider’s own policy | Obligations contained in any health and safety policy the Provider has in place from time to time. |
| The Council’s policy | * The Council’s health and safety policy (if any) from time to time. * But only to the extent the Provider is obliged to comply with it under section 13. |

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| **Modern slavery and trafficking** |  |
| Obligations of the Provider regarding modern slavery and trafficking All of the following |  |
| Comply with Law | The Provider must comply with relevant Law, including the Modern Slavery Act 2015. |
| Comply with policies | The Provider must comply with any policy of the Council in relation to the issue, to the extent required under section 13. |
| Supply chain | The Provider 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 85.1. |
| Keep informed | The Provider must keep the Council informed in a proper and timely manner if the Provider becomes aware of any incident involving slavery and/or trafficking in connection with the Services   * Within the Provider’s own organisation, and/or * Within the Provider’s supply chain. |
| Breaches of item 85.1 by the Provider which are to be a Termination Default Event of the Provider | * Any breach of the Modern Slavery Act 2015 (or any reasonable equivalent Law applicable to the Provider or its Affiliate at the time) by the Provider and/or its Affiliate. * This applies even if the breach is minor. |

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| **Equalities** |  |
| Obligations of the Provider relating to anti-discrimination and equalities whilst it is carrying out activities in connection with the Services |  |
| The Provider’s obligations | * The Provider must comply with relevant Law relating to equalities and anti-discrimination in each jurisdiction in which it carries out activities connected with this Call-Off Contract. * 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. |
| Protected characteristics | Without limiting the Provider’s obligations under item (a), the Provider must (in relation to activities within the UK) comply with the Equality Act in relation to the following protected characteristics (to the extent that Act requires the Provider to do so):   * Age * Disability * Gender reassignment * Marriage and civil partnership * Pregnancy and maternity * Race * Religion or belief * Sex * Sexual orientation * Any additional or replacement protected characteristics included in that Act from time to time. |
| What the Provider must have in place | The Provider must have in place (at all times whilst it is carrying out any activities in connection with the 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. |

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| **Corrupt Acts** |  |
| Obligations of the Provider in relation to Corrupt Acts | The Provider must not do any of the following in connection with this Call-Off Contract   * Carry out any Corrupt Act * Assist or instruct another person to carry out any Corrupt Act. |
| Definition of a **‘Corrupt Act’**:Any of the following acts (to be read independently) |  |
| Certain offers | The act is a direct or indirect offer or promise to which all of the following apply   * It is made to any Personnel of the Council and/or its Affiliate * It offers or promises any benefit or advantage (whether or not financial) * The offer or promise is substantially for any of the following purposes * To encourage that Personnel to carry out his/her duties improperly. * To reward that Personnel for having carried out his/her duties improperly. |
| Policy | * Any act which breaches any policy of the Council from time to time regarding gifts to its Personnel * But only to the extent the policy is communicated in writing to the Provider. |
| Certain offences | In relation to the Provider’s dealings with the Council under this Call-Off Contract   * Any offence under the Bribery Act. * Any other offence under any Law relating to fraud. |
| Serious attempts | Any serious attempt by any Personnel of the Provider and/or its Affiliate to do anything indicated elsewhere in this item 87.2. |
| Consequence of the **Provider’s** breach of item 87.1 | It shall be a Termination Default Event of the Provider.  This applies   * Regardless of the size of the breach. * But only where the breach was done with the assistance or instruction of the Provider’s Representative and/or any other member of the Provider’s Personnel of at least equivalent seniority.   This does not limit the rights or remedies of the Council and/or its Affiliates. |

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| **Dispute resolution** |  |
| Purpose of this section 88 | To set out arrangements for the resolution of any dispute between the Council and/or its Affiliates and the Provider (each of them is a **'Disputing Parties'**) in connection with this Call-Off Contract (each such dispute is a **'Relevant Dispute'**). |
| Obligations of the Council if its Affiliate is a Disputing Party | If an Affiliate of the Council is a Disputing Party, the Council shall use reasonable endeavours to ensure the Affiliate complies with this section 88 in relation to the Relevant Dispute. |
| 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. |
| Next step: if the Disputing Parties' Representatives cannot resolve the Relevant Dispute within **30 days** | * 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. |
| Next step if the Relevant Dispute has not been resolved within **60 days** of commencing the previous stepThe Disputing Parties must attempt to resolve the Relevant Dispute by mediation, according to all of the followingUnless it is reasonable for the Disputing Parties to resolve the Relevant Dispute by engaging an independent expert under item 88.6 |  |
| How the Disputing Parties are to commence the mediation | * By either Disputing Party giving the other Disputing Party a notice (strictly according to section 93) requesting mediation. * Such notice must summarise in reasonable detail the Relevant Dispute (as understood in good faith by the Disputing Party giving that notice). |
| 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’**). |
| 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. |
| General obligations of Disputing Parties in the course of the mediationAll of the following |  |
| Good faith | The Disputing Parties must act generally in good faith in attempting to resolve the Relevant Dispute. |
| 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. |
| Directions to Personnel | The Disputing Parties must direct their respective Personnel to attend and cooperate with the mediation properly and in good faith, as reasonably necessary. |
| 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 this 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. |
| 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. |
| 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. |
| How mediation costs are to be borne | * The Disputing Parties shall share equally the costs of engaging the mediator * They shall otherwise bear their own costs in connection with the mediation. |
| Next step 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 this Call-Off Contract) requires resolution by an independent expert * All of the following apply |  |
| 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. |
| How the Relevant Dispute procedure is to be commenced | * By either Disputing Party giving a notice to the other Disputing Party indicating it wishes this dispute resolution procedure to apply. * That notice must be given strictly according to section 93. |
| How the expert is to be appointed | * By agreement between the Disputing Parties. * If the Disputing Parties cannot reach agreement within **30 days:** * Either Disputing Party may refer the matter to the President at the time of the Chartered Institute of Arbitrators (or similar replacement body), who shall be instructed to appoint a suitably qualified, independent expert. * The Disputing Parties shall accept the person appointed, unless there are genuine and serious concerns about that person’s independence. |
| 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. |
| Costs | The Disputing Parties shall bear the costs of the expert’s appointment equally. |
| Confidentiality | A Disputing Party shall not be regarded as having breached its confidentiality obligations in this 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. |
| 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. |
| 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. |
| Status of the expert | * The expert shall act as an expert and not as an arbitrator. * The Arbitration Act 1996 does not apply to the expert. |
| Accept | The Disputing Parties shall accept the expert’s determination on the matter as final and binding until revised by the English courts. |
| Exceptions to item (j) | Any of the following   * Where there is a significant and obvious error. * If it is later discovered that the expert was not independent of the Disputing Parties. |
| Right of a Disputing Party to commence legal proceedings in relation to the Relevant Dispute if mediation is used under item 88.5 | It may do so if the Relevant Dispute is not resolved by mediation after at least **90 days** from commencement of mediation. |
| Right of a Disputing Party to commence legal proceedings in relation to the Relevant Dispute if an expert is appointed under item 88.6 | It may do so any time after the expert issues his/her report. |
| Various remedies | Nothing in this Call-Off Contract (including this section 88) prevents a Disputing Party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to this Call-Off Contract. |

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| **Relationship between the parties** |  |
| Relationship between the parties created by this Call-Off Contract | The relationship of client and independent service provider. |
| Relationships between the parties which are not created by this Call-Off Contract(each of the following) |  |
| Partnership | Any partnership between the parties. |
| Principal-agent | * 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. * **Exception:** to the extent otherwise clearly indicated or reasonably implied elsewhere in this Call-Off Contract. |
| Employment | Any employment relationship (or the like) between a party and/or its Affiliates and the Personnel of the other party and/or that other party’s separate contractors and/or Affiliates. |

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| **Assignment and novation** |  |
| If a party to this Call-Off Contract (**‘X’**) wishes to assign, transfer or the like any of X’s rights, powers and benefits under this Call-Off Contract to another person, whether the consent of the other party to this Call-Off Contract (**‘Y’**) is required | * X may not do so without Y’s prior written consent. * Y may not unreasonably withhold that consent. |
| If X wishes to novate this Call-Off Contract to a third party, whether Y’s consent is required | * X may not do so without Y’s prior written consent. * Y may not unreasonably withhold that consent if the third party is X’s Affiliate or is another public body. * Y’s consent in all other cases is at its discretion. |

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| **Entire agreement** |  |
| Status of this Call-Off Contract | Subject to this section 91, this Call-Off Contract represents the entire agreement between the parties on the subject matter of this Call-Off Contract. |
| Status of any previous agreements entered between the parties on the subject matter of this Call-Off Contract | They are fully extinguished immediately when this Call-Off Contract is executed. |
| 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 this Call-Off Contract and/or any document clearly cross-referenced in it | To the fullest extent permitted by Law:   * These are excluded from this Call-Off Contract. * That party’s liability in relation to any of these is excluded. * This does not exclude any party’s liability for fraudulent misrepresentation. |

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| **Third party rights** |  |
| Rights of third parties with rights under this 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 92.2. |
| Third parties whose rights to directly enforce their rights under this Call-Off Contract under the Contracts (Rights of Third Parties) Act 1999 are retainedAll of the following (to be read independently) |  |
| Affiliates | Affiliates of the Council. |
| Personnel | Personnel of the Council and/or its Affiliates. |
| Third Party Beneficiaries | Each Third Party Beneficiary described in section 9 in relation to Services provided for that person's benefit. |
| Transferor employer on a Commencement Transfer | A transferor employer (other than the Council) of any individual whose employment transfers as a result of a Commencement Transfer in relation to the indemnity given to it by the Provider in section 37. |
| Transferee employer on a Cessation Transfer | A transferee employer of any individual whose employment transfers as a result of a Cessation Transfer   * Other than the Council * In relation to the Provider’s obligation to provide that transferee employer with further information described in item 39.11. |
| Transferee employer on a Cessation Transfer | A transferee employer of any individual whose employment transfers as a result of a Cessation Transfer   * Other than the Council * In relation to that transferee employer’s right to request records under section 40. |
| Indemnity to transferee employer for Claims for TUPE Transfers on a Cessation Transfer | A transferee employer of any individual whose employment transfers as a result of a Cessation Transfer   * Other than the Council * Who is identified in item 43.1. * In relation to the indemnity given by the Provider under section 43. |
| Inspection rights | Any third party referred to in item 58.3 in relation to its inspection rights. |
| Rights of third parties to this Call-Off Contract under the Contracts (Rights of Third Parties) Act 1999 which **are not specially retained** under item 92.2 | These are excluded to the fullest extent permitted by Law. |

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| **Notices** |  |
| To what this section 93 applies | It applies to all of the following:   * Communications between the parties described as ‘notices’ in this Call-Off Contract. * Any other communications between the parties which are expressed in this Call-Off Contract to be subject to this section 93.   The formalities in this section 93 are not required in relation to other communications between the parties. |
| To whose attention a notice or other communication described in item 93.1 is to be addressed if sent to a party | To the party’s Representative at the time. |
| Methods by which notices must be given to be valid (in at least one of the following ways) |  |
| **Method** | **When notice is deemed to have been given** |
| Hand delivery to the recipient’s Representative | On the date it is given to him/her. |
| By registered mail or courier to the recipient’s last known address (addressed to the recipient’s Representative unless otherwise indicated) | The **earlier** of the following:   * The date of actual receipt of the notice, as sufficiently evidenced by Royal Mail 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. |
| By e-mail issued as follows:   * **If the relevant communication is given to the Council:** to an e-mail address as nominated by the Council to the Provider from time to time for such communication. The current e-mail address (unless otherwise indicated) is procurement@bromley.gov.uk * **If the relevant communication is given to the Provider:** to the usual work e-mail address of the Provider’s Representative or such additional or replacement e-mail address as nominated by the Provider to the Council from time to time for such communication. * **In any case:** with the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address. | The notice is deemed to have been given on the date and at the time the e-mail is received by the recipient (as the recipient can reasonably prove) subject to the following   * If that date and time is before 9 am on a Business Day: it is deemed to have been received at 9 am on that Business Day. * If that date and time is after 5 pm on a Business Day or at any time on a day that is not a Business Day: it is deemed to have been received at 9 am on the next Business Day. |

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| **Amendments** |  |
| How this Call-Off Contract is to be validly amended(no other way is valid) | * By agreement in writing between the Council and the Provider. * The relevant document must clearly indicate an intention to amend this 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. |

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| **Remedies** |  |
| If this Call-Off Contract refers to a particular remedy in a particular circumstance | This does not in itself exclude the availability of any other remedy in that circumstance (unless otherwise clearly indicated). |
| Whether available remedies described in this Call-Off Contract are cumulative | Yes. |
| If a person with rights under this Call-Off Contract pursues a particular remedy in particular circumstances | That shall not in itself prevent that person from pursuing other available remedies in those circumstances (whether those remedies arise under common law, equity, statute or otherwise). |
| Acknowledgements of the parties in relation to seeking remedies other than damages | * Damages may not always be an adequate remedy of a person with rights under this Call-Off Contract in particular circumstances. * Accordingly, 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 without limitation, injunctions and/or specific performance. |

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| **Severability** |  |
| If any part of this Call-Off Contract is held by any court (or equivalent body) to be invalid or unenforceable for any reason | The parties to this Call-Off Contract shall do the following  **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 this Call-Off Contract) to be valid and enforceable, whilst keeping the original intention of the parties intact as far as reasonably possible.  **Second step if the first step is not reasonably possible:** the entire part **shall be severed** from this Call-Off Contract unless   * It alters the fundamental nature of this Call-Off Contract or * It is against public policy to do so. |
| About the remaining parts of this Call-Off Contract not described in item 96.1 | They shall remain in full force and effect. |

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| **Waivers** |  |
| Strict requirements for a waiver of a party’s rights or powers in connection with this Call-Off Contract to be binding on that party | Only 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 properly authorised by that party. |
| Other rules regarding waiver of any party’s right or power in connection with this 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 and does not affect any other right or power. |

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| **Governing law and jurisdiction** |  |
| Law under which this Call-Off Contract is to be interpreted and generally governed | English law. |
| Jurisdiction to exclusively apply to disputes arising in connection with this Call-Off Contract. This is subject to the dispute resolution arrangements in section 88 | English courts. |