

Housing
Ombudsman Service

Exchange Tower 1
Harbour Exchange Square
London EC14 9GE
Tel: 0300 111 3000
Fax: 020 7831 1942
info@housing-
ombudsman.org.uk
www.housing-ombudsman.org.uk

Contract

for the provision of

Outsourced Casework Assistance Services

Service Provision Start Date:	30 th November 2018
Contract Reference:	HOS Outsourced Casework Services

This CONTRACT is made on the "Service Provision Start Date"

BETWEEN:

(1) The Housing Ombudsman, THO ("The Customer"), a corporation sole whose principal office is at Exchange Tower 1, Exchange Square London E14 9GE and

(2) Clanchatton Birmingham Ltd, ("The Supplier"), a company registered in England and Wales with company number 01221157 and having its registered office at Grosvenor House, Prospect Hill, Redditch, Worcestershire, B97 4DL (the "Contractor")

together known as "the Parties".

WHEREAS:

The THO has agreed to appoint the Contractor to provide and deliver the Services and the Contractor has agreed to accept such appointment on the Conditions set out below.

IT IS AGREED as follows:

1. Interpretation

1.1. In this Contract and the Schedules hereto terms with capital initial letters shall have the meanings set forth in Condition 1 or defined elsewhere as appropriate.

2. Provision of the Services

2.1. The Contractor agrees to provide to THO, and THO agrees to purchase the Services set out in Schedule 1 hereto.

3. Duration

3.1.1. This Contract shall commence on the Service Provision Start Date and unless terminated at an earlier date in accordance with its terms shall continue in effect until the earlier of:

3.1.2. the date specified by THO if THO terminates this Contract pursuant to Conditions 11(c) 11.2, (20.4(a), 20.7(a) or 21;

3.1.3. 31 March 2019 "the Expiry Date"

4. Option to extend

4.1 The Customer may extend this contract with the agreement of the Contractor by providing 30 days notice prior to the Expiry Date for a period not exceeding twelve months (12) on the same terms and conditions with no maximum or minimum case volumes provided to the Contractor over the extension period.

Signed by and on behalf of THO:		Signed by and on behalf of the Contractor:	
Name (Print):	Rosalind D'Cruz <i>A. Smart</i>	Name (Print):	Mike Harfield
Title:	Head of Commercial Services	Title:	Chief Operating Officer
Signature:	<i>A. Smart</i>	Signature:	<i>Mike Harfield</i>

Terms and Conditions for the Provision of Services

1. Interpretation

1.1 In these Conditions: Approval" means the written consent of THO and "Approve" shall be construed accordingly.

"Caseworker" means a member of Contractor Personnel who is assigned to Determine Customer cases and who does not hold the role of Team Manager

"Change" means any amendment to the scope and/or manner of provision of the services and which is carried out in accordance with Schedule 3 (CHANGE CONTROL)

"Charges" the amount payable by the Customer to the Contractor for Services duly performed and delivered by the Contractor to the Customer.

"Commercially Sensitive Information" means information relating to

(a) the pricing of Services, but not the price and

(b) such other information which the Contractor has indicated to the Customer that, if disclosed, by the Customer would cause the Contractor significant commercial disadvantage or material financial loss

"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer" take the meaning given in the GDPR.

"Data Protection Legislation" (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

"Data Protection Impact Assessment": an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

"Data Loss Event": any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

"Data Subject Access Request": a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

"DPA 2018": Data Protection Act 2018

"Determine" the act of making a Determination and recording the Determination in the Customer's case management solution

"Determination" means documented case decisions to expected standards which analyses and makes findings on the evidence

"EIR" has the meaning given to it in Condition 29.1

"Expiry Date" means the date in Condition 3.1.3

"FOIA" has the meaning given to it in Condition 29.1.

"Good Industry Practice" means the exercise of that degree of skill, diligence prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier seeking to perform its contractual obligations, complying with all applicable Laws and regulations and engaged in the same type of undertaking as the Contractor

"GDPR": the General Data Protection Regulation (Regulation (EU) 2016/679)

"Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply

"LED": Law Enforcement Directive (Directive (EU) 2016/680)

"Order" means THO purchase order or other agreed official document specifying THO's requirements for delivery of the Contract or part thereof to which these Conditions are annexed;

"Protective Measures": appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of THO and "Regulatory Body" shall be construed accordingly

"Relevant Policies" has the meaning given to it in Condition 20.1(c).

"Relevant Requirements" has the meaning given to it in Condition 20.1(a).

"Relevant Terms" has the meaning given to it in Condition 20.2.

"Replacement Contractor" means any third party service provider of Replacement Services appointed by the Customer from time to time (or where the Customer is providing replacement Services in-house, the Customer)

"Services" has the meaning given to it in paragraph 1 Schedule 1 (SERVICES)

"Service Period" means a calendar month

"Staff" means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

"Sub-processor": any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

"Team Manager" a member of Contractor Personnel who is assigned to manage a team of Caseworkers greater than five (5) in number

"Term" means from the Service Provision Date to the Expiry Date, including any period of agreed extension

"the Contract" means the agreement concluded between THO and the Contractor, including specifications, patterns, the Contractor's samples, plans, drawings and other documents which are incorporated or referred to therein;

"the Contractor" means the person who by the Contract undertakes to supply the Services to THO as is provided for in the Contract; where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners;

"THO" means Housing Ombudsman, a corporation sole;

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

"2006 Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

- 1.2 Unless the context otherwise requires, reference in these Conditions to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.
- 1.3 The headings to these Conditions shall not affect their interpretation.
- 1.4 Any decision, act or thing which either party to the Contract is required to take or do under the Contract may be requested by any officer or employee of the other party authorised, either generally or specially, by that other party to make such a request, provided that upon receipt of a written request from one party the other party shall inform the party requesting the information of the name of any such officer or employee.
- 1.5 An Order raised in writing by THO constitutes an offer on the part of THO to acquire the Services subject to these Conditions which must be accepted either in writing by the Contractor or by the actual execution of the Order. The Contractor is deemed to have understood the nature and extent of the Services and to have visited the Premises and shall make no claim founded on his failure to do so. THO shall not be liable for any order unless it is issued or confirmed on its purchase order or other official document and signed by an authorised officer of THO.

2. Variation of Conditions

The Services shall be supplied in accordance with these Conditions. Any conditions which the Contractor may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded

and not form part of the Contract, unless each of such conditions has been specifically agreed to in writing by THO in accordance with Schedule 3 (CHANGE CONTROL PROCEDURES).

Acceptance of an Order shall be deemed to bind the Contractor to these Conditions and the Services shall not be supplied or performed by the Contractor, his employees, agents or representatives, except in accordance herewith.

The Contract contains the whole agreement between the Parties in respect of its subject matter and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract.

3. Contractor's Status

In carrying out the Services the Contractor shall be acting as an independent Contractor and not as the agent of THO. Accordingly:

- (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of THO, and
- (b) nothing in the Contract shall impose any liability on THO in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of THO to the Contractor that may arise by virtue of either a breach of the Contract or any negligence on the part of THO, its staff or agents.

4. Contractor's Personnel

4.1 If and when instructed by the THO, the Contractor shall give to THO a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as THO may reasonably require.

5. Manner of Carrying out the Services

5.1 Not used

6. Time of Performance

The Contractor shall begin performing the Services on the date stated in the Order and shall complete them by the date stated in the Order or continue to perform them for the period stated in the Order (whichever is applicable). Time is of the essence of the Contract. THO may by written notice require the Contractor to execute the Services in such order as THO may decide, in the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as THO may require.

7. Forms

An advice note shall accompany each complete performance of the Services or of any separable part thereof. A bill shall be rendered on the Contractor's own invoice form to THO. All advice notes, other relevant correspondence and invoices, shall be clearly marked with THO's order number, the consignee and the description of the Services concerned.

8. Free-Issue Materials

Where THO for the purpose of the Contract issues materials, information or data, free of charge to the Contractor such materials, information or data shall be and remain the property of THO. The Contractor shall maintain all such materials, information or data in good order and condition and shall use such materials, information or data solely in connection with the Contract. The Contractor shall notify THO of any surplus materials remaining after completion of the Services and shall dispose of them as THO may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants' agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of THO, the Contractor shall deliver up such materials whether processed or not to THO on demand.

9. Audit

The Contractor shall keep and maintain until two years after the Contract has been completed records to the satisfaction of THO of all expenditures which are reimbursable by THO and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by THO on a time charge basis. The Contractor shall on request afford THO or his representatives such access to those records as may be required by THO in connection with the Contract.

10. Patents and Information

- 10.1 It shall be a condition of the Contract that the Services (other than those parts of the Services which incorporate designs furnished by THO) shall not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual or industrial property of any third party and the Contractor shall indemnify the THO against all actions, claims, demands, costs and expenses which THO may suffer or incur as a result of or in connection with any claim by a third party that such elements of the Services are so infringing.
- 10.2 All intellectual property rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs or other materials:
- (a) furnished to or made available to the Contractor by THO are hereby assigned to and shall vest in THO absolutely; or
 - (b) prepared by or on behalf of the Contractor for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in THO absolutely unless otherwise prohibited by third party software licencing terms. In all the circumstances the Contractor warrants that THO has the right to use all such third party software in the execution and performance of the Services.
 - (c) The Contractor shall not and shall procure that the Staff shall not (except to the extent necessary for the implementation of the Contract) without prior written consent of THO use or disclose any such specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to the Contract) which the Contractor may obtain pursuant to or by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to THO or the Contract nor use THO's logo or other identifier in any advertisement or other public announcement without THO's prior written consent.
- 10.3 The provisions of this Condition 10 shall apply during the continuance of the Contract and after its termination howsoever arising.
11. Default by Contractor
- 11.1 If the Contractor shall have failed to comply with any terms of the Contract, either in relation to provision of the Services or otherwise, THO shall be entitled (whether or not the Services or any part thereof have been accepted by THO) to avail itself of any of the following remedies at THO's discretion:
- (a) rescind the Contract; or
 - (b) give the Contractor the opportunity to carry out remedial work in respect of the Services at the Contractor's expense so that they comply with the terms of the Contract; or
 - (c) refuse to accept any further performance of the Services and/or terminate the Contract in whole or in part without any liability to the Contractor; or
 - (d) carry out (either itself or using a third party) at the Contractor's expense such work as may be necessary to make the Services comply with the Contract; or
 - (e) claim such damages, costs and expenses as THO may have sustained in consequence of any breach of the terms of the Contract or failure by the Contractor to comply with any statutory or other legal obligations herein specified or implied by law.
12. Force Majeure
- Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this Condition shall limit the obligations of the Contractor to use his best endeavours to fulfil his obligations under the Contract.
13. Price and Payment
- 13.1 The Charges shall be 'net', that is, after deduction of all agreed discounts. The amount of any duty additional to the Charges and any early settlement discounts shall be shown separately in the Contract.
- 13.2 Payment for the Services rendered, unless stated otherwise in the Contract, shall be made ten days after receipt by THO of a correctly rendered invoice. THO will seek to encourage genuine early settlement discounts whenever possible. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. Delays in payment of invoices are possible

if the Contractor does not show THO's Order number on its invoices. Payment terms shall not be varied without the express authority of THO.

- 13.3 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract or under any other contract with THO.

14. Warranties

- 14.1 The Contractor warrants to THO that the Services shall be performed by appropriately qualified and trained personnel ("Personnel") with due care and diligence and to such high standard of quality as it is reasonable for THO to expect in all the circumstances (such standard shall be no less than Good Industry Practice).
- 14.2 If the 2006 Regulations apply on or in connection with the expiry or termination of all or any part of this Agreement, or the termination of all or any part of the Services, or any reduction in the Services (howsoever occurring) with the effect that any Personnel (or other employees) shall automatically transfer their employment by operation of law under the 2006 Regulations to THO or any successive supplier of the Services, part of the Services, or services materially similar to the Services or part of the Services (each, a "Transferring Employee"), then the Contractor shall indemnify THO and any successive supplier and keep them indemnified against all losses (including any statutory redundancy payments, any enhanced redundancy payments and any awards made by an employment tribunal for a basic award or compensation for unfair dismissal, and reasonable professional costs) arising in connection with any termination of employment of a Transferring Employee by THO or a successive supplier within 6 months from the date of any such termination or reduction in the Services as hereinbefore described.
- 14.3 Without prejudice to any other right or remedy if the Services or any part thereof are not performed in accordance with the Contract then THO shall be entitled:
- (a) at THO's option to require the Contractor to supply a replacement for the Services in accordance with the Contract within the time stated in writing by THO; or
 - (b) at THO's sole option and whether or not THO has previously required the Contractor to supply any replacement for the Services to require the repayment of any part of the Charges which have been previously paid in respect of the deficient Services.

15. Limitation of Liability

- 15.1 Nothing in this Contract shall limit the liability of any person for losses, damages, claims, demands, actions, costs, charges, expenses and liabilities arising directly or indirectly as a result of:
- (a) personal injury or death arising from its negligence, or
 - (b) fraud, or
 - (c) any other liability which cannot be limited under applicable Law.
- 15.2 Subject to Condition 15.1, neither party shall be liable to the other party pursuant to this Contract, whether in contract or otherwise howsoever arising, for any loss of business, loss of opportunity, loss of goodwill or loss of anticipated savings or any indirect or consequential losses or damages.
- 15.3 The Contractor's liability pursuant to Condition 30 shall be capped at £10 million.

16. Insurance

- 16.1 The Contractor shall insure against its full liability under Condition 15. The requirements on the Contractor to have in place such insurance shall be a condition of the Contract.
- 16.2 The Contractor shall procure that each of its associates involved in delivering the Services has in place appropriate professional indemnity insurance to cover its obligations as such relate to this Contract.
- 16.3 The Contractor upon request shall produce to THO any documentary evidence that the insurance is properly maintained.

17. Transfer and Sub-Contracting

Neither party shall assign the whole or any part of the Contract. The Contractor shall not sub-contract the production or supply of the Services or any part thereof without the previous consent in writing of THO.

18. Patents, etc.

The Charges shall include all royalties, licence fees or similar expenses required in respect of the receipt and use of the Services by THO and/or the making, use or exercise by the Contractor of any invention or design for the purpose of performing the Contract.

19. Confidentiality

The Contractor, his employees and agents shall treat this Contract and all data, designs, drawings, material, specifications and information supplied by THO to the Contractor in connection with this Contract as confidential and shall not disclose the same to any third party without THO's written consent or infringe any copyright, patent, trade mark, trade name or registered design vested in the THO. All materials, drawings, documents, specifications and other technical data prepared by or on behalf of THO in connection with the Contract shall be THO's property and THO may reproduce and use the said items freely for any purpose whatsoever.

20. Anti-Bribery and Corruption

20.1 The Contractor shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with THO's ethics, anti-bribery and anti-corruption policies and all relevant industry codes on anti-bribery or anti-corruption, in each case as THO or the relevant industry body may update them from time to time ("Relevant Policies");
- (d) have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Condition 20.1(b), and will enforce them where appropriate;
- (e) promptly report to THO any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract;
- (f) immediately notify THO (in writing) if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the Effective Date); and
- (g) within 2 (two) months of the Effective Date, and annually thereafter, certify to THO in writing signed by an officer of the Contractor, compliance with this Condition 20.1 by the Contractor and all persons associated with it under Condition 20.2. The Contractor shall provide such supporting evidence of compliance as THO may reasonably request.

20.2 The Contractor shall ensure that any person associated with the Contractor who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in Condition 20.1 ("Relevant Terms"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to THO for any breach by such persons of any of the Relevant Terms.

20.3 For the purpose of Condition 20.1 and 20.2, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Condition 20 a person associated with the Contractor includes any sub-contractor of the Contractor.

20.4 Breach of Condition 20.1 shall be deemed a material breach under this Contract and if the Contractor, or any member(s) of Staff, engages in conduct prohibited by Condition 20.2, THO may, notwithstanding any other Condition:

- (a) terminate this Contract; and
- (b) recover from the Contractor the full amount of any liabilities, costs, damages, claims, expenses or losses suffered by THO resulting from the termination, including the cost reasonably incurred by THO of making other arrangements for the supply of the Services and any additional expenditure incurred by THO throughout the remainder of the Term.

PROTECT COMMERCIAL

- 20.5 The Contractor shall take all reasonable steps to prevent fraud by the Staff in connection with this Contract and its subject matter and the receipt of any monies from THO.
- 20.6 The Contractor shall notify THO immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur in connection with this Contract, its subject matter or the receipt of any monies from THO.
- 20.7 If the Contractor or any member of Staff commits any fraud in relation to this Contract, THO may, notwithstanding any other Condition:
- (a) terminate this Contract; and
 - (b) recover from the Contractor the amount of any liabilities, costs, damages, claims, expenses or losses suffered by THO resulting from the termination, including the cost reasonably incurred by THO of making other arrangements for the supply of the Services and any additional expenditure incurred by THO throughout the remainder of the Term.
- 20.8 THO's rights and remedies under this Contract shall survive inspection, acceptance and payment.

20A Modern Slavery

- 20A.1 The Contractor shall at all times comply with:
- (a) all applicable Laws, regulations and sanctions relating to modern slavery and human trafficking including but not limited to the Modern Slavery Act 2015; and
 - (b) any anti-slavery policy adopted by THO from time to time.
- 20A.2 The Contractor shall implement and maintain throughout the Term due diligence procedures for its own suppliers, permitted sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 20A.3 The Contractor shall notify THO as soon as it becomes aware of:
- (a) any breach, or potential breach, of any anti-slavery policy adopted by THO from time to time; or
 - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 20A.4 The Contractor shall permit THO, and any person nominated by it for this purpose, to have such access on demand to the Contractor's premises, personnel, systems, books and records as THO may require to verify the Contractor's compliance with this Condition 20A.

21. Insolvency

THO may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor in any of the following events:

- (a) if the Contractor, being an individual, or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance of assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or
- (b) if the Contractor being a company shall pass a resolution, or the Court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction) or if an administrative receiver on behalf of a creditor shall be appointed, or if the Court shall make an administration order, or if circumstances shall arise which entitle the Court or a creditor to appoint an administrative receiver or which entitle the Court to make a winding-up order or administration order;

provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to THO.

22. Effect of Termination

In advance of expiry of the Contract or otherwise upon THO informing the Contractor that it intends to terminate the Contract pursuant to Clause 3 (Duration) the Parties acknowledge and agree that the provisions of Schedule 6 (EXIT AND SERVICE TRANSFER ARRANGEMENTS) shall apply. The Contractor shall comply with the provisions of Schedule 6 (EXIT AND SERVICE TRANSFER ARRANGEMENTS) without undue delay.

23. Notice

Any notice required to be given in writing under the Contract shall be sent by email, facsimile or by first class post, addressed to the address of the party for which it is intended shown on the signature page of the Contract or to such other address as may be notified in writing in accordance herewith for the purposes and shall be deemed to have been received in the case of an email or facsimile at 9:00 am on the next Working Day after transmission and in the case of a letter forty-eight hours after posting. In proving service by letter it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

24. Waiver

No failure or delay on the part of THO to exercise any of its rights under the Contract shall operate as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by THO of any breach by the Contractor of any of its obligations under the Contract shall not affect the rights of THO in the event of any further or additional breach or breaches.

25. Validity

If any provision of these Conditions is held by any competent THO to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

26. Dispute

Any dispute arising under or in connection with the Contract or the supply of the Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated upon the application of either party by the President for the time being of the Law Society in accordance with the Arbitration Acts 1950 - 1979. The arbitrator's decision shall be final and binding the Parties. Costs shall be in the award of the arbitrator.

27. Observance of Legal Requirements

The Contractor shall carry out the obligations of the Contract in a manner that conforms with any relevant legal requirements and in accordance with all applicable Laws.

28. Rights of Third Parties

Nothing in this Contract is intended to confer a benefit on any third party in relation to it and in particular a person who is not a party may not enforce any of the terms or object to any variations and neither shall any person who is not a party have any rights under the Contracts (Rights of Third Parties) Act 1999 in relation to this Contract.

29. Freedom of Information

29.1 The Contractor acknowledges that THO voluntarily complies with legislative responsibilities which may require the release of information under the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations 2004 ("EIR") and that THO may be under an obligation to provide information on request. Such Information may include matters relating to, arising out of or under this Contract.

29.2 Notwithstanding anything in this Contract to the contrary, in the event that THO receives a "Request for Information" under any applicable Law, THO will be entitled to disclose all Information to the extent that it is obliged to do so in order to respond to that request in accordance with FOIA and/or EIR, save that in relation to any such information that is:

29.2.1 exempted from disclosure under FOIA or EIR (as applicable) THO will as soon as reasonably practicable after receiving a valid request under FOIA or EIR to disclose such information, notify the Contractor of that fact and (unless requested or agreed otherwise by the Contractor) rely on the FOIA exemption in relation to confidentiality (section 41 FOIA) or the equivalent exemption under EIR and will not, subject to Condition 29.3:

- (a) confirm or deny that the exempted information in question is held by THO; or
- (b) disclose the exempted information requested;

29.2.2 confidential information of the Contractor that is not exempted from disclosure under FOIA or EIR (as applicable) ("Contractor Confidential Information"), THO will consult with the Contractor as soon as reasonably practicable and will not, subject to Condition 29.3:

- (a) confirm or deny that the Contractor Confidential Information in question is held by THO; or

- (b) disclose the Contractor Confidential Information requested,
to the extent that, in THO's opinion, a relevant exemption is applicable in accordance with the relevant section of FOIA and/or EIR in the circumstances.
- 29.3 Subject to Condition 29.4, nothing in this Contract will prevent THO from complying with any valid decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any exempted information or Contractor Confidential Information, provided that prior to complying with any such notice THO has consulted with the Contractor and (if requested to do so by the Contractor, acting reasonably) appealed to the Information Tribunal against the notice and that appeal has been unsuccessful.
- 29.4 On request from the Contractor, THO having notified the Contractor of any order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner or by any court or tribunal in relation to the disclosure of any exempted information or Contractor Confidential Information, THO shall bring such actions and appeals against the disclosure of such Information to the Information Tribunal or to such other courts and tribunals (having jurisdiction) as the Contractor may reasonably require except where THO has received a written opinion from counsel experienced in FOIA and / or EIR-related matters (such opinion to be provided to the Contractor upon request) that such an action or appeal has no reasonable prospect of success.
- 29.5 The Contractor will fully indemnify THO against any reasonable direct costs incurred by THO in seeking to maintain the withholding of information pursuant to Condition 29.4 provided that:
 - 29.5.1 THO (acting in good faith) notifies the Contractor in response to the Contractor's request under Condition 29.4 that it has no wish to pursue any action or appeal for its own purposes and that but for the Contractor's request would disclose the information; and
 - 29.5.2 THO will use reasonable endeavours to consult with the Contractor before incurring any such costs.
- 29.6 In the event that THO receives a Request for Information and requires the Contractor's assistance in obtaining such Information, the Contractor will respond to any related request for assistance from THO, at its own cost and within five (5) days of receiving the request for assistance

30 Data Protection

- 30.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 1 by the Customer and may not be determined by the Contractor.
- 30.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 30.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 30.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (a) process that Personal Data only in accordance with Schedule 1, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that :

- (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor; (
 - C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

30.5 Subject to clause 30.6, the Contractor shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- (f) becomes aware of a Data Loss Event. 1.6 The Contractor's obligation to notify under clause 1
- 30.6 The Contractor's obligation to notify under clause 30.5 shall include the provision of further information to the Customer in phases, as details become available
- 30.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 30.5 and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following any Data Loss Event;
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 30.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects
- 30.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 30.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 30.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 30.11 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 30.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 30.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

30.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

31 Transparency obligations

31.1 The Parties acknowledge that

(a) The content of this Contract including any changes to this Contract agreed from time to time, except for-

(1) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and

(2) Commercially Sensitive Information; (together the "Transparency Information") are not Confidential Information.

31.2 Notwithstanding any other provision of this Contract, the Contractor hereby give its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer, shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

31.3 The Contractor shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information

31.4 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.

31.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being publish to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Contractor.

32 Law

The Contract shall be considered as a contract made in England and subject to English Law

Schedule 1 – SERVICES SCHEDULE

1. Introduction

- 1.1 The Contractor shall provide qualified and competent Personnel in the execution of the requirements detailed in this Schedule the "Services".

2. Service requirements

- 2.1 The Contractor shall provide support for the review and Determination of Customer cases.
- 2.2 The Contractor shall Determine complaint cases provided to it over the Term in accordance with this Schedule
- 2.3 The Contractor shall Determine the cases provided by the Customer within a Service Period, unless otherwise agreed with the Customer and where the Customer has provided such cases to the Contractor in line with its obligations outlined in Schedule 5 CUSTOMER RESPONSIBILITIES.
- 2.4 The Contractor shall periodically over a Service Period Determine cases for the Customer.
- 2.5 The Contractor shall rework any cases at its cost which are rejected by the Customer as not meeting the expected standard
- 2.6 Where the Customer has rejected a case, the Contractor shall remedy the defect within 5 working days and resubmit the case for consideration of the Customer.
- 2.7 The Contractor shall work collaboratively with the Customer to deliver the Services
- 2.8 The Contractor shall be responsible throughout the Contract term for identifying improvements to the Services including drawing to the Customer's attention opportunities to reduce costs or to maximise value for money for the Customer.
- 2.9 The Contractor shall manage the Services in line with DPA obligations and shall bring to the immediate attention of the Customer any DPA violations.
- 2.10 The Contractor shall participate in schedule Service meetings as and when required by the Customer.
- 2.11 The Contractor shall prepare Service Period management information ("MI") for submission to the Customer within 5 working days of the end of a Service Period which shall show the number of cases by unique case identifier it has received and the number it has completed and Determined for the Customer within the Service Period

3. Complaint determination quality standards and process

- 3.1 The Contractor shall Determine all cases in accordance with the Customer Scheme and all guidance notes provided to it.
- 3.2 The Contractor shall be expected to;
 - 3.2.1 Determine whether the complaint falls within the Customer's jurisdiction to investigate.
 - 3.2.2 Identify the key issues in the case and make an objective assessment on evidence
 - 3.2.3 Consider whether the landlord's decision in the case is fair in all the circumstances, or whether the Landlord has been responsible for maladministration (which includes a finding of service failure).
 - 3.2.4 Conclude its assessment by making a final Determination of its findings.
- 3.3 The Contractor shall at all times, make its Determination as though it were the Customer with due regard to the Customer's impartial role in the process.
- 3.4 The Contractor shall draft Determinations in clear and concise English without the use of excessive jargon.
- 3.5 The Contractor shall base its findings on the papers. Where additional information is required, the Contractor shall liaise with the Customer to discuss.

Schedule 1 – SERVICES Annex A

Annex A to Schedule 1 – SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. Schedule Processing, Personal Data and Data Subjects

1.1 The Contractor shall comply with any further written instructions with respect to processing by the Customer

1.2 Any such further instructions shall be incorporated into this Schedule

Description	Detail
Subject matter of the processing	The Contractor shall have access to the Personal Data of the Customer's clients in reaching a Determination on the clients case. This data may include <u>personal sensitive data and data of third parties</u> .
Duration of the processing	The processing of Personal Data shall continue over the period of the term of the contract up to but not <u>exceeding 31st March 2020</u>
Nature and purposes of the processing	The processing of such Personal Data shall include collation and recording of the personal data on the Customer's case management system.
Types of Personal Data	Personal Data accessed will include name, address, date of birth, telephone number, images, personal sensitive data where provided
Categories of Data Subject	Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of the Customer website
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>[Describe how long the data will be retained for, how it be returned or destroyed]</p> <p>The data will be retained on the HOS hosted system and will be destroyed in line with the Customer's data retention policy</p>

Schedule 2 – CHARGES SCHEDULE

1. Introduction

- 1.1. This schedule sets out the Charges (including VAT) which shall be payable to the Contractor for the Services over the Term. No provision for indexation is included in the contract pricing structure.
- 1.2. Travel and subsistence rates are those applying at the time of contract and in line with internal policy. Should that policy change the Contractor shall be informed and any proposed amendment agreed between the Parties.

2. Payments over the Term

- 2.1. When requested to do so the Contractor shall provide a dedicated team of Caseworkers to Determine the volume of cases provided to the Contractor for processing within a Service Period and over the Term.
- 2.2. The Contractor shall be entitled to assign a Team Manager to the team where the number of Caseworkers in the team is greater than five (5).
- 2.3. The Contractor is expected to Determine cases on an average case processing time of ten (10) hours per case.
- 2.4. Payment for cases Determined in a Service Period is charged on a Billable Hours basis of £[redacted] per Caseworker.
- 2.5. Billable Hours includes initial set-up training, training associated with increasing the team size at THO's request, all productive time spent processing cases, enrichment time and twentyfour (24) minutes of paid breaks for every eight (8) hour shift. Holidays, sickness and absence are not chargeable by the Contractor.
- 2.6. Following initial set-up training it is expected that c. 80% of Billable Hours will be spent processing cases and, therefore, the Contractor is expected to Determine cases on an average Billable Hours time of twelve (12) hours and thirty five (35) minutes.
- 2.7. The Team Manager is charged on a Billable Hours basis of £XX [redacted] per hour and is expected to spend 50% of their time processing cases..
- 2.8. Payments in a Service Period are extrapolated per Caseworker assigned in the Service Period and by the number of weeks worked within the Service Period. Charges will include cost of a Team Manager where applicable.

Role	Weekly Billable hours	Weekly cost
Caseworker	40	[redacted]
Team Manager	40	[redacted]

3. Invoicing

- 3.1. Invoicing must be submitted to invoices@housing-ombudsman.org.uk. The Order number must be quoted including sufficient detail to enable the invoice be paid. Payment terms are ten (10) days in arrears.
- 6.2. Invoices will only be accepted for payment where the Contractor has updated the Customer's case management solution with a Determination and the Determined case reference is included in the Contractor's invoice.

Schedule 3 – CHANGE CONTROL

1. Change Control Principles

- 1.1 Where the Customer or the Contractor identifies a need to vary this Contract or the scope content or manner of provision of the Services, the Customer may at any time request and the Contractor may at any time recommend such change only in accordance with the Change Control Procedure as set out herein.
- 1.2 The Change Control Procedure shall cover contract changes which require a variation to this Agreement and which shall be given effect by the Contract Change Control Procedure outlined herein.
- 1.3 Neither the Customer nor the Contractor shall unreasonably withhold its agreement to any Change.

2. Contract Change Control Procedure

- 2.1 A completed pro-forma (see Annex A) to this Schedule shall constitute a request for change (Part A).
- 2.2 The Customer shall assign a unique reference to the request for change.
- 2.3 The Contractor shall impact the change request (Part B) within a 10 working day period providing details of costs where that is appropriate.
- 2.4 Once the Change has been impacted the Customer and the Contractor shall conclude the variation within 5 days.
- 2.5 A signed variation (Part B) constitutes an amendment to the Contract.
- 2.6 THO and the Contractor shall each bear its own costs associated with preparing and agreeing a Change in accordance with the Change Control Procedure

Change control request and impact assessment Pro-forma

PART A

CHANGE REQUEST FORM

Title Of the Change:

Unique ID

Description of the Change

Raised by:

Date

Reason for the Change

Any other issues or considerations

PART B **IMPACT ASSESSMENT – to be completed by the Contractor**

Title of Change

Unique ID

Section 1 – Impact details**Section 2 – Contract change details**

Price £	Commercial model (fixed price or T&M)	Start date	End date	Impacted schedules	Change by:	Impacted	Impact date

Section 3 – Agreement of the Parties

Contract change agreed by:	Customer	Contractor
Signature		
Name & role Title		
Date		

Schedule 4 – KEY PERSONNEL

1. Introduction

- 1.1 The following named Contractor personnel are, for the purposes of the execution of the Services, regarded as Key Personnel

Role Description	Contractor Personnel
Account Manager	
Service Delivery Owner	

- 1.2 The Contractor shall provide a minimum of 1 months notice to the Customer in the event of a change to the Key Personnel.
- 1.3 The Contractor warrants that any replacement Key Personnel are, as a minimum, qualified and capable of performing the services
- 1.4 The Customer shall be entitled to approve the appointment of any replacement Key Personnel, its approval not to be unreasonably withheld.

Schedule 5 – CUSTOMER RESPONSIBILITIES

1. Introduction

- 1.1 This Schedule details responsibilities of the Customer that are additional to those already contained in the terms and conditions and other Schedules of this Contract.

2. Customer Specific Responsibilities

- 2.1 The Customer shall provide access to its case management system and all licences necessary for the Contractor to deliver the Services
- 2.2 The Customer shall provide such training and training materials as necessary to enable the Contractor to deliver the Services
- 2.3 The Customer shall identify and make known to the Contractor the cases by case reference for Determination within the Service period and to do so by the last working day of the previous Service Period.
- 2.4 The Customer shall agree with the Contractor a schedule for Determination of cases where the volume of such cases cannot be Determined by Contractor within the Service Period
- 2.5 The Customer shall use its reasonable endeavours to obtain any additional case materials as required by the Contractor to Determine the case.
- 2.6 The Customer shall respond to queries of a general nature from the Contractor within 2 working days provided the Contractor has followed the procedures advised to it for submission of such requests.

3. Customer General Responsibilities

- 3.1 The Customer shall engage collaboratively with the Contractor in the delivery of the Services over the Term.

Schedule 6 – EXIT AND SERVICE TRANSFER ARRANGEMENTS

1. Introduction

- 1.1. This Schedule describes the duties and responsibilities of the Contractor leading up and covering the exit from this Contract and the transfer of provision of the Services where that applies

2. Objectives

- 2.1. The objectives of this Schedule are to
- ensure a smooth transition of Services from the Contractor to a Replacement Contractor or back to the Customer
 - ensure that all relevant assets are transferred

3. General

- 3.1. Where the Customer intends to continue equivalent or substantially similar services to the Services after termination or expiry, either by performing them itself or by means of a Replacement Contractor, the Contractor, shall ensure the smooth transition to the Replacement Contractor and shall co-operate with the Customer or the Replacement Contractor as required in order to fulfil the obligations under this Schedule.
- 3.2. The Contractor shall co-operate fully with the Customer and any potential Replacement Contractor(s) tendering for any re-competition for the Services, including enabling the transfer of responsibility for the provision of the Services previously performed by the Contractor to be achieved with the minimum of disruption to the extent that this is within the Contractor's reasonable control.

4. Asset Treatment

- 4.1. On request, the Contractor shall return to the Customer all Customer supplied documentation.

Schedule 7 – CONTRACTOR SOLUTION

1. Introduction

- 1.1. The Contractor shall deliver the Services to the Customer in accordance with its proposal to the Customer dated XXX and incorporated into the Contract here .
- 1.2. Where there is any conflict between the Contractor proposal and Schedule 1, Schedule 1 shall take precedence.