

Tier 1 Agreement
Accommodation and Support for Young People Aged 16-25
Relevant Lot: indicate on award

Date of this Tier 1 Agreement

The execution date of the parties indicated below, or if the parties indicate different dates, on the later date

Parties

	Council	Tier 1 Provider
Name	Rotherham Borough Council	<u>To be inserted on award of contract. Include a company number or equivalent, if there is one</u>
Address for notices	c/- Commissioning Team, Children & Young Peoples' Services Riverside House, Main Street, Rotherham S60 1AE Or as communicated by the Council to the Tier 1 Provider from time to time	<u>To be inserted on award of contract</u> Or as communicated by the Tier 1 Provider to the Council from time to time

Table of Contents

1. Background to this Tier 1 Agreement.....	2
2. The agreement between the parties.....	3
Schedule 1 – terms and conditions	4
Scope of activity	4
3. Scope of the Flexible Purchasing System	4
Issuing Package Requests and entering Individual Call-Off Contracts.....	4
4. Right to place Package Requests.....	4
5. Awarding Individual Call off Contracts.....	4
6. Suspension of the Tier 1 Provider.....	5
7. Procedure to make a Package Request	6
8. Minimums volumes of Package Requests.....	6
9. Obligation to accept Package Requests	6
Tier 1 Provider exclusivity	7
10. The Tier 1 Provider's exclusivity obligations	7
Duration	7
11. Commencement of Package Requests	7
12. Expiry	7
About the parties	7
13. Required Accreditations	7
14. Warranties and representations of the Tier 1 Provider.....	7
No TUPE	9
15. No transfers of employment	9
Keeping informed	9
16. Keeping informed	9
Information	10
17. No warranties on accuracy of Council information.....	10
18. Confidentiality	10
19. Freedom of information	13

20.	Announcements and publicity	13
	Insurance.....	13
21.	The Tier 1 Provider's insurance requirements.....	13
	Liability issues.....	14
22.	Liability of consortium members	14
23.	Caps and exclusions of liabilities.....	14
	Early termination	14
24.	Tier 1 Provider Termination Default Events	14
25.	Termination due to a Termination Default Event.....	16
26.	Early termination by the Council without Tier 1 Provider Termination Default Event	17
27.	Early termination by the Tier 1 Provider without Council Termination Default Event	17
28.	Consequences of termination etc.	17
	Miscellaneous	18
29.	Corrupt Acts	18
30.	Dispute resolution	18
31.	Relationship between the parties.....	19
32.	Assignment and novation.....	19
33.	Entire agreement.....	19
34.	Third party rights	19
35.	Notices	19
36.	Amendments.....	20
37.	Remedies	20
38.	Severability.....	20
39.	Waivers.....	20
40.	Governing law and jurisdiction	20
	Definitions and interpretation.....	21
41.	Definitions.....	21
42.	Interpretation.....	22

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1. Background to this Tier 1 Agreement

1.1	Who is the Council	A metropolitan borough local authority with responsibility for Rotherham.
1.2	Who is the Tier 1 Provider	A service provider with skill and expertise in providing services similar to those to which this Relevant Lot described in item 2.1 relates.
1.3	Description of the flexible purchasing system to which this Tier 1 Agreement relates ('Flexible Purchasing System')	A flexible purchasing system for Care and Support for Adults and Young People Preparing for Adulthood.
1.4	Why the Council wishes to enter this Tier 1 Agreement	<ul style="list-style-type: none"> • The Council expects to regularly commission services to which the Relevant Lot relates. • For this purpose, the Council has established the Flexible Purchasing System described in item 1.3 covering a number of lots. Each lot relates to a different category of services within the scope of the Flexible Purchasing System. • This Tier 1 Agreement relates to each Relevant Lot described in item 2.1. • Some providers within the Relevant Lot (including the Tier 1 Provider under this Tier 1 Agreement) were conferred Tier 1 Provider status. • The main purpose of this Tier 1 Agreement is to set out the rights and privileges which the Tier 1 Provider has in relation to the Relevant Lot as a Tier 1 Provider.
1.5	How this contract was awarded by the Council to the Tier 1 Provider	<ul style="list-style-type: none"> • As a result of a public procurement exercise intended to be compliant with relevant Law (under the light touch regime of the Public Contracts Regulations 2015) and the Constitution of the Council. • In the course of that exercise, the Tier 1 Provider applied to become a Tier 1 Provider on the Relevant Lot of the Flexible Purchasing System.
1.6	On what the Council has relied in entering this Tier 1 Agreement with the Tier 1 Provider	The Council has relied on claims and promises which the Tier 1 Provider has made in its Provider Application.

2. The agreement between the parties

Each party agrees as follows

2.1 Each lot of the Flexible Purchasing System to which this Tier 1 Agreement relates (each of them is a **'Relevant Lot'**)
If the Tier 1 Provider is member of 2 or more Relevant Lots, reference in this Tier 1 Agreement to a Relevant Lot is reference to each of them separately

2.2 Appointment

2.3 Acceptance

2.4 How the Tier 1 Provider is to provide the Services to the Council

2.5 Consideration payable by the Council for the Tier 1 Provider's agreement to enter this Tier 1 Agreement

2.6 Acknowledgements by each party

2.7 Relationship between this Tier 1 Agreement and each Individual Call-Off Contract

2.8 **Terms of this Tier 1 Agreement:** the terms of this are Tier 1 Agreement comprise **all** of the following

- As amended from time to time according to this Tier 1 Agreement
- According to the following priority if there are inconsistencies

(a) General Specification

(b) Other documents

(c) Schedule 1

(d) Provider Application

	<u>Indicate on award</u>
	The Council appoints the Tier 1 Provider as a potential service provider with 'tier 1' status under the Relevant Lot.
	The Tier 1 Provider accepts its appointment as a potential service provider with 'tier 1' status under the Relevant Lot.
	Under Individual Call-Off Contracts the Tier 1 Provider enters with the Council from time to time whilst the Tier 1 Provider remains a member provider of the Relevant Lot.
	<ul style="list-style-type: none"> • £1.00 if demanded. • The parties agree this is sufficient consideration.
	The terms of this Tier 1 Agreement are to be legally binding upon the Council and the Tier 1 Provider.
	<ul style="list-style-type: none"> • This Tier 1 Agreement and each Individual Call-Off Contract are separate contracts between the Council and the Tier 1 Provider. • Nothing in this Tier 1 Agreement in itself affects the rights and obligations of the parties under any Individual Call-Off Contract, and vice versa.

	The General Specification.
	Other documents, websites identified by a link, or the like of any of these <ul style="list-style-type: none"> • Which are cross-referenced elsewhere in this Tier 1 Agreement; and • Which this Tier 1 Agreement indicates are incorporated into this Tier 1 Agreement; and • Which are communicated (or in the case of a website, the relevant link has been communicated) between the parties.
	The terms and conditions of this Tier 1 Agreement indicated in schedule 1.
	The Provider Application unless the Council at its discretion decides that this is more favourable and should override any other items in this list.

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

	Council	Tier 1 Provider
Signature		
Date of signature		
Name of signatory (print)		
Title or role of signatory (print)		

Schedule 1 – terms and conditions

Scope of activity

3. Scope of the Flexible Purchasing System

3.1 Scope of activities within which the Tier 1 Provider and the Council may enter Individual Call-Off Contracts for the purposes of the Relevant Lot

As indicated in the General Specification.

Issuing Package Requests and entering Individual Call-Off Contracts

4. Right to place Package Requests

4.1 Who can place Package Requests under this Flexible Purchasing System

Only the Council.

5. Awarding Individual Call off Contracts

5.1 How each Individual Call-Off Contract is to be awarded under the Flexible Purchasing System **on a block basis** in relation to the Relevant Lot

- **If the Council is permitted (under relevant procurement law and under the Council's constitution) to directly award the Call-off Contract to a specific operator:** by direct award.
- **Otherwise:** by a suitable mini-competition exercise between all Member Providers of that Relevant Lot, where that exercise meets the requirements of relevant procurement law and the Council's constitution.

5.2 How each Individual Call-Off Contract is to be awarded under the Relevant Lot **for the placement of a specifically-named service user – FIRST STEP: direct award**

(a) Right to directly award where in best interests etc.

- The Council may directly award the Individual Call-Off Contract to a particular Member Provider (or to any other operator in extenuating circumstances e.g. a placement outside the Borough) where
- In the professional opinion of the Council's officers, it is in the best interests of the service user to be placed with that operator.
 - The Council has given appropriate weight to the wishes of the service user (taking into account his/her age, capacity and other relevant factors).

(b) Other direct award

The Council may also directly award the Individual Call-Off Contract to a particular operator **in other circumstances** where the Council is permitted to do so according to public procurement law and the Council's constitution at the time.

(c) To whom the Council may make the direct awards indicated in item (a) or item (b)

The Council may award the Individual Call-Off Contract to that Member Provider **regardless** of whether it is the Tier 1 Provider, any Other Tier 1 Provider or a Tier 2 Provider.

5.3 How each Individual Call-Off Contract is to be awarded under the Flexible Purchasing System **for the placement of a specifically-named service user – SECOND STEP** if the Individual Call-Off Contract is not awarded under item 5.2 – **expressions of interest from the Tier 1 Provider and Other Tier 1 Providers**

(a) Who the Council will invite

The Council will invite the Tier 1 Provider and all Other Tier 1 Providers of the Relevant Lot to submit expressions of interest regarding the service user.

(b) Deadline to respond

- **Ordinarily:** a **minimum of 2 Business Days** or such longer period indicated.
- **In a genuine emergency:** such shorter period as set by the Council acting reasonably.

(c) Obligation to respond

- The Tier 1 Provider and the Other Tier 1 Providers on the Relevant Lot **are not obliged** to respond to that invitation
- In relation to **any particular** service user or
 - In relation to **any minimum number** of service users.

(d) Criteria which the Council will use to evaluate responses

- The Council will evaluate responses to the invitation from the Tier 1 Provider and the Other Tier 1 Providers according to the following evaluation criterion:
The successful bidding Tier 1 Provider or Other Tier 1 Provider will be the one whose response best meets the needs of service user, according to the professional opinion of the Council's evaluators.
- The Council may change the evaluation criteria for a particular Individual Call-Off Contract from time to time. If it does so, it will indicate the relevant criteria when it issues the relevant invitation.

5.4 How each Individual Call-Off Contract is to be awarded under the Flexible Purchasing System **for the placement of a specifically-named service user – THIRD STEP** if the Individual Call-Off Contract is not awarded under item 5.3 - **competition between all Member Providers**

- (a) Invitation
- (b) Deadline to respond
- (c) Obligation to respond
- (d) Criteria which the Council will use to evaluate responses

The Council will invite **all Member Providers** regardless of status on the Relevant Lot to submit expressions of interest regarding the service user.

The Council will indicate at the time a deadline for the Member Providers to respond to that invitation.

The Tier 1 Provider and the other Member Providers are **not obliged to respond** to that invitation

- In relation to **any particular** service user or
- In relation to **any minimum number** of service users.

- The Council will evaluate responses to the invitation from the Member Providers according to the following evaluation criterion:

The lowest price response that adequately meets the needs of service user, according to the professional opinion of the Council's evaluators.

This is according to the latest rates which the Member Providers had most recently submitted to the Council at the time or had otherwise agreed with the Council in writing.

- The Council may change the evaluation criteria for a particular Individual Call-Off Contract from time to time. If it does so, it will indicate the relevant criteria at the time it issues the relevant invitation.

5.5 When the Tier 1 Provider will **not** be invited to take part

- In the second step indicated in item 5.3, or
- In the third step indicated in item 5.4.

If (at the time) any of the following applies

- The Tier 1 Provider is suspended from the Relevant Lot under section 6 and/or under the rules of the Flexible Purchasing System.
- The Tier 1 Provider has been removed from the Relevant Lot under the rules of the Flexible Purchasing System.
- This Tier 1 Agreement has been terminated and the (for the purposes of participation in the third step indicated in item 5.4) the Council has **not** transferred the Tier 1 Provider to Tier 2 of the Relevant Lot under item 26.8.

6. Suspension of the Tier 1 Provider

6.1 The Council may (but shall not be obliged to) suspend the Tier 1 Provider from the Tier 1 Provider's rights in section 5 if and for as long as any of the following applies to the Tier 1 Provider

(a) Overdue report, output etc.

For as long as any **specific report, output, deliverable, proposal, plan or the like of any of these** which the Tier 1 Provider must provide the Council according to this Tier 1 Agreement and/or any Individual Call-Off Contract (whether relating to this Relevant Lot or any other Relevant Lot within the scope of the Flexible Purchasing System) remains **overdue**.

(b) Service continuity plan

- For as long as the Tier 1 Provider has failed to deliver to the Council a service continuity plan which meets the Council's written approval.
- The Council must not unreasonably withhold that approval.
- Without limiting the grounds on which the Council may withhold that approval, it may do so if, in the reasonable opinion of the Council, the service continuity plan does not properly identify and deal with the main risks of disruption to the Services, having regard to the vulnerable situation of Service Users.
- This right to suspend the Tier 1 Provider does not apply in the **first 6 months** after the date of this Tier 1 Agreement.

(c) Overdue debts

- For as long as any debt or other liability then owed by the Tier 1 Provider and/or its Affiliate to the Council and/or its Affiliate (whether in connection with the Flexible Purchasing System or otherwise) remains overdue more than **30 days** after the Council has issued a written demand for payment. That demand must be issued strictly according to section 35.
- **Exception:** this does not apply to any debt or other liability which is subject to a genuine dispute which the Tier 1 Provider and/or its relevant Affiliate is using reasonable and genuine efforts to attempt to resolve.

(d) Remedying Material Breach

For as long as the Tier 1 Provider has not yet remedied (to the reasonable satisfaction of the Council) a Material Breach of any Individual Call-Off Contract under any lot of the Flexible Purchasing System.

(e) Investigations

If and for as long as all of the following apply

(i) Non-routine investigation

The Tier 1 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.).

(ii) To what the investigation relates

That investigation may relate to the Services and/or to other unrelated business activities of the Tier 1 Provider and/or its Affiliates, whether in the UK or elsewhere.

(iii) Risks to the Council if it did not require suspension of the Tier 1 Provider

If the Council did not require the Services to be suspended, there would be an unreasonable risk of **any** 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.
- Serious and justified loss of confidence in the Tier 1 Provider amongst relevant members of the public (including Service Users and their families).
- Serious, unjustified and unfavourable publicity to the Council.

(f) Other

The Tier 1 Provider is suspended from the Relevant Lot under the rules of the Flexible Purchasing System for any other reason not indicated elsewhere in this item 6.1.

6.2 Procedures the Council must follow if it wishes to suspend the Tier 1 Provider from the Tier 1 Provider's rights in section 5 if any of the circumstances in item 6.1 applies

By communicating the matter to the Tier 1 Provider in writing.

6.3 Arrangements regarding lifting the suspension of the Tier 1 Provider

- The Council shall communicate when the suspension is lifted, in writing.
- The Council shall not unreasonably delay lifting the suspension when it is reasonably satisfied that the circumstances indicated in item 6.1 no longer apply.

7. Procedure to make a Package Request

7.1 Procedures (e.g. documentation authorisations) that apply to Package Requests to be made by the Council under the Flexible Purchasing System

As decided (and properly communicated to the Tier 1 Provider in writing) by the Council from time to time

- Acting reasonably; and
- With reasonable consultation with the Tier 1 Provider.

7.2 The consequences in item 7.3 apply where **all** of the following apply

(a) Communicated procedures

The Council has communicated the required procedures to the Tier 1 Provider in writing.

(b) Non-compliant Package Request

The Tier 1 Provider receives an attempted Package Request

- Which appears to have been issued by the Council **but**
- Which **does not properly comply** with the procedures, authorisations etc. as most recently communicated by the Council under item (a).

7.3 Consequences if and for as long as the circumstances in item 7.2 apply to an attempted Package Request

- All of the following consequences are to apply, to the extent relevant
- These consequences apply until the relevant issue is fixed – e.g. the Council later issues a compliant replacement Package Request, the Council later withdraws the attempted Package Request etc.

(a) The Tier 1 Provider's obligation **to inform**

The Tier 1 Provider must use reasonable endeavours to promptly inform the following of the attempted Package Request:

- The Representative of the Council; or
- Such other person as the Representative delegates responsibility from time to time.

(b) If the Tier 1 Provider provides any services in response to this attempted Package Request

(i) No liability to pay

- The Council shall not be liable to pay the Tier 1 Provider anything in respect of those services.
- This applies even if the Tier 1 Provider has satisfactorily provided those services.

(ii) Caps and exclusions on liability

The caps and exclusions on the liability of the Tier 1 Provider under this Tier 1 Agreement (see section 23) shall not apply to liabilities of the Tier 1 Provider to the extent those liabilities relate to its provision of those services.

8. Minimums volumes of Package Requests

8.1 Whether the Council is obliged under this Tier 1 Agreement to issue any **minimum volumes** of Package Requests

No.

9. Obligation to accept Package Requests

9.1 Whether the Tier 1 Provider is contractually obliged under this Tier 1 Agreement to accept any particular Package Request issued by the Council

No contractual obligation to do so.

Tier 1 Provider exclusivity

10. The Tier 1 Provider’s exclusivity obligations

10.1 Whether the Tier 1 Provider is obliged under this Tier 1 Agreement to deal with the Council **on an exclusive basis**

No obligation.

Duration

11. Commencement of Package Requests

11.1 When the Council may commence making Package Requests under this Tier 1 Agreement

Any time from the date of this Tier 1 Agreement.

12. Expiry

12.1 Expiry date of this Tier 1 Agreement

No expiry date. It continues until it is terminated.

About the parties

13. Required Accreditations

13.1 Licences, registrations, accreditations, permits, consents (or the like of any of these) which the Tier 1 Provider must have in place at all times whilst it retains its status as a tier 1 provider of the Relevant Lot
Each of them is a **‘Required Accreditation’**

Only those required by Law from time to time in relation to services to which the Relevant Lot relates.

13.2 Obligation of the Tier 1 Provider to provide the Council with evidence of its compliance with this section 13

- The Tier 1 Provider must provide the Council with appropriate evidence that the Tier 1 Provider has the relevant Required Accreditations in place.
- The Tier 1 Provider must do so promptly on the Council’s reasonable request from time to time.

14. Warranties and representations of the Tier 1 Provider

The Tier 1 Provider warrants and represents

- To the Council and its Affiliates
- That each of the following (to be read independently) is materially true and materially correct
- At the date of this Tier 1 Agreement and again each time the Tier 1 Provider enters into any Individual Call-Off Contract in relation to any Relevant Lot
- Excluding any exceptions sufficiently disclosed by the Tier 1 Provider to the Council in writing before the relevant date when the warranty and representation applies
- In addition to other warranties and representations of the Tier 1 Provider indicated elsewhere in this Tier 1 Agreement and/or in any Individual Call-Off Contract

About the Tier 1 Provider generally

14.1 Claims made by the Tier 1 Provider

The claims the Tier 1 Provider has made about itself or its subcontractors or their respective Personnel in the Provider Application are, to the best of the Tier 1 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.

14.2 No changes to the Tier 1 Provider since the Provider Application

- There have been no significant changes to the circumstances of the Tier 1 Provider compared to those disclosed in the Provider Application.
- **Changes to the Tier 1 Provider’s circumstances to which this applies:** only to those changes which would (on reasonable view) significantly and unfavourably affect the ability of the Tier 1 Provider to meet its obligations under this Tier 1 Agreement.

14.3 Not negligently or deliberately withheld information

There is no reasonably significant information about the Tier 1 Provider, its Personnel and/or its subcontractors to which all of the following apply:

- The Tier 1 Provider has negligently or deliberately withheld that information from the Council; and
- If that information had been sufficiently disclosed, it would be reasonably likely to have significantly affected the decision of the Council (acting reasonably in the circumstances) to enter into this Tier 1 Agreement on these terms.

- 14.4 The Tier 1 Provider is not
- Under any non-routine investigation by any law enforcement or regulatory body for any serious matter; and/or
 - Subject to any claims or disputes or other actions
 - Which are reasonably likely to result in any of the following:

- (a) Affects carrying out its obligations
- (b) Publicity

- 14.5 **Competitive procedure:** in any competitive procedure in which the Tier 1 Provider was awarded this Tier 1 Agreement, the Tier 1 Provider has not done any of the following:

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

- 14.6 If the Tier 1 Provider is a human being (e.g. a sole trader)

- 14.7 If the Tier 1 Provider is a company or other type of entity other than a human being

Financial status of the Tier 1 Provider

- 14.8 Able to pay debts

- 14.9 If the Tier 1 Provider is a human being (e.g. a sole trader)

- 14.10 If the Tier 1 Provider is a company or other type of entity other than a human being

Ability to carry out obligations

- 14.11 Third party consents, regulatory approvals etc.

- 14.12 No breaches etc.

Miscellaneous

- 14.13 If the Tier 1 Provider is a consortium, partnership, joint venture or the like

- 14.14 Not acting on behalf of a third party

- 14.15 Valid execution

The Tier 1 Provider being significantly and unfavourably affected in its ability to properly carry out its obligations under this Tier 1 Agreement.

Serious, unjustified and unfavourable publicity being brought to the Council and/or to its Affiliates.

Engaged in any collusive or other anti-competitive conduct with other bidders (or potential bidders).

Engaged in any canvassing activity.

Done any act that would breach item 29.1 in relation to Corrupt Acts if that act were done after this Tier 1 Agreement is entered.

The Tier 1 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 Tier 1 Agreement.

The Tier 1 Provider has the following to enter this Tier 1 Agreement and to carry out its obligations under it this Tier 1 Agreement

- The Tier 1 Provider has the power to do so under its constituent document.
- The Tier 1 Provider has obtained the relevant resolutions and taken the required corporate action to do so.
- The Tier 1 Provider validly exists under the Law of the place where it was incorporated or otherwise constituted.

The Tier 1 Provider is able to pay its debts (taking into account its contingent and prospective liabilities) when they fall due.

- The Tier 1 Provider is not an undischarged bankrupt; and
- No procedure is currently underway to put the Tier 1 Provider into bankruptcy.

All of the following

- The Tier 1 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 Tier 1 Provider and/or its assets.
- The Tier 1 Provider is not aware (and has no reasonable grounds to be aware) that any of the above is imminent.

The Tier 1 Provider has obtained all necessary third party consents, regulatory approvals or the like to enable it to do the following

- To execute this Tier 1 Agreement or the Order of the relevant Individual Call-Off Contract; and
- To carry out its obligations as required under it.

By executing this Tier 1 Agreement and by carrying out its obligations under this Tier 1 Agreement, the Tier 1 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.

Each warranty and representation in this section 14 applies to each member of that consortium, partnership, joint venture or the like, to the extent reasonably relevant to that member.

The Tier 1 Provider is not entering this Tier 1 Agreement on behalf of any third party whose identity has not been sufficiently disclosed in writing to the Representative of the Council.

The Tier 1 Provider has validly executed this Tier 1 Agreement.

No TUPE

15. No transfers of employment

15.1 Whether the employment of any individual is expected transfer under the Transfer of Undertakings (Protection of Employment) Regulations (2006) in connection with any service provision change on the **commencement or cessation** of any part of this Tier 1 Agreement

- Such transfers are not expected in relation to the commencement or cessation of the Tier 1 Agreement.
- Arrangements regarding any such transfers on the commencement and cessation of Services under one or more Individual Call-Off Contracts are indicated in the terms and conditions of the Individual Call-Off Contract.

Keeping informed

16. Keeping informed

16.1 Events or circumstances on which the Tier 1 Provider must keep the Representative of the Council informed under this section 16

- In writing where reasonably practicable
- In a proper and timely manner when the Tier 1 Provider first becomes aware of the matter
- The Tier 1 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

(a) Any event or circumstance to which both of the following apply

(i) Who it affects

The event or circumstance affects the Tier 1 Provider, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with this Tier 1 Agreement and/or any Individual Call-Off Contract.

(ii) 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 Tier 1 Provider.

(b) Loss of Required Accreditation

- The Tier 1 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 Tier 1 Provider must have under section 13.
- Any of the above in relation to any relevant subcontractor which the Tier 1 Provider has appointed in connection to the Services (to the extent relevant to its activities in connection with the Services).

(c) Any of the following events or circumstances in relation to the Tier 1 Provider if he/she is a human being acting as a sole trader

(i) Bankruptcy

- His/her bankruptcy and/or
- Any bankruptcy proceedings being commenced against him/her.

(ii) 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).

(iii) Right to remain

He/she no longer has right to remain in the United Kingdom (or such other country where his/her duties in connection with the Individual Call-Off Contract are to be carried out).

(d) Any of the following events or circumstances in relation to the Tier 1 Provider if it is an entity other than a human being (e.g. a company)

(i) Winding up

Any order of a court (or equivalent) being made or any resolution being passed requiring the Tier 1 Provider to be dissolved and/or wound up.

(ii) 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 Tier 1 Provider and/or its assets.

(iii) Announcements

If the shares of the Tier 1 Provider are listed on a stock exchange, any profit warnings in relation to the Tier 1 Provider which are issued to that stock exchange.

(iv) Change in Control

Any change in Control of the Tier 1 Provider, if it is a company.

(e) If the Tier 1 Provider is a consortium, partnership or the like, any of the following

(i) Change

Any change in the composition of its membership.

(ii) Events affecting members

Any of the events or circumstances indicated elsewhere in this section 16 in relation to the Tier 1 Provider applies to any of its members individually.

	(f) Investigations	<ul style="list-style-type: none"> Any non-routine investigation of the Tier 1 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 accept further Individual Call-Off Contracts.
	(g) Corrupt Acts	Any breach by the Tier 1 Provider of item 29.1.
16.2	Whether this section 16 in itself limits the Tier 1 Provider's obligations to keep the Council informed	No.

Information

17. No warranties on accuracy of Council information

17.1	In relation to information given by the Council to the Tier 1 Provider in relation to this Tier 1 Agreement	<ul style="list-style-type: none"> The Council gives no person any warranty or representation in relation to the accuracy and/or the completeness of that information. Exception: as otherwise indicated elsewhere in this Tier 1 Agreement.
	(a) No warranty etc.	
	(b) Exclusion of liability	The liability of the Council and its Affiliates in relation to the accuracy and/or completeness of that information is excluded to the fullest extent permitted by Law.
	(c) No relief	The Tier 1 Provider is not entitled to any relief from its obligations under this Tier 1 Agreement for the sole reason that any such information is inaccurate and/or incomplete.
	(d) No exclusion	Nothing in this item 17.1 excludes any person's liability for fraudulent misrepresentation.

18. Confidentiality

18.1	What is Confidential Information of the Council and/or its Affiliates respectively as a 'Discloser' Each of the following, to be read independently	
	(a) Business activities	<p>Information relevant to the Discloser's business activities generally, including without limitation</p> <ul style="list-style-type: none"> 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)
	(b) Dispute resolution	Disclosures made in the course of any dispute resolution procedure described in section 30.
	(c) Rules regarding how the information must be disclosed etc. to be considered the Discloser's Confidential Information	
	(i) How the information must be disclosed or made or available to the Recipient	<ul style="list-style-type: none"> 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 the Individual Call-Off Contract.
	(ii) By whom must the information be disclosed or made available	It may be disclosed or made available by or on behalf of the Discloser to the Tier 1 Provider (and/or anyone acting on its behalf)
	(iii) Whether the information must be labelled as 'confidential' (yes/no)	Not required.

18.2 What is Confidential Information of the Tier 1 Provider as a 'Discloser'

Each of the following, to be read independently

(a) Subcontractor, Personnel

Any information

- Relating to
 - Any Personnel of the Discloser, or
 - Any subcontractor appointed by the Discloser in connection with the Individual 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 the Individual Call-Off Contract.

(b) 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 the Individual 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.

(c) Dispute resolution

Disclosures made in the course of any dispute resolution procedure described in section 30.

(d) Tier 1 Provider Response

The contents of a genuinely confidential nature in the Tier 1 Provider Response.

(e) Rules regarding how the information must be disclosed etc. to be considered the Tier 1 Provider's Confidential Information under the Individual Call-Off Contract

(i) 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 Tier 1 Provider's premises, contained in any device or material etc.)
- But only in activities reasonably connected with the Individual Call-Off Contract.

(ii) By whom must the information be disclosed or made available

It may be disclosed or made available by or on behalf of the Tier 1 Provider to the Council (and/or anyone acting on its behalf)

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

Not required.

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

(a) Public domain

- 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 the Individual Call-Off Contract.

(b) Independently developed

The Recipient can reasonably prove it (or its Affiliates and/or their Personnel) had developed that information independently of its association with the Discloser.

(c) 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 the Individual 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.

(d) Trivial

The information is of a trivial nature.

18.4 **The Recipient's obligations:** the Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the Discloser in the possession of the Recipient from time to time

To continue for the period indicated in item 18.5

(a) Non-disclosure
(subject to item 18.6)

The Recipient

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

(b) Not to misuse

- The Recipient must not copy, modify, reverse engineer or otherwise use that Confidential Information for any purpose other than for legitimate purposes connected with the relevant parts of the Services.
- Without limiting the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser.

(c) **Storage**

The Recipient (where it is the Tier 1 Provider) must store the Confidential Information as follows:

(i) Reasonable standard

To a reasonable standard of security.

(ii) Comparable	In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality.
(d) Comply with the Law	The Recipient must comply with relevant Law in relation to the keeping, disclosure or use of that Confidential Information.
(e) If Personnel breach	If any Personnel of the Recipient or those of its Affiliate or (if the Recipient is the Tier 1 Provider) any subcontractor directly or indirectly appointed by the Recipient does anything in breach of the rest of this item 18.4, the onus shall lie with the Recipient to prove it was not done at the direction of, or with the assistance of the Recipient.
(f) Not to direct others	The Recipient must not direct or assist any person to do anything in breach of the rest of this item 18.4.
18.5 Duration of the Recipient's obligations in item 18.4 in relation to each piece of the Discloser's Confidential Information The later of the following	
(a) Agreed period	3 years from the termination date of the Tier 1 Provider's last Individual Call-Off Contract under the Flexible Purchasing System.
(b) Other	Such longer period required by Law in relation to that piece of Confidential Information.
18.6 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 18.4	
(a) Consent	With the prior written consent of the Discloser, subject to the Recipient's compliance with any conditions attached to that consent.
(b) To any of the following (i) Personnel (subject to item 18.7) (ii) Advisors etc. (subject to item 18.7) (iii) Public body (subject to item 18.7) (iv) Assignment, novation (subject to item 18.7) (v) Disputes (subject to item 18.7) (vi) Third parties (subject to item 18.7) (vii) Required by Law (subject to item 18.8)	<p>To the genuine existing or prospective Personnel of the Recipient and/or its Affiliates.</p> <p>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.</p> <p>Any public body authorised to review this Tier 1 Agreement.</p> <p>Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of this Tier 1 Agreement.</p> <p>Relevant third parties engaged for the purpose of resolving disputes under section 30.</p> <p>Third parties described in item 34.2 who have rights under the Individual Call-Off Contract for the purpose of advising them of their rights, powers and benefits under the Individual Call-Off Contract.</p> <p>To the extent the Recipient is required to disclose or make available the Confidential Information by Law, including without limitation:</p> <ul style="list-style-type: none"> • A court, • 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 19).
18.7 Rules regarding the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person indicated in item 18.6 • To the extent indicated in item 18.6 that this item 18.7 applies • All of the following	
(a) Need to know	The Recipient may only disclose (or make available) that Confidential Information to that person • In good faith. • Only on a strict 'need to know' basis.
(b) Treating unauthorised disclosures etc.	The Discloser may regard any unauthorised disclosure or other misuse of such Confidential Information by any such person as if it were the Recipient's own act.
(c) Separate confidentiality agreement	<ul style="list-style-type: none"> • The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms. • But only if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances.

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

(a) Inform

The Recipient must inform the Discloser of the circumstances
With sufficient detail and accuracy and
Promptly on becoming aware of the obligation to make the compelled disclosure.

(b) Make person aware

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

(c) Assist the Discloser to challenge

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

(d) Keep to minimum

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

(e) Exception to this item 18.8

- If disclosure is required under any FOI Act.
- This is covered in section 19.

19. Freedom of information

19.1 What are the FOI Acts for the purposes of this section 19

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

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

- The Council.
- The Tier 1 Provider, but only if it is a public authority which is subject to a relevant FOI Act.

19.3 **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.

19.4 Consequences if the FOI Party receives a request for information under any FOI Act involving information of the other party
(all of the following)

(a) Rights of the FOI Party

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

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

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

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

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

(d) To what this item 19.4 is subject

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

20. Announcements and publicity

20.1 Restrictions on the Tier 1 Provider making announcements and/or giving publicity in connection with the Individual Call-Off Contract
(e.g. press releases, public circulars, interviews etc.)

- The Tier 1 Provider must not do so without the prior written consent of the Council.
- The Council must not unreasonably withhold that consent.

20.2 Restrictions on the Tier 1 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 Tier 1 Provider and/or its Affiliate

- The Tier 1 Provider must not do so without the prior written consent of the Council.
- The Council must not unreasonably withhold that consent.

Insurance

21. The Tier 1 Provider's insurance requirements

21.1 The Tier 1 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
(a) Employers' liability	£10 million or such higher level required by Law.
(b) Public liability	£10 million
(c) Professional indemnity	£5 million

21.2 Duration for which the Tier 1 Provider must ensure the insurances described in item 21.1 are in place for insurances if the insurance is on a 'claims occurred' basis	<ul style="list-style-type: none"> For as long as the Tier 1 Provider is providing any Services whatsoever under any Individual Call-Off Contract whatsoever. In any case, for as long as the Tier 1 Provider is the Tier 1 Provider
21.3 Duration for which the Tier 1 Provider must ensure the insurances described in item 21.1 are in place for insurances if the insurance is on a 'claims made' basis	<ul style="list-style-type: none"> For as long as the Tier 1 Provider is providing any Services whatsoever under any Individual Call-Off Contract whatsoever. In any case, for as long as the Tier 1 Provider is the Tier 1 Provider For a further 6 years after the Tier 1 Provider discontinues providing any Services whatsoever under the Flexible Purchasing System.
21.4 Obligations of the Tier 1 Provider to provide evidence that the insurance cover required under this section 21 is in place	<ul style="list-style-type: none"> The Tier 1 Provider must provide the Council with evidence that it has that insurance properly in place. It 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 Tier 1 Provider's insurance broker.
21.5 Other obligations of the Tier 1 Provider in relation to the insurance cover required in this section 21	<p>The Tier 1 Provider must not</p> <ul style="list-style-type: none"> Do anything; and/or Fail to take reasonable action to do anything within its reasonable power; and/or Assist or instruct anyone else to do or fail to do any of the above <p>that results in any of the following</p> <ul style="list-style-type: none"> 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.
21.6 Exemptions where the Tier 1 Provider or its relevant subcontractor is not required to have any particular insurance cover otherwise required in item 21.1	<ul style="list-style-type: none"> 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).
21.7 Consequences if the Tier 1 Provider does not have any of the insurance cover required in this section 21 at any time whilst it is required to have it in place according to item 21.1	<ul style="list-style-type: none"> It shall be a Termination Default Event of the Tier 1 Provider. Even if the Tier 1 Provider later obtains that insurance cover during that period. This does not limit the rights and remedies of the Council.

Liability issues

22. Liability of consortium members

22.1 If a party is a consortium, partnership under the Partnership Act 1890, joint venture or the like: nature of the liability of its members in connection with this Tier 1 Agreement

Their liability is 'joint and several'.

23. Caps and exclusions of liabilities

23.1 Arrangements regarding caps and exclusions of liability of the parties to each other in connection with this Tier 1 Agreement

The arrangements in the terms and conditions of the Individual Call-Off Contracts from time to time relating to caps and exclusion of the liability of the parties also apply to this Tier 1 Agreement.

Early termination

24. Tier 1 Provider Termination Default Events

Each of the following is a Termination Default Event of the Tier 1 Provider

- To be read independently
- For as long as the relevant circumstances continue to apply to the Tier 1 Provider

General breaches

24.1 Material Breach not capable of being remedied

- The Tier 1 Provider is in Material Breach of this Tier 1 Agreement.
- On a reasonable view, that Material Breach is **not capable of being remedied** by the Tier 1 Provider.

24.2 Material Breach capable of being remedied

- All of the following must apply
- The Tier 1 Provider is in Material Breach of this Tier 1 Agreement.
 - On a reasonable view the Material Breach is capable of being remedied by the Tier 1 Provider.
 - For as long as the Tier 1 Provider has still not remedied the Material Breach
 - To the reasonable satisfaction of the Council
 - At the Tier 1 Provider's own cost
 - More than **30 days** after the Council has requested the Tier 1 Provider to do so
 - The Council must have issued its request by notice given strictly according to section 35.
 - The Council shall not unreasonably refuse consent to a written request by the Tier 1 Provider to an extension of the above deadline if there are delays to the Tier 1 Provider remedying the Material Breach which are significantly due to factors outside the reasonable control of the Tier 1 Provider.

24.3 Insurance

- The Tier 1 Provider does not have in place the insurance cover required in section 21 at any time (even if it subsequently obtains it).
- But only to the extent this is a Termination Default Event according to item 21.7.

General misconduct

24.4 Serious misconduct

- The Tier 1 Provider has engaged in serious misconduct
- Such misconduct includes without limitation
 - The Tier 1 Provider's involvement in a serious public scandal (whether or not in connection with this Tier 1 Agreement)
 - Where a reasonable person would not expect the Council to continue a commercial relationship of this kind with the Tier 1 Provider.

24.5 **Misconduct in competitive exercise:** the Tier 1 Provider has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Council in awarding to the Tier 1 Provider the contract to which this Tier 1 Agreement relates

- Regardless of whether the misconduct occurred with the knowledge of the Tier 1 Provider's senior management
- Including the following without limitation

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

Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders.

Doing any act in connection with that competitive exercise that would breach section 29 in relation to Corrupt Acts if that act were done after this Tier 1 Agreement is entered.

Engaging in any canvassing activity.

24.6 Corrupt Act

- The Tier 1 Provider's breach of section 29.
- But only if item 29.3 indicates that this is a Termination Default Event of the Tier 1 Provider.

About the Tier 1 Provider

24.7 Removal from Relevant Lot

The Tier 1 Provider is removed from the Relevant Lot under the rules of the Flexible Purchasing System in place from time to time.

24.8 Loss of Required Accreditation

- The Tier 1 Provider ceases to hold any Required Accreditation which it is required to have under item 13.
- **If the Tier 1 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 Tier 1 Provider even if the Tier 1 Provider later acquires that Required Accreditation.
- **Otherwise:** this shall be a Termination Default Event only for as long as the Tier 1 Provider has failed to acquire that Required Accreditation.

24.9 In relation to the Tier 1 Provider's capacity as a human being operating as a sole trader

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

The Tier 1 Provider becomes bankrupt.

The Tier 1 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).

The Tier 1 Provider dies.

The Tier 1 Provider suffers total and permanent disability.

(e) Mental Health Act (if the Tier 1 Provider is a human acting as a sole trader) if relevant	The Tier 1 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 Tier 1 Provider in his/her relevant jurisdiction.
24.10 Certain appointments (if the Tier 1 Provider is not a sole trader – e.g. a company)	The Tier 1 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 Tier 1 Provider and/or its assets.
24.11 Right to operate	The Tier 1 Provider is not permitted to operate in the UK, if a physical presence in the UK is reasonably necessary to enable the Tier 1 Provider to meet its obligations under this Tier 1 Agreement.
24.12 Winding up (if the Tier 1 Provider is not a sole trader – e.g. a company)	<p>The Tier 1 Provider is subject to a court order (or equivalent) or a resolution requiring the Tier 1 Provider to be dissolved and/or wound up.</p> <p>Exception: in relation to a genuine solvent reconstruction where</p> <ul style="list-style-type: none"> • The replacement entity agrees in writing to become legally bound to the obligations of the Tier 1 Provider under this Tier 1 Agreement. • The replacement entity accepts in writing liability for the liabilities of the Tier 1 Provider in connection with this Tier 1 Agreement. • 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 Tier 1 Provider had at the date of this Tier 1 Agreement. • The replacement entity has the same underlying majority controlling ownership as the Tier 1 Provider.
24.13 Unable to pay debts	<ul style="list-style-type: none"> • If and for as long as the Tier 1 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 Tier 1 Provider has no reasonable prospect of paying such debts.
24.14 Composition with creditors	If and for as long as the Tier 1 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.
24.15 If the Tier 1 Provider is a consortium, partnership or the like If and for as long as all of the following apply	Any of the events or circumstances described elsewhere in this section 24 applies to any member at the time of the consortium, partnership or the like.
(a) Certain events apply to a member	<ul style="list-style-type: none"> • The Tier 1 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 35.
(b) If that member has not been removed from the consortium, partnership or the like: failure to take steps	The Tier 1 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.
(c) Arrangements	
25. Termination due to a Termination Default Event	
25.1 Termination rights of the Council if and for as long as a Termination Default Event applies to the Tier 1 Provider	The Council may terminate this Tier 1 Agreement if and for as long as a Termination Default Event applies to the Tier 1 Provider.
25.2 What are the Termination Default Events of the Tier 1 Provider	See section 24.
25.3 How a Council terminates this Tier 1 Agreement under this section 25	<p>By giving the Tier 1 Provider a notice as follows:</p> <ul style="list-style-type: none"> • Strictly according to section 35. • Setting out in reasonable detail a description of the Termination Default Event of the Tier 1 Provider.
25.4 Interpretation	<p>If</p> <ul style="list-style-type: none"> • A Termination Default Event applies to a Tier 1 Provider; 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 Tier 1 Provider has remedied the Termination Default Event); and • The Council has not yet given the Tier 1 Provider the notice described in item 25.3 in relation to that Termination Default Event <p>Then the Council is no longer entitled to give that notice to the Tier 1 Provider in relation to that particular Termination Default Event.</p>

25.5 Effective date on which this Tier 1 Agreement is terminated if a notice is given by the Council under item 25.3	<ul style="list-style-type: none"> On the date the relevant notice is given, or On any later date indicated in that notice.
25.6 Consequence for the Tier 1 Provider if this Tier 1 Agreement is terminated by the Council under this section 25	<p>It is not a member of the Flexible Purchasing System for the Relevant Lot whatsoever (i.e. on any tier).</p> <p>If the Tier 1 Provider wishes to be reinstated on that Flexible Purchasing System, it must reapply according to the application procedures at the time.</p>
25.7 If the Council terminates early this Tier 1 Agreement as a whole under this section 25, whether the Individual Call-Off Contracts then in place either continue or also terminate at the same time	They continue, unless those Individual Call-Off Contracts are also terminated separately according to the terms and conditions of the Individual Call-Off Contracts.
25.8 Whether termination of this Tier 1 Agreement under this section 25 in itself limits the rights and remedies of the Council	<ul style="list-style-type: none"> No. Without limiting this, if the Council is the Council, 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.
26. Early termination by the Council without Tier 1 Provider Termination Default Event	
26.1 Whether the Council may terminate early this Tier 1 Agreement where no Termination Default Event applies to the Tier 1 Provider	<ul style="list-style-type: none"> The Council may do so according to this section 26. This section 26 does not limit the termination rights of the Council indicated elsewhere in this Tier 1 Agreement.
26.2 Initial period: any initial period when the Council may not terminate this Tier 1 Agreement early under this section 26	The Council cannot give the notice described in item 26.5 in the first 12 months from the date of this Tier 1 Agreement.
26.3 Partial termination: whether the Council may terminate early only part of this Tier 1 Agreement under this section 26	Not applicable.
26.4 If the Council terminates early this Tier 1 Agreement as a whole under this section 26, whether the Individual Call-Off Contracts then in place either continue or also terminate at the same time	They continue, unless those Individual Call-Off Contracts are also terminated separately according to the terms and conditions of the Individual Call-Off Contracts.
26.5 How the Council terminates this Tier 1 Agreement if it wishes to do so under this section 26	<ul style="list-style-type: none"> By notice in writing given to the Tier 1 Provider. The notice must be given strictly according to section 35.
26.6 Notice period if the Council terminates this Tier 1 Agreement under this section 26 The termination of this Tier 1 Agreement becomes effective at the end of this notice period	<p>Either</p> <ul style="list-style-type: none"> 3 months after the date the notice described in item 26.5 is given; or Any later date or event as indicated in the notice (not being later than the expiry date of this Tier 1 Agreement).
26.7 Whether termination under this section 26 in itself affects the Tier 1 Provider's place on any other Relevant Lot	<ul style="list-style-type: none"> No. If the Council wishes to terminate the Tier 1 Provider in relation to another Relevant Lot, it must follow the relevant procedures in relation to that Relevant Lot.
26.8 If the Council terminates this Tier 1 Agreement under this section 26, whether the Council may transfer the Tier 1 Provider to Tier 2 of the Relevant Lot (without terminating the Tier 1 Provider from the entire Lot of the Flexible Purchasing System)	<ul style="list-style-type: none"> The Council may do so, giving the Tier 1 Provider reasonable communication of the transfer. The Council is not obliged to do so. The Council is not obliged to give the Tier 1 Provider a reason for deciding to do so, or not to do so.
27. Early termination by the Tier 1 Provider without Council Termination Default Event	
27.1 Whether the Tier 1 Provider may terminate early this Tier 1 Agreement where no Termination Default Event applies to the Council	<ul style="list-style-type: none"> This is not necessary given the Tier 1 Provider is not contractually obliged to accept any particular Package Request under any Relevant Lot (see item 9.1). Therefore, if the Tier 1 Provider no longer wishes to participate in the Relevant Lot, it can simply refuse to accept further Package Requests. It does not need to give the Council a reason for doing so. Although the Tier 1 Provider should give the Council communication of any decision of the Tier 1 Provider not to accept further Package Requests, the Tier 1 Provider is not contractually required to communicate that decision to the Council.
28. Consequences of termination etc.	
28.1 Consequences on the termination of this Tier 1 Agreement (a) Discontinue	<ul style="list-style-type: none"> The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties in connection with this Tier 1 Agreement shall discontinue. This includes the Tier 1 Provider's right to a right of first refusal under section 5. This is subject to item 28.2 in relation to those which continue after the termination date.

(b) In relation to a particular Individual Call-Off Contract

The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the Council and the Tier 1 Provider in connection with that Individual Call-Off Contract shall **not** in themselves be affected.

28.2 **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 Tier 1 Agreement

- Shall continue until they are completed, until they expire, or indefinitely (as relevant according to this Tier 1 Agreement)
- Regardless of the termination of this Tier 1 Agreement
- Each of these are to be read independently

(a) Already arisen, accrued

Those in connection with this Tier 1 Agreement which had already arisen or accrued at the time of the termination of this Tier 1 Agreement.

(b) Relating to certain events or circumstances

Those which relate to events or circumstances

- Which are connected with this Tier 1 Agreement; and
- Which occurred on or before the termination date.

(c) Interest

Any interest accruing on any debts in connection with this Tier 1 Agreement which relate to events or circumstances which had already occurred or arisen on or before the termination date.

(d) Continuing nature

- Those in connection with the Tier 1 Agreement which are expressed (or which are reasonably implied) in this Tier 1 Agreement to continue after the termination date.
- This includes those under any Individual Call-Off Contract which is to continue after expiry or early termination of this Tier 1 Agreement, as indicated in this Tier 1 Agreement.

Miscellaneous

29. Corrupt Acts

29.1 Obligations of the Tier 1 Provider in relation to Corrupt Acts

The Tier 1 Provider must not do any of the following in connection with this Tier 1 Agreement

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

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

(a) Certain offers

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

- It is made to any Personnel of the 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.

(b) 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 Tier 1 Provider.

(c) Certain offences

In relation to the Tier 1 Provider's dealings with the Council under this Tier 1 Agreement

- Any offence under the Bribery Act.
- Any other offence under any Law relating to fraud.

(d) Serious attempts

Any serious attempt by any Personnel of the Tier 1 Provider and/or its Affiliate to do anything indicated elsewhere in this item 29.2.

29.3 Consequence of the Tier 1 Provider's breach of item 29.1

It shall be a Termination Default Event of the Tier 1 Provider.

This applies

- Regardless of the size of the breach.
- But only where the breach was done with the assistance or instruction of the Tier 1 Provider's Representative and/or any other member of the Tier 1 Provider's Personnel of at least equivalent seniority.

This does not limit the rights or remedies of the Council and/or its Affiliates.

30. Dispute resolution

30.1 Arrangements in relation to dispute resolution

The arrangements in the terms and conditions of each Individual Call-Off Contract relating to dispute resolution also apply to this Tier 1 Agreement.

31. Relationship between the parties

31.1 Relationship between the parties created by this Tier 1 Agreement

The relationship of a commissioner of a public service and an independent service provider.

31.2 Relationships between the parties **which are not created** by this Tier 1 Agreement

(each of the following)

- (a) Partnership
- (b) Principal-agent

Any partnership between the parties.

- 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 in this Tier 1 Agreement.

- (c) 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.

32. Assignment and novation

32.1 If a party to this Tier 1 Agreement ('X') wishes to assign, transfer or the like any of X's rights, powers and benefits under this Tier 1 Agreement to another person, whether the consent of the other party to this Tier 1 Agreement ('Y') is required

- X may not do so without Y's prior written consent.
- X may not unreasonably withhold that consent.

33. Entire agreement

33.1 Status of this Tier 1 Agreement

Subject to this section 33, this Tier 1 Agreement represents the entire agreement between the parties on the subject matter of this Tier 1 Agreement.

33.2 Status of any previous agreements entered between the parties on the subject matter of this Tier 1 Agreement

They are fully extinguished immediately when this Tier 1 Agreement is executed.

33.3 Liability of a party in relation to any statement, warranty, representation, opinion or prediction of the future which that party may have made which is not described in this Tier 1 Agreement and/or any document clearly cross-referenced in it

To the fullest extent permitted by Law:

- These are excluded from this Tier 1 Agreement.
- That party's liability in relation to any of these is excluded.

This does not exclude any party's liability for fraudulent misrepresentation.

34. Third party rights

34.1 Rights of third parties with rights under this Tier 1 Agreement 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 34.2.

34.2 Third parties whose rights to directly enforce their rights under this Tier 1 Agreement under the Contracts (Rights of Third Parties) Act 1999 **are retained**

- Affiliates of the Council.
- Personnel of the Council and/or its Affiliates.

34.3 Rights of third parties to this Tier 1 Agreement under the Contracts (Rights of Third Parties) Act 1999 which **are not specially retained** under item 34.2

These are excluded to the fullest extent permitted by Law.

35. Notices

35.1 Application of this section 35

It applies to all of the following:

- Communications between the parties described as 'notices' in this Tier 1 Agreement.
- Any other communications between the parties which are expressed in this Tier 1 Agreement to be subject to this section 35.

The formalities in this section 35 are not required in relation to other communications between the parties.

35.2 To whose attention a notice or other communication described in item 35.1 is to be addressed if sent to a party

To the party's Representative at the time.

35.3 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)	2 Business Days after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered.

<p>By e-mail issued as follows:</p> <ul style="list-style-type: none"> • If the notice is given to the Council: to an e-mail address as nominated by the Council to the Tier 1 Provider from time to time for such communication. • If the notice is given to the Tier 1 Provider: to the usual work e-mail address of the Tier 1 Provider's Representative or such additional or replacement email address as nominated by the Tier 1 Provider to the Council from time to time for such communication. <p>With the sender being able to reasonably prove the relevant e-mail was sent to the relevant e-mail address.</p>	<p>On the date and at the time the e-mail is received by the recipient (as the recipient can reasonably prove) subject to the following</p> <ul style="list-style-type: none"> • If that date and time is before 9 am on a Business Day, it is deemed to have been received at 9 am on that Business Day. • If that date and time is after 5 pm on a Business Day or on any day that is not a Business Day, it is deemed to have been received at 9 am on the next Business Day.
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36. Amendments

<p>36.1 How this Tier 1 Agreement is to be validly amended (no other way is valid)</p>	<ul style="list-style-type: none"> • By agreement in writing between the Council and the Tier 1 Provider. • The relevant document must clearly indicate an intention to amend this Tier 1 Agreement. • 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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37. Remedies

<p>37.1 If this Tier 1 Agreement refers to a particular remedy in a particular circumstance</p>	<p>This does not in itself exclude the availability of any other remedy in that circumstance (unless otherwise clearly indicated).</p>
<p>37.2 Whether available remedies described in this Tier 1 Agreement are cumulative</p>	<p>Yes.</p>
<p>37.3 If a person with rights under this Tier 1 Agreement pursues a particular remedy in particular circumstances</p>	<p>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).</p>
<p>37.4 Acknowledgements of the parties in relation to seeking remedies other than damages</p>	<ul style="list-style-type: none"> • Damages may not always be an adequate remedy of a person with rights under this Tier 1 Agreement 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.

38. Severability

<p>38.1 If any part of this Tier 1 Agreement is held by any court (or equivalent body) to be invalid or unenforceable for any reason</p>	<p>The parties to this Tier 1 Agreement shall do the following</p> <ul style="list-style-type: none"> • 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 Tier 1 Agreement) to be valid and enforceable, whilst keeping the original intention of the parties intact as far as reasonably possible. • Second step if the first step is not reasonably possible: the entire part shall be severed from this Tier 1 Agreement unless <ul style="list-style-type: none"> - It alters the fundamental nature of this Tier 1 Agreement or - It is against public policy to do so.
<p>38.2 About the remaining parts of this Tier 1 Agreement not described in item 38.1</p>	<p>They shall remain in full force and effect.</p>

39. Waivers

<p>39.1 Strict requirements for a waiver of a party's rights or powers in connection with this Tier 1 Agreement to be binding on that party</p>	<p>Only if all of the following apply to the waiver (and not otherwise):</p> <ul style="list-style-type: none"> • 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.
<p>39.2 Other rules regarding waiver of any party's right or power in connection with this Tier 1 Agreement</p>	<ul style="list-style-type: none"> • Delay or failure to exercise that right or power shall not in itself be a valid waiver of it. • A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion, and does not affect any other right or power.

40. Governing law and jurisdiction

<p>40.1 Law under which this Tier 1 Agreement is to be interpreted and generally governed</p>	<p>English law.</p>
<p>40.2 Jurisdiction to exclusively apply to disputes arising in connection with this Tier 1 Agreement. This is subject to the dispute resolution arrangements in section 30</p>	<p>English courts.</p>

Definitions and interpretation

41. Definitions

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Tier 1 Agreement), the following capitalised words or expressions shall have the following meaning when used in this Tier 1 Agreement

(a word or expression not defined below shall be defined according to 1) if there is a common meaning according to industry or trade, it shall have that meaning, or otherwise 2) it shall have the meaning given in the Oxford English Dictionary)

Any capitalised word or expression defined in the terms and conditions of the Individual Call-Off Contracts has the same meaning in this Tier 1 Agreement, except as indicated below,

Defined term	Definition
Affiliate	<ul style="list-style-type: none"> In relation to a person, any other entity which controls that person, is controlled by that person or is under the same common underlying control as of that person. For this purpose, a person ('X') will be regarded as having control over another person ('Y') if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters.
Business Day	Any day except a Saturday, Sunday or any official bank or public holiday in England.
Confidential Information	In relation to a Discloser, as indicated in section 18.
Corrupt Act	See item 29.2.
Discloser	A party to this Tier 1 Agreement (and its relevant Affiliate where indicated) in relation to its respective Confidential Information.
Flexible Purchasing System	The flexible purchasing system established by the Council and described in item 1.3.
FOI Act	See item 19.1.
FOI Party	Each party identified as such in item 19.1.
General Specification	<ul style="list-style-type: none"> The specification annexed to (and forming part of) this Tier 1 Agreement Including any other document which (according to this Tier 1 Agreement) is deemed to form part of the General Specification.
Individual Call-Off Contract	<p>A contract entered from time to time</p> <ul style="list-style-type: none"> Between <ul style="list-style-type: none"> The Council (as the client) and The Tier 1 Provider (as the provider) Which is entered under and in accordance with this Tier 1 Agreement Which cross references this Tier 1 Agreement.
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	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> Any statute, regulation, 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 Tier 1 Agreement 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 Tier 1 Agreement from time to time.
Material Breach	<ul style="list-style-type: none"> In relation to a party to this Tier 1 Agreement, a breach of this Tier 1 Agreement by that party (including an anticipatory breach of this Tier 1 Agreement by that party or a breach of any warranty or representation given by that party under this Tier 1 Agreement) Which has significant (and not trivial) consequences for the other party.
Member Provider	An operator which is a member of the Relevant Lot from time to time, whether the Tier 1 Provider, any Other Tier 1 Provider, or a Tier 2 Provider.
Other Tier 1 Provider	Each operator other than the Tier 1 Provider holding Tier 1 status from time to time in relation to the Relevant Lot.
Package Request	<p>Any request for service issued by the Council from time to time</p> <ul style="list-style-type: none"> Which is issued under this Tier 1 Agreement, and Which is wholly within the scope of the Flexible Purchasing System according to item 3.1. Which meets the requirements of this Tier 1 Agreement.

Defined term	Definition
Personnel	In relation to a firm or other organisation: <ul style="list-style-type: none"> Any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or the like of any of these but other than the other party to this Tier 1 Agreement). If that firm or other organisation is the Tier 1 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 Tier 1 Provider in connection with this Tier 1 Agreement. This includes any such subcontractor which 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.
Provider Application	The proposal, response to a competitive exercise or application (or the like of any of these) which <ul style="list-style-type: none"> Has been prepared by or on behalf of the Tier 1 Provider in connection with this Tier 1 Agreement and/or a specific Individual Call-Off Contract. Accompanies this Tier 1 Agreement or the specific Individual Call-Off Contract (as relevant). This includes any and all written responses which the Tier 1 Provider has given to any clarification questions or the like which were raised by the Council during any relevant procurement process to which this Tier 1 Agreement or the specific Individual Call-Off Contract relates.
Recipient	A party in relation to the Confidential Information of a relevant Discloser.
Relevant Lot	Each lot to which this Tier 1 Agreement relates, as indicated in item 2.1.
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 Tier 1 Agreement, or his/her replacement from time to time including: <ul style="list-style-type: none"> 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.
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 13.
Service User	Any individual to whom Services are provided from time to time under any Individual Call-Off Contract.
Services	The services which the Tier 1 Provider must provide under any Individual Call-Off Contract it enters from time to time under this Flexible Purchasing System.
Termination Default Event	In relation to the Tier 1 Provider, each event or circumstance described in section 24.
Tier 2 Provider	Each operator holding Tier 2 status from time to time in relation to the Relevant Lot.

42. Interpretation

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Tier 1 Agreement), this Tier 1 Agreement shall be interpreted as follows

42.1 Headings

42.2 Consents, approvals

42.3 Definitions

42.4 Statutes, codes etc.

42.5 'In writing'

42.6 'Including'

42.7 Items etc.

Headings do not affect the interpretation of this Tier 1 Agreement.

- 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).

If a word or phrase is defined in this Tier 1 Agreement, its other grammatical forms have a corresponding meaning.

Reference in this Tier 1 Agreement 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.

- 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).

- 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.

Reference in this agreement to items, sections, schedules, appendices or annexures is reference to those in this Tier 1 Agreement.

- Reference to one gender refers to all genders
- Reference to the singular includes the plural and vice versa
- Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.

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