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**DATED**

**OVERARCHING AGREEMENT**

**Out of Hours Customer Call Handling Services**

**THE COUNCIL OF THE LONDON BOROUGH OF EALING**

**AND**

**[ ]**

Helen Harris

Director of Legal Services

Ealing Council

Ref CN/ 10238209

**OVERARCHING AGREEMENT**

**FOR THE PROVISION OF OUT OF HOURS CUSTOMER CALL HANDLING SERVICES**

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**THIS OVERARCHING AGREEMENT** is made on the day of 20

**BETWEEN**

**(1) THE COUNCIL OF THE LONDON BOROUGH OF EALING** of Town Hall, New Broadway W5 2BY (hereinafter called “the Lead Authority”);

**and**

**(2) CAPITA BUSINESS SERVICES LIMITED** (company registered number **02299747**) whose registered office is at 30 Berners Street, London, W1T 3LR (hereinafter called “the Service Provider”)

(hereinafter collectively called “**the Parties**” and independently called “**the Party**”)

**BACKGROUND**

1. The Lead Authority acting as a central purchasing organisation pursuant to Regulation 37 of the Public Contracts Regulations placed an advert in FTS and other websites seeking applications from potential service providers on behalf of itself and the Participating Organisations for the provision of out of hours call handling services with the intention that the Lead Authority and the Participating Organisations would enter into separate but identical Services Agreements save for local variations and factual differences.
2. Following evaluation of the tenders received, the Service Provider was selected to enter into this Overarching Agreement to govern the arrangement for the provision of the Services to itself and the Participating Organisations in accordance with this Overarching Agreement.
3. The Service Provider acknowledges that there will be no obligation on any of the Participating Organisations to enter into any Services Agreements with the Service Provider.
4. This Overarching Agreement sets out the procedure the Lead Authority and the Participating Organisations to enter into the Services Agreement.

**IT IS AGREED** as follows: -

**OPERATIVE PROVISIONS**

**1. Definitions and Interpretations**

1.1 In this Overarching Agreement, unless the context otherwise requires the following terms shall have the meanings given to them below:

## Definitions and Interpretation

|  |  |
| --- | --- |
| **Abatement** | means a reduction in the Price to be paid to the Service Provider by the Participating Organisation for services rendered as a consequence of the Default Notice by the Service Provider in the provision of the Services; |
| **Baseline Call Target** | 100,000 Calls per annum or as subsequently adjusted via Change Control Procedure |
| Bribery Act | means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| **Business Continuity Plan** | means the Service Provider’s business continuity plan provided in **Section IX** (Business Continuity) as may be amended from time to time with the agreement of the Lead Authority and/or any plan prepared pursuant to **Clause 49** (Business Continuity) of the **Services** Agreement; |
| **Business Continuity Requirements** | means the business continuity requirements set out in **Section IX** (Business Continuity Requirements) and **Clause 49** (Business Continuity) of the Access Agreement; |
| **Call** | means a telephone call falling with the Platinum (Team Leader Direct Access), Gold (standard and electronic) or Silver (standard and electronic) |
| **Call Handler** | means an employee of the Service Provider who processes customer service requests whether received by telephone or other electronic means including without limitation text, e-mail and website. |
| **Call Management System** | means the totality of the IT and telecommunications facilities used by the Service Provider in connection with all aspects of the delivery and management of the Services  including without limitation:  A telephony platform  A system to hold the scripts  A CRM system which has an assembly function and generates outputs e.g. call queues or e-mails (Microsoft Dynamics on the Azure Cloud)  A quality and scheduling system to enable rosters to be generated  A report writing tool  A portal to enable clients to view their reports and scripts  Interfaces which enable the above to talk to one another;  as amended by agreement from time to time |
| **Contract Period** | means the Term. |
| **Change in Law** | means any change in Law, which impacts on the performance of the Services which comes into force after the Initial Services Commencement Date |
| **Current Provider** | means the current service provider providing the Services. |
| **Default Notice** | means a notice served on the Service Provider by the Participating Organisation in the event of poor performance with respect to the Services on the part of the Service Provider in accordance with **Clause** **36** (Default and Termination) of the Services Agreement; |
| **Definitive Financial Model (DFM)** | means the spreadsheet set out in the tender which indicates how the price per call in the tender is made up and shows in appropriate detail:   1. fixed and variable costs charged to the price per Call; 2. overheads; 3. variable costs; 4. the depreciation of capital investment; 5. one off costs 6. the costs of setting up the existing Participating Organisations (POs); 7. how these are depreciated over the 5 years, if they are not separately charged to a Participating Organisation at Contract Commencement; 8. the Baseline Call Target; and 9. TUPE costs •   As these occur and are accounted for over the 5 year primary contract term. |
| **Emergency** | means an event causing or, in the reasonable opinion of a Participating Organisation or the Service Provider, threatening to cause death or injury to an individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services; |
| **Equipment** | means the Service Provider’s equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the terms of the **Services** Agreement; |
| **Existing Participant(s)** | means an organisation listed in **Section V** (List of Existing Participants); |
| **Exit Strategy or Exit Plan** | means the Service Provider’s Exit Plan in the event of expiry or early termination of this Overarching and/or all or any Services Agreements, as set out in **Section X** (Exit Strategy); |
| **General Change in Law** | a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) of which relates to a comparable supply and for the avoidance of doubt, the introduction of the General Data Protection Regulation shall constitute a General Change in Law |
| **Implementation Price** | means the price derived from the hourly rates for IT and non IT staff and the bid back rates for script creation and other bid back rates as appropriate as set out in the Pricing Schedule for the transitional preparations and mobilisation by the Service Provider for New Participants. |
| **Initial Services** | means the Services to be provided by the Service Provider at the Initial Services Commencement Date as identified in Paragraph 2.2.2 of this Specification and which does not include any Additional Services requested by the Participating Organisation during the Term of the Services Agreement or Services for New Participants; |
| **Initial Services Commencement Date** | means **8 a.m. on 21 October 2025**, the date upon which the Service Provider shall commence the delivery of the Initial Services to the Participating Organisations. |
| Initial Term | means the period commencing on the Initial Services Commencement Date and ending on the 5th anniversary of the Initial Services Commencement Date. |
| **Initial Training** | means such training required to be provided to all relevant Staff prior to their delivery of the Services; |
| **IVR** | Means the interactive voice recognition system operating in support of the Services |
| **Joint Contract Review Meeting** | means a meeting to be held between members of the Joint Management Board, representing all the Participating Organisations and the Service Provider’s Key Personnel, for the purpose of monitoring the Service Provider’s performance and the delivery of the Services; |
| **Joint Management Board** | means the joint management board comprising authorised representatives from each Participating Organisation; |
| **Key Personnel** | mean those persons named in the **Section VIII (**Service Provider’s Key Personnel Schedule) of the Overarching Agreement as being key personnel; |
| **Law** | means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, or delegated or subordinate Legislation or notice of any Regulatory Body. |
| **Lead Authority** | means the Council of the London Borough of Ealing; |
| **New Participant** | means an organisation that joins the Overarching Agreement during the Overarching Agreement Period and is able to purchase any or all of the Services in accordance with the terms of this Overarching Agreement and Services Agreement but is not an Existing Participant; |
| **On-Call Duty Staff** | means those specified on-call duty staff of the relevant Participating Organisation to whom Call Handlers are required to refer call details to so that the required actions may be taken. Such on-call duty staff may be directly employed by the Participating Organisation or employed by external contractors as required by the Participating Organisation; |
| **Overarching Agreement** | means this overarching agreement incorporating the documents referred to in Article 3.6 and such other documents as agreed by the parties |
| **Participating Organisation (or PO)** | means an organisation able to purchase the Services from the Service Provider under the terms of this Overarching Agreement and the Services Agreement, which includes all Existing Participants and any New Participants; |
| **Performance Review Meetings** | means the review meetings referred to in Section VI (Performance Monitoring) of the Overarching Agreement; |
| **Performance Standards** | means the performance standards set out in **Section VI** (Performance Monitoring) of the Overarching Agreement; |
| **Pricing Schedule** | Means the pricing schedule set out in Section II of the Overarching Agreement. |
| **Price** | means the price exclusive of any applicable VAT payable to the Service Provider by the Participating Organisation under the Services Agreement, as set out in the Pricing Schedule at Appendix 1 of the Services Agreement, for the full and proper performance by the Service Provider of its obligations under the Services Agreement; |
| **Prohibited Acts** | the following constitute Prohibited Acts:    (a) to directly or indirectly offer, promise or give any person working for or engaged by the Lead Authority or a Participating Organisation a financial or other advantage to:  (i) induce that person to perform improperly a relevant function or activity; or  (ii) reward that person for improper performance of a relevant function or activity;    (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Overarching Agreement;    (c) committing any offence:  (i) under the Bribery Act;  (ii) under legislation creating offences concerning fraudulent acts;  (iii) at common law concerning fraudulent acts relating to this or any other contract with the Lead Authority or the Participating Organisations; or    (d) defrauding, attempting to defraud or conspiring to defraud the Lead Authority or a Participating Organisation; |
| **Service Documentation** | means the documents containing a description of the Services required by the Participating Organisation including but not limited to the Service Options, service standards, hours of service, Call Handler scripts, processes and procedures and attached at **Appendix 6** (Document Schedule); |
| **Services** | means the services to be provided by the Service Provider to the Participating Organisations as listed in **paragraph 2.2** (Service Options) of the Specification at Section II and any other documents (or parts thereof) specified by the Participating Organisations and attached to their Overarching Agreement Agreements; |
| **Services Agreement** | means the agreement between a Participating Organisation and the Service Provider on the terms set out below at Section III (**Services** Agreement) and any other documents (or parts thereof) specified by the Participating Organisation for the delivery of the Services; |
| **Service Option(s)** | means individual services listed in **paragraph 2.2** (Service Options) of the Specification at Section II, which together constitute the Services; |
| **Specification** | means the description of the Services to be provided under the Overarching Agreement and Services Agreement as set out in Section II and any modifications or additions thereto as may from time to time be made in accordance with the terms of the Services Agreement and the particular requirements of Participating Organisations; |
| **Specific Change of Law** | means a Change in Law that relates specifically to the business of the Service Provider and not local authorities |
| **Staff** | means all staff employed by the Service Provider to perform all or any of the Services together with the Service Provider’s agents, representatives and sub-contractors and all of their respective employees engaged in performing all or any of the Services; |
| **Strategic Monitoring Manager** | means the strategic lead officer authorised to act on behalf of the Participating Organisations to monitor the Overarching Agreement and the Services Agreements; |
| **Supervising Officer** | means the individual for the time being authorised by the Participating Organisation to manage the Services Agreement on behalf of the Participating Organisation or such person as may be nominated by the Supervising Officer to act in his absence; |
| **Term or Contract Period** | means the period of the Initial Term as may be varied by:   * 1. any extensions to this Overarching Agreement which are agreed pursuant to Article 3 (Duration and Scope) or   2. the earlier termination of this Overarching Agreement in accordance with its terms. |
| **Transition** | means the transitional preparations and service mobilisation by the Service Provider and its Staff, to enable the Service Provider to deliver the Initial Services from the Initial Services Commencement and delivered in accordance with **Article 18** and the Transition Procedures at **Section XI**; |
| **Transition Agreement** | means the agreement executed by an Existing Participant and the Servicer Provider pursuant to the delivery of transitional services by the Service Provider in preparation for the commencement of this Overarching Agreement and attached as **Section XI**; |
| **Transition Period** | means the period of transition whereupon the Service Provider and its Staff shall mobilise and make ready for the delivery of the Services from the Initial Services Commencement Date as agreed between the Parties and set out in the Transition Procedures at **Section XI**. |
| **Transition Price** | means the costs identified and referred to in the Definitive Financial Model with respect to Existing POs, covering all arrangements necessary to enable the Service Provider to provide Services to the Existing POs from the Initial Services Commencement Date. |

**2.** **PURPOSE OF CONTRACT**

2.1 The Purpose of this Overarching Agreement is to establish the terms under which the Service Provider shall supply Services to a Participating Organisation from the Service Options at agreed prices.

2.2 This Overarching Agreement is not a commitment to purchase any Services by the Lead Authority or any Participating Organisation. Commitment to purchase will only be made when an authorised party (see **Article 4** below) issues a Services Agreement under the terms of this Overarching Agreement.

**3.** **DURATION AND SCOPE**

3.1 This Overarching Agreement shall take effect on the Initial Services Commencement Date and shall continue for the Term.

2.2 If the Lead Authority wishes to extend this Overarching Agreement beyond the expiry of the Initial Term, it shall give the Service Provider at least three months' written notice of such intention prior to the expiry of the Initial Term provided always that the Lead Authority shall not be entitled to extend the Initial Term by more than two years.

2.3 If the Lead Authority does not wish to extend this Overarching Agreement beyond the Initial Term, this Overarching Agreement shall expire on the expiry of the Initial Term. After such expiry, the Service Provider shall still be obliged to provide the assistance to the Lead Authority and POs in accordance with the provisions of and the Exit Plan.

3.2 This Overarching Agreement incorporates the following documents:

Section II Pricing Schedule and the Service Provider’s Method Statement;

Section III Form of Services Agreement including the Specification;

Section IV Services Agreement Procedure;

Section V List of Existing Participants/Scope of Overarching Agreement;

Section VI Performance Monitoring;

Section VII Service Provider Documentation Schedule;

Section VIII Service Provider’s Key Personnel;

Section IX Business Continuity Requirements;

Section X Service Provider’s Exit Strategy;

Section XI Transition Procedures; and

Section XII Collateral Warranty

all of which are annexed to and form part of this Overarching Agreement and the Services Agreement where the context requires it.

3.3 The Services that may be contracted for by a Participating Organisation under this Overarching Agreement are listed at **paragraph 2.2** (Service Options) of the Specification at Part 1, Section II. A Participating Organisation is not bound to purchase all of its requirements or any given value or volume of Services from the Service Provider.

3.4 The prices to be paid to the Service Provider for the supply to a Participating Organisation of the Services are those listed in the Pricing Schedule at Part 2 of Section II.

3.5 In the event of any inconsistency between the documents forming this Overarching Agreement they shall be given the following order of precedence:

a) The terms and conditions

b) the schedules in the order they appear.

In the event of any inconsistency between the terms of this Overarching Agreement and any Service Agreement, the Overarching Agreement shall take precedence.

**4.** **AUTHORISED PARTIES**

The bodies authorised from the commencement of this Overarching Agreement to purchase any or all of the Services are listed in Section V (List of Existing Participants). Following the commencement of this Overarching Agreement, such authorised bodies shall also include any New Participants that join the Overarching Agreement in accordance with **Article 5** below.

**5.** **METHOD OF ENTERING INTO A SERVICES AGREEMENT**

5.1 On each occasion that a Participating Organisation requires Services under this Overarching Agreement, a Services Agreement will be issued in accordance with the Services Agreement Procedure in Section IV.

5.2 The terms and conditions applying to the Services Agreement will be those set out in the Form of Services Agreement at Section III. At the discretion of the Participating Organisation, the terms and conditions applying to a Services Agreement may be varied by agreement between the Service Provider and the Participating Organisation to the extent:

* that the Form of Services Agreement in Section III indicates blank spaces where information is to be inserted or indicates a choice of alternative or optional provisions;
* necessary to accord with the Standing Orders, Financial Regulations and constitutional constraints applying to such Participating Organisation;
* that the Participating Organisation and the Service Provider agree any terms (“Special Terms”) which are supplementary to and not in conflict with those indicated in the Form of Services Agreement in Section III.

Provided that any such changes are not material changes.

5.3 The method of entering into the Services Agreement may be varied by agreement between the Service Provider and a Participating Organisation to the extent necessary to accord with the Standing Orders, Financial Regulations and constitutional constraints applying to such Participating Organisation, provided that the effect of such variation does not conflict with any term of this Overarching Agreement (other than the Services Agreement Procedure set out in Section IV).

**6. NEW PARTICIPANTS**

During the Contract Period, New Participants may elect to join the Overarching Agreement and seek to purchase the Services from the Service Provider in accordance with the terms of the Services Agreement and **paragraph 10** of the Specification. Whilst New Participants will be permitted to join the Overarching Agreement from the commencement of the Overarching Agreement Period, New Participants will not be permitted to procure the Services from the Service Provider during the first three (3) months of the Overarching Agreement Period.

**7.** **PERFORMANCE MONITORING**

7.1 The Service Provider shall comply with the monitoring arrangements set out in Section VI (Performance Monitoring) including, but not limited to, providing such data and information as the Service Provider may be required to produce under this Overarching Agreement and/or the Services Agreement.

7.2 The Service Provider shall monitor low call volumes and provide the Lead Authority and the Participating Organisations with details of how such monitoring occurs and the results of this monitoring. The results are to be provided as agreed between the Parties.

**8.** **CONFIDENTIAL INFORMATION**

8.1 “Confidential Information” means any information which has been designated as confidential by either Party in writing or that might reasonably be considered to be confidential (however it is conveyed or on whatever media it is stored) including, without limitation, information which relates to the business affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers, contractors and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 2012.

8.2 Each Party:

(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons (including the Participating Organisations) and to such extent as may be necessary for the performance of this Overarching Agreement, which persons the Party shall procure will be bound by the same obligation of confidentiality hereunder as the Party in receipt of the Confidential Information or except where disclosure is otherwise expressly permitted by the provisions of the Overarching Agreement or as required by law.

8.3 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Lead Authority or any Participating Organisation under or in connection with the Overarching Agreement is given only to such of its staff and professional advisers or consultants engaged to advise it in connection with the Overarching Agreement as is strictly necessary for the performance of the Overarching Agreement and only to the extent necessary for the performance of the Overarching Agreement.

8.4 The Service Provider shall ensure that its staff or professional advisers or consultants are aware of and abide by the Service Provider’s confidentiality obligations under this Overarching Agreement. Any breach of the confidentiality obligations in this Overarching Agreement by the Service Provider’s staff or professional advisers shall be a breach committed by the Service Provider.

8.5 The Service Provider shall not use any Confidential Information it receives from the Lead Authority or any Participating Organisation otherwise than for the purposes of the Overarching Agreement.

8.6 The provisions of **Articles 8.1 to 8.5** shall not apply to any Confidential Information received by one Party from the other which:

(a) is or becomes public knowledge (otherwise than by breach of this **Article 8**);

(b) was in the possession of the receiving Party without restriction as to its disclosure before receiving it from the disclosing Party;

(c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure.

8.7 Nothing in this **Article 8** shall prevent the Lead Authority disclosing any Confidential Information for the purpose of:

(a) the examination and certification of the Lead Authority’s accounts; or

(b) any examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Lead Authority has used its resources; or

(c) responding to an access request under the Freedom of Information Act 2000

provided that in disclosing information under sub-paragraph (b) the Lead Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

8.8 Nothing in this **Article 8** shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Overarching Agreement in the course of its normal business to the extent that this does not result in a disclosure of Confidential Information or an infringement of intellectual property rights.

**9.** **BUSINESS ETHICS AND CONFLICT OF INTEREST**

9.1 The Service Provider must establish and maintain appropriate business standards, procedures and controls including those necessary to avoid any real or apparent impropriety or to prevent any action or conditions which could result in conflict with the Lead Authority’s best interests.

9.2 The obligations set out in **Article 9.1** above will apply to the activities of the employees and agents of the Service Provider in their relations with the employees of the Lead Authority and any Participating Organisation arising from this Overarching Agreement.

**10. PREVENTION OF BRIBERY**

10.1 The Service Provider:

(a) shall not, and shall procure that all of the Service Provider’s staff shall not, and shall require that all Staff shall not in connection with this Overarching Agreement, commit a Prohibited Act

(b) warrants, represents and states that it is not aware of any financial or other advantage being given to any person working for or engaged by the Lead Authority, or that an agreement has been reached to that effect, in connection with the execution of this Overarching Agreement, excluding any arrangement of which full details have been disclosed in writing to the Lead Authority before execution of this Overarching Agreement;

10.2 The Service Provider shall in connection with its obligations under the Overarching Agreement:

(a) if requested, provide the Lead Authority with any reasonable assistance, at the Lead Authority's reasonable cost, to enable the Lead Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

(b) within ten (10) Working Days of the commencement of the Overarching Agreement Period and annually thereafter, certify to the Lead Authority in writing that it has not committed a Prohibited Act (such certification to be signed by an authorised representative of the Service Provider) compliance with this **Article 10** by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Overarching Agreement. The Provider shall provide such supporting evidence of compliance as the Lead Authority may reasonably request.

10.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Lead Authority at the commencement of the Overarching Agreement) to prevent any of the Service Provider’s staff from committing a Prohibited Act and shall enforce it where appropriate.

10.4 If any breach of **Article 10** is suspected or known, the Service Provider must notify the Lead Authority immediately.

10.5 If the Service Provider notifies the Lead Authority that it suspects or knows that there may be a breach of **Article 10**, the Service Provider must respond promptly to the Lead Authority's enquiries, co-operate with any investigation and allow the Lead Authority to audit books, records and any other relevant documentation. This obligation shall continue for twelve (12) years following the expiry or termination of this Overarching Agreement.

10.6 The Lead Authority may terminate this Overarching Agreement by written notice with immediate effect if the Service Provider or its staff breach Article 10.1. and where the breach is by Staff not under the Service Providers direct employment The Lead Authority may request that the Service Provider terminates all contractual links with the employer in connection with the Services provided (in all cases whether or not acting with the Service Provider's knowledge)

10.7 Any notice of termination under **Article 10.6** must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Lead Authority believes has committed the Prohibited Act; and

(c) the date on which this Overarching Agreement will terminate.

10.8 Despite **Article 16** (Dispute Resolution), any dispute relating to:

(a) the interpretation of **Article 10**; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Lead Authority and its decision shall be based upon sound evidence final and conclusive.

10.9 Any termination under **Article 10.6** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Lead Authority.

**11.** **LIABILITY**

11.1 Except to the extent admitted by this Overarching Agreement, the Lead Authority does not act as agent for any Participating Organisation and will not be liable to the Service Provider for the acts, omissions, breach or default of a Participating Organisation. The rights and obligation of, and between, the Service Provider and a Participating Organisation will be covered exclusively under the terms and conditions of the Services Agreement between them.

11.2 The Service Provider shall indemnify and keep indemnified the Lead Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim arises in connection with the Agreement or is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of its representatives or sub-contractors failing to perform in accordance with the Agreement save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Lead Authority or its representatives (excluding any Service Provider's Staff) or as a result of written instruction from the Lead Authority and the indemnity is capped in accordance with this Overarching Agreement and all claims are fully mitigated and adjusted to reflect any contributory liability that may apply.

11.3 Neither Party excludes or limits liability to the other Party for

(a) death or personal injury caused by its negligence or that of its employees agents or sub-contractors;

(b) fraud or fraudulent misrepresentation by it or its employees;

(c) for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or

(d) any other matter where the law prescribes that liability may not be limited.

11.4 Neither Party shall have liability for matters of an indirect or consequential nature.

11.5 In respect of the liabilities in clause 11.2 and any other matter under this Overarching Agreement, and each and every indemnity given by the Service Provider under this agreement, not otherwise specifically reserved and excluded from the application of this clause, the maximum aggregate liability that may be incurred by the Service Provider during the course of and in relation to this overarching agreement shall, subject to clause 11.3, be limited to £5,000,000.00 (Five million pounds) in aggregate across all liability and indemnities for the Contract Period

**12.** **TRANSFER AND THIRD PARTY RIGHTS**

12.1 The Lead Authority may assign, novate or transfer this Overarching Agreement at any time during the Overarching Agreement Period to another local authority or public sector body.

12.2 Except in relation to **Section V**, a person who is not a party to this Overarching Agreement has no right under the Overarching Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Overarching Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

12.3 This Overarching Agreement is personal to the Service Provider. The Service Provider shall not assign, novate, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Overarching Agreement in whole or in part except with the prior written consent of the Lead Authority. The Service Provider may only assign, novate, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Overarching Agreement where it simultaneously assigns, novates, underlets, charges, sells, bargains or otherwise transfers all remaining Services Agreements it has with Participating Organisations and the Overarching Agreement with the Lead Authority to the same economic operator.

12.4 It is agreed by the Parties the Lead Authority may without limitation withhold consent in the following cases:

12.4.1 where the economic operator to whom this Overarching Agreement, other remaining Services Agreements are being assigned, novated, underlet, sold or otherwise transferred to does not meet the criteria for verifying the technical, professional ability and economic & financial standing applied in the procurement process for the award of this Overarching Agreement and Services Agreement;

12.4.2 where the Lead Authority considers there are grounds for the exclusion of a the economic operator under Regulation 57 of the Public Contracts Regulations 2015 (as amended);

12.4.3 where the Service Provider is not simultaneously assigning, novating, underletting, charging, selling, or otherwise transferring all remaining Services Agreements it has with Participating Organisations and the Overarching Agreement with the Lead Authority to the same economic operator.

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**13.** **ENTIRE AGREEMENT**

This Overarching Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous negotiations, representations and agreements either written or oral preceding the Overarching Agreement.

**14. TERMINATION & IPR TRANSFER**

14.1 The Lead Authority shall be entitled to terminate this Overarching Agreement where the Service Provider or its Staff commits a material breach of the terms of this Overarching Agreement and, where the breach is capable of being remedied, has failed to rectify such breach within a reasonable period of being requested to do so by the Lead Authority or upon the happening of any of the events set out in **Clauses 35** **and 36** of the Services Agreement.

14.2 The Lead Authority may terminate the Overarching Agreement by notice in writing with immediate effect where:

(a) the Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Services Agreement; or

(b) the Service Provider is an individual or a firm and a petition is presented for the Service Provider’s bankruptcy, or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider’s or firm’s affairs; or

(c) the Service Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Service Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

(f) any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 (as amended) apply.

14.3 Subject to Article 14.3A the Service Provider may terminate this overall Overarching Agreementat any time subject to giving at least two (2) years’ prior written notice of such termination to the Lead Authority and Participating Organisations. The Service Provider may only terminate this Overarching Agreement where it simultaneously terminates all remaining Services Agreements.

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14.3A If the Lead Authority elects to retender the Services following termination under Article 14.3 then the Service Provider shall pay the Lead Authority its reasonable and proper costs of carrying out a retendering process up to £200,000 the objective of which shall be to retender the Services or materially similar services and enter into a contract with a replacement provider. The Lead Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the retendering process as soon as reasonably practicable and must begin (meaning the issue of a PIN notice or an OJEU notice) a retendering process within 12 months of the termination. The Service Provider shall pay the retendering costs to the Lead Authority within 30 day of receipt of a written request from the Lead Authority with satisfactory evidence of costs incurred by the Lead Authority.

### 15. APPLICABLE LAW

The construction, validity, performance and execution of this Overarching Agreement will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England.

16. DISPUTE RESOLUTION

16.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Overarching Agreement within twenty (20) Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the Finance Director of each Party.

16.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

16.3 If the dispute cannot be resolved by the Parties pursuant to **Article 16.1** the dispute shall be referred to mediation pursuant to the procedure set out in **Article 16.5**.

16.4 The performance of the Overarching Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and its staff shall comply fully with the requirements of the Overarching Agreement at all times.

16.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

(b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolutionto provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Overarching Agreement without the prior written consent of both Parties.

(f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**17. THE SERVICE PROVIDER’S TENDER**

17.1 The Service Provider is deemed to have satisfied itself before submitting its tender as to the accuracy and sufficiency of the rates and prices and other financial information stated in the tender documents, which shall, except as the Service Provider otherwise provides in the tender, cover all the Service Provider's obligations under the Overarching Agreement and any Services Agreement and the Service Provider shall be deemed to have obtained for itself all necessary information that might influence or affect its tender save where such information cannot be independently verified in which case clause 17.1 shall not apply and the Parties shall revert to the TUPE True Up mechanism and other commercial claims set out in the Definitive Financial Model.

17.2 Save as agreed under the Services Agreement Procedure Section IV Services Agreement Procedures and without prejudice to the generality of the above, the Service Provider shall be deemed to have included in its tender the costs of all necessary equipment, materials, staff, facilities and anything else required for the performance of its obligations under the Overarching Agreement or any Services Agreement

17.3 This Overarching Agreement and the Services Agreement shall be open to all Participating Organisations in respect of the Services by means of a Services Agreement entered into between the Service Provider and the Participating Organisation. The Lead Authority does not guarantee that all or any Existing Participant will issue a Services Agreement at the commencement of the Overarching Agreement or at all.

17.4 The Service Provider shall notify the Lead Authority in writing immediately on learning of any relationship or potential conflict of interest in the provision of the Services to any Participating Organisation that might influence or be perceived to influence the provision of the Services to any other Participating Organisation and which may result in a detrimental or negative impact on the Services to that other Participating Organisation.

17.5 Notwithstanding the generality of **Article 17.4**, the Service Provider shall ensure that the provision of the Services to one Participating Organisation shall not have a detrimental or negative impact on the provision of the Services to any other Participating Organisation.

17.6 Notwithstanding any data or information provided to the Service Provider in regard to the value and/or volume of work set out in the tender documentation, the Lead Authority does not guarantee and accepts no liability in respect of the actual value of the Services, or the number or volume of any deliveries which may be required from the Service Provider under the Overarching Agreement or any Services Agreement.

**18. TRANSITION**

18.1 Prior to the commencement of the Overarching Agreement and any subsequent Services Agreements, the Service Provider shall be required to assist with the transition of the Services in accordance with the terms of this **Article 18** and the Transition Procedures attached at **Section XI**.

18.2 The Service Provider shall at all times comply with the reasonable and agreed requirements of the Lead Authority and Participating Organisations when transitioning the Services from the Current Provider (in the event that the Service Provider is not the Current Provider).

18.3 The Service Provider will be required to ensure that it is able to provide the Services in accordance with the terms of this Overarching Agreement and subsequent Services Agreements from the Initial Services Commencement Date. Failure to provide the Services in full and in accordance with the terms of the Services Agreement from the Initial Services Commencement Date will be a material breach of contract.

18.4 The Service Provider shall be deemed to have included in its tender the costs of all necessary equipment, materials, staff, facilities and anything else required for the performance of its obligations in relation to the Transition of the Services.

18.5 The Service Provider agrees to indemnify the Participating Organisations against any loss or damage sustained by the Participating Organisations arising directly or indirectly from the Service Provider’s failure to comply with its obligations under this Overarching Agreement or any Services Agreement to deliver the Services from the Initial Services Commencement Date.

**19. BUSINESS CONTINUITY AND EXIT MANAGEMENT**

19.1Prior to the commencement of this Overarching Agreement and any subsequent Services Agreements, the Service Provider shall provide a copy of its Business Continuity Plan and Exit Strategy to the Lead Authority in accordance with **Clause 41** (Exit Management) and **Clause 49** (Business Continuity) of the Services Agreement.

19.2 The Service Provider’s Business Continuity Plan shall contain all practical measures considered necessary and sufficient by the Service Provider to enable the Service Provider to continue to be able to perform its obligations under the Overarching Agreement and Services Agreements in the event of an Emergency or disaster, whether such event takes place in a Participating Organisation’s borough or location or at the Service Provider’s business premises elsewhere. The Business Continuity Plan shall also set out the detailed procedures and processes to be followed and actions to be taken in the event of a failure or disruption of the Services. All business continuity documentation shall have due regard to the standards outlined in the British Standard BS25999 or European or international equivalent.

19.3 Upon the expiry of this Overarching Agreement and any subsequent Services Agreements or in the event that this Overarching Agreement and/or any Services Agreements are terminated early, the Service Provider shall exit from the Overarching Agreement and/or Services Agreements in accordance with **Clause 41** (Exit Management) of the Services Agreement and the provisions set out in the Service Provider’s Exit Strategy attached at **Section X**. The Service Provider shall at all times co-operate and assist with the process of transition from this Overarching Agreement to any subsequent agreement in relation to the delivery of the Services or services similar to the Services. In this respect, the Service Provider may be required, as part of the transition to a new provider, to transfer the Services on a staggered basis (i.e. service by service, Participating Organisation by Participating Organisation).

19.4 The Service Provider shall comply with the provisions of the Business Continuity Plan and the Exit Strategy and the Service Provider shall ensure that it is able to implement the Business Continuity Plan and Exit Strategy at any time in accordance with their terms.

19.5 The Service Provider shall review, update and test the Business Continuity Plan and Exit Strategy on a regular basis (being 6 months after the Initial Services Commencement Date and then every 6 months (for an interim drill) and every 12 months (for a full annual test) and within six (6) months of the expiry of the Overarching Agreement in accordance with the Specification.

**20. SUB-CONTRACTING**

Whilst this Overarching Agreement shall be performed primarily by the Service Provider, where the Service Provider wishes to engage a sub-contractor in the delivery of the Services in relation to the call centre, its staffing and performance, such sub-contracted services shall account for no more than twenty per cent (20%) of the total annual contract value and shall not be sub-contracted to an entity which is not registered on does not have a presence in the United Kingdom.

**21. Reports**

The Service Provider agrees to create its own reporting documents as detailed in its original tender and will provide these to the Lead Authority and the Participating Organisations on a daily/monthly/quarterly/yearly basis as agreed between the Parties for the type of report required

**22. Updates**

The Service Provider shall keep the Lead Authority and the Participating Organisations updated with regard to any changes in the company or its structure or the Staff team structure and also in respect of the telephone/lCT structure available on the secure portal.

**23. Development of the Services**

23.1 Where the Service Provider develops the Services being delivered it shall not increase the Price to be paid for the Services unless the development has been at the request of the Lead Authority and/or Participating Organisations and the price has been agreed before the development has started.

23.2 The Service Provider has agreed to provide maintain and develop the Services and the Call Management System to ensure that at the end of the last Services Agreement the Services will be capable of continuing. Subject to clause 23.3 it is agreed that the Lead Authority will take receive the latest version of Call Management System (together with any IPR developed) in accordance with the Exit Strategy with the IPR of the scripts remaining vested in the hands of the appropriate Participating Organisations and copies of the scripts transferred to the Lead Authority in accordance with the Exit Strategy and the consent of the Participating Organisations.

23.4 It is acknowledged that the manner in which the Services may be developed cannot be precisely determined until closer to the end of Overarching Agreement due to the potential for advancement in technology, and whilst the Service Provider shall assist in the future transition of the Services the Parties reserve the right to agree the manner of such transition to a later date and that the Service Provider shall be able to recover the cost of assistance in connection with such procedure in accordance with the Exit Strategy.

**24. Warranties**

24.1 Each Party warrants, represents and states to the other that:

24.1.1 it has full capacity and authority to enter into and to perform this Contract;

24.1.2. this Overarching Agreement is executed by a duly authorised representative of that Party; and

24.1.3 once duly executed this Overarching Agreement will constitute legal, valid and binding obligations on it.

24.2 The Service Provider warrants, represents and states to the Lead Authority on a continuing basis throughout the Term that:

24.2.1 the Services will be provided using good quality material and equipment;

24.2.2 it has and will continue to hold (and, to the extent applicable to the scope of the Services to be provided by any sub-contractor, its sub-contractors will have and continue to hold) all necessary accreditations, licences and regulatory approvals (to the extent required) from third parties and relevant regulatory bodies which are necessary to perform the Service Provider's (or where relevant the sub-contractor's) obligations under this Overarching Agreement,

24.2.3 it has and will continue to have all necessary rights in and to the Service Provider Software, any third party software and/or the Service Provider's background Intellectual Property Rights and any other materials made available by the Service Provider and/or the sub-contractors to the Lead Authority which are necessary to perform the Service Provider's obligations under this Overarching Agreement;

24.2.4 as at the Initial Services Commencement Date all statements and representations in the Service Provider's response to the invitation to tender as clarified are to the best of its knowledge, information and belief, true, accurate up-to-date and not misleading.

24.2.5 it will, without delay, advise the Lead Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading and which would have an adverse impact on this Overarching Agreement and/or any Services;

24.2.6 there are no actions, suits or proceedings or regulatory investigations pending or, to the Service Provider's knowledge, threatened against or affecting the Service Provider before any court or administrative body or arbitration tribunal that might affect the ability of the Service Provider to meet and carry out its obligations under this Overarching Agreement;

24.2.7 it is aware of the reliance that the Lead Authority or the Participating Organisations’ will have on the Exit Strategy to support a smooth transition of the Services on termination or expiry of this Services Agreement and will ensure that subject to adequate and timely information being provided by the Lead Authority regarding the needs to be satisfied such Exit Strategy will contain sufficient information and explanation required for the purpose of executing a smooth transition of the Services until the Exit Strategy is agreed by the parties;

24.2.8 it and all of its sub-contractors shall at all times comply with Law in carrying out their obligations under this Overarching Agreement;

24.2.9 the delivery of the Services (including the standards to which they are delivered) shall not cause the Lead Authority or the POs to be in breach of or unable to satisfy any law which is applicable to it;

24.2.10 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;

24.2.11 it is not subject to any contractual obligation, compliance with which will be likely to have an adverse effect on its ability to perform its obligations under this Overarching Agreement;

24.2.12 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue; and

24.2.13 in entering into this Overarching Agreement, it has not committed a Prohibited Act; and

24.2.14 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge, information and belief, pending or threatened against it or any of its assets, which will or might affect its ability to perform its obligations under this Overarching Agreement.

24.3 For the avoidance of doubt the fact that any provision within this Overarching Agreement is expressed as a warranty shall not preclude any right of termination the Lead Authority may have in respect of breach of that provision by the Service Provider.

24.4 The Parties agree that:

24.4.1. the warranties, representations and undertakings set out in this Overarching Agreement are material as indicated;

24.4.2. in entering into this Overarching Agreement each Party has relied upon the warranties, representations and undertakings in this Overarching Agreement.

24.5. The Service Provider shall notify the Lead Authority promptly and in any event within two (2) Working Days of it becoming aware that it is in material breach of any of the warranties set out in this Overarching Agreement and within five (5) Working Days of it becoming aware that it is otherwise in breach of any of the warranties set out in this Overarching Agreement.

**25. CONTINUAL IMPROVEMENT**

25.1 The Service Provider shall, in connection with the Services, assist the Lead Authority in complying with its duty to secure continual improvement in respect of the Services whether under the Best Value Duty in the 1999 Act or under any performance improvement regime applicable to local government from time to time during the Term including the provision of information or data, co‑operation (including access to documents) in any inspections and attendance at any relevant meetings. If, in the course of complying with its obligations set out in this Clause 25, any improvements to the Services are identified by the Service Provider and/or the Lead Authority, the Parties shall act in good faith and shall seek to deal with such improvements in accordance with Article 26.

25.2 The Service Provider agrees that throughout the Term it shall use reasonable endeavours to identify new or potential improvements to the Services and all additional savings incremental to those gained through implementation of the Services reasonably and properly available to the Service Provider in the marketplace or through its internal organisation, and all potential beneficial changes in the Services and terms generally offered by the Service Provider to its customers, and bring them to the attention of the Lead Authority. As part of this obligation, the Service Provider shall identify and report to the Joint Management Board once every three months on:

25.2.1 The emergence of new and evolving relevant technologies which could improve the Services and those technological advances potentially available to the Service Provider and the POs which the Parties may wish to adopt;

25.2.2 New or potential improvements to the Services, including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanism and customer support services in relation to the Services;

25.2.3 New or potential improvements to the interfaces or integration of the Services with other services provided by third party contractors or by the POs which might result in efficiency or productivity gains or in reduction of operational risk; and

25.2.4 Changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the POs

25.3 The benefit of such savings and changes referred to in Clause 25.2 may take the form of a variation in the Price and/or (if the Lead Authority should so require) of a variation in the Services and/or the other terms of this Overarching Agreement and/or the Services Agreement, such changes and variations to be implemented, as appropriate, in accordance with, the Article 26 or the Change Control Procedure in the Services Agreement as appropriate.

25.4 NOT USED

25.5 NOT USED

25.6 NOT USED

25.7 The Lead Authority may agree the sum, request further information or not agree the sum. Where the sum is agreed by the Lead Authority, the parties who will make the payment shall be determined by the Lead Authority based on the following principles:

25.7.1 Where the reduction in the Calls is due to the actions of individual Participating Organisation(s) the Lead Authority shall arrange for the relevant Participating Organisation(s) to make that payment to the Service Provider.

25.7.2 Where the reduction in the Calls is due to an Existing Participant terminating its Services Agreement the payment shall be made by that Existing Participant in accordance with clause 37 of the relevant Services Agreement.

25.7.3 Where the reduction in the Calls is due to the matters outside the Existing Participants’ control the Lead Authority shall determine the sums to be paid to the Service Provider by each Existing Participant

25.8 To allow for longer term changes that may arise such as changes in the combination of Servicesselected since the Initial Services Commencement Date and the reductions associated with Participating Organisations terminating their arrangements early, the Parties may operate a change control mechanism to regulate recovery of the Service Provider’s Commercial Position as follows:

25.8.1 The Service Provider shall raise a Change Request setting out evidence to support the likelihood of recurring and or ongoing detrimental impact on the Service Provider’s Commercial Position which shall include evidence of the full mitigation undertaken by the Service Provider to reduce the impact of Call volume reduction on the Service Provider’s Commercial Position and shall also provide the Lead Authority with such other information as it may reasonably require.

25.6.2 The Change Request shall identify necessary adjustments to the cost per Call to restore the Service Provider to the Service Provider’s Commercial Position as set out in the DFM. This change will reflect the Service Provider’s full mitigation of its losses in respect of the call volumes being encountered.

25.6.4The Change Request shall be dealt with in accordance with Section IV with the Lead Authority receiving this Change Request and considering the options available.

* + 1. After appropriate due diligence the Lead Authority and the Participating Organisations will either accept the Change Request as drafted or otherwise agree or not agree the Change Control proposal. Where the Change Request has been approved it shall be incorporated into the individual Services Agreements
    2. If the Parties cannot agree the Change Request the matter shall be escalated and dealt with in accordance with the Dispute Resolution Procedure.

**26. Amendments**

26.1 Any amendment to the Overarching Agreement shall only be effective if agreed by the parties in writing and signed by both the Parties.

26.2 Any amendment or variation made to the terms of the Overarching Agreement shall apply to the Services Agreement from the date of the amendment or variation without having to be confirmed in writing by the parties, unless otherwise agreed.

**27 Change of Law**

27.1 Unless otherwise agreed between the Parties through the Change Control procedure the Service Provider shall neither be relieved of its obligations to supply the Services (or any part of the Services) in accordance with this Overarching Agreement nor be entitled to an increase in the Price as a result of:

27.1.1 a General Change in Law; or

27.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the services is reasonably foreseeable at the Initial Services Commencement Date; or

27.2 NOT USED

27.3 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in 27.3 (i) below), the Service Provider shall:

27.3.1 notify the Lead Authority as soon as reasonably practicable of the likely effects of that change including:

(i) whether any change is required to the Services, the Price or this Overarching Agreement; and

(ii) whether any relief from compliance with the Service Provider’s obligations is required including any obligation to meet the Performance Standards; and

27.3.2 provide the Lead Authority with evidence:

(i) that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

(ii) as to how the Specific Change in Law has affected the cost of providing the Services; and

(iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Price.

27.4 Any variation to the Price or relief from the Service Provider’s obligations resulting from a Specific Change in Law (other than as referred to in 27.3.1(i) shall be implemented in accordance with the conditions of this Overarching Agreement. Any such variation to the Price or relief from obligations shall be proportionate taking into account any contracts the Service Provider may have with other local authorities for the same or similar services and the Service Provider shall provide such information and documentation to the Lead Authority as it may reasonably require to demonstrate that this requirement has been complied with.

**28. Social Value**

28.1 The Lead Authority and the Service Provider are committed to ensuring that the Overarching Agreement provides social value, as more specifically set out in these Articles and in Section II Part 3 – Service Provider’s Method Statements of this OA.The Service Provider shall use all reasonable endeavours to deliver its social value commitments in accordance with the Overarching Agreement and as set out in Schedule Section II Part 3 – Service Provider’s Method Statements of this OA.

28.2 The Service Provider undertakes to participate actively in economic and social regeneration activities in connection with the Overarching Agreement including promoting the use of small and medium enterprises and social enterprises in its supply chain and has set out in its tender, Schedule Section II Part 3 – Service Provider’s Method Statements of this OA, the social value outcomes and community benefits they will provide during the Term.

28.3 The Service Provider shall not be entitled to any additional payment for discharging its social value obligations, the cost of discharging those obligations shall be deemed to have been allowed in the Service Provider’s Price.

28.4 Achievement by the Service Provider of the social value outcomes and community benefits will be monitored over the lifetime of the Overarching Agreement. The Service Provider shall report to the Supervising Officer and, in relation to social value deliverables for a Lead Authority and/or Participating Organisations’ area, to the Participating Organisation on a monthly basis on social value activities outcomes and community benefits delivered and targets achieved pursuant to the Overarching Agreement.

28.5 Where the Service Provider is unable to deliver the whole or any part of the social value obligations contained in its social value offer, the Service Provider shall notify the Lead Authority and, in relation to social value deliverables for a Participating Organisation’s area, the Participating Organisation in writing as soon as is reasonably practicable and the Parties shall agree a reallocation of the financial value of the relevant social value obligation to another or other social value obligations and the social value offer; the Service Provider’s social value method statement shall be varied accordingly.

**29. Value for Money Review**

29.1A For the Value for Money Review the parties will consider the current cost base and profitability of the Service Provider on an open book basis referencing:

1. The original business case underpinning the Service Provider’s tender (as submitted as part of its tender as set out in the DFM)
2. The amounts of inflation added to the prices set out in the Pricing Schedule and the volume discounts taken from these prices;
3. Any efficiencies in the provision of the provision of the Services as introduced by the Service Provider which have the effect of reducing their costs including the introduction of new technology;
4. Performance of the Service Provider against the KPIs and the method statements of the Service Provider.

The aim of the Value for Money Review will be that any betterment of the commercial position of the Service Provider in relation to the delivery of the Services shall be shared between the parties on a 50/50 basis

29.1 Three (3) months prior to the second anniversary of the Initial Services Commencement Date, the Service Provider, the Lead Authority and the Participating Organisations’ Joint Management Board shall undertake a joint Value for Money Review of the Services, which may lead to price variations. The Value for Money Review will be conducted in accordance with requirements set out in this clause 29. The Value for Money Review will consider all aspects of the delivery and operation of the Services up to that point and including:

* Total volumes of the different call types handled;
* Changes to the scope of the Services Agreements;
* Efficiencies achieved by the Service Provider in its arrangements relating to the delivery of the Services;
* Detailed evidence on an open book basis to support increases in the Service Provider’s own costs (where increases have occurred);
* Variations to service usage by the public;
* Average call handling times for all call types;
* Charging and invoicing data;
* Performance levels achieved against the required Performance Standards set out in Section IV (Performance Monitoring);
* Default Notices issued;
* Volumes of upheld complaints concerning the Service Provider, its Staff and the Services delivered;
* Numbers of Call Handlers (full time equivalent) employed to deliver the Services.

The Value for Money Review will specifically consider additions or amendments to the discount bandings relating to call handling prices. It will also include a review of the daytime step in services.

**Information required**

29.2 The Service Provider shall submit its proposals for variations to the Price, if any, along with the information set out below. This information is to be submitted in advance of the Value for Money Review. It must cover the period from the Initial Services Commencement Date to 6 months before the second anniversary of the Initial Services Commencement Date and be submitted no later than 3 months prior of the second anniversary of the Initial Services Commencement Date.

29.3 The Value for Money Review will require both metrical and narrative information. The metrical information requested below is required to be presented as a summary of all the Services Agreements, providing totals for each annual period of the Services Agreements completed (i.e. totals for year 1 of the Services Agreements) as well as the total for the first six (6) months of year 2 of the Services Agreements).

29.4 The data provided should be a summary of the information previously provided by the Service Provider in monthly and annual reports to all the POs. The Service Provider shall submit the metrical and financial/cost data in Excel format, although PDF format copies may be submitted at the same time. Narrative information may be submitted in either PDF or Word formats.

29.5 The main information requirements are set out below, but the Lead Authority reserves the right to request additional information if appropriate.

**a) Total Volumes of different Calls handled**

The Service Provider shall submit:

1. the total number of Inbound Calls handled for the Services as a whole;
2. in relation to the above calls, the total number of calls handled at the Gold Standard and Silver Standard;
3. the total number of Outbound Calls handled for the Services as a whole;
4. of the categories of calls outlined in items i to iii above, total number of calls handled for each of the Participating Organisations.
5. the total number of Inbound Calls relating to daytime step in services
6. for the daytime step in services calls the total number of calls handled at Gold Standard and Silver Standard
7. the total number of Outbound Calls for the daytime step in services as a whole.

These totals shall be broken down by month and totalled by year and for the first six (6) months of year 2.

These totals must separately identify calls dealt with by self service solutions, and the numbers of e-mails and SMS texts sent for outbound communications.

The Service Provider is also required to provide a schedule of all out of scope calls received. This information shall be presented by Participating Organisation with totals for year 1 and for the first six (6) months of year 2.

**b) Changes to the Scope of the Services Agreements**

The Service Provider shall provide data relating to:

1. the total number of Service Options delivered for each Participating Organisation at the start of the Overarching Agreement (or at the date the Services are commenced for New Participants) and the total number of Service Options delivered for each Participating Organisation at the anniversary of year 1 and at the end of the first six (6) months of year 2;
2. the total number of Minor and Major Variations by each Participating Organisation for year 1 and the first six (6) months of year 2.

**c) Efficiencies achieved by the Service Provider**

The Service Provider is required to provide metrical data to support any efficiencies achieved. Details of any such efficiencies should be included within the narrative report.

**d) Evidence to support any increase in the Service Provider’s costs**

The Service Provider is required to provide the total cost of a full time equivalent (FTE) Call Handlers at the anniversary of the years 1 of the Initial Services Commencement Date and at the end of the first six months of year 2. This figure is to exclude any TUPE related costs.

Where the Service Provider believes that costs associated with other elements of Services (i.e. other than labour costs) have also increased, then the Service Provider must provide full and clear evidence to support any such assertion e.g. invoices or market reports to support this element of the claim.

**e) Changes in service usage by the public**

This shall be measured by the total number of inbound calls handled for each Participating Organisation by month and totalled for each year completed, as well as the total for the first six months of year 2.

**f) Average call handling times for all call types**

Call handling times are to be shown by Inbound and Outbound Call types. The data must be provided for these Out of Hours and daytime step in services calls separately as set out in paragraph a) above and for each Participating Organisation. The data must show the average call handling time by month and totalled for each year completed, and the total for the first six months of year 2. Separate average call handling times must be provided for daytime step in services for each Participating Organisation.

**g) Charging and Invoicing information**

The Service Provider shall provide annual summaries for year 1 and for the first six months of year 2 of the costs charged to each Participating Organisation, including:

* + - charge by type of call (e.g. inbound, out bound, etc);
    - by Service standard applied (i.e. Gold or Silver standard);
    - Discounts applied to each of the Out of Hours calls handled under the Gold and Silver Standards and for daytime step in services;
    - summary of charges for Additional Optional Services by Participating Organisation shown by month and by year;
    - of the Staff transferred from Participating Organisations, the number of such Staff no longer employed in the delivery of the Services and the number joining per month.

**h) Performance Standards Achieved**

The following performance data shall be presented for all the Services Agreements and for each Participating Organisation for both Out of Hours services and for daytime step in services, by month and by year:

* Numbers of answered and abandoned calls shown both as percentages and in figures;
* Numbers of answered calls achieving Gold Standard and Silver Standard, shown as both percentages and in figures;
* Staff turnover as a rolling percentage for each month up to the review date;
* A schedule of any Services interruptions, giving dates and duration for each incident. The list should also give reasons for each interruption;
* A schedule listing all incidents (if any) of failure to comply with the required escalation procedures. The schedule should provide dates and brief notes of actions taken to avoid future recurrences.

**i) The number of Default Notices issued**

The Service Provider shall provide a summary of all Default Notices issued by month and Participating Organisation and be totalled by year. The Default Notices should be summarised by either type or reason.

**j)** **The number of Upheld Complaints about the Service**

These are to be shown by month and totalled by year for the whole contract and be shown by month and totalled by year for each Participating Organisation.

Where requested, an additional schedule shall be provided, that summarises the complaints by reason.

**k) Numbers of Call Handlers (full time equivalent) employed to deliver the Service (both Out of Hours and for daytime step in services)**

Number of staff employed, *expressed as a Full Time Equivalent, (FTE)* as at the anniversary of Years 1 and 2 and at 31/03/15.

It should be noted that the financial standing of the Service Provider will also be reviewed.

**Narrative Information**

A brief overview of the Services Agreements and performance achieved to date, highlighting any particular issues, e.g. emergencies dealt with, numbers of New Participants and efficiencies achieved over the period of the Overarching Agreement completed to date. The narrative should also provide a detailed explanation for any areas of poor performance.

The narrative should also detail any further changes, improvements and/or efficiencies that the Service Provider intends to make, that will impact upon the delivery of the Services.

Participating Organisations will be required to provide the Service Provider with information concerning any planned changes in their policies, services or procedures that could impact upon the level of Services they receive from the Service Provider. This may be provided at summary level, as increases or reductions in types of calls and ranges of Services provided across all the Services Agreements.

**29.6 Review Procedure**

The Strategic Monitoring Manager will set up a project team (the Panel), with support from Finance, Legal, Procurement and HR, largely from within its own organisation plus a number of representatives from the Joint Management Board.

The Review will take account of issues and developments discussed at the quarterly review meetings and, if necessary, any long standing or unresolved issues as well as the information provided by the Service Provider under this Value for Money Review.

These proposals shall include:

* prices for outbound Out of Hours calls and proportions dealt with by SMS text or e-mail rather than a Call Handler;
* whether some or all Prices should increase in line with a price index as set out below.

The Panel will review the Service Provider’s proposal and any supportive information and shall, where necessary, provide the Service Provider with any relevant information about the Participating Organisations’ plans that may affect Services provision.

The Panel shall submit the results of their review, along with any proposals for any change to the Joint Management Board for consideration and approval, no later than 4 weeks after the beginning of the review period.

Once the parties have agreed the financial quantum of savings by the Service Provider the POs will have the following options with regard to their 50% share of the savings:

1. Cash out
2. Discounts to the Prices for identified Service Options
3. The funding of Services enhancements for no additional costs.

The Panel and Joint Management Board may conclude that no aspects of the Price require amendment.

The Service Provider shall be given 4 weeks to assess the Panel’s proposals and options regarding the use of the savings and efficiencies. At the end of the 4 week period, the Service Provider and Panel shall meet to discuss the Panel’s proposals.

Where the proposals and options are agreed by the parties, then the Pricing Schedule, Services Agreement and Overarching Agreement shall be amended accordingly taking into account any pricing discounts and inflation increases previously agreed.

In the event that agreement is not reached, then the Dispute Resolution procedures set out in clause 16 of the Overarching Agreement shall apply.

**30. Call Volume Discounts**

30.1 At each anniversary of the Initial Services Commencement Date the total annual call volume across all categories and for all POs will be assessed. The Service Provider shall submit the total number of inbound calls handled for the Services as a whole across all Services Agreements to the Lead Authority within 14 days of the anniversary of the Initial Services Commencement Date.

30.2 Where the total inbound call volumes are in the range 100000 to 150000 then the discount factor in Cell E7 on the summary page of the Pricing Schedule table will apply and where the total call volumes exceed 150,001 then the discount factor in cell E8 on the summary page of the Pricing Schedule will apply.

30.3 These discount percentages will apply from the first day of the following contract year. The Service Provider will discount the Price for all Gold and Silver calls by the appropriate percentage as set out above for all POs respectively for the next 12 months and set out the discounted Prices in the invoices due for the next contract year.

**31 FINANCIAL DISTRESS EVENT**

**“Financial Distress Event”** means the occurrence of one or more of the events listed in this clause 31

**“Financial Distress Service Continuity Plan”** means a plan setting out how the Service Provider will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs.

**“Rating Agencies”** means the rating agencies agreed by the parties.

31.1 The Service Provider shall promptly notify (or shall procure that its auditors promptly notify) the Lead Authority in writing following the occurrence of a Financial Distress Event or key sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a key sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Service Provider first becomes aware of the Financial Distress Event, the key sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

31.2 In the event of (each being a “Financial Distress Event”):

(a) the Service Provider or any key sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

(b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of Service Provider or any key sub-contractor;

(c) the Service Provider or any key sub-contractor committing a material breach of covenant to its lenders;

(d) a key sub-contractor notifying the Lead Authority that the Service Provider has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

(e) any other event that is analogous to those set out above.

in each case which the Lead Authority reasonably believes could directly impact on the continued performance and delivery of the Services in accordance with this Contract; then, immediately upon notification of the Financial Distress Event (or if the Lead Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Service Provider), the Service Provider shall have the obligations and the Lead Authority shall have the rights and remedies as set out in Paragraphs 31.3 to 31.6.

31.3 The Service Provider shall (and shall procure that any relevant key sub-contractor shall):

(a) at the request of the Lead Authority, meet the Lead Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Lead Authority may permit and notify to the Service Provider in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and

(b) where the Lead Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 31.3 (a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:

(i) submit to the Lead Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Lead Authority may permit and notify to the Service Provider in writing); and

(ii) provide such financial information relating to the Service Provider or any key sub-contractor as the Lead Authority may reasonably require.

31.4 The Lead Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Lead Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Service Provider of its reasons and the Service Provider shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Lead Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Lead Authority or referred to the Dispute Resolution Procedure under Paragraph 31.5.

31.5 If the Lead Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Service Provider’s obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

31.6 Following approval of the Financial Distress Service Continuity Plan by the Lead Authority, the Service Provider shall:

(a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Contract;

(b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 31.6 (a), submit an updated Financial Distress Service Continuity Plan to the Lead Authority for its approval, and the provisions of Paragraphs 31.4 and 31.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

(c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

31.6 Where the Service Provider reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Lead Authority and the Parties may agree that the Service Provider shall be relieved of its obligations under Paragraph 31.6.

31.7 Where:

(a) the Service Provider fails to notify the Lead Authority of a Financial Distress Event in accordance with Paragraph 31.1;

(b) the Service Provider fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 31.6(c).

the Lead Authority may require the Service Provider’s Managing Director to attend a meeting at the its premises within three (3) Working Days of being requested to do so, in order to ascertain the reason for the failures set out above and to agree a solution (which must be in writing), in order to prevent any further failures and to rectify the failures (where possible) within an agreed timescale

31.8 The Service Provider shall where possible include provisions similar to clause 31 in any Sub-Contracts it enters into agreement with.

**32 REAL LIVING WAGE**

32.1 It is a condition of this OA that for the Term and any extensions thereof the Service Provider:

(a) pays all employees who are employed by the Service Provider to perform the Services (the “Employees”) not less than the Real Living Wage as set by the Living Wage Foundation.

(b) agrees to increase the amount which it pays to the Employees by the same amount as any increase to the Real Living Wage within twelve months of the date on which any increase in the Real Living Wage is announced by the Living Wage Foundation

(c) for each Employee (other than any Employee who is under a probationary period of six months), pays the Employee’s usual daily wage in respect of the first ten days in each year when the Employee is unable to work through illness

(d) allows each Employee to have four weeks’ paid holiday per annum, in addition to public holidays; and

(e) allows each Employee fair and unfettered access to a trade union

32.2 If the Service Provider sub-contracts all or part of the provision of the Services to a sub-contractor the Service Provider shall procure that the terms contained in 32.1(a) to (e) shall apply to all employees who are employed by the sub-contractor to perform the Services (or part of them).

**IN WITNESS** of which this Overarching Agreement was executed in duplicate as a Deed by or on behalf of each Party the day and year first above written

|  |  |  |
| --- | --- | --- |
| **EXECUTED** and **DELIVERED** as a **DEED** by  **[ ]** acting by the signature of: | **) ) )** | ................................................  **Director** |
|  |  | ................................................  **Director/Secretary** |

|  |  |
| --- | --- |
| The Common Seal of **THE COUNCIL OF THE LONDON BOROUGH OF EALING** was hereunto affixed in the presence of: | **) ) ) ) )** |
| Authorised Officer |

# Section II – Specification, Pricing Schedule and Service Provider’s Method Statement

**1.** **INTRODUCTION**

1.1 The range of Services to be supplied under this Overarching Agreement and service delivery arrangements are set out in the Specification at Part 1 of this Section II.

1.2 The Price to be charged by the Service Provider for the delivery of the Services shall be the Price set out in the Pricing Schedule at Part 2 of this Section II. The Price shown in Part 2 shall be the Price for the period of the Overarching Agreement (unless varied as a consequence of a Value for Money Review at Year 3 of the Overarching Agreement) and is inclusive of all expenses for performance at sites in the mainland UK but is exclusive of Value Added Tax (VAT).

1.3 Additional items or deletions may be proposed at any time by the Lead Authority or the Service Provider and incorporated into the Specification by written agreement. Any such changes will not affect the prices indicated in any Services Agreement issued prior to the date of such written agreement.

1.4 The Services shall be provided in accordance with the terms of this Overarching Agreement, the Services Agreement and the agreed Method Statement at Part 3 of this Section II. For the avoidance of doubt The Parties acknowledge that the method statements which currently form Part 3 of Section II do not reflect the IT and Operational solution that will be delivered to the Lead Authority and PO’s from the Commencement Date. The method statements will be updated by the parties to reflect the true methodology by the Parties through the Change Control process prior to the Initial Services Commencement Date.

**PART 1 – THE SPECIFICATION**

**PART 2 – PRICING SCHEDULE**

**PART 3 – SERVICE PROVIDER’S METHOD STATEMENTS**

**Section III - Services Agreement**

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2. Term
3. Service Provider’s Status
4. Participating Organisation’s Obligations
5. Entire Agreement
6. Scope of Access Agreement
7. Notices
8. Mistake in Information
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12. The Services
13. Manner of Carrying Out the Services
14. Standard of Work and Performance Management
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Appendix 1 – Specification, Method Statement and Pricing Schedule

Appendix 2 – Not used

Appendix 3 – Not used

Appendix 4 – Change Control Procedures

Appendix 5 – Commercially Sensitive Information Schedule

Appendix 6 – Document Schedule

Appendix 7 – Bulk Transfer Terms

Appendix 8 – Business Continuity Plan

Appendix 9 – Exit Strategy

[Appendix 10 - Performance Monitoring]

**THIS SERVICES AGREEMENT** is made on day of 20[ ]

**BETWEEN**

1. **[PARTICIPATING ORGANISATION]** of **[ADDRESS OF PARTICIPATING ORGANISATION]** (the “Participating Organisation ”); and
2. **[SERVICE PROVIDER]** (company registered number **[ ]**) whose registered office is at **[ ]** (the “Service Provider”).

(hereinafter collectively called “**the Parties**” and independently called “**the Party**”)

**RECITALS:**

(A) This Services Agreement is issued pursuant to the Overarching Agreement made the [*date*] day of [*month*] 2025 between the Council of the London Borough of Ealing of the one part and the Service Provider of the other part

(B) The Participating Organisation and the Service Provider have agreed that the Service Provider shall provide the Services to the Participating Organisation in the manner and upon the terms hereinafter set out.

OPERATIVE PROVISIONS:

**1. Definitions and Interpretations**

1.1 In this Services Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them below:

|  |  |
| --- | --- |
| **Abatement** | means a reduction in the sum to be paid by the Participating Organisation to the Service Provider as a consequence of poor performance with respect to the Services on the part of the Service Provider; |
| **Services Agreement** | means this agreement between the Participating Organisation and the Service Provider consisting of these Clauses and any attached Schedules, and any other documents (or parts thereof) specified by the Participating Organisation; |
| **Additional Services** | means any Service Option(s) as listed in **Appendix 1** (Specification) which the Participating Organisation requests the Service Provider to deliver, in addition to the Initial Services, in accordance with **Clause 31** (Variation) of this Services Agreement; |
| **Admission Agreement** | means a transferee admission agreement entered into in accordance with regulation 6 of the LGPS Regulations by the Administering Authority, the Participating Organisation and the Service Provider or Sub-Contractor (as appropriate); |
| **Admission Body** | means a transferee admission body for the purposes of regulation 6 of the LGPS Regulations; |
| **Administering Authority** | [name of administering authority] Council of [address] acting in its capacity as the administering authority of the [name of relevant LGPS fund] for the purposes of the LGPS Regulations |
| **Appendix** | means an appendix to this Services Agreement; |
| **Approval and Approved** | means the written consent of the Supervising Officer; |
| **Baseline Call Target** | The agreed number of Calls set within the Overarching Agreement (100,000 per annum) or as subsequently adjusted via change control required |
| Bribery Act | means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| **Business Continuity Plan** | means the Service Provider’s business continuity plan attached at **Section IX** of the Overarching Agreement and/or any plan prepared pursuant to **Clause 49** (Business Continuity), as may be amended from time to time with the agreement of the Participating Organisation; |
| **Business Continuity Policy** | means the Service Provider’s business continuity policy as may be amended from time to time with the agreement of the Lead Authority; |
| **Caller** | means a person placing a call to the Service Provider in regard to the Services; |
| **Call Handler** | means a member of the Service Provider’s staff ( and any sub-contractor staff) employed to answer telephone calls in accordance with the terms of this Services Agreement |
| **Call Management System** | means the totality of the IT and telecommunications facilities used by the Service Provider in connection with all aspects of the delivery and management of the Services  including without limitation:  A telephony platform (e.g. Ipsolutions)  A system to hold the scripts (e.g. TK dialogues)  A CRM system which has an assembly function and generates outputs e.g. call queues or e-mails (Microsoft Dynamics on the Azure Cloud)  A quality and scheduling system to enable rosters to be generated  A report writing tool (using  e,g, Sharepoint)  A portal to enable clients to view their reports and scripts  Interfaces  which enable the above to talk to one another  Configuration work to ensure 100% accuracy in data transfer between the systems above;  as amended by agreement from time to time. |
| **Cessation Date** | means any date on which the Service Provider or the relevant Sub-Contractor ceases to be an Admission Body other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees; |
| **Change Control Procedures** | means the change control procedures set out in **Appendix 4** (Change Control Procedures); |
| **Change Request** | means a written request for a change to this Services Agreement which shall be made in accordance with the Change Control Procedure |
| **Collateral Warranty** | means a collateral warranty executed as a deed in the relevant form set out in **Section XII (**Collateral Warranty) of the Overarching Agreement; |
| **Commencement Date** | means the date on which this Services Agreement begins, being  **21 October 2025**; |
| **Commercially Sensitive Information** | means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule at **Appendix 5** and comprised of information:  (a) which is provided by the Service Provider to the Participating Organisation in confidence for the period set out in that Schedule; and/or  (b) that constitutes a trade secret; |
| **Confidential Information** | means any information which has been designated as confidential by either Party in writing or that might reasonably be considered to be confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all Personal Data and sensitive personal data within the meaning of the Data Protection Act 2018 and the Commercially Sensitive Information; |
| **Contracting Authority** | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Participating Organisation; |
| **Contract Manager** | means the member of the Service Provider’s staff who will be the main point of regular contact for the Participating Organisations, be responsible for the day-to-day delivery of the Services and have full authority to take decisions and resolve issues on behalf of the Service Provider; |
| **Current Provider** | means Capita for the purposes of the Existing Participants and in connection with New Participants means the provider of services substantially similar to any of the Services immediately prior to the transfer of such to the Service Provider |
| **Data Controller** | means Controller; |
| **Data Processor** | means Processor |
| **Default** | means any breach of the KPI’s agreed between the Parties |
| **Default Notice** | means a notice served on the Service Provider by the Participating Organisation in the event of poor performance with respect to the Services on the part of the Service Provider in accordance with **Clause** **36** (Default and Termination) of the Services Agreement; |
| **Definitive Financial Model (DFM)** | means the spreadsheet set out in the tender which indicates how the price per call in the tender is made up and shows in appropriate detail:  • fixed and variable costs charged to the price per Call;  • overheads;  • variable costs;  • the depreciation of capital investment;  • one off costs  • the costs of setting up the existing Participating Organisations (POs);  • how these are depreciated over the 5 years, if they are not separately charged to a Participating Organisation at Contract Commencement;  • the Baseline Call Target; and  • TUPE costs •  As these occur and are accounted for over the 5 year primary contract term |
| **Directive** | means the EC Acquired Rights Directive 77/187 as amended; |
| **Disclosure and Barring Service (DBS)** | the Disclosure and Barring Service established under the Protection of Freedoms Act 2012. |
| **DPA** | means the Data Protection Act 2018; |
| **Eligible Employees** | means the Relevant Employees who are employees of the Participating Organisation who immediately before the Relevant Transfer Date are active members of or have the right to acquire benefits under the Participating Organisation Scheme; |
| **Emergency** | means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to an individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services; |
| **Equipment** | means the Service Provider’s equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the Services Agreement; |
| **EIR** | means the Environmental Information Regulations 2004; |
| **Existing Participant** | means an organisation listed in **Section V** (List of Existing Participants) of the Overarching Agreement; |
| **Exit Strategy or Exit Plan** | means the Service Provider’s Exit Plan in the event of expiry or early termination of the Services Agreement attached at **Section X** of the Overarching Agreement; |
| **FOIA** | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation; |
| **Force Majeure** | means any event or occurrence of the following descriptions, which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned: governmental regulations, war, civil war, conflict or terrorist attack within and affecting the United Kingdom, riot, fire, flood, or any similar disaster. It does not include any industrial action occurring amongst the Service Provider’s staff or any staff of any sub-contractor, any disruption of transportation or any increase in costs; |
| **Overarching Agreement** | means the agreement made the **[*date* ]** between the Lead Authority and the Service Provider for the provision to Participating Organisations of the Services; |
| **Good Industry Practice** | means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances; |
| **Information** | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| **Contract Period** | means the Term. |
| **Initial Services** | means the initial Services to be provided by the Service Provider at the Initial Services Commencement Date as identified in the Specification; |
| **Initial Services Commencement Date** | means **8 a.m. on 21 October 2025**, the date upon which the Service Provider shall commence the delivery of the Initial Services to the existing Participating Organisations. |
| Initial Term | means the period commencing on the Initial Services Commencement Date and ending on the 5th anniversary of the Initial Services Commencement Date. |
| **Intellectual Property Rights** | means patents, inventions, trademarks, service marks, logos, design rights (whether capable of being registered or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether capable of being registered or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off; |
| **Joint Contract Review Meeting** | means a meeting to be held between members of the Joint Management Board, representing all the Participating Organisations and the Service Provider’s Key Personnel, for the purpose of monitoring the Service Provider’s performance and the delivery of the Services; |
| **Joint Management Board** | means the joint management board comprising authorised representatives from each Participating Organisation; |
| **Key Personnel** | mean those persons named in the **Section VIII (**Service Provider’s Key Personnel Schedule) of the Overarching Agreement as being key personnel; |
| **Legislation** | means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply; |
| **Lead Authority** | means the Council of the London Borough of Ealing; |
| **LCSG** | means the London Contracts and Supplies Group, a body set up to assist in procurement for a variety of stakeholders whose members will be able to benefit from the Overarching Agreement and related Services; |
| **LGPS** | means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972; |
| **LGPS Regulations** | means the Local Government Pension Scheme (Administration) Regulations 2008; |
| **Losses** | means all costs, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought; |
| **Malicious Software** | means any software, programme or code intended to destroy, interfere, corrupt or cause undesired effects on programme files, data or other information (including Confidential Information), executable code or application software macros, whether or not its operation is immediate or delayed and whether the Malicious Software is introduced wilfully, negligently or without knowledge of its existence; |
| **Major Variation** | means a variation to a Service Option initiated by either the PO or the Service Provider that requires significant staff retraining, such as alterations to call workflow script, process reconfiguration of core systems affecting all or any Participating Organisations, matters requiring technical expertise, testing or any impact assessment the full redrafting of a procedure or script, changes to existing data capture forms such as adding, changing or removing fields and/or changing the form’s business logic. |
| **Material Change** | means a change that alters changes or affects the performance of the Services to the detriment of Service delivery |
| **Minor Variation** | means a variation to a Service Option that can be implemented by way of minor amendments to existing scripts or guidance documents and requires minimal retraining of Staff, does not alter the call workflow, script or process, does not require reconfiguration of core systems effecting all Participating Organisations, require technical expertise, testing or any impact assessment and requires minimal retraining of staff , such as providing a written briefing to Call Handlers and answering their questions |
| **Month** | means calendar month; |
| **New Participant** | means an organisation that joins the Overarching Agreement during the Overarching Agreement Period and is able to purchase any or all of the Services in accordance with the terms of this Overarching Agreement and the Services Agreement. |
| **Overarching Agreement** | means the agreement made between the Lead Authority and the Service Provider |
| **Participating Organisation Data** | means any data and Personal Data, record, document or information which is communicated in writing, orally, electronically or by any other means by or on behalf of the Participating Organisation, which is obtained and supplied by the Participating Organisation and provided to Callers or which is obtained, gleaned, compiled or processed by the Service Provider during the course of the Service Provider providing the Services as a data processor on behalf of the Participating Organisation relating to Callers and Services provided to Callers; |
| **Participating Organisation Property** | means any property, other than real property, issued or made available to the Service Provider by the Participating Organisation in connection with the Services Agreement. |
| **Participating Organisation Software** | means softwarewhich is owned by or licenced to the Participating Organisation, including software which is or will be used by the Service Provider for the purposes of providing the Services, but excluding theService Provider’s software; |
| **Performance Standards** | means the performance standards set out in **Section VI** (Performance Monitoring) of the Overarching Agreement. |
| **Personal Data** | means personal data, as defined by the DPA, which relates to a living individual who can be identified  a) from the data, or  b) from the data and other information which is in the possession of or is likely to come into the possession of the Data Controller; |
| **Premises** | means the premises owned by or leased or licensed to the Service Provider and used in the provision of the Services excluding the Participating Organisation Premises. |
| **Prescribed Rate** | means four percent (4%) above the base rate from time to time of the Bank of England; |
| **Price** | means the price exclusive of any applicable VAT payable to the Service Provider by the Participating Organisation under the Services Agreement, as set out in the Pricing Schedule at **Appendix 1**, for the full and proper performance by the Service Provider of its obligations under the Services Agreement. |
| **Pricing Schedule** | means the pricing schedule at **Appendix 1** and **Section II** of the Overarching Agreement containing details of the Price. |
| **Prohibited Acts** | the following constitute Prohibited Acts:    (a) to directly or indirectly offer, promise or give any person working for or engaged by a Participating Organisation a financial or other advantage to:  (i) induce that person to perform improperly a relevant function or activity; or  (ii) reward that person for improper performance of a relevant function or activity;    (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Services Agreement;    (c) committing any offence:  (i) under the Bribery Act;  (ii) under legislation creating offences concerning fraudulent acts;  (iii) at common law concerning fraudulent acts relating to this or any other contract with the Participating Organisation; or    (d) defrauding, attempting to defraud or conspiring to defraud the Participating Organisation; |
| **Quality Standards** | means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body with which a skilled and experienced operator engaged in the same type of industry or business as the Service Provider would reasonably and ordinarily be expected to comply as supplemented by the Specification; |
| **Regularly Variable Data** | means data provided to the Service Provider by Participating Organisations relating to individual Service Options, which is likely to require regular amendment in course of the day to day operation of the Services, including but not limited to staff rotas, staff contact details, external contractor contact details, service contact details, escalation contact details; |
| **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 Services Agreement or any other affairs of the Participating Organisation and “Regulatory Body” shall be construed accordingly; |
| **Relevant Authority** | means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, officer or public or statutory person of the Government of the United Kingdom or the European Union; |
| **Relevant Transfer** | means a relevant transfer within the meaning of Regulation 3 of TUPE; |
| **Replacement Service Provider** | means any service provider appointed by the Participating Organisation from time to time, to provide any services which are substantially similar to any of the Services and which the Participating Organisation receives in substitution for any of the Services following the expiry, termination or partial termination of the Services Agreement, whether those services are provided by the Participating Organisation itself or by any third party; |
| **Requests for Information** | shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations; |
| **RPIx** | the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the Index, such other index as the Parties may agree, or such adjustments to the Index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with clause 46 (Dispute Resolution); |
| **Schedule** | means a schedule of the Overarching Agreement; |
| **Section** | means a section of the Overarching Agreement; |
| **Service Documentation** | means the documents containing a description of the Services required by the Participating Organisation including but not limited to the Service Options, service standards, hours of service, Call Handler scripts, processes and procedures and attached at **Appendix 6** (Document Schedule); |
| **Service Provider Software** | means softwarewhich is proprietary to the Service Provider, including software which is or will be used by the Service Provider for the purposes of providing the Services; |
| **Services** | means the services to be provided by the Service Provider to the Participating Organisation as specified in the Specification; |
| **Service Option(s)** | means individual services that together make up the Services, as set out in **paragraph 2.2** of the Specification; |
| **Specification** | means the description of the Services to be provided under the Services Agreement and set out in **Part 1, Section II** of the Overarching Agreement and **Appendix 1** of this Services Agreement and any modifications or additions thereto as may from time to time be made in accordance with the terms of this Services Agreement, as supplemented by the particular requirements of the Participating Organisation also set out in Appendix 1; |
| **Staff** | means all staff employed by the Service Provider to perform all or any of the Services together with the Service Provider’s agents, representatives and sub-contractors and all of their respective employees engaged in performing all or any of the Services; |
| **Strategic Monitoring Manager** | means the strategic lead officer authorised to act on behalf of the Participating Organisations |
| **Supervising Officer** | means the individual for the time being authorised by the Participating Organisation to manage the Services Agreement on behalf of the Participating Organisation or such person as may be nominated by the Supervising Officer to act in his absence; |
| **Term or Contract Period** | means the period of the Initial Term as may be varied by:  any extensions to this Overarching Agreement which are agreed pursuant to clause 2 of this Services Agreement or  the earlier termination of this Services Agreement in accordance with its terms or its termination pursuant to the Overarching Agreement. |
| **Transition** | means the transitional preparations and service mobilisation by the Service Provider and its staff, to enable the Service Provider to deliver the Initial Services from the Initial Services Commencement and delivered in accordance with **Article 18** of the Overarching Agreement and the Transition Procedures at **Section XI** of the Overarching Agreement; |
| **Transition Agreement** | means the agreement executed by the Parties pursuant to the delivery of transitional services by the Service Provider in accordance with the Transition Procedures in preparation for the commencement of the Overarching Agreement and attached at **Section XI** of the Overarching Agreement; |
| **TUPE True- Up** | A calculation to balance the anticipated costs associated with the cost to a Party under the Agreement with the actual costs calculated post Transfer and for which recovery mechanisms are set out in the Definitive Financial Model |
| **TUPE** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time and or any other regulations enacted for the purpose of implementing the Directive into English law; |
| **Variation** | has the meaning given to it in **Clause 31.1;** |
| **VAT** | means Value Added Tax; |
| **Working Day** | means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London. |

* 1. In the Services Agreement except where the context otherwise requires:

1. the terms and expressions set out in **Clause 1.1** shall have the meanings ascribed therein;
2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
3. words importing the masculine include the feminine and the neuter;
4. reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
5. references to any statute, enactment, regulation or other similar instrument shall be construed as a reference to the statute, enactment, , regulation or instrument as amended by any subsequent enactment, modification, regulation or instrument;
6. references to any person shall include natural persons and partnerships, firms and other incorporated and unincorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
7. unless otherwise expressly provided, the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
8. headings are included in the Services Agreement for ease of reference only and shall not affect the interpretation or construction of the Services Agreement.

# 1.3 Execution of this Agreement

1.3.1 It shall be a condition of this Services Agreement that the Service Provider shall provide the following documents provided formal agreement is not required immediately upon its execution of this Services Agreement (unless otherwise provided as part of its tender submission);

(i) Environmental Policy;

(ii) Quality Manual;

(iii) A list of the Service Provider’s Sub-contractors;

(iv) Risk Register;

(v) A broker’s letter detailing the Insurance Policies which the Service Provider has in place;

(vi) Risk Assessment Method Statement;

(vii) Health & Safety Policy;

(viii) Preliminary Business Continuity and Disaster Recovery Plans;

(ix) Equal Opportunities Policy;

(x) Initial Exit Strategy;

(xi) Anti-Bribery Policy;

(xii) Business Continuity Plan

1.3.2 It shall be a condition precedent of this Services Agreement that the Service Provider and Participating Organisation shall agree and ensure that all relevant documents, data, guidelines and procedures specific to the performance of the Services under this Services Agreement are attached at **Appendix 6**.

1.3.3 In the event that the Service Provider fails to provide any one or more of the documents listed in **sub-clause 1.3.1** above, the Participating Organisation shall be entitled to either terminate the Services Agreement without any consequence whatsoever to the Participating Organisation or withhold payment of any sum due or which may become due under this Services Agreement until such time as the missing document or documents has, or have been produced to the reasonable satisfaction of the Participating Organisation.

**2. Term**

This Services Agreement shall take effect on the Initial Services Commencement Date and shall continue for the Term.

2.2 If the Participating Organisation wishes to extend this Services Agreement beyond the expiry of the Initial Term, it shall give the Service Provider at least three months' written notice of such intention prior to the expiry of the Initial Term provided always that the Participating Organisation shall not be entitled to extend the Initial Term by more than two years.

2.3 If the Participating Organisation does not wish to extend this Services Agreement beyond the Initial Term, this Services Agreement shall expire on the expiry of the Initial Term. After such expiry, the Service Provider shall still be obliged to provide the assistance to the Lead Authority and POs in accordance with the provisions of and the Exit Plan.

**3. Service Provider’s Status**

* 1. In carrying out the Services the Service Provider shall be acting as principal and not as the agent of the Participating Organisation.
  2. Accordingly:

(a) the Service Provider shall not (and shall procure that the Service Providers staff do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Participating Organisation; and

(b) nothing in the Services Agreement shall impose any liability on the Participating Organisation in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the Participating Organisation to the Service Provider that may arise by virtue of either a breach of the Services Agreement or by negligence on the part of the Participating Organisation.

## 4. Participating Organisation’s Obligations

Save as otherwise expressly provided, the obligations of the Participating Organisation under the Services Agreement are obligations of the Participating Organisation in its capacity as a contracting counterparty and nothing in the Services Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Participating Organisation in any other capacity, nor shall the exercise by the Participating Organisation of its duties and powers in any other capacity lead to any liability under the Services Agreement (howsoever arising) on the part of the Participating Organisation to the Service Provider.

**5. Entire Agreement**

5.1 The Services Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Services Agreement. The Services Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

5.2 In the event of and only to the extent of any conflict between the body of the Services Agreement, the Specification and other documents referred to or annexed to the Services Agreement, the conflict shall be resolved in accordance with the following order of precedence:

(1) the body of the Services Agreement shall prevail over;

(2) the Specification;

(3) any other document referred to in the Services Agreement.

Unless expressly agreed, a document varied pursuant to **Clause 31** shall not take higher precedence than specified here.

In the event of any inconsistency between the Overarching Agreement and the Services Agreement, the Overarching Agreement shall take precedence.

5.3 The Services Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

6. Scope of Services Agreement

Nothing in the Services Agreement shall be construed as creating a partnership or a contract of employment between the Participating Organisation and the Service Provider.

**7. Notices**

7.1 Except as otherwise expressly provided within the Services Agreement, no notice or other communication from one Party to the other shall have any validity under the Services Agreement unless made in writing by or on behalf of the Party concerned.

7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (delivered by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in **Clause 7.3**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours after successful transmission, in the case of electronic mail or facsimile transmission or immediately upon the acknowledgement of receipt of such letters, facsimile transmission or item of electronic mail where acknowledgment of receipt is sooner than the deemed periods stated above.

7.3 For the purposes of **Clause 7.2**, the address of each Party shall be:

(a) For the Participating Organisation:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

E-mail:

(b) For the Service Provider:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

E-mail:

7.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

**8. Mistakes in Information**

The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Participating Organisation by the Service Provider in connection with the provision of the Services and shall pay the Participating Organisation any extra costs occasioned by any discrepancies, errors or omissions therein.

#### 9. Conflicts of Interest

The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any staff is placed in a position where in the reasonable opinion of the Participating Organisation there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or staff and the duties owed to the Participating Organisation under the provisions of the Services Agreement. The Service Provider shall disclose to the Participating Organisation full particulars of any such conflict of interest immediately as any arise. Where the Services are sub-contracted this obligation shall also apply to the sub-contractor and its employees involved with the provision of the Services

**10. Fraud**

The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Service Provider (including its shareholders, members and directors) and/or any of the Service Provider’s suppliers, in connection with the receipt of monies from the Participating Organisation. The Service Provider shall notify the Participating Organisation immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

**11. Prevention of Bribery**

11.1 The Service Provider:

(a) shall not, and shall procure that all of the Service Provider’s staff shall not, in connection with this Services Agreement, commit a Prohibited Act;

(b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Participating Organisation, or that an agreement has been reached to that effect, in connection with the execution of this Services Agreement, excluding any arrangement of which full details have been disclosed in writing to the Participating Organisation before execution of this Services Agreement.

11.2 The Service Provider shall:

(a) if requested, provide the Participating Organisation with any reasonable assistance, at the Participating Organisation's reasonable cost, to enable the Participating Organisation to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

(b) within ten (10) Working Days of the Commencement Date and annually thereafter, certify to the Participating Organisation in writing (such certification to be signed by an authorised representative of the Service Provider) compliance with this **Clause 11** by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Services Agreement. The Provider shall provide such supporting evidence of compliance as the Participating Organisation may reasonably request.

11.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Participating Organisation at the commencement of the Services Agreement) to prevent any of the Service Provider’s Staff from committing a Prohibited Act and shall enforce it where appropriate.

11.4 If any breach of **Clause 11** is suspected or known, the Service Provider must notify the Participating Organisation immediately.

11.5 If the Service Provider notifies the Participating Organisation that it suspects or knows that there may be a breach of **Clause 11**, the Service Provider must respond promptly to the Participating Organisation's enquiries, co-operate with any investigation and allow the Participating Organisation to audit books, records and any other relevant documentation. This obligation shall continue for twelve (12) years following the expiry or termination of this Services Agreement.

11.6 The Participating Organisation may terminate this Services Agreement by written notice with immediate effect if the Service Provider or Staff (in all cases whether or not acting with the Service Provider's knowledge) breaches **Clause 11.1**.

11.7 Any notice of termination under Clause **11.6** must specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Participating Organisation believes has committed the Prohibited Act; and

(c) the date on which this Services Agreement will terminate.

11.8 Despite **Clause 46** (Dispute Resolution), any dispute relating to:

(a) the interpretation of **Clause 11**; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Participating Organisation and its decision shall be final and conclusive.

11.9 Any termination under Clause **11.6** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Participating Organisation.

**12. The Services**

12.1 In consideration of the payment by the Participating Organisation of the Price, the Service Provider shall:

(i) provide the Services as described in the Specification in accordance with the key performance indicators and related performance monitoring requirements set out in Section VI (Performance Monitoring)during the Term;

(ii) exercise its rights and perform the Services in accordance with this Services Agreement and Good Industry Practice;

(iii) warn the Participating Organisation if any matter specified by the Participating Organisation or required by the Participating Organisation or the Supervising Officer is such as to prejudice the quality or purpose of the Services;

(iv) provide the Participating Organisation with such information as the Participating Organisation reasonably requests in order to comply with any rights or obligations relating to the Services, including the timely production of performance data;

(v) perform its obligations under and observe and enforce all of the provisions of any sub-contracts to which it is a party in relation to this Services Agreement;

(vi) as necessary from time to time at its own cost obtain and maintain all consents which are necessary to provide the Services and shall supply to the Participating Organisation upon request a copy of every consent obtained and any variation, relaxation or waiver agreed with the Relevant Authority;

(vii) at all times ensure that the Services comply with and meet all the requirements of this Services Agreement and all Legislation; and

(viii) perform its obligations in full co-operation with the Participating Organisation, its contractors, agents, stakeholders and other relevant service users and any other persons employed by the Participating Organisation.

12.2 The Participating Organisation shall have the power to inspect and examine the performance of the Services at any premises where any part of the Services is being performed, provided that the Participating Organisation gives reasonable notice to the Service Provider.

12.3 In the event that the Participating Organisation notifies the Service Provider of the Participating Organisation’s reasonably held opinion that any part of the Services do not meet the requirements of the Services Agreement or differ in any way from those requirements and this is other than as a result of default or negligence on the part of the Participating Organisation, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Services Agreement within such reasonable time as may be specified by the Participating Organisation.

12.4 The Service Provider shall provide the Services in accordance with the agreed timescales.

12.5 Without prejudice to any other rights and remedies the Participating Organisation may have pursuant to the Services Agreement, the Service Provider shall reimburse the Participating Organisation for all reasonable costs incurred by the Participating Organisation which have arisen as a consequence of the Service Provider’s delay in the performance of its obligations under the Services Agreement and which delay the Service Provider has failed to remedy following reasonable notice from the Participating Organisation and within the time specified in the notice.

**13. Manner of Carrying Out the Services**

The Service Provider shall provide all the Equipment and materials necessary for the provision of the Services. The Participating Organisation shall not be responsible for provision of the Equipment and/or materials unless otherwise agreed by the Participating Organisation.

# 14. Standard of Work and Performance Management

14.1 The Service Provider shall at all times comply with the Quality Standards and Good Industry Practice and where applicable shall maintain accreditation with the relevant Quality Standards accreditation body. To the extent that the standard of service has not been specified in the Services Agreement, the Service Provider shall agree the relevant standard of Services with the Supervising Officer in writing prior to the commencement of the Services.

14.2 The Service Provider warrants and represents that all staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

14.3 The Service Provider’s performance shall be monitored by the Participating Organisation and shall, in particular, be measured on the basis of the Key Performance Indicators as set out in **Section IV** (Performance Monitoring) of the Overarching Agreement and on its level of compliance with the Specification.

14.4 The Service Provider shall attend regular Performance Review Meetings with the Participating Organisation, which shall be held at least quarterly throughout the Term (at premises to be agreed between the Parties), in order to agree upon any issues which are outstanding and/or require review and to ensure total compliance by the Service Provider with the required monitoring arrangements as set out in **Section IV** (Performance Monitoring) of the Overarching Agreement and the Specification.

14.5 The Service Provider shall keep and maintain such necessary data and information and shall provide such assistance as the Participating Organisation may reasonably require to enable the Participating Organisation to complete all official returns, including such information required by any Relevant Authority or Regulatory Body and to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Services.

14.6 The Service Provider shall provide such data and information as the Participating Organisation from time to time shall reasonably require, including the timely production of performance reports. It is a condition that such performance data is provided by the Service Provider within five (5) Working Days of the end date of each reporting month and within two (2) Working Days in relation to weekly reports, or as otherwise required by the Participating Organisation.

14.7 The Service Provider shall at all times during the currency of the Services Agreement allow the Supervising Officer and such other persons (including representatives of other public bodies or agencies) as may from time to time be reasonably nominated by the Supervising Officer access on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to all offices and places of work used by the Service Provider for the purposes of monitoring and inspecting work being performed pursuant to the provision of the Services and any or all records and documents in the possession, custody or control of theService Provider in connection with the provision of the Services.

14.8 The introduction of new methods of working or systems which cause a Material Change shall be subject to prior written approval by the Participating Organisation which shall not be unreasonably withheld or delayed.

14.9 The signing by the Supervising Officer (or his representative) of time sheets or other similar documents shall not be construed as implying the Service Provider’s compliance with this Services Agreement.

###### 15. Staff and Key Personnel

15.1 The Service Provider shall employ sufficient suitably qualified staff to ensure that the Services are provided in all respects to the Specification throughout the Term, including (without limitation) during periods of absence of members of its staff due to sickness, maternity leave, holidays, training or otherwise.

15.1a The Service Provider shall require the employers of all staff engaged in the provision of Services to adhere to the requirements of clause 15.1 as if they were the Service Provider.

15.2 The Service Provider shall perform the Services in accordance with the arrangements relating to staff stated in the Specification and the terms of this Services Agreement.

15.3 The Service Provider shall notify the Supervising Officer of any material amendments to the staff  ~~a~~rrangements during the Term whether or not they fall within the provisions of **Clause 15.2** above.

15.4 The Service Provider shall employ or engage in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.

15.5 The Service Provider shall, for the purposes of enabling the Participating Organisation and the Supervising Officer to satisfy themselves as to the Service Provider’s compliance with this **Clause 15**, maintain at all times accurate and up-to-date records of all staff, in the Service Provider’s employ who are and who are likely to have any connection with the performance of the Services including employee attendance records and shall afford the Participating Organisation and the Supervising Officer full access to these records upon reasonable notice in writing by the Supervising Officer.

15.6 The Supervising Officer may, on giving notice together with reasons to the Contract Manager, request that the Service Provider (but not unreasonably or vexatiously) considers the removal from the provision of the Services any individual member of the Service Provider’s staff or staff of its sub-contractors including the Contract Manager and where there are matters of a competency or disciplinary nature the Service Provider shall be obliged to investigate and follow its procedures.

15.7 The Participating Organisation shall under no circumstances be liable either to the Service Provider or to its staff for any cost, expense, liability, loss or damage occasioned by removal under **Clause 15.6** as a result of the request to consider removal and, subject as aforesaid, the Service Provider shall fully indemnify the Participating Organisation in respect of any claim made by its staff arising from the request that is not otherwise based upon any breach or negligence attributable to the Participating Organisation .

15.8 For the avoidance of doubt, the Service Provider shall at all times be fully and solelyresponsible under this Services Agreement for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to the Service Providers staff in connection with their employment after the Commencement Date and indemnifies the Participating Organisation against any liability arising as a consequence thereof.

15.9 In carrying out the Services, the Service Provider shall take all reasonable steps to minimise any nuisance or annoyance to the Caller.

15.10 The Service Provider shall:

(i) ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS); and

(ii) monitor the level and validity of the checks under this clause 15.10 for each member of staff and shall require the same from the employers of all Staff;

(iii) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out the Services or who may otherwise present a risk to Callers.

15.11 The Service Provider warrants that at all times for the purposes of this Services Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

15.12 The Service Provider shall immediately notify the Participating Organisation of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.

15.13 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to Callers.

15.14 The Service Provider will provide details of employee disciplinary and grievance procedures and other policies, which the Participating Organisation may request from time to time.

15.15 The Service Provider shall adhere to and comply with any guidelines and/or codes of practice issued by the Participating Organisation when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children.

15.16 The Participating Organisation reserves the right to visit the Service Provider’s organisation and Premises to audit, inspect and monitor the Service Provider’s compliance with this **Clause 15**.

15.17 The Service Provider shall ensure that managers in charge of recruitment, vetting and monitoring staff are adequately trained.

**Key Personnel**

15.17 It is a condition of this Services Agreement that the Service Provider’s Key Personnel shall be in attendance and/or contactable at all times (or as agreed by the Participating Organisation) and that all Key Personnel shall be of an appropriate calibre.

15.18 The Service Provider’s Key Personnel shall not be released from providing the Services without ensuring that such change will satisfy the requirements of clause 15.20 except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances. In particular, in providing the Services, the Key Personnel shall be as specified in **Section VIII** of the Overarching Agreement.

15.19 Any replacements to the Key Personnel shall be subject to the agreement of the Participating Organisation. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

15.20 The Changes under **Clause 15.18** or **Clause 15.19**. shall be conditional on appropriate arrangements being made by the Service Provider to minimise any adverse impact on the Services Agreement which could be caused by a change in Key Personnel.

## 16. Assignment and Sub-Contracting

16.1 This Services Agreement is personal to the Service Provider. Subject to clause 16.4A the Service Provider shall not assign, novate, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Services Agreement in whole or in part except with the prior written consent of the Participating Organisation which may not be unreasonably withheld.  The Service Provider may only assign, novate, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Services Agreement where it simultaneously assigns, novates, underlets, charges, sells, bargains or otherwise transfers all other Services Agreements it has with other Participating Organisations and the Overarching Agreement with the Lead Authority to the same economic operator. It is agreed by the Parties the PO may without limitation withhold consent in the following cases:

16.1.1 where the economic operator to whom this Services Agreement, other services agreements and the Overarching Agreement are being assigned, novated, underlet, sold or otherwise transferred to does not meet the criteria for verifying the technical, professional ability and economic & financial standing applied in the procurement process for the award of this Services Agreement;

16.1.2 where the PO considers there are grounds for the exclusion of a the economic operator  under Regulation 57 of the Public Contracts Regulations 2015 (as amended);

16.1.3 where the Service Provider is not simultaneously assigning, novating, underletting, charging, selling, or otherwise transferring all other services agreements it has with other Participating Organisations and the Overarching Agreement with the Lead Authority to the same economic operator.

16.1.4 where the Service Provider sub-contracts more the 20% of the Services or the economic operator to whom this Services Agreement, other services agreements and the Overarching Agreement are being sub-let to is not registered or does not have a presence in the United Kingdom.

16.4A Whilst this Services Agreement shall be performed primarily by the Service Provider, where the Service Provider wishes to engage a sub-contractor in the delivery of the Services in relation to the call centre, its staffing and performance, such sub-contracted services shall account for no more than twenty per cent (20%) of the total annual contract value and shall not be sub-contracted to an entity which is not registered or does not have a presence in the United Kingdom.

16.2 Notwithstanding the above, the Service Provider may in the ordinary course of its business contract for third party services or products that are (a) not solely dedicated to the Participating Organisation; (b) not material to any material function constituting a part of the Services; and (c) do not result in a material change in the way that the service Provider conducts its business.

16.3 The Participating Organisation shall be entitled to:

16.3.1 assign, transfer or otherwise dispose of its rights and obligations under this Services Agreement or any part thereof to any Contracting Authority provided that any such assignment, novation, transfer or other disposal shall not increase the burden of the Service Provider’s obligations pursuant to this Services Agreement; or

16.3.2 novate this Services Agreement to any other public body which substantially performs any of the functions that previously had been performed by the Participating Organisation.

16.4 In the event that the Service Provider enters into any sub-contract in connection with this Services Agreement it shall:

16.4.1 remain responsible to the Participating Organisation for the performance of its obligations under this Services Agreement notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;

16.4.2 impose obligations on its sub-contractor in materially the same terms as those imposed on it pursuant to this Services Agreement and shall procure that the sub-contractor complies with such terms; and

16.4.3 provide a copy (redacted to preserve sensitive and commercial information), at no charge to the Participating Organisation, of any such sub-contract on receipt of a request for such by the Participating Organisation's Supervising Officer.

Save that clauses 16.4.2 and 16.4.3 shall not apply to sub-contractors who do not provide the Services

16.6 Nothing in this Services Agreement shall prohibit or prevent any sub-contractor employed by the Service Provider from being employed by the Participating Organisation at any establishments of the Participating Organisation.

## 17. Offers of Employment

For the duration of the Services Agreement and for a period of twelve (12) months thereafter neither of the Participating Organisation or the Service Provider shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

**18. Price**

18.1In consideration of the performance of the Service Provider’s obligations under the Services Agreement by the Service Provider, the Participating Organisation shall pay the Price in accordance with this **Clause 18** and the Pricing Schedule at Section II of the Overarching Agreement.

18.2 The Participating Organisation shall pay the Service Provider, on the production of a valid VAT invoice, in addition to the Price, a sum equal to the VAT chargeable on the value of the Services provided in accordance with the Services Agreement.

18.3 Upon the first anniversary of the Services Agreement and on each subsequent anniversary throughout the Term, the Service Provider shall calculate any discounts due to the Participating Organisation, as a consequence of the an increase in the volume of inbound calls handled and an increase in the number of Participating Organisations purchasing the Services triggering price reductions, and credit the Participating Organisation against the next invoice due or in any event within twenty-eight (28) days of the anniversary. At the end of the Term or sooner in the event that this Services Agreement is terminated early, the Service Provider shall pay to the Participating Organisation any refunds due within fifteen (15) days of the date of contract expiry or the date of termination (as applicable).

18.4 Within two (2) weeks of each anniversary of the Overarching Agreement, the Service Provider is required to submit a financial statement containing the volumes of calls handled in the preceding year along with details of the discounts applied.

18.5 The prices contained in the Pricing Schedule shall be the price for the duration of the Services Agreement, unless varied as a consequence of the joint Value for Money Review which shall be conducted three (3) months prior to the third anniversary of the Overarching Agreement and subject to clause 25 of the Overarching Agreement.

18.6 The Prices set out in the Pricing Schedule shall increase on an annual basis with effect from each anniversary of the Initial Services Commencement Date in line with the percentage increase in the RPIx in the preceding 12-month period. The first such increase shall take effect at the beginning of the second contract year and shall be based on the latest available figure for the percentage increase in the RPIx at the beginning of the last month of the previous contract year.

18.7 Except as set out in this clause 18. neither the Prices nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Service Provider or its Staff in the performance of their obligations.

18.8 Call volume discounts, indexation and Money Value Review changes shall be applied in the following sequence:

First: Call volume discounts

Second indexation

Third Money Value Review where applicable

18.9 Recovery of Transition Price

The Baseline Call Target shall be monitored, controlled and provided for in accordance with the recovery mechanism in the Definitive Financial Model.

**19. Payment and Tax**

19.1 The Service Provider shall submit invoices monthly in arrears, in a form agreed by the Participating Organisation prior to the commencement of the Services Agreement and in accordance with **paragraph 11.10** of the Specification. Such invoices shall, at the very least, contain the following information:

* Service Provider’s name and address;
* Service Provider’s VAT registration number;
* Invoice number;
* Date of invoice;
* Date or dates of Services supplied;
* VAT calculated at the correct rate.

19.2 Invoices are to be dispatched by the Service Provider within two (2) weeks of the conclusion of the preceding month to which the invoice applies. Each invoice shall be accompanied by a full statement detailing each element of the charge. The Participating Organisation shall pay the undisputed sums due to the Service Provider in cleared funds within thirty (30) days of receipt and agreement of invoices for work performed in accordance with the terms of this Services Agreement.

19.3 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Supervising Officer to substantiate the invoice.

19.4 VAT, where applicable, shall be shown separately on valid VAT invoices as a strictly net extra charge.

19.5 In calculating the amount of any payment of the Price the Participating Organisation shall be entitled to:

(i) make any adjustments to the amount claimed in accordance with the Pricing Schedule;

(ii) make adjustments to the amount claimed for any Variations as may arise from the application of the Change Control Procedure;

(iii) make any arithmetical or mathematical corrections to any errors in the amount claimed that it considers necessary;

(iv) set-off any amounts due in accordance with **Clause** 20 (Recovery of Sums Due); and

(v) deduct or withhold any other amounts which may be properly deducted or withheld under this Services Agreement, including in accordance with Pricing Schedule.

19.6 The Participating Organisation may, in accordance with Clause 36 (Default and Termination), reduce payment in respect of any of the Services which the Service Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Participating Organisation.

19.7 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Services Agreement under **Clause 36** for failure to pay undisputed charges.

19.8 The Parties shall pay interest on any amount payable under this Services Agreement not paid on the due date, from the period from that date to the date of payment calculated on a daily basis at the Prescribed Rate, unless the unpaid sum is in dispute between the Parties.

19.9 In the event of a dispute regarding any sums due under any invoice such dispute shall be resolved within a maximum period of four (4) weeks. If such dispute cannot be resolved in this time then it shall be resolved in accordance with the Dispute Resolution Procedure set out in Clause 46.

**20. Recovery of Sums Due**

20.1 Wherever under the Services Agreement any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Participating Organisation in respect of any breach of the Services Agreement), the Participating Organisation may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Services Agreement.

20.2 Any overpayment by either Party, whether of the Price or of VAT, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

20.3 The Service Provider shall make any payments due to the Participating Organisation without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Participating Organisation to the Service Provider.

**21. NOT USED**

**22. Discrimination**

22.1 The Service Provider shall adopt a policy to comply with the requirements of the Equality Act 2010 and, accordingly, shall not treat one individual or group of people less favourably than others because of colour, race, nationality, ethnic origin, religion or belief, gender, gender reassignment, sex, sexual orientation, disability, age, marital status or because they have entered into a civil partnership, pregnancy or maternity and, further, shall seek to promote equality among its staff and generally.

22.2 Pursuant to **Clause 22.1**, the Service Provider shall also observe as far as possible the Equality Act Codes of Practice produced by the Equality and Human Rights Commission, which accompany the Equality Act 2010.

22.3 The Service Provider shall set out its equal opportunities policy as appropriate:

22.3.1 in instructions to those concerned with recruitment, training and promotion;

22.3.2 in pertinent documents available to its staff, recognised trade unions or other representative groups of its staff;

22.3.3 in recruitment advertisements and connected literature.

22.4 The Service Provider shall, on request, provide the Participating Organisation with examples of such instructions, documents, advertisements and literature.

22.5 The Service Provider shall require the observance of **Clause 22.1** by all Staff and all suppliers and sub-contractors employed in the execution of the Services Agreement.

22.6 The Service Provider shall inform the Participating Organisation as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Service Provider under equalities Legislation or of any judgments, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and in connection with the performance of the Services under the Services Agreement and shall provide the Participating Organisation with such information and documentation as may be reasonably required in relation thereto.

22.7 In the event of any finding of unlawful discrimination or recommendation being made against the Service Provider by any court or tribunal, or of any adverse finding or recommendation in any formal investigation, the Service Provider shall take appropriate steps to address the recommendation or to prevent repetition of the unlawful discrimination and shall, on request, provide the Participating Organisation with details of any steps taken.

22.8 The Service Provider shall indemnify the Participating Organisation in respect of any costs and legal expenses incurred in defending any action brought by the Commission for Equality and Human Rights and/or any third party against the Participating Organisation for non-compliance with any of the statutory provisions mentioned in **Clause 22.1** and/or any Codes of Practice as a result of the breach of this Clause by the Service Provider.

22.9 The Service Provider shall, at the request of the Participating Organisation, provide a suitable breakdown of its workforce by race and grade as the Participating Organisation may reasonably require in order to be satisfied as to the Service Provider’s compliance with this **Clause 22**.

22.10 The Service Provider shall monitor the representation within its workforce of employees of different racial groups (meaning groups of persons defined by reference to colour, race, nationality, ethnic or national origins) and further undertakes to report to the Participating Organisation the results of such monitoring at the Participating Organisation’s request. If it appears to the Service Provider or the Participating Organisation that a particular racial group is under-represented in its workforce as a whole or in a particular area of work in its workforce, the Service Provider shall take such action as the Participating Organisation may consider to be reasonably necessary to remedy the said lack of representation and encourage members of particular racial groups to apply for jobs or take up training opportunities, wherever possible.

**23. Health and Safety**

23.1 The Service Provider shall in performing the Services:

(i) comply with all applicable health and safety Legislation including but not limited to compliance with the requirements under the Management of Health and Safety at Work Regulations 1999 to carry out a suitable and sufficient risk assessment;

(ii) notify the Participating Organisation of any relevant new hazard or any relevant special precaution found to be necessary and any actions required to be taken by the Participating Organisation;

(iii) notify the Participating Organisation promptly of all incidents and accidents relating to the Services reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 together with any serious incidents and accidents involving members of the public or Participating Organisation employees and shall confirm in writing to the Participating Organisation any action taken by the Service Provider or recommended to be taken by the Participating Organisation to prevent a reoccurrence; and

(iv) keep a full record of all incidents and accidents relating to the Services which shall be available for inspection by the Participating Organisation upon reasonable notice.

23.2 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Participating Organisation on request at any point in the Term.

23.3 The Participating Organisation may suspend the provision of the Services in the event of non-compliance by the Service Provider with the health and safety requirements of this Services Agreement. The Service Provider shall not resume provision of the Services until the Participating Organisation is satisfied that the non-compliance has been rectified.

23.4 No payment will be made for any part of the Services omitted as result of a cessation of the Services required by the Participating Organisation owing to breach of any health and safety requirement and neither will any additional payment be made for steps which the Participating Organisation requires the Service Provider to take to remedy the breach of the health and safety requirement.

23.5 The Service Provider shall:

23.5.1 keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Participating Organisation in writing of any changes made; and

23.5.2 comply with any changes, amendments or further instructions reasonably requested or issued by the Participating Organisation in connection with the Service Provider’s health and safety procedures or the Health and Safety Guidelines (where applicable).

**24. GDPR and Data Protection**

The following definitions shall apply to this clause

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.

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

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, Special Categories: take the meaning given in the Data Protection Legislation.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider 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.

UK General Data Protection Regulation or UK GDPR: means has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018)

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

Processing: has the meaning set out in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly

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 such measures adopted by it.

Sub-processor: any third party appointed to process Personal Data on behalf of the Service Provider related to this Agreement.

UK General Data Protection Regulation or "UK GDPR": means has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018

24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, in connection with the processing of Personal Data for the purpose of providing the Services, the PO is a Controller and the Service Provider a Processor. The only processing that the Service Provider is authorised to do is listed in this clause by the PO and may not be determined by the Service Provider. The Parties acknowledge that for the purposes of the Data Protection Legislation, in connection with the processing of Personal Data for the purpose of providing the Services to Callers, both the Participating Organisation and the Service Provider are Controllers though the Service Provider may additionally be a Processor in relation to certain processing activities. The Parties further acknowledge that in respect of the data which the Participating Organisation controls for the purposes of the Data Protection Legislation, the Participating Organisation is the Controller and the Provider is the Processor. The only processing of such data that the Provider is authorised to do by the Participating Organisation is listed in Table 1 below which also sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.

24.2 The Service Provider shall notify the PO immediately and in any event within 24 hours if it considers that any of the PO’s instructions infringe the Data Protection Legislation and shall set out:

a: the nature of the PO’s instructions that infringe the Data Protection Legislation

b. the facts relating to the PO’s instructions that infringe the Data Protection Legislation including where possible approximate number of Data Subjects

c. describes the likely consequences of the Personal Data Breach

24.3 The Service Provider shall provide all reasonable assistance to the PO in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the PO, 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.

24.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Services Agreement:

1. process that Personal Data only in accordance with Table 1 below unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the PO before processing the Personal Data unless prohibited by Law.
2. The Service Provider shall only process Personal Data in accordance with PO’s documented instructions as provided from time to time.

(c) implement Protective Measures, which have been reviewed and approved by the PO as appropriate to protect against a Data Loss Event having taken into 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;

(d) ensure that:

(i) the Staff do not process Personal Data except in accordance with this Agreement;

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and takes reasonable steps to ensure that they:

(A) are aware of and comply with the Service Provider’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Service Provider 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 PO or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

(i) the PO or the Service Provider has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation or LED Article 37) as determined by the PO;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Service Provider 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 PO in meeting its obligations); and

(iv) the Service Provider complies with any reasonable instructions notified to it in advance by the PO with respect to the processing of the Personal Data;

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

24.5 Subject to clause 24.6, the Service Provider shall notify the PO immediately and in any event within 24 hours if it:

(a) receives a Data Subject Access Request (or purposed 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.

The Controller is obliged to report certain types of data breaches within 72 hours to the Information Commissioners Office.

24.6 The Service Provider’s obligation to notify under clause 24.5 shall include the provision of further information to the PO in phases, as details become available.

24.7 Taking into account the nature of the processing, the Service Provider shall provide the PO with reasonable assistance in relation to either Party’s obligations under the Data Protection Legislation and any complaint, communication or request made under clause 24.5 (and insofar as possible within the timescales reasonably required by the PO (to enable the PO comply with relevant time limits set out in the UK GDPR) including by providing:

(a) the PO with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the PO to enable the PO to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the PO, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the PO following any Data Loss Event;

(e) assistance as requested by the PO with respect to any request from the Information Commissioner’s Office, or any consultation by the PO with the Information Commissioner’s Office.

Where the PO requires such assistance, it will make a request to the Service Provider which allows the Service Provider a reasonable time (and in any event no less than 5 working days) to respond to the request.

24.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:

(a) the PO determines that the processing is not occasional;

(b) the PO determines the processing includes Special Categories of data as referred to in the UK GDPR or Personal Data relating to criminal convictions and offences referred to UK GDPR; and

(c) the PO determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

24.9 In line with sub-clause 30.3 (Audit) of the Services Agreement, the Service Provider shall allow for audits of its Data Processing activity by the PO or the PO’s designated auditor and shall permit the PO, its regulators and any third party auditors access to any of the Service Provider’s facilities, equipment or personnel used to process the personal data to ensure that the requirements of the Data Protection Legislation are met.

24.10 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.

24.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Service Provider must:

(a) notify the PO in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the PO;

(c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 24 such that they apply to the Sub-processor; and

(d) provide the PO with such information regarding the Sub-processor as the PO may reasonably require.

24.12 NOT USED

24.13 The Service Provider may, at any time on not less than 30 Business 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 Agreement).

24.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. Subject always to the rights of the Service Provider to agree reasonable adjustments to the price or scope of this SA (any submissions by the Service Provider for a price adjustment must be reasonably evidenced and where the parties are unable to agree a price adjustment the matter shall be resolved in accordance with the dispute resolution procedure). The PO may on not less than 30 Business Days’ notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

* 1. Processing, Personal Data and Data Subjects
     1. The Service Provider shall comply with any further reasonable written instructions with respect to processing by the PO subject always to the rights of the Service Provider to agree a reasonable adjustment to the price or scope of this SA as a result of such instruction. (any submissions by the Service Provider for a price adjustment must be reasonably evidenced and where the parties are unable to agree a price adjustment the matter shall be resolved in accordance with the dispute resolution procedure).
     2. If the Service Provider is unable to comply with the written requests believed reasonable by the PO, the Service Provider must inform the PO in writing as reasonable practicable to do so clearly explaining the reasons why the Service Provider is unable to comply

24.15.3 Any such further instructions shall be incorporated into this Services Agreement.

Table 1

|  |  |
| --- | --- |
| Description | Details |
| Subject matter of the processing | Processing emergency out of hours telephone calls from residents and passing them onto PO duty officers/services] |
| Duration of the processing | Contract Period |
| Nature and purposes of the processing | The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.  Out of Hours Call Centre include services such as (without limitation):  • Abandoned car removal  • Anti-social behaviour  • Building security/alarms  • CCTV  • Complaints  • Dangerous structure  • Data protection  • Environment health  • Freedom of information  • General Information  • Graffiti removal  • Hall hire  • Highways emergencies  • Homeless families  • Housing repairs  • Lone worker support  • Major emergencies  • Media enquiries  • Noise patrol  • Parks & cemeteries  • Parking  • Play equipment  • Registrar emergencies  • Social services emergency  • Stray dogs  • Street cleansing  • Street lighting  • Suicide calls  • Terror Threats  • Travellers  • Trees |
| Type of Personal Data | This will at least include:-  Caller:  Name  Address  Email  Phone Number  Gender  Ethnicity  And possibly some of the following:   * race; * ethnic origin; * political opinions; * religious or philosophical beliefs; * trade union membership; * genetic data; * biometric data (where this is used for identification purposes); * health data; * sex life; or * sexual orientation |
| Categories of Data Subject | Residents, neighbours and staff |
| 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 | Call data are retained for a period in line with Services retention and disposal policies. In most cases this will be for a period of 6 months after which the call recordings are removed. |

24.16 Each Party shall indemnify and keep indemnified the other against all actions, claims, costs, damages, deductions, expenses losses and liabilities incurred by the other in respect of any breach by the offending Party (and/or any act or omission of any sub-contractor) of its obligations under this **Clause** 24 and where such breach is incurred on the instructions of another Party there shall be contributory liability reflected in the indemnification.

24.17 The Service Provider shall bring into effect and maintain and procure that all relevant sub-Processors have in effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data and comply with the requirements of Clause 24.4.

24.18 The Participating Organisation may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider or its sub-contractors. Within twenty (20) Working Days of such a request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Participating Organisation can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Legislation.

24.19 Without prejudice to the Service Provider’s general obligations to provide data and information to the Participating Organisation on request, the Participating Organisation shall be entitled to request, and subject to the prior written consent of the relevant employees having been obtained, the Service Provider shall provide within a reasonable time, employment and relevant personal information in relation to the Service Provider’s employees or any sub-contractor’s employees for the purposes of anti-fraud measures such as data matching. The Service Provider shall ensure that it takes any measures necessary pursuant to the Data Protection Legislation and any other relevant Legislation to facilitate such disclosure lawfully and fairly.

24.20 Each Party undertakes to the other Party that it will not knowingly place the other Party in breach of the other Party’s obligations under the Data Protection Legislation.

24.21 Each Party shall comply with its obligations under the Computer Misuse Act 1990 insofar as performance of this Services Agreement gives rise to obligations thereunder.

24.22 Where the Service Provider processes Personal Data and governs the processing of that Personal Data on behalf of the Participating Organisation, then the Participating Organisation may require the Service Provider to enter into a data processor agreement (in a form to be agreed between them in advance of such data processing with both Parties acting with good faith).

24.23 At the quarterly Performance Review Meetings referred to in the Specification the parties shall also review the following which shall be documented and retained for compliance purposes:

1. Adherence or issues of non-compliance with this clause 24;
2. A review of previous on-going monitoring findings to ensure these are being reviewed and recommendations implemented appropriately;
3. Changes to the data processing activities for example the use of new sub-processors, any changes in the processor’s legal structure which result in the transfer of PO personal data to a new parent or other group company or a change in the location of the processing of personal data; and
4. Details of any data breaches (reportable and non-reportable).
5. Any other matters related to this clause reasonably required by the PO

**25.** **Participating Organisation Data, Security, Loss of Data and Malicious Software**

25.1 The Service Provider acknowledges that (subject to the provisions of the Data Protection Legislation) Participating Organisation Data is the property of the Participating Organisation and the Participating Organisation hereby reserves any Intellectual Property Rights which may subsist in the Participating Organisation Data and grants to the Service Provider for the Term an irrevocable licence to deal with Participating Organisation Data solely in order to provide and deliver the Services and perform its obligations under this Agreement and shall not exploit the Participating Organisation Data or deal with it in any other way.

25.2 The Service Provider shall take all necessary steps to ensure that any Participating Organisation Data which comes into its possession or control is protected in accordance with the Data Protection Legislation and appropriate security procedures and in compliance with Good Industry Practice (having regard to the nature of their other obligations under this Services Agreement and under the Data Protection Legislation).

25.3 The Service Provider and the Participating Organisation shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Services Agreement) to preserve the integrity of all data provided, acquired or generated in connection with this Services Agreement and to prevent any corruption or loss of the Participating Organisation Data.

25.4 The Service Provider shall ensure that a back-up copy of Participating Organisation Data is made every working day and that such copy is recorded on media from which the Participating Organisation Data can be re-loaded in the event of any corruption or loss of data.

25.5 The Service Provider shall ensure that all removable media used in the provision of the Services is properly encrypted.

25.6 In the event that Participating Organisation Data is corrupted or lost as a result of any default by the Service Provider, the Participating Organisation shall have the option in addition to any other remedies that may be available to it either under this Services Agreement or otherwise to elect either of the following remedies:

25.6.1 the Participating Organisation may require the Service Provider at its own expense to restore, or procure the restoration of the Participating Organisation Data, using the back-up copy referred to in **Clause 25.4**; or

25.6.2 the Participating Organisation may itself restore, or procure the restoration of, the Participating Organisation’s Data, using the back-up copy referred to in **Clause 25.4**, and the Service Provider shall repay to the Participating Organisation all reasonable expenses incurred in so doing.

25.7 The Service Provider shall ensure that the Participating Organisation Data is updated each working day and that each day’s update is recorded on reloadable media and is included in the daily back-up copy made by the Service Provider.

25.8 In order to ensure that no unauthorised person gains access to any Confidential Information, including the Participating Organisation’s Data, obtained in the performance of the Services Agreement, the Service Provider agrees to maintain security systems approved by the Lead Authority initially and thereafter as agreed between the Service Provider and the Participating Organisation and to the expected industry standard.

25.9 The Service Provider shall immediately notify the Participating Organisation of any breach of security in relation to Confidential Information and all Participating Organisation Data obtained in the performance of the Services Agreement and will keep a record of such breaches. The Service Provider shall use its best endeavours to recover such Confidential Information or Participating Organisation Data however it may be recorded. This obligation is in addition to the Service Provider’s obligations under Clause 26 (Confidentiality). The Service Provider shall co-operate with the Participating Organisation in any investigation that the Participating Organisation considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

25.10 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Participating Organisation’s Data.

25.11 The Service Provider shall not store, copy, disclose, or use the Participating Organisation Data except as necessary for the performance by the Service Provider of its obligations under this Services Agreement or as otherwise expressly authorised in writing by the Participating Organisation.

25.12 To the extent that Participating Organisation Data is held and/or processed by the Service Provider, the Service Provider shall supply such Participating Organisation Data to the Participating Organisation as requested by the Participating Organisation in the format specified Participating Organisation.

25.13 Upon receipt or creation by the Service Provider of any Participating Organisation Data and during any collection, processing, storage and transmission by the Service Provider of any Participating Organisation Data, the Service Provider shall take all precautions necessary to preserve the integrity of the Participating Organisation Data and to prevent any corruption or loss of such data.

25.14 The Service Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from its ICT systems.

25.15 Notwithstanding **Clause 25.14**, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Participating Organisation’s Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

25.16 Any cost arising out of the actions of the Parties taken in compliance with the provisions of **Clause 25.15** shall be borne by the Parties as follows:

25.16.1 by the Service Provider where the Malicious Software originates from the Service Provider software, third party software or the Participating Organisation’s Data (whilst the Participating Organisation’s Data was under the control of the Service Provider); and

25.16.2 by the Participating Organisation if the Malicious Software originates from the Participating Organisation’s software or the Participating Organisation’s Data (whilst the Participating Organisation’s Data was under the control of the Participating Organisation).

26. Confidentiality

26.1 Each Party:

1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Services Agreement, which persons the Party shall procure will be bound by the same obligation of confidentiality hereunder as the Party in receipt of the Confidential Information or except where disclosure is otherwise expressly permitted by the provisions of the Services Agreement.

26.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Participating Organisation under or in connection with the Services Agreement:

(a) is given only to such of the Staff and professional advisers or consultants engaged to advise it in connection with the Services Agreement as is strictly necessary for the performance of the Services Agreement and only to the extent necessary for the performance of the Services Agreement;

(b) is treated as confidential and not disclosed (without prior consent) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Services Agreement.

26.3 The Service Provider shall ensure that its staff or professional advisers or consultants are aware of and abide by the Service Provider’s confidentiality obligations under this Services Agreement and shall use reasonable endeavours to ensure its Staff are aware of and abide by the same obligations of confidentiality. Any breach of the confidentiality obligations in this Services Agreement by the Staff or professional advisers shall render the Service Provider liable as if such a breach was committed by it.

26.4 The Service Provider shall not use any Confidential Information it receives from the Participating Organisation otherwise than for the purposes of the Services Agreement.

26.5 The provisions of **Clauses 26.1 to 26.4** shall not apply to any Confidential Information received by one Party from the other:

(a) which is or becomes public knowledge (otherwise than by breach of this Clause);

(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under FOIA or the EIR pursuant to Clause 27.

26.6 Nothing in this **Clause 26** shall prevent the Participating Organisation disclosing any Confidential Information for the purpose of:

1. the examination and certification of the Participating Organisation’s accounts; or
2. any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Participating Organisation has used its resources; or
3. responding to an access request under the Freedom of Information Act 2000

provided that in disclosing information under sub-paragraph (b) the Participating Organisation discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

26.7 Nothing in this **Clause 26** shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Services Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

27. Freedom of Information

27.1 The Service Provider acknowledges that the Participating Organisation is subject to the requirements of FOIA and the EIR and shall assist and cooperate with the Participating Organisation (at the Service Provider’s expense) to enable the Participating Organisation to comply with these Information disclosure requirements.

27.2 The Service Provider shall and shall procure that its sub-contractors shall:

(a) transfer any Request for Information to the Participating Organisation as soon as practicable after receipt and in any event within two (2) Working Days;

(b) provide the Participating Organisation with a copy of all Information in its possession or power in the form that the Participating Organisation requires within five (5) Working Days (or such other period as the Participating Organisation may specify) of the Participating Organisation requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Participating Organisation to enable the Participating Organisation to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the EIR.

27.3 The Participating Organisation shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

(a) is exempt from disclosure in accordance with the provisions of FOIA or the EIR;

(b) is to be disclosed in response to a Request for Information, and in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Participating Organisation.

27.4 The Service Provider acknowledges that the Participating Organisation may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public Organisations’ functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under FOIA or the EIR to disclose Information:

* 1. without consulting with the Service Provider, or

(b) following consultation with the Service Provider and having taken its views into account.

27.5 The Service Provider shall ensure that all Information produced in the course of the Services Agreement or relating to the Services Agreement is retained for disclosure and shall permit the Participating Organisation to inspect such records as requested from time to time.

## 27.6 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Participating Organisation may nevertheless be obliged to disclose Confidential Information in accordance with this Clause 27.

28. Publicity and Media

28.1 Without prejudice to the Participating Organisation’s obligations under FOIA, neither Party shall publicise the Services Agreement or any part thereof in any way, except with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

28.2 Both Parties shall take reasonable steps to ensure the observance of the provisions of **Clause 28.1** by all their staff, employees, agents, professional advisers and consultants. The Service Provider shall take reasonable steps to ensure the observance of the provisions of **Clause 28.1** by its sub-contractors.

28.3 The Service Provider shall not by itself or its staff and procure that its sub- contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Services Agreement without the prior written approval of the Participating Organisation.

28.4 No facilities to photograph or film in or upon any Participating Organisation Premises used in relation to the provision of the Services or otherwise shall be given or permitted by the Service Provider unless the Participating Organisation has given its prior written approval.

29. Intellectual Property Rights

29.1 All Intellectual Property Rights in any specifications, databases instructions, service scripts, processes, procedures, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(a) furnished to or made available to the Service Provider by the Participating Organisation including any developments or improvements made by the Service Provider shall remain the property of the Participating Organisation and the Participating Organisation consents to its IPR being transferred and/or licensed to the Lead Authority for the purpose of continuation of the Services on termination of this Agreement;

(b) relating to the Call Management System prepared by or for the Service Provider for use, or intended use, in relation to the performance of the Services Agreement shall belong to the Service Provider until it transfers to the Lead Authority pursuant to clause 14 of the Overarching Agreement.  The Participating Organisation shall not, and shall use its reasonable endeavours to procure that its employees, agents, and representatives shall not, (except when necessary for the implementation of the Services Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Services Agreement) which they may obtain in connection with the Services Agreement except information which is in the public domain

29.2 It is a condition of the Services Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Parties shall during and after the Term on written demand indemnify and keep indemnified the other against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which may be suffered or incurred as a result of or in connection with any breach of this Clause, except where any such claim relates to:

(a) designs furnished by the Participating Organisation;

(b) the use of data supplied by the Participating Organisation which is not required to be verified by the Service Provider under any provision of the Services Agreement.

29.3 Either Party shall promptly notify the other when it becomes aware of any Intellectual Property Rights claim being brought or any liability arising.

29.4 Any Intellectual Property Rights claim brought shall be managed by the Service Provider at its own expense. The Service Provider shall take such action as is necessary to minimise the impact of any claim on the Participating Organisation and the delivery of the Services pending the outcome of the claim.

29.5 The Participating Organisation shall, at the request of the Service Provider, assist the Service Provider in the management of any such claim and where the Participating Organisation does so assist, the reasonable costs and reasonable expenses incurred in doing so shall be borne by each Party individually save to the extent that liability for the claim lies with the other.

29.6 The Participating Organisation shall not make any admissions which could be prejudicial to the defence or settlement of the Intellectual Property Rights claim (or could increase the liability) without first obtaining the written permission of the Service Provider, such permission not to be unreasonably withheld or delayed.

29.7 If a claim is made, or the Service Provider anticipates that a claim might be made, the Service Provider may, at its own expense and sole option, either:

29.7.1 procure for the Participating Organisation the right to continue using the relevant item which is subject to the claim; or

29.7.2 replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other Services;

(iii) there is no additional cost to the Participating Organisation; and

(iv) the terms of this Services Agreement shall apply to the replaced or modified Services.

29.8 If the Service Provider elects to modify or replace an item pursuant to **Clause 29.7** or to procure a licence in accordance with **Clause 29.7,** but this has not avoided or resolved the claim, then, without prejudice to the indemnity set out in **Clause 29.2**, the Service Provider shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs in implementing and maintaining the substitute items

29.9 At the termination of the Services Agreement each Party shall at the request of the other immediately return to that Party all materials, data, work or records of held, including any back-up media that belongs to the other Party subject to the retention of materials data work or records required under law or to deal with any claims relating to the Services Agreement.

29.10 The provisions of this **Clause 29** shall apply during the continuance of the Services Agreement and indefinitely after its expiry or termination.

30. Audit

# 30.1 The Service Provider shall keep, or cause to be kept, full and accurate records (“the Records”) of all Services performed in connection with this Services Agreement, together with all materials and sites used in connection therewith.

30.2 Without prejudice to the generality of **Clause 30.1**, the Service Provider shall ensure that it correctly identifies measures and reports all transactions associated with the Services and all performance and charging information required to be supplied to the Participating Organisation hereunder and that it allows such information to be validated by the Participating Organisation. For the avoidance of doubt the information required to be supplied to the Participating Organisation shall not include Commercially Sensitive Information relating to the Service Provider’s internal financial affairs.

30.3 The Service Provider shall grant to the Participating Organisation, any auditors of the Participating Organisation and their respective authorised agents the right of reasonable access to the Service Provider’s records and/or any sites and/or materials for the purposes of audit or any other inspection and shall provide all reasonable assistance at all times during the period of this Services Agreement for the purposes of carrying out an audit or other inspection of the Service Provider’s compliance with this Services Agreement, such right to include the reasonable right of access to the records and/or any sites and/or materials for third parties authorised by the Participating Organisation in the event of termination or expiry of this Services Agreement, for the purpose of ensuring continuity in the provision of the Services to the Participating Organisation.

30.4 Without prejudice to the foregoing provisions of this Clause, in the event of an investigation into suspected fraudulent activity or other impropriety by the Service Provider or any third party, the Participating Organisation reserves for itself, any auditors of the Participating Organisation and their respective authorised agents the right of immediate access to the records and/or any sites and/or materials and the Service Provider agrees to render necessary assistance to the conduct of such investigation at all reasonable times during the period of this Services Agreement. Provided that where Services are interrupted and or delayed by such participation this shall not count in connection with any failure to deliver on any KPI’s affected.

30.5 If in the reasonable view of the Participating Organisation the audit indicates that the Service Provider’s controls or performance are unsatisfactory it will inform the Service Provider, and the latter will agree on the improvements required and a timetable for achieving them. The Service Provider will comply with the timescale to implement the improvements as may be required by the Participating Organisation.

30.6 The Service Provider shall keep and maintain until 12 (12) years after the Services Agreement has been completed or terminated earlier in accordance with the terms hereof, or as long a period as may be agreed between the Parties, full and accurate records of the Services Agreement including the Services provided under it, all expenditure reimbursed by the Participating Organisation and all payments made by the Participating Organisation. The Service Provider shall on request afford the Participating Organisation or the Participating Organisation’s representatives or the Audit Commission (or any successor body, organisation, entity or association) such access to those records as may be required by the Participating Organisation or the Audit Commission in connection with the Services Agreement.

30.7 The Service Provider shall also keep, maintain and provide access to all individual call handling information records and audio recordings in line with the Participating Organisation’s requirements and in line with the Data Retention Guidelines for Local Government. These requirements are to be stated in the Participating Organisation’s Service Documentation to be concluded prior to service implementation.

30.8 The Service Provider shall notify the Participating Organisation of any proposed change in the Service Provider’s auditor and shall inform the Participating Organisation of the reasons for any such proposed change.

31. Variation

31.1  The Participating Organisation reserves the right on giving notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, amendments to existing Services, or increasing or decreasing the Services) for any reasons whatsoever provided that such changes to the Services do not fundamentally affect any part of the Specification other than that which is permitted in accordance with the terms of this Services Agreement. Such a change is hereinafter called a “Variation” and shall be made in accordance with this **Clause 31**, **paragraph 2.3** of the Specification and the Change Control Procedures at **Appendix 4**.

31.2  The Service Provider shall comply within a reasonable time (not exceeding thirty (30) days) with any request made by the Participating Organisation to cease to provide a Service Option or in the case of a request to make Major Variations to an existing Service Option or a number of Service Options within a reasonable time (not exceeding 60 days).

31.3 There shall be no charge for the deletion of any Service Option, whether in part or in whole, from the Participating Organisation’s Specification.  Costs relating to any such Major Variations to the Services (i.e. those that may require changes to call flow or significant staff re-training) shall be calculated in accordance with the agreed charges as set out in the Pricing Schedule and procedures at **paragraph 2.3** of the Specification. Such Major Variations shall only be initiated by the Service Provider upon receipt of written confirmation by the Participating Organisation of its acceptance of the Service Provider’s proposal and the associated costs.

31.4  The Service Provider shall collaborate fully with the Participating Organisation and set up any additional Service Options requested by the Participating Organisation within six (6) weeks of the receipt of a Change Request Form for Out of Hours Services (or over a longer period where agreed in writing by the Participating Organisation).  The cost for setting up additional Service Options shall be calculated in accordance with the agreed charges set out in the Pricing Schedule. Where the Parties are unable to agree upon a price for the additional Service Options the Parties will resolve such disputes within four (4) weeks. If the Parties are unable to resolve the dispute within this time frame, then it shall be resolved in accordance with the Dispute Resolution procedure set out in Clause 46.

31.5  Where a Minor Variation to a Service Option is requested by the Participating Organisation (i.e. a Variation that necessitates only minimal retraining of Call Handlers and can be implemented by the amendment of existing scripts or guidance documents), the Service Provider shall make such changes within one (1) Working Day of receipt of the request or as directed by the Supervising Officer.  There shall be no additional charge for any such Minor Variations at any time during the Term.

31.6 NOT USED

31.7  All Variations shall be communicated in writing by the Supervising Officer to the Contract Manager in accordance with the notice provisions set out in **Clause 7** above. All Variations shall be requested via a Change Request Form in the form attached at **Appendix 4.**

**32. Transfers of Employment (TUPE)**

32.1 In this Clause 32, unless the context otherwise requires, the following terms shall have the meanings given to them below:

“Admission Agreement”means an admission agreement for the purposes of the Regulations.

“Administering Authority” means the relevant authority acting in its capacity as administering authority of the Fund for the purposes of the Regulations.

“Compensation Regulations” means the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

“Eligible Employees” means the Relevant Employees who are employees of the Participating Organisation who immediately before the Relevant Transfer Date are active members of or have the right to acquire benefits under the Participating Organisation Scheme;

“Existing Service Provider” means any provider (including the Current Provider and, if applicable, the Participating Organisation) of services substantially similar to any of the Services prior to the commencement of the delivery of any such Services by the Service Provider;

“Exit Date” has the meaning given in Clause 32.2.7.2 below;

“Exit Employees**”** has the meaning given in Clause 32.2.7.2 below;

“Final Employee List” means the update to and the still relevant information within the First Employee List as provided to the tender up to 28 days before the Commencement Date

“First Employee List” means an update to and the still relevant information within the information relating to the Relevant Employees supplied to the Service Provider during the tender for this Services Agreement regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of the Relevant Employees.

“Fund” means the relevant fund of the LGPS

“LGPS” means the Local Government Pension Scheme

“Original Eligible Employees**”** means the Relevant Employees who are former employees of the Participating Organisation who immediately before the Relevant Transfer Date are employees of the Current Provider and are active members of or have the right to acquire benefits under the Current Provider’s Scheme

“Participating Organisation

Scheme” means the LGPS or other relevant scheme;

“Relevant Employees” means those employees who are immediately prior to the applicable Relevant Transfer Date employed by the applicable Existing Service Provider wholly or mainly in the provision of services substantially similar to any of the Services;

“Regulations” means the Local Government Pension Scheme Regulations 2013

“Relevant Transfer Date” has the meaning given in Clause 32.2.1 below.

32.2 **TUPE and Employees**

32.2.1 Relevant Transfers

The Participating Organisation and the Service Provider agree that on the Initial Services Commencement Date (if the Participating Organisation is an Existing Participant), and on each other occasion where the identity of a provider (including the Participating Organisation) of any service which constitutes or will constitute any of the Services is changed whether in anticipation of changes pursuant to the Services Agreement or not, shall be events that each constitute a Relevant Transfer and that the contracts of employment and any collective agreement of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the Service Provider except insofar as such contracts relate to any benefits for old age, invalidity or survivors under any occupational pension scheme (save as required under sections 257 and 258 of the Pensions Act 2004). On the occasion of each such Relevant Transfer (each such occasion being a “Relevant Transfer Date”), the Service Provider shall comply with its obligations under TUPE (including without limitation its obligations under Regulation 13(4) of TUPE) and the Service Provider shall indemnify the Participating Organisation or at its request the applicable Existing Service Provider against any Losses sustained as a result of any breach of this Clause 32.2.1 by the Service Provider.

32.2.2 – not used

32.2.3 Emoluments and Outgoings

1. The Service Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Service Provider in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the applicable Relevant Transfer Date up to the applicable Exit Date.
2. The Participating Organisation shall indemnify the Service Provider in respect of all remuneration, benefits, entitlements and outgoings in respect of the Eligible Employees, and any other employees not engaged by the Current Provider but employed in connection with the delivery of the services by any alternate Existing Service Provider whilst a Participating Organisation who is a New Participant shall indemnify the Service Provider for these matters in respect of all Eligible Employees and Relevant Employees who are or will be engaged in the provision of the Services provided to the New Participant prior to the commencement of the Service Provider as employer, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the applicable Relevant Transfer Date and such indemnity shall apply in respect of any claims brought in respect of such matters whether the claim is commenced prior to or after the Relevant Transfer Data
3. Under the contract for the provision of out of hours call handling services between the Existing Participant and the Current Provider which commenced on about 1st October 2012 (“the Existing Contract”), the Current Provider agreed to indemnify the Existing Participant and at its request any replacement provider for all remuneration, benefits, entitlements, claims and outgoings in respect of the Relevant Employees up to the Relevant Transfer Date and where an indemnity to the Existing Participant for the benefit of the Service Provider is in place the Participating Organisation shall require that to be applied by the Current Provider in the event of any claim thereunder. Where the Current Provider fails to meet the requirements of the indemnity, it is insufficient, fails to cover any claim brought and or it is withdrawn prior to being discharged, and such failure or insufficiency has not been caused by the actions or omissions of the Service Provider who shall be obliged to use all reasonable endeavours to enforce the indemnities from the Current Provider and to fully mitigate any losses, a True-Up of the Losses to the Service Provider shall be undertaken in accordance clauses 32.2.5A to 32.2.5F using the Definitive Financial Model figures as the basis of any adjustment.

32.2.4 Union Recognition

The Service Provider shall in accordance with TUPE recognise the trade unions representing Relevant Employees after the applicable Relevant Transfer Date to the same extent as they were recognised by the applicable Existing Service Provider.

32.2.5 Indemnities

(a)The Service Provider shall indemnify and keep indemnified in full the Participating Organisation or at its request the applicable Existing Service Provider against all Losses arising from:

(i) in connection with the applicable Relevant Transfer Date, any claims pursuant to 4(9) or 4(11) of TUPE as a result of any measures proposed by the Service Provider or any actual or proposed changes to the terms and conditions of employment or working conditions of Relevant Employees by the Service Provider which is or is alleged to be to the Relevant Employees’ material detriment;

(ii) any claims arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Service Provider to the Relevant Employees or their representatives whether before on or after the applicable Relevant Transfer Date and whether liability for any such claims arise before on or after the applicable Relevant Transfer Date;

(iii) any breach by the Service Provider of its obligations under TUPE or Clauses 32.2.3 or 32.2.4 above;

(iv) the employment or termination of employment by the Service Provider of any Relevant Employees on or after the applicable Relevant Transfer Date up to the applicable Exit Date.

Notwithstanding any other provisions within this Services Agreement, in particular Clause 52 of the Services Agreement (The Contracts (Rights of Third Parties) Act 1999), the Existing Service Provider shall have the right to enforce any of the provisions of this Clause 32.2.5 which relates to the Existing Service Provider against the Service Provider.

1. The Participating Organisation shall indemnify and keep indemnified in full the Service Provider against all Losses arising from:

(i) any claims arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Participating Organisation to the Eligible Employees or their representatives whether before on or after the applicable Relevant Transfer Date and whether liability for any such claims arise before on or after the applicable Relevant Transfer Date;

(ii) any breach by the Participating Organisation of its obligations under TUPE in respect of Eligible Employees

(iii) the employment or termination of employment by the Participating Organisation of any Eligible Employees prior to the applicable Relevant Transfer Date.

(iv) any claim brought by any Eligible Employee arising from employment prior to the Transfer.

1. Under the contract for the provision of out of hours call handling services between the Existing Participant and the Current Provider which commenced on about 1st October 2012 (“the Existing Contract”), the Current Provider agreed to indemnify the Existing Participant and at its request any replacement provider on the following basis (where reference to the “Service Provider” in clause (c) (i) to (c) (iii) means the Current Provider)

(i) “payment of all remuneration, benefits, entitlements and outgoings in respect of the Exit Employees and such other employees or former employees of the “Service Provider” or any or its sub-contractors, agents or representatives (who had been engaged in the provision of all or any of the Services), including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the applicable Exit Date, are satisfied that any such failure to comply arises as a result of an act or omission of the Participating Organisation or any Replacement Service Provider.”

(ii) “the “Service Provider” shall remain (and procure that its sub-contractors, agents or representatives shall remain) (as relevant) responsible for all the Service Provider's or its subcontractors, agents or representatives' employees (other than the Exit Employees) on or after the time of expiry or termination of the provision of all or any of the Services by the Service Provider to the Participating Organisation and shall indemnify the Participating Organisation and.at its request any Replacement Service Provider against all Losses incurred by the Participating Organisation or any Replacement Service Provider resulting from any claim whatsoever whether arising before on or after the applicable Exit Date by or on behalf of any of the “Service Provider's”" or its sub-contractors, agents or representatives' employees who do not constitute the Exit Employees.”

(iii) “In respect of those employees who constitute Exit Employees the “Service Provider” shall indemnify the Participating Organisation and at its request any Replacement Service Provider against all Losses incurred by the Participating Organisation or any Replacement Service Provider resulting from any claim whatsoever by or on behalf of any of the Exit Employees in relation to the period after the applicable Relevant Transfer Date but before the applicable Exit Date in respect of their employment or the termination of their employment (whether or not terminated by notice and if so terminated, whenever that notice expires) (whether any such claim, attributable to the period up to the applicable Exit Date, arises before, on or after the applicable Exit Date) including but not limited to any failure by the Service Provider or any of its sub-contractors to comply with its or their obligations under Regulations 11, 13 or 14 of TUPE, save to the extent that any such failure to comply arises as a result of an act or omission of the Participating Organisation or any Replacement Service Provider

Also under the Existing Contract the Current Provider agreed that the above indemnities may be assigned to a replacement provider

Where there is an indemnity in place for the benefit of the Service Provider or assigned to the Service Provider in respect of the liabilities set out in clause 32.2.5 (c) the Participating Organisation shall require that to be applied by the Service Provider in the event of any claim thereunder. Where the Existing Service Provider fails to meet the requirements of the indemnity, it is insufficient, it fails to cover any claim brought and or it is withdrawn prior to being discharged and such failure or insufficiency has not been caused by the actions or omissions of the Service Provider who shall be obliged to use all reasonable endeavours to enforce the indemnities from the Existing Service Provider and to fully mitigate any losses, a True-Up of any Losses to the Service Provider shall be undertaken in accordance clauses 32.2.5A o 32.2.5F using the Definitive Financial Model figures as the basis of any adjustment.

32.2.5A TUPE True Up

(a) The monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services (the "Remuneration Costs") have been calculated on the basis of (amongst other things) the information contained in the First Employee List and have been included in the Service Provider’s Definitive Financial Model;

(b) If within 6 months of the Initial Services Commencement Date the Remuneration Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Actuals Employee List (being the list of employees who actually transfer to the Service Provider on 1 October 2018) relating to Relevant Employees or on account of any inaccuracies in, or omissions from, the information contained in the First Employee List or the Final Employee List; or due to Losses (and excluding indirect and consequential loss) arising for the reasons set out in clause 32.2.5 (c) then (subject to clause 32. 2.5B, clause 32. 2.5C and clause 32. 2.5E there shall be a corresponding adjustment to the unit price per call contained in the Service Provider’s Definitive Financial Model to compensate for any such difference or another financial adjustment such as a lump sum payment.

32. 2.5B Obligation to discuss/mitigate

(a) If the circumstances described in 32. 2.5A arise:

1. if the circumstances set out clause 32. 2.5A (b) arise then the parties shall discuss the implications for the provision of the Services; and

(ii) the Service Provider and the relevant sub-contractor shall fully mitigate any additional costs, Losses and any adjustment to the unit price per Call or other financial adjustment shall be calculated as if they had done so.

32. 2.5C Calculation of adjustment to unit price per Call and other financial adjustment

In calculating any adjustment to be made to the unit price per Call or other financial adjustment pursuant to clause 32. 2.5A:

(a) account shall be taken of a decrease in the Remuneration Costs to the extent that it arises from a reduction in the number of Relevant Employees (or their whole time equivalent) or inaccuracies in the Final Employee List which decreases the Remuneration Costs;

32. 2.5D no adjustments under clause 32. 2.5A shall be made to the extent that any payment is made to the Service Provider or a relevant subcontractor under Regulation 12 of TUPE.

32.2.5E Open Book Requirement

Either party may propose an adjustment to the unit price per Call or other financial adjustment such as a lump sum payment pursuant to clause 32.2.5A by giving not less than ten (10) Business Days’ notice to the other. Each party will provide, or procure the provision, to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to clause 32. 2.5A.

32.2.5F Co-operation

In relation to all matters described in clause 32. 2.5A and clause 32. 2.5B, the Service Provider and the Participating Organisation shall, and the Service Provider shall procure that the relevant sub-contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

32.2.6 Retendering and Provision of Information

32.2.6.1 The Service Provider shall at no cost to the Participating Organisation as soon as reasonably practicable and in any event within five (5) Working Days following a written request by the Participating Organisation provide to the Participating Organisation (or to such other parties as the Participating Organisation may require) such information (subject to relevant data protection legislation) as the Participating Organisation may require for the purpose of any retender of all or any of the Services concerning the identity and numbers of Staff and their terms and conditions of employment. Such information may include without limitation any or all of the following about all such Staff:

* current salary;
* length of service;
* hours of work;
* arrangements for overtime;
* factors that may affect redundancy entitlement;
* current, pending and threatened industrial injury claims or other claims, disputes, trade disputes and industrial action or any circumstances known to the Service Provider or any of its sub-contractors, agents or representatives which make such a claim, dispute or industrial action possible;
* probationary periods;
* retirement ages;
* periods of notice for termination of employment;
* current pay agreement and any agreed settlement yet to come into effect;
* age;
* gender;
* annual leave entitlement;
* sick leave entitlement;
* maternity/paternity leave arrangements;
* special leave entitlement;
* season ticket loans, provision of cars and other contractual or customary benefits, if applicable;
* pension arrangements;
* location and any contractual provisions relating to location;
* nature of job, grade and job title;
* percentage of time spent in providing all or any of the Services; and
* without prejudice to the above, the employee liability information under Regulation 11 of TUPE.

32.2.6.2 The Service Provider shall warrant that the information provided pursuant to Clause 32.2.6.1 is accurate and complete.

32.2.6.3 The Service Provider shall advise the Participating Organisation immediately of any material changes to the information provided pursuant to Clause 32.2.6.1 between the date on which it is provided and the expiry or termination of the provision of all or any of the Services by the Service Provider to the Participating Organisation andwarrant that the changes disclosed are accurate and complete and that all known existing liabilities relating to the Staff have been discharged.

32.2.6.4 Within six (6) months prior to the expiry of the provision of all or any of the Services by the Service Provider to the Participating Organisation, or following the service of notice of the termination of the provision (by the Service Provider) of all or any of the Services to the Participating Organisation, or as a consequence of the Participating Organisation notifying the Service Provider of its intention to retender the provision of all or any of the Services, the Service Provider and any of its sub- contractors, agents or representatives shall be precluded from, other than in the ordinary course of business and with the Participating Organisation’s prior written consent (such consent not to be unreasonably withheld or delayed), making any material increase or decrease in the numbers of Staff carrying out all or any of the Services, making any increase in the remuneration or other changes in the terms and conditions of the Staff, or transferring any of the Staff to another part of its or their business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing all or any of the Services to provide all or any of the Services.

32.2.6.5 The Service Provider will indemnify and keep indemnified the Participating Organisation or at its request any Replacement Service Provider in respect of any Losses resulting from any failure on the part of the Service Provider to fulfil its obligations in this Clause 32.2.6, including without limitation any Losses arising from the information provided by the Service Provider pursuant to clauses 32.2.6.1 or 32.2.6.3 not being accurate and complete or otherwise being misleading.

Notwithstanding any other provisions within this Services Agreement, in particular Clause 52 of the Services Agreement (The Contracts (Rights of Third Parties) Act 1999), the Replacement Service Provider shall have the right to enforce any of the provisions of this Clause 32.2.6.5 which relates to the Replacement Service Provider against the Service Provider

32.2.7 Termination of Agreement

32.2.7.1 On the expiry or earlier termination of the provision of all or any of the Services by the Service Provider to the Participating Organisation, the Participating Organisation and the Service Provider agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any services substantially similar to all or any of the Services but the position shall be determined in accordance with the law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.

32.2.7.2 For the purposes of this Clause 32.2.7 “Exit Employees” shall mean those employees wholly or mainly engaged in the provision of all or any of the Services as the case may be as immediately before the expiry or termination of the provision of all or any of the Services by the Service Provider to the Participating Organisation whose employment transfers to the Participating Organisation or a Replacement Service Provider pursuant to TUPE. Upon any such expiry or termination or partial termination for whatever reason (such date being termed the “Exit Date”), the provisions of this Clause 32.2.7 will apply.

32.2.7.3 The Service Provider shall or shall procure that all remuneration, benefits, entitlements and outgoings in respect of the Exit Employees and such other employees or former employees of the Service Provider or any or its sub-contractors, agents or representatives (who had been engaged in the provision of all or any of the Services), including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the applicable Exit Date, are satisfied.

32.2.7.4 Without prejudice to clause 32.2.7.3, the Service Provider shall indemnify the Participating Organisation and any Replacement Service Provider at the request of the Participating Organisation for any Losses incurred by the Participating Organisation or any Replacement Service Provider mitigated and excluding indirect and consequential loss which arise from any claim whatsoever whether arising before on or after brought by the Service Provider or its sub-contractors, agents or representatives’ employees (other than the Exit Employees) in connection with the their position and obligations in the delivery of the Services to the Participating Organisation provided always that the Service Provider has full charge of any litigation conducted in pursuit of such a claim and no settlement is made without the Service Provider’s advance written consent .

32.2.7.5 In respect of those employees who constitute Exit Employees the Service Provider shall indemnify Participating Organisation and any Replacement Service Provider at the request of the Participating Organisation for all Losses incurred by the Participating Organisation or any Replacement Service Provider fully mitigated which arises from any claim whatsoever brought by or on behalf of any of the Exit Employees in relation to the period after the applicable Relevant Transfer Date but before the applicable Exit Date in respect of their employment or the termination of their employment (whether or not terminated by notice and if so terminated, whenever that notice expires) (whether any such claim, attributable to the period up to the applicable Exit Date, arises before on or after the applicable Exit Date) including but not limited to any failure by the Service Provider or any of its sub-contractors to comply with its or their obligations under Regulations 11, 13 or 14 of TUPE, save to the extent that any such failure to comply arises as a result in part or in full of an act or omission of the Participating Organisation or any Replacement Service Provider provided always that the Service Provider has full charge of any litigation conducted in pursuit of such a claim and no settlement is made without the Service Provider’s advance written consent.

Notwithstanding any other provisions within this Services Agreement, in particular Clause 52 of the Services Agreement (The Contracts (Rights of Third Parties) Act 1999), the Replacement Service Provider shall have the right to enforce any of the provisions of Clauses 32.2.7.4 and 32.2.7.5 which relates to the Replacement Service Provider against the Service Provider

32.2.7.6 The Participating Organisation shall be entitled to assign the benefit of the indemnities set out in Clause 32.2.7 to any Replacement Service Provider.

32.2.8 Sub-Contractors, Agents and Representatives

In the event that the Service Provider enters into any sub-contract or arrangement with an agent or representative in connection with the provision of the Services, it shall impose obligations on its sub-contractors, agents or representatives in the same terms as those imposed on it pursuant to Clause 32.2 and shall procure that the sub-contractor, agent or representative complies with such terms. The Service Provider shall indemnify and keep indemnified the Participating Organisation or at its request any Existing Service Provider or any Replacement Service Provider against Losses, incurred by the Participating Organisation, Existing Service Provider or any Replacement Service Provider, as a result of or in connection with any failure on the part of the Service Provider to comply with this clause and/or its sub-contractors, agents or representatives’ failure to comply with such terms.

32.3 **Pensions**

32.3.1 Where the Service Provider or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date, the Service Provider and/or each relevant Sub-Contractor will offer membership of a pension scheme (the **Service Provider Scheme**) on the terms currently enjoyed by the Eligible Employees to all the Eligible Employees.

32.3.2 The Service Provider and/or Sub-Contractor shall nominate in writing to the Lead Authority and/or the Participating Organisation not later than the Relevant Transfer Date the pension scheme or schemes which it proposes shall be the Service Provider Scheme. Such pension scheme or schemes must be:

(i) reasonably acceptable to the Participating Organisation (such acceptance not to be unreasonably withheld or delayed);

(ii) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

(iii) where the Eligible Employees were members of the LGPS immediately prior to the Relevant Transfer Date and the Service Provider Scheme is not the LGPS, one which is certified by the Government Actuary’s Department or an actuary nominated by the Participating Organisation (in accordance with relevant guidance produced by the Government Actuary's Department) shall certify to be the same as, broadly comparable to or better than the benefits provided by the Eligible Employee’s pension scheme immediately before the Relevant Transfer Date. In the event that the Government Actuary’s Department (or an actuary nominated by the Participating Organisation) cannot certify that the Service Provider Scheme provides benefits that are the same as, broadly comparable to or better than the benefits provided by the Participating Organisation Scheme immediately before the Relevant Transfer Date, the Service Provider  and/or each relevant Sub-Contractor shall provide such additional compensation as required by the Government Actuary’s Department or an actuary nominated by the Participating Organisation; and

(iv) the LGPS, where the Eligible Employees were members of the LGPS immediately prior to the Relevant Transfer Date.

32.3.3 (i)Where the Service Provider is required to offer membership of the LGPS to any Eligible Employees pursuant to clause 32.3.2, the Service Provider will enter into an Admission Agreement to have effect from and including the Relevant Transfer Date.

32.3.3(ii) The Service Provider and the Participating Organisation will execute the Admission Agreement as referred to in clause 32.3.3(i) and the Participating use its reasonable endeavours to procure that the Administering Authority executes the Admission Agreement.

32.3.3(iii) The Participating Organisation shall procure that, as at the Relevant Transfer Date, any liabilities relating to the Eligible Employees prior to the Relevant Transfer Date are 100 per cent funded as determined by the actuary to the Fund in accordance with the actuarial assumptions consistent with the most recent actuarial valuation of the Fund before the Relevant Transfer Date. 100 percent funded shall mean that the Service Provider shall be notionally allocated at the Relevant Transfer Date an amount of assets within the Fund equal to the value of the liabilities as at the Relevant Transfer Date.

32.3.3(iv) Where pursuant to Regulation 64 of the Regulations, the Service Provider is required to make an exit payment to the Administering Authority on cessation of the Admission Agreement, the Participating Organisation undertakes that it shall pay to the Service Provider a lump sum payment equal to the exit payment required to be paid by the Service Provider to the Administering Authority within 15 days of being notified of that amount by the PO (the Exit Contribution).

Where pursuant to Regulation 64 of the Regulations the Service Provider is entitled to an exit credit from the Administering Authority on the cessation of the Admission Agreement, and that exit credit is paid by the Administering Authority, the Service Provider is discharged from all liability in relation to the LGPS.

32.3.3(v) The Service Provider accepts responsibility for any Exit Contribution to the extent it results from one or more of the following and to the extent it has not been funded for in whole or in part by the Service Provider:-

### granting an augmentation of benefits in relation to an Eligible Employee in relation to the Fund;

### the award of pay increases to Eligible Employees which in aggregate exceed the percentage rate allowed for pay increases in the latest valuation of the Fund prior to the award of the pay increase in question; or

### the termination of the employment contract of an Eligible Employee who is aged 55 or over at the time, by reason of redundancy or in the interests of efficiency or otherwise allowing such employee to retire on those grounds; or

### the award of any discretions or benefits under the Compensation Regulations as determined by the Service Provider); or

### the termination of the employment contract of an Eligible Employee on the grounds of permanent ill health or infirmity of mind or body which renders the employee permanently incapable of efficiently discharging the duties of his current employment.

### The reduction or waiver of any contributions due from Eligible Employee;

### The waiver of any reduction in benefits under the LGPS in respect of an Eligible Employee

## 32.3.3(vi) On each occasion where the contributions paid by the Service Provider to the Fund or to the Administering Authority for credit to the Fund from time to time pursuant to the provisions of the Admission Agreement, the Participating Organisation shall reimburse and continue to reimburse the Service Provider the amount of such contributions. Such reimbursement shall be paid by the Participating Authority to the Service Provider for payment into the Fund within 30 days of notified of the amount by the Administering Authority.

32.3.4The Service Provider undertakes to the Participating Organisation (for the benefit of the Participating Organisation itself and for the Participating Organisation as agent and trustee for the benefit of the Eligible Employees) that it shall procure and that any relevant Sub-Contractor shall procure that:

1. The Eligible Employees shall on or as soon as reasonably practicable after the Relevant Transfer Date be offered membership of the Service Provider Scheme with effect on and from the Relevant Transfer Date;
2. Except where the Service Provider Scheme is the LGPS, the Service Provider Scheme shall provide and be operated so as to provide for employer contributions to the Service Provider Scheme in respect of the Eligible Employees' periods of service on and from the Relevant Transfer Date which are at least equal to the rate of employer contributions to which the Eligible Employees were entitled under their pension scheme immediately before the Relevant Transfer Date and otherwise complies with clause 32.3.2. Where the Service Provider Scheme is the LGPS the provisions of clause 32.3.3 shall be complied with;

(iii) If the Service Provider Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Service Provider or the relevant Sub-Contractor. The replacement scheme must comply with the requirements of clause 32.3.2 or clause 32.3.3 (as relevant) as if it were the Service Provider Scheme.

(iv) Where the Service Provider Scheme has not been established at the Relevant Transfer Date and the Eligible Employees were members of the LGPS immediately prior to the Relevant Transfer Date, the Eligible Employees shall be provided with benefit entitlements (such as death-in-service entitlements) which are no less favourable than the benefit entitlements provided by the Participating Organisation Scheme immediately before the Relevant Transfer Date. Such benefit entitlements will continue to be provided until such benefit entitlements are provided by the Service Provider Scheme.

32.3.5 The Service Provider undertakes to the Participating Organisation (for the benefit of the Participating Organisation itself and for the Participating Organisation as agent and trustee for the benefit of the Eligible Employees) that:

32.3.5.1 all information which the Participating Organisation or the Administering Authority or their respective professional advisers may reasonably request from the Service Provider or any relevant Sub-Contractor concerning any other matters raised in Clause 32.3.4 shall be supplied to them as expeditiously as possible;

32.3.5.2 until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in this Clause 32.3 without the consent in writing of the Participating Organisation (not to be unreasonably withheld or delayed);

32.3.4.3 it shall not and shall procure that any relevant Sub-Contractor shall not take or omit to take any action which would materially affect the benefits under the Service Provider Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Participating Organisation (not to be unreasonably withheld or delayed) provided that the Service Provider and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and

32.3.5 The Service Provider hereby indemnifies the Participating Organisation and/or any Replacement Service Provider and, in each case, their sub-contractors from and against all Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Service Provider and/or of any relevant Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such employees which Losses:

32.3.5.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Services Agreement; or

32.3.5.2 arise out of the failure of the Service Provider and/or any relevant Sub-Contractor to comply with the provisions of this Clause 32.3 before the date of termination or expiry of this Services Agreement.

32.3.5A The Service Provider hereby indemnifies the Participating Organisation and/or any Replacement Service Provider and, in each case, their sub-contractors, from and against all Losses suffered or incurred by it or them, which arise from any breach by the Service Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Agreement.

Notwithstanding any other provisions within this Services Agreement, in particular Clause 52 of the Services Agreement (The Contracts (Rights of Third Parties) Act 1999), the Replacement Service Provider shall have the right to enforce any of the provisions of this Clauses 32.3.5 which relates to the Replacement Service Provider against the Service Provider.

32.3.6 Save on expiry or termination of this Services Agreement, if the Service Provider and/or any relevant Sub-Contractor shall transfer the employment of any Eligible Employee to another employer (by way of a transfer under TUPE) the Service Provider shall and shall procure that any relevant Sub-Contractor shall:

32.3.6.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

32.3.6.2 procure that the employer to which the Eligible Employees are transferred (the “New Employer”) complies with the provisions of this Clause 32.3 provided that references to the “Sub-Contractor” will become references to the New Employer, references to “Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.

32.3.7 The Service Provider shall and shall procure that any relevant Sub-Contractor shall:

32.3.7.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Access Agreement (including without limitation identification of the Eligible Employees);

32.3.7.2 promptly provide to the Participating Organisation such documents and information mentioned in clause 32.3.7.1 which the Participating Organisation may reasonably request in advance of the expiry or termination of this Services Agreement; and

32.3.7.3 fully co-operate (and use their reasonable endeavours to procure that the trustees of the Service Provider's Scheme shall fully co-operate) with the reasonable requests of the Participating Organisation relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Services Agreement.

32.3.8 In respect of the Relevant Employees who are not Eligible Employees, the Service Provider shall and shall procure that any Sub-Contractor shall make such pension provisions in respect of such Relevant Employees as complies with its obligations under TUPE and/or sections 257 and 258 Pensions Act 2004 and the regulations under these sections, namely the Transfer of Employment (Pension Protection) Regulations 2005.

32.3. Notwithstanding any other provisions within this Services Agreement, in particular Clause 52 of the Services Agreement (The Contracts (Rights of Third Parties) Act 1999), the Eligible Employees shall have the right to enforce any of the provisions of this Clause 32.3 which relate to them against the Service Provider.

33. Indemnity and Insurance

33.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

33.2 Neither Party excludes or limits liability to the other Party for

33.2.1 death or personal injury caused by its negligence or that of its employees agents or sub-contractors;

33.2.2 fraud or fraudulent misrepresentation by it or its employees;

33.2.3 for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or

33.2.4 any other matter where the law prescribes that liability may not be limited.

33.3 The Service Provider shall indemnify and keep indemnified the PO against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the PO or its representatives (excluding any Service Provider's Staff unless these are acting under the written direction of the PO).

33.4 The Service Provider shall during the currency of this Services Agreement be responsible for building and contents insurance liability in respect of any premises occupied for the purposes of the Services Agreement.

33.5 Notwithstanding the foregoing and subject to Clauses 33.1, 33.2 and 33.3, the Parties shall not be liable to the other for any loss of, profits, revenue, contracts or anticipated savings.

33.6 Each and every limit and exclusion in this **Clause 33** is independent and severable from the other and if held unlawful or unenforceable that part shall be struck out and the remainder shall remain in effect.

33.7 The Service Provider shall effect and maintain and shall cause any sub-contractor to maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider’s performance of the Services Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

33.8 The Service Provider shall at all times maintain in force and shall cause any sub-contractor to maintain employer’s liability insurance of at least £10 million (£10,000,000) and in respect of public liability of at least £10 million (£10,000,000) in respect of any one occurrence or series of occurrences arising out of one event, or such other insurances and/or sums as may be agreed between the parties from time to time.

33.9 The Service Provider shall hold and maintain professional indemnity insurance in respect of its obligations to provide the specified Services with due skill, care and diligence and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this **Clause 33** and, as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider has a limit of indemnity of not less thantwo million pounds (£5,000,000) for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of twelve (12) years following the expiration or earlier termination of the Services Agreement.

33.10 The Service Provider shall supply to the Participating Organisation forthwith and upon each renewal date of any relevant policy, written confirmation from its insurers or brokers that the Service Provider's insurance policies comply with this **Clause 33** and the Service Provider shall produce to the Supervising Officer, on request, copies of all insurance policies referred to in this **Clause 33** or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

33.11 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the Services Agreement the Participating Organisation may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider by deduction from payments due to the Service Provider.

33.12 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Services Agreement.

33.13 In respect of the all liabilities, and each and every indemnity given by the Service Provider under this agreement, not otherwise specifically reserved and excluded from the application of this clause, the maximum aggregate liability that may be incurred by the Service Provider during the course of this agreement shall subject to clauses 33.14 and 33.15 be limited to £5,000,000.00 (£5 million pounds) in aggregate across all liability and indemnities for the Initial Term of the contract

33.14 NOT USED

33.15 In all matters where a claim is made, the Party making a claim shall mitigate their loss, and such claim shall be subject to the capped liability under clauses 33.13 and 33.14 as appropriate.

34. Warranties and Representations

34.1 The Service Provider warrants, represents and undertakes to the other that:

34.1.1. it has full capacity and authority to enter into and to perform this Services Agreement;

34.1.2. this Services Agreement is executed by a duly authorised representative of that Party; and

34.1.3. once duly executed this Services Agreement will constitute legal, valid and binding obligations on it.

34.2. The Service Provider warrants, represents and undertakes to the PO on a continuing basis throughout the Term that:

34.2.1 the Services will be provided using good quality material and equipment;

34.2.2 it has and will continue to hold (and, to the extent applicable to the scope of the Services to be provided by any sub-contractor, its sub-contractors will have and continue to hold) all necessary accreditations, licences and regulatory approvals (to the extent required) from third parties and relevant regulatory bodies which are necessary to perform the Service Provider's (or where relevant the sub-contractor's) obligations under this Services Agreement;

34.2.3 it has and will continue to have all necessary rights in and to the Service Provider Software, any third party software and/or the Service Provider's background Intellectual Property Rights and any other materials made available by the Service Provider and/or the sub-contractors to the PO which are necessary to perform the Service Provider's obligations under this Services Agreement;

34.2.4 as at the Initial Services Commencement Date all statements and representations in the Service Provider's response to the invitation to tender [as clarified] are to the best of its knowledge, information and belief, true, accurate up-to-date and not misleading.

34.2.5 it will, without delay, advise the PO of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading and which would have an adverse impact on this Services Agreement and/or any Services;

34.2.6 there are no actions, suits or proceedings or regulatory investigations pending or, to the Service Provider's knowledge, threatened against or affecting the Service Provider before any court or administrative body or arbitration tribunal that might affect the ability of the Service Provider to meet and carry out its obligations under this Services Agreement;

34.2.7 it is aware of the reliance that the Participating Organisations will have on the Exit Strategy to support a smooth transition of the Services on termination or expiry of this Services Agreement and will ensure that such Exit Strategy will contain sufficient information and explanation required for the purpose of executing a smooth transition of the Services;

34.2.8 it and all of its sub-contractors shall at all times comply with Law in carrying out their obligations under this Services Agreement;

34.2.9 the delivery of the Services (including the standards to which they are delivered) shall not cause the PO to be in breach of or unable to satisfy any law which is applicable to it;

34.2.10 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;

34.2.11 it is not subject to any contractual obligation, compliance with which will be likely to have an adverse effect on its ability to perform its obligations under this Services Agreement;

34.2.12 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue; and

34.2.13 in entering into this Services Agreement, it has not committed a Prohibited Act; and

34.2.14 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge, information and belief, pending or threatened against it or any of its assets, which will or might affect its ability to perform its obligations under this Services Agreement.

34.3 For the avoidance of doubt the fact that any provision within this Services Agreement is expressed as a warranty shall not preclude any right of termination the Lead Authority may have in respect of breach of that provision by the Service Provider.

34.4 The Service Provider agrees that:

34.4.1 the warranties, representations and undertakings set out in this Services Agreement are material;

34.4.2. in entering into this Services Agreement the Lead Authority has relied upon the warranties, representations and undertakings in this Services Agreement.

34.5. The Participating Organisation warrants, represents to the Service Provider on a continuing basis throughout the Term that:

it has and will continue to hold (and, to the extent applicable to the scope of the Services to be provided) all necessary consents, licences and regulatory approvals (to the extent required) from third parties and relevant regulatory bodies which are necessary to support the Service Provider's provision of service wherever the performance of the Service Providers performance is in any way dependent upon provision of such and the consent license and or regulatory approval will be within the normal remit of the Participating Organisation under this Overarching Agreement;

34.6 The Participating Organisation warrants, represents to the Service Provider on a continuing basis throughout the Term that it has and will continue to have, and will provide the same under licence to the Service Provider all necessary rights in and to the Participating Organisation Software, any third party software and/or background Intellectual Property Rights and any other materials made available by the Participating Organisation and/or the Lead Authority which are necessary to facilitate the Service Provider's obligations under this Services Agreement.

34.7 The Service Provider shall notify the PO promptly and in any event within two (2) Working Days of it becoming aware that it is in material breach of any of the warranties set out in this Services Agreement and within five (5) Working Days of it becoming aware that it is otherwise in breach of any of the warranties set out in this Services Agreement.

34.8 The Service Provider’s liability to the Participating Organisation under Clause 33 shall be without prejudice to any other right or remedy available to the Participating Organisation

35. Termination upon Change of Control and Insolvency

35.1 The Participating Organisation may terminate the Services Agreement by notice in writing with immediate effect where:

(a) the Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Services Agreement; or

(b) the Service Provider is an individual or a firm and a petition is presented for the Service Provider’s bankruptcy, or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Service Provider’s or firm’s affairs; or

(c) the Service Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Service Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

(f) any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 (as amended) apply.

35.2 The Service Provider shall notify the Supervising Officer immediately when any change of control occurs. The Participating Organisation may only exercise its right under **Clause 35.1**:

(a) within six (6) months of being notified that a change of control has occurred or,

(b) where no notification has been made within six (6) months of the date that the Participating Organisation becomes aware of the change of control;

but shall not be permitted to do so where an Approval in respect of the change of control was granted prior to the change of control of the Service Provider.

35.3 If the Service Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Participating Organisation shall be entitled to terminate the Services Agreement by notice to the Service Provider or the Contract Manager with immediate effect.

36. Default and Termination

36.1 If at any time after three (3) months from the Commencement Date:

36.1.1 the Services or any part of them have not been carried out in compliance with the Performance Standards at Section VI (Performance Monitoring) and in accordance with the Services Agreement then without prejudice to any other right or remedy available to the Participating Organisation, the Participating Organisation may issue Default Notices and deduct sums of money (in the form of an Abatement) in accordance with the procedures set out in paragraph 5 of Section VI (Performance Monitoring) and also act in accordance with paragraph 5.6 of Section VI (Performance Monitoring).

36.1A If at any time after the Commencement Date:

36.1A.1 the Service Provider has materially failed to comply with any requirement made by the Participating Organisation (or its Supervisory Officer) within the terms of the Services Agreement; or

36.1A.2 the Participating Organisation (or its Supervisory Officer) has evidence to demonstrate that the Service Provider has adversely affected the image or reputation of the Participating Organisation; or

then without prejudice to any other right or remedy available to the Participating Organisation, the Participating Organisation may act in accordance with the procedures set out in **Clause 36.2** below.

36.2 Any or all of the following procedures may be used upon issue of notice in writing to the Service Provider and the Participating Organisation shall have sole and entire discretion as to which is most appropriate:

36.2.1 without terminating the Services Agreement, the Participating Organisation may itself provide or procure the provision of any part of the Services until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Supervising Officer that the Service Provider is able to perform the Services Agreement to a standard acceptable to the Participating Organisation;

36.2.2 without terminating the whole Services Agreement, the Participating Organisation may determine that part of the Services shall no longer be provided by the Service Provider and itself provide or procure a third party to provide that part of the Services;

36.2.3 without terminating the Services Agreement, the Participating Organisation may require the Service Provider to remedy the default within a specified timescale at the discretion of the Participating Organisation; and

36.2.4 the Participating Organisation may terminate the whole of the Services Agreement in accordance with **Clause 36.4** below.

36.3 The Service Provider shall indemnify and recompense the PO for any reasonable expenses losses of damages incurred which are in addition to the cost of the relevant part of the Services arising as consequence of suspension of the Services or procuring a third party to provide the Services.

36.4 The Participating Organisation shall be entitled upon the happening of any of the events set out in clause 36.1A and the following events to terminate the Services Agreement, without prejudice to any accrued rights or remedies under the Services Agreement or other rights to terminate under this Services Agreement, forthwith by written notice having immediate effect and may recover from the Service Provider any loss resulting from such termination where:

(a) the Service Provider commits a material breach of any term of the Services Agreement which breach is capable of being remedied and the Service Provider has failed to remedy the said breach within fourteen (14) days after issue of a written request from the Participating Organisation that the Service Provider should do so;

(b) any material breach by the Service Provider of any of its obligations under the Services Agreement which is irremediable; or

(c) the Service Provider or the Service Provider’s staff commits a Prohibited Act under the Bribery Act or breaches any of its obligations pursuant to **Clause 11** (Prevention of Bribery) in connection with the Services Agreement in all cases whether or not acting with the Service Provider’s knowledge.

(d) the Service Provider is in persistent breach of any of the terms of the Services Agreement;

(e) the Service Provider has received more than five (5) Default Notices as a consequence of poor performance in any three (3) consecutive months

36.5 Any notice of termination under **Clause 35.5 (c)** must specify:

(i) the nature of the Prohibited Act; and

(ii) the identity of the party whom the Participating Organisation believes has committed the Prohibited Act.

36.7 Despite **Clause 46** (Dispute Resolution), any dispute relating to:

(i) the interpretation of **Clause 11** (Prevention of Bribery); or

(ii) the amount or value of any gift, consideration, or commission

shall be determined by the Participating Organisation and its decision shall be final and conclusive as long as it is not unreasonable.

36.8 In the event of termination in accordance with clauses 36.4, 1.3.3 and in addition to such consequences as are set out in this Services Agreement, the Service Provider shall:

1. forthwith cease to perform the Services; and

(ii) fully and promptly indemnify the Participating Organisation in respect of the cost of causing to be performed the Services or any part thereof as would have been performed by the Service Provider during the remainder of the Term of the Services Agreement to the extent that such cost exceeds such sums as would have been lawfully payable to the Service Provider for performing the Services. The Participating Organisation shall be at liberty to have the Services or any part thereof performed by any persons (whether or not servants of the Participating Organisation), as the Participating Organisation shall in its entire discretion think fit but shall be under obligation to employ the least expensive method of having the Services or part thereof performed

36.9 The Participating Organisation shall be entitled to:

1. cease to be under any obligation to make further payments to the Service

Provider and where the Parties agree that a sum or sums are due to the Service Provider, the Participating Organisation shall pay the Service Provider such sums forthwith and in any event within thirty (30) days of the calculation being agreed between the Parties;

(b) repossess any of its premises, materials, equipment or other goods loaned or hired to the Service Provider and to exercise lien over any of the materials, equipment or other goods belonging to the Service Provider for any sum due hereunder or otherwise due from the Service Provider to the Participating Organisation;

(c) employ and pay other persons to perform and complete the Services or any part thereof;

(d) have the Service Provider, if requested in writing by the Participating Organisation within fourteen (14) days of the termination, assign to the Participating Organisation without charge the benefit of any agreement for the supply of any systems or services for the purpose of the Services Agreement and/or for the carrying out of any instruction and the Service Provider shall comply with any such request;

(e) deduct, retain or set off from any sum or sums which would but for paragraph (c) of this Clause have been due from the Participating Organisation to the Service Provider under this Services Agreement or any other Services Agreement or be entitled to recover the same from the Service Provider as a debt, any loss or damage to the Participating Organisation resulting from or arising out of the termination of the Services Agreement. Such loss or damage shall include reasonable cost to the Participating Organisation of the time spent by its officers in terminating the Services Agreement and in making alternative arrangements for the provision of the Services or any part thereof;

(f) when the total costs, losses and/or damages resulting from or arising out of the termination of the Service Provider’s employment have been calculated and deducted insofar as is practicable from any sum or sums which would, but for paragraph c) of this Clause, have been due to the Service Provider, any balance shown as due to the Participating Organisation shall be recoverable as a debt, or alternatively, the Participating Organisation shall pay to the Service Provider any balance shown as due to the Service Provider.

36.10 The rights of the Participating Organisation under this **Clause 36** are in addition to and without prejudice to any other rights the Participating Organisation may have whether against the Service Provider directly or pursuant to any indemnity.

36.11 The Service Provider may terminate this Services Agreement by serving notice on the Participating Organisation at least seventy five (75) days prior to termination of the Services Agreement if any sums remain unpaid for forty five (45) days after receipt by the Participating Organisation of an invoice for Services previously rendered in accordance with this Services Agreement and the Service Provider has given the Participating Organisation prior written notice stating sum(s) remaining unpaid and its intention to terminate the Services Agreement and such sum(s) remain unpaid for forty five (45) days following service of the notice

Following the issue of such written notice, the Service Provider shall allow for a further thirty (30) days for the Participating Organisation to make the payment in question before terminating the access Agreement in accordance with this **Clause 36.11**.

**37. Termination at Will**

37.1 The Participating Organisation may terminate the Services Agreement at any time subject to giving at least one (1) years’ prior written notice of such termination to the Service Provider and shall pay the Service Provider the Participating Organisation’s share of the remaining Transition Price in accordance with the mechanism set out in the DFM in the sheet entitled Transition (Price) recovery – PO Exit Calc.

38. Remedies Cumulative

Except as otherwise expressly provided by the Services Agreement, all remedies available to either Party for breach of the Services Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**39. Consequences of Termination**

39.1 Where the Participating Organisation terminates the Services Agreement in full or in part in accordance with **Clause 36** above and then makes other arrangements for the provision of Services, the Participating Organisation shall not be entitled to recover from the Service Provider the cost reasonably incurred or otherwise of making those other arrangements.

39.2 For the avoidance of any doubt, termination of this Services Agreement shall not invalidate any other Services Agreement placed by another Participating Organisation pursuant to the Overarching Agreement.

40. Recovery upon Termination

40.1 Save as otherwise expressly provided in this Services Agreement and notwithstanding the provisions thereof:

(a)termination of this Services Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Services Agreement prior to termination or expiration and nothing in the Services Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of this Services Agreement shall not affect the continuing rights and obligations of the Service Provider and the Participating Organisation under **Clauses 11** (Prevention of Bribery); **14** (Standard of Work and Performance Management); **20** (Recovery of Sums Due); **24** (Data Protection); **25** (Participating Organisation’s Data, Security, Loss of Data & Malicious Software); **26** (Confidentiality); **28** (Publicity and Media); **29** (Intellectual Property Rights); **30** (Audit); **33** (Indemnity and Insurance); **34** (Warranties and Representations); **36** (Default and Termination); **37** (Termination at Will); **38** (Remedies Cumulative); **39** (Consequences of Termination); **40** (Recovery upon Termination) and **53** (Governing Law).

40.2 At the end of the Term (howsoever arising) or at the point of earlier termination of the Services Agreement in accordance with the terms hereof, the Service Provider shall forthwith deliver to the Participating Organisation upon request all the Participating Organisation’s Property (including but not limited to materials, documents, information) relating to the Services Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this **Clause 40** the Participating Organisation may recover possession thereof and the Service Provider grants licence to the Participating Organisation or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or sub-contractors where any such items may be held.

**41. Exit Management**

41.1 The Service Provider shall comply with the Exit Strategy set out in Section X (Exit Management).

41.2 Unless the Participating Organisation otherwise requires, during the time between service of a notice of termination of this Services Agreement in whole or in part and such termination taking effect, the Parties shall take all steps, which are necessary and consistent with their continuing obligations, to mitigate any losses, costs, liabilities and expenses which they may incur as a result of the termination, including for the Service Provider to:

(i) cancel all capital and recurring cost commitments in connection with the provision of the Services on the most cost-effective terms; and

(ii) terminate all relevant contracts or the relevant parts of relevant contracts with its sub-contractors in connection with the provision of the Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Participating Organisation whether such contracts are required to be transferred to the Participating Organisation or any future service provider instead.

41.3 The Service Provider agrees :

41.3.1 that it will not materially alter the terms and conditions of the contracts of employment of any of its employees within twelve (12) months of the expiry of the Term, other than normal annual pay settlements or as required by law or where the Service Provider is contractually bound and any such contractual obligation should be brought to the attention of the authority as soon as it arises and where practicable to do so, agreed with the authority prior to the Service Provider entering into such a contractual arrangement to make such an alteration;

41.3.2 that it will not terminate the contract of employment of any of its employees within twelve (12) months of the expiry of the Term for any reason whatsoever or at the point of earlier termination of the Services Agreement in accordance with the terms hereof, save where, in the reasonable opinion of the Service Provider, termination is for a potentially fair reason as set out in section 98 of the Employment Rights Act 1996 and, if any of its employees are so dismissed, the Service Provider undertakes to replace them with employees of similar skills and experience on terms not materially different from the terms that are fair and reasonable and conditions, which are, overall, no less favourable than those of the employee being replaced;

41.3.3 that it will not recruit any additional employees within twelve (12) months of the expiry of the Term or at the point of earlier termination of the Services Agreement in accordance with the terms hereof, except where the Participating Organisation’s prior written consent has been given, such consent not to be unreasonably withheld or delayed;

### 41.3.4 that it will not relocate or assign new duties to any of its employees within twelve (12) months of the expiry of the Term without the prior written consent of the Participating Organisation, such consent not to be unreasonably withheld or delayed

### 41.3.5 that it will not make any other alterations to the structure or organisation of its workforce, which are intended to or which may preclude the application of TUPE upon the expiry of the Term;

41.3.6 that it will, promptly on reasonable notice and at its cost, disclose to the Participating Organisation all relevant current details as to the personnel and employment records of its employees employed in the Services, including their terms and conditions of employment, remuneration, benefits (including any bonus, incentive, profit-sharing scheme, employee share scheme and life, accident and health insurance), National Insurance and PAYE records, disciplinary and attendance records, working arrangements, outstanding obligations to increase remuneration, recognition agreements, redundancy schemes, all existing, anticipated or threatened claims and disputes, their previous employers (if they transferred to the Service Provider under TUPE) and any other information that may be reasonably required by the Participating Organisation or a prospective contractor in connection with any future procurement of the Services or a similar service. It is expressly acknowledged and agreed that the Participating Organisation may pass such information to a person who has been invited to tender in any such future procurement, subject to provision by such person of an undertaking to keep such information confidential and to use it only in connection with his tender. The Service Provider acknowledges that provision of employee information is a performance indicator and failure to provide such information promptly on request and to the Participating Organisation’s reasonable satisfaction will incur a deduction from payment to the Service Provider to be determined by the Supervising Officer. In addition, if the provision of employee information is not to the Participating Organisation’s reasonable satisfaction, the Service Provider shall, upon request, make available to the Supervising Officer all of its payroll records, work rotas and personnel databases to enable the Supervising Officer to assemble the employee information required by this Clause;

41.3.7 that it will use all reasonable endeavours to co-operate to facilitate a transfer of those employees under TUPE to a third party or the Participating Organisation itself on termination or expiry of this Services Agreement; and

41.3.8 that it will indemnify the Participating Organisation and any subsequent service provider in respect of any claim brought against them for any injuries, discrimination, harassment or harm of any sort suffered by those employees in the course of their employment by the Service Provider subject to the agreed limits and principles of indemnity set out under this agreement at clause 33 and always acknowledging that death and or personal injury claims will not be limited

## 41.4 The Service Provider acknowledges the necessity for the Participating Organisation to ensure continuity in the provision of the Services following the ending of the Services Agreement for whatsoever reason. Accordingly, the Service Provider agrees that in the event that the Services Agreement is terminated or upon the expiry of the Term or at the point of earlier termination of the Services Agreement in accordance with the terms hereof, the Service Provider shall fully co-operate and comply with all reasonable instructions and requests issued to it by the Supervising Officer to ensure a smooth handover of and continuity in the provision of the Services.

41.5 Without prejudice to the generality of **Clause 41.4,** the Service Provider shall at its cost, no later than one (1) year before the end of the Term supply to the Supervising Officer a draft handover note in a format reasonably approved by the Supervising Officer four (4) weeks before the start of such period (i.e. the one (1) year period mentioned above). The draft handover note shall contain such information and details as may reasonably be required by the Supervising Officer to manage the handover of the Services from the Service Provider to the Participating Organisation itself or to a replacement service provider, including (without limitation) details of work in progress, invoices issued and pending, performance indicators measured and details of any other matter or issue raised, resolved or outstanding in respect of or in connection with the provision of the Services. The Service Provider shall review and update the draft handover note, taking account of any amendments reasonably required by the Supervising Officer, and shall no later than twenty (20) Working Days after the end of the Term supply to the Participating Organisation two copies of the final handover note.

41.6 Upon the expiry or early termination of this Services Agreement, the Participating Organisation reserves the right to require the Service Provider to assist with the transition of the Services to another service provider by way of a staggered transfer (i.e. on a service by service basis) over an agreed period to be determined by the Participating Organisation.

41.7 If the Services Agreement is terminated other than by expiry of the Term, the Service Provider shall at its cost supply to the Supervising Officer a comprehensive handover report within ten (10) Working Days of notice of the termination. Such handover report shall be in a reasonable format notified to the Service Provider by the Supervising Officer before the start of such period and contain such information and details as may reasonably be required by the Supervising Officer.

41.8 The Service Provider shall provide all information required as set out in this **Clause 41** and any other relevant provisions of this Services Agreement so that the Participating Organisation may:

* + - make all required arrangements for the future of the Services; and
    - meet its legal obligations (including the duty of best value);
    - prepare the necessary documentation for tendering, re-tendering or any transfer of the Services in accordance with its Constitution; and
    - carry out an efficient, effective and legally compliant re-tendering process.

41.9 The Service Provider shall, to the extent reasonably required by the Participating Organisation:

(a) Subject to reasonable written notice from the PO allow the Participating Organisation (and/or any third party at the direction of the Participating Organisation) reasonable right of access to any premises from which the Services are provided);

(b) deliver to the Participating Organisation and Ealing Council ( to which the Participating Organisation consents) upon request call data and scripts in a business as usual form relating to the Services in accordance with the Exit Strategy and are in the Service Provider’s possession or under its control, or in the possession or under the control of any permitted sub-contractors, and in default of compliance with this provision the Participating Organisation may recover possession thereof and the Service Provider grants a free and unrestricted licence to the Participating Organisation and its appointed agents to enter for the purpose of any such recovery any Premises of the Service Provider where any such documents, information or materials may be held. For the avoidance of doubt the call volume data and KPI information will be transferred to Ealing for the ongoing management of the service.

(c) the Participating Organisation shall be entitled to repossess any physical resources licensed, loaned, or hired to the Service Provider and shall have full and unfettered licence over all drawings, details, descriptive schedules and other documents necessary to the use of Service delivery and used in connection with the Services where these are owned by or licensed to the Participating Organisation

41.10 If any licences, authorisations, orders, grants, confirmations, consents, permissions and approvals from third parties are necessary or required for the transfer of any chattels, licences, materials, documents, records (or other matters as set out in **Clauses 41.9** to the Participating Organisation or enable the Participating Organisation to continue or re-tender the Services or any part thereof, the Service Provider shall use reasonable endeavours to procure that the same are issued or as the case may be transferred to the Participating Organisation as soon as reasonably practicable after the expiry or termination of Services Agreement.

41.11 For the duration of the Services Agreements the IPR in Call Management System shall belong to the Service Provider to develop, exploit, utilise, and otherwise replicate for use solely in providing the Services to the Lead Authority and Participating Organisations until the last Services Agreement terminates and not for any other purpose. The IPR in Call Management System, to the extent it belongs to the Service Provider, shall transfer to the Lead Authority pursuant to clause 14 of the Overarching Agreement.

41.11B During the Term the Service Provider shall adhere to the terms of such licences and further the Service Provider acknowledges that neither the Lead Authority nor the PO shall be responsible or liable for any breaches of the licence by the Service Provider during the term of the Services Agreement.

41.12 Without prejudice to the generality of **Clause 41.10**, the Service Provider shall:

(i) co-operate in the preparation and execution of a secure transfer (if required by the Participating Organisation) of all IT operations including the preparation of agreed transfer plans plus the provisions of unrestricted access to software and data in order to arrange the transfer of any intellectual property or licences to use any of the said software and data;

41.13 The Service Provider shall carry out the requirements of this **Clause 41** in accordance with the fee scale as set out in the Exit Strategy ;

41.13 At the end of the Term, the Parties shall deal promptly with all outstanding invoices (including disputed invoices).

41.14 If the Service Provider does not fulfil its obligations in accordance with this **Clause 41**, the Participating Organisation shall not pay any sums in excess of those which the Participating Organisation would have paid had such action been taken.

42. Disruption

42.1 The Service Provider shall take reasonable care to ensure that in the performance of the Services it does not disrupt the operations of the Participating Organisation, its employees or any other contractor employed by the Participating Organisation.

42.2 The Service Provider shall immediately inform the Participating Organisation of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Services Agreement.

42.3 In the event of industrial action by the Staff or the Service Provider’s suppliers the Service Provider shall seek the Participating Organisation’s Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Services Agreement.

42.4 If the Service Provider’s proposals referred to in **Clause 42.3** are considered insufficient or unacceptable by the Participating Organisation acting reasonably, then the Services Agreement may be terminated by the Participating Organisation by notice in writing with immediate effect.

43. Force Majeure

43.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Services Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event, which causes the cessation of or substantial interference with the performance of the Services or otherwise causes either Party to be materially unable to comply with any of its obligations under the Services Agreement. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform any part of its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Services Agreement for a period in excess of six (6) months, either Party may terminate the Services Agreement by notice in writing with immediate effect.

43.2 Any failure or delay by the Service Provider in performing its obligations under the Services Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as being due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

43.3 **Clause 43** does not affect the Participating Organisation’s rights under **Clause 40** (Recovery upon Termination).

43.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in **Clause 43.2** it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

43.5 It is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Services Agreement shall be any event qualifying for Force Majeure hereunder.

44. Waiver

44.1 The failure of either Party to insist upon strict performance of any provision of the Services Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Services Agreement.

44.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Clause 7**.

44.3 A waiver of any right or remedy arising from a breach of the Services Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Services Agreement.

**45. Severability**

If any provision of the Services Agreement is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Services Agreement shall continue in full force and effect as if the Services Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

46. Dispute Resolution

46.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Services Agreement within twenty (20) Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the [] of each Party.

46.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

46.3 If the dispute cannot be resolved by the Parties pursuant to **Clause 46.1** the dispute shall be referred to mediation pursuant to the procedure set out in **Clause 46.5.**

46.4 The performance of the Services Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and Staff shall comply fully with the requirements of the Services Agreement at all times.

46.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

(b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolutionto provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Services Agreement without the prior written consent of both Parties.

(f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**47. Amendments**

This Services Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by or on behalf of the Parties hereto.

**48. Partnership and Agency**

48.1 Except where expressly stated herein, nothing in this Services Agreement shall create a partnership between the Participating Organisation and the Service Provider.

48.2 The Service Provider and its Staff are not and shall not hold themselves out as being servants or agents of the Participating Organisation.

**49. Business Continuity**

49.1 The Service Provider shall at all times comply with the provisions of the Business Continuity Plan and the Service Provider shall ensure that it is able to implement the Business Continuity Plan.

49.2 The Service Provider shall review, update and test the Business Continuity Plan on a regular basis (and in any event not less than once in every six (6) month period and within six (6) months before the expiry of the Services Agreement. The Service Provider shall be expected to review and test the Business Continuity Plan within three (3) months of the Initial Services Commencement Date. The Service Provider may be required to conduct additional reviews and tests of the Business Continuity Plan where the Participating Organisation considers it necessary, including where there has been a change to the Services, the introduction of Additional Services or any underlying business processes or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan.

49.3 Following each test/review, the Service Provider shall send the Participating Organisation a written report summarising the results of the test/review and shall promptly implement any actions or remedial measures which the Participating Organisation considers to be necessary as a result of those tests/reviews.

49.4 The Participating Organisation reserves the right to attend any Business Continuity Plan test undertaken by the Service Provider, or request that the Service Provider attends tests facilitated by the Participating Organisation. The Service Provider shall attend any debrief if requested to do so by the Participating Organisation.

49.5 The Service Provider shall undertake regular risk assessments and/or business impact analysis in relation to the provision of the Services not less than once every six (6) months and shall ensure that such risk assessments are retained on the portal for the PO to access when required.

49.6 For the avoidance of doubt, no additional payment shall be due to the Service Provider in connection with the provisions of this Clause 49.

49.7 The Service Provider shall have at all times during the Term have adequate and appropriate contingency arrangements in place so it may continue to provide the Services in the event that the Service Provider’s telephone system fails or that the Service Provider and/or Staff lose access to the Premises where the Services are delivered.

49.8 The Service Provider will (in addition to any other liability or obligation set out in this Services Agreement) indemnify the Participating Organisation, its employees, agents or sub-contractors against any cost, liability or loss that arises from any failure to meet its obligations under this **Clause 49**.

**50. Emergencies**

50.1Under the Civil Contingencies Act 2004, the Participating Organisation is obliged to ensure that its services and therefore its contractors, such as the Service Provider, who are delivering services on its behalf, are able to operate effectively at all times in a way that meets the needs of its residents and address the needs of the workforce in the event of a major civil incident. The Service Provider shall ensure that plans and procedures are in place to enable the continued operation of the Services during any form of major civil or other disruption.

50.2 If an Emergency arises at any time during the Term which cannot be dealt with by the performance of the Services, the Participating Organisation may instruct the Service Provider to use all reasonable endeavours to procure that such additional or alternative services are undertaken by the Service Provider as and when required by the Participating Organisation to ensure that the Emergency is dealt with and normal operation of the Services resumes as soon as is reasonably practicable.

50.3 As soon as reasonably practicable following each occasion on which an Emergency arises, the Parties shall liaise and seek to agree upon the additional charge (if any) to the Participating Organisation of providing any such additional or alternative services. In the event that a dispute arises in relation to such charges, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.

**51. Value for Money and Customer Satisfaction**

51.1 The Service Provider acknowledges that:

(i) the Participating Organisation is required by Legislation to ensure it achieves best value for the provisions of Services;

(ii) the provisions of this **Clause 51** are intended to assist the Participating Organisation in demonstrating value for money; and

(iii) the provisions of this **Clause 51** shall apply in respect of the obligations of the Service Provider and the Participating Organisation in order to meet requirements in respect of best value.

51.2 The Service Provider shall, throughout the Term, but only to the extent of its obligations under this Services Agreement, make arrangements to encourage and achieve improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

* + 1. The Service Provider shall make reasonable endeavours to assist the Participating Organisation in demonstrating the Services Agreement meets best value requirements and to allow the Participating Organisation to demonstrate that it is meeting its duties pursuant to Legislation by:

51.3.1 complying with the requests for information, data or other assistance made by the Participating Organisation pursuant to Legislation in order to:

* 1. assist the Participating Organisation in assessment of the Services;
  2. facilitate any inspection or audit undertaken by any Regulatory Bodies or any other relevant authority in connection with its dues in respect of the Services, including any inspection undertaken with a view to verifying the Participating Organisation's compliance with those duties;
  3. facilitate the Participating Organisation preparing any statement, in response to a Participating Organisation's auditor's report;
  4. assist the Participating Organisation in relation to any action taken by the Secretary of State;
  5. enable the Participating Organisation to comply with any Government Departmental Direction; and
  6. enable the Participating Organisation to report on its performance to Regulatory Bodies or other relevant authorities;

51.3.2 complying with all requests by the Participating Organisation to procure the attendance of Key Personnel or staff of the Service Provider or any sub- contractor (or to procure attendance of any of its or their sub-contractors) at any meetings of the Participating Organisation at which the Services are to be discussed as required by the Participating Organisation; and

51.3.3 co-operating in audits and other inspections by Regulatory Bodies or other Relevant Authorities.

51.4 The Service Provider shall use reasonable endeavours to assist the Participating Organisation with any replacement or new assessment relating to best value (whether emanating from Central Government or as part of good practice entered into by a local authority and including but not limited to peer to peer or external assessments or audits).

Customer Satisfaction Surveys

51.5 The Service Provider shall, as required by the Participating Organisation, undertake (or procure the undertaking of) customer satisfaction surveys the purpose of which shall include:

(a) assessing the level of satisfaction among Callers with the Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services;

(b) monitoring the compliance by the Service Provider with the Specification; and

(c) assisting the Participating Organisation in the preparation and conduct of any assessment of the Services or other related services.

51.6 Any such customer satisfaction surveys shall be undertaken by means of survey methods agreed between the Parties in a form to be agreed with the Participating Organisation.

51.7 The content of the questionnaire or other material to be used for the undertaking of customer satisfaction surveys or any other survey method shall comply with all applicable Legislation and any such guidance from the Participating Organisation.

51.8 The Participating Organisation shall provide reasonable assistance and information (subject to compliance with all Legislation) to the Service Provider to enable the Service Provider to undertake customer satisfaction surveys.

51.9 Where a customer satisfaction survey is undertaken by the Service Provider, the Service Provider shall, within twenty (20) Working Days of each customer satisfaction survey date, prepare a summary of the results of the customer satisfaction survey in such form as the Participating Organisation shall reasonably require and promptly upon a written request from the Participating Organisation provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Service Provider) as the Participating Organisation shall reasonably require.

Value for Money Review

51.10 The Service Provider shall co-operate fully with and make reasonable endeavours to assist the Participating Organisation to undertake and complete a joint Value for Money Review of the Services and associated Price prior to the second anniversary of the Overarching Agreement, as set out in **Clause 18.4** and in accordance with the procedures set out in the Pricing Schedule.

**52. The Contracts (Rights of Third Parties) Act 1999**

No person who is not a Party to the Services Agreement (including any employee, officer, agent, representative, or sub-contractor of either the Participating Organisation or the Service Provider) shall have any right to enforce under the Contracts (Rights of Third Parties) Act 1999 any term of the Services Agreement, which, expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 53. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

53. Governing Law

The Services Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

**54 Change of Law**

54.1 The Service Provider shall neither be relieved of its obligations to supply the Services (or any part of the Services) in accordance with this Services Agreement nor be entitled to an increase in the Price as a result of:

54.1.1 a General Change in Law; or

54.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the services is reasonably foreseeable at the starting date; or

54.2 NOT USED

54.3 If a Specific Change in Law occurs or will occur during the Services Agreement (other than as referred to in 54.3 (i) below), the Service Provider shall:

54.3.1 notify the Participating Organisation as soon as reasonably practicable of the likely effects of that change including:

(i) whether any change is required to the Services, the Price or this Services Agreement; and

(ii) whether any relief from compliance with the Service Provider’s obligations is required including any obligation to meet the Performance Standards; and

54.3.2 provide the Participating Organisation with evidence:

(i) that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

(ii) as to how the Specific Change in Law has affected the cost of providing the Services; and

(iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Price.

54.4 Any variation to the Price or relief from the Service Provider’s obligations resulting from a Specific Change in Law (other than as referred to in 54.3.1(i) shall be implemented in accordance with the conditions of this Services Agreement. Any such variation to the Price or relief from obligations shall be proportionate taking into account any contracts the Service Provider may have with other local authorities for the same or similar services and the Service Provider shall provide such information and documentation to the Participating Organisation as it may reasonably require to demonstrate that this requirement has been complied with.

.

**IN WITNESS** whereof the Services Agreement has been signed and delivered as a deed on the date and year stated at the beginning of this deed.

|  |  |  |
| --- | --- | --- |
| THE COMMON SEAL of **[NAME OF PARTICIPATING ORGANISATION**][*conform to correct form of attestation for Authority*] : | ))) | [Authorised] Signatory |
|  |  |  |
| THE COMMON SEAL of [**SERVICE PROVIDER**] was affixed in the presence of: | ))) | Director/Company Secretary |

**EXECUTED AS A DEED by**

**[SERVICE PROVIDER]**

acting by :

|  |  |
| --- | --- |
| **DIRECTOR** | Signature |
| Name IN CAPITALS |

|  |  |
| --- | --- |
| **DIRECTOR / COMPANY SECRETARY** | Signature |
| Name IN CAPITALS |

**Appendix 1**

Specification, Method Statement & Pricing

*[insert Specification, Service Provider’s Method Statement and Pricing*

*provisions relevant to this Services Agreement]*

**Appendix 2**

Not Required

**APPENDIX 3**

Not Required

**APPENDIX 4**

**CHANGE CONTROL PROCEDURES**

**Change Control and Definitions**

1.1 Either party may issue a Change Request for:

* a minor service variation (Minor Variation);
* a major service variation (Major Variation);
* the addition of a Service Option;
* subject to clause 31.3 of the Services Agreement and paragraph 5 below the removal of a Service Option,
* a fundamental change in the way in which particular Services are to be delivered of a magnitude greater than a Major Variation
* a fundamental technological change in the way the Services could be delivered on the grounds of efficiency, consumer choice or enhanced Services
* a change in the number of POs consuming the Services

at any time during the term of its Services Agreement.

1.2 Minor Variation means: a variation to a Service Option that can be implemented by way of minor amendments to existing scripts or guidance documents and requires minimal retraining of Staff, does not alter the call workflow, script or process, does not require reconfiguration of core systems effecting all Participating Organisations, require technical expertise, testing or any impact assessment and requires minimal retraining of staff, such as providing a written briefing to Call Handlers and answering their questions. Minor Variations shall be implemented within one (1) working day, or as otherwise required by the Participating Organisation. The Service Provider’s charges for such Minor Variations are contained within the standard monthly charge for each Participating Organisation.

1.3 Major Variation means: a variation to a Service Option initiated by either the PO or the Service Provider that requires significant staff retraining, such as alterations to call workflow script, process reconfiguration of core systems affecting any Participating Organisations, matters requiring technical expertise, testing or any impact assessment the full redrafting of a procedure or script, changes to existing data capture forms such as adding, changing or removing fields and/or changing the form’s business logic. Major Variations shall, as far as reasonably possibe be implemented within one (2) months, or as otherwise agreed with the Participating Organisation.

**Costs**

2. In the event of a Change Request for a Minor Variation, the variation shall be completed by the Service Provider at no additional cost to the Participating Organisation.

3. Where the Participating Organisation wishes to procure an additional Service Option, then the Participating Organisation shall pay the Service Provider the sum as set out in the Pricing Schedule for the service set-up costs.

4. In the event of a Change Request for a Major Variation of a Participating Organisation’s Specification, the standard hourly rate as set out in the Bid BackFinancial Appendix and associated DFM which shall be paid to the Service Provider for any of its staff resources used to complete this work,. This is the specified rate for additional, skilled technical support activities.

5. NOT USED.

6. In the case of Major Variations the cost estimation and authorisation process detailed below shall apply. Individual Participating Organisations shall have the final decision on any proposals made by the Service Provider in response to written Change Requests from them.

**Change Request Form**

7. All Change Requests shall be notified to the other party by way of a Change Request Form (see form attached as Example 1) submitted to the other party and delivered in accordance with this Change Control Procedure and agreed timescales.

8. It is important that all Participating Organisations and the Lead Authority are able to monitor the implementation and impact of Change Requests. The Service Provider shall maintain an up-to-date record of all Change Requests received, whereby each Participating Organisation can access its Change Requests on-line via the secure web interface. A unique reference number shall be applied to each Change Request received by the Service Provider from each Participating Organisation, to distinguish such Change Requests from others received from other Participating Organisations.

9. The party submitting the Change Request will initially complete Part 1 of the Change Request Form and submit it to the other party electronically. The party submitting the Change Request will determine whether the variation requested is either a ‘minor’ or ‘major’ variation and complete the Change Request Form accordingly. The timescales for implementation of the Change Request shall be confirmed on the Change Request Form.

**Minor Variations**

10. Minor Variations shall be implemented by the Service Provider within one (1) Working Day of the receipt of the Change Request Form (unless otherwise agreed in writing by the Participating Organisation).

11. Urgent Change Request for Minor Variations may be received by the Service Provider from a Participating Organisation by telephone, however, such requests shall always be followed up by a completed Change Request Form.

12. On receipt of each Change Request Form for Minor Variations, the Service Provider shall review and respond to it within 24 hours by completing Part 2 (a) or (b) of the Change Request Form and providing other relevant information where necessary.

13. In exceptional circumstances where the Service Provider is not able to complete the Change Request within the requested timescales, the Service Provider shall contact the relevant Participating Organisation immediately by telephone and agree an alternative timescale acceptable to the Participating Organisation. This arrangement will not, however, affect a Participating Organisation’s right to require the Service Provider to implement such a Change Request within one (1) Working Day. If the Change Request is not accepted for any reason, or the classification of a request as a Minor (or Major) Variation is not accepted by the Service Provider, the Service Provider’s response must indicate this. The matter can be referred to the Joint Management Board under paragraph 21 for resolution.

**Major Variations**

14. Major Variations shall, as afar as reasonably practical, be implemented by the Service Provider within two (2) months (with the Service provider acknowledging that where reasonably possible it will provide a quotation within 30 days of receipt of the Change Request Form) of the receipt of the Change Request Form (unless otherwise agreed in writing by the Participating Organisation).

1. In respect of Change Requests for Major Variations, the Service Provider shall respond to such Requests within five (5) Working Days, providing the Participating Organisation with full details of the proposed resources to be used, the total cost and the effective date(s).
2. Upon receipt of the Service Provider’s proposal, the requesting Participating Organisation shall review the proposal and may require amendments or seek clarification from the Service Provider prior to determining whether to accept the proposal and proceed with implementation. In the event that the Participating Organisation accepts the Service Provider’s proposal, the Participating Organisation will complete Part 3 of the Change Request Form and return it to the Service Provider as confirmation of its acceptance and notice to proceed.
3. The agreed cost for Major Variations shall be charged and form part of the invoice submitted to the relevant Participating Organisations, once the work relating to the Major Variation has been agreed and signed off by the Participating Organisation, for the month following the implementation of the Major Variation(s) or monthly in arrears for any Major Variation(s) where the implementation extends beyond a calendar month. The invoice(s) submitted by the Service Provider shall include full details of work undertaken by the Service Provider in response to the Change Request in any given month.

**Deferment**

1. In the event that the Participating Organisation wishes to defer the implementation date of any Change Request, then the Participating Organisation concerned shall notify the Service Provider as soon as reasonably possible in writing.

**Progress Log**

1. The Service Provider shall maintain a progress log of all outstanding Change Request Forms for each Participating Organisation, to be held on the secure web interface and updated regularly with progress updates, including projected completion date(s).
2. It should be noted that each Participating Organisation’s Specification is required to be reviewed and updated at least quarterly by the Service Provider with the agreement of the Participating Organisation, in order to capture all Variations made to the Participating Organisation’s Specification during the preceding quarter and to ensure that the Specification remains up to date at all times.

**Joint Management Board**

1. In the event that a Participating Organisation and the Service Provider cannot agree on a matter relating to a Change Request, then the matter shall be referred to the Joint Management Board for resolution.
2. In the event that a Participating Organisation or the Service Provider is of the opinion that a proposed Change Request is likely to have an adverse impact on the provision of Services for one or more Participating Organisations, the Change Request shall be reviewed by the Joint Management Board. The Joint Management Board shall have the final decision as to whether the Service Provider may proceed with the Change Request.
3. In the event that the Service Provider disagrees with the Joint Management Board’s decision and agreement cannot be reached, the matter may be referred for resolution by way of the dispute resolution procedure set out in Clause 46 (Dispute Resolution) of the Services Agreement.

Variations to Service Delivery Arrangements proposed by the Service Provider

1. The Service Provider must give all Participating Organisations a minimum period of three (3) months prior written notice of any significant proposed variation to their delivery arrangements. Any proposed variation to such arrangements which conflict with the terms of the Contract and/or the Services Agreement, or a Participating Organisation’s policies and/or strategies may not be agreed, and may only be dealt with as set out in the Specification and in accordance the terms of the Overarching Agreement and Services Agreements.

**Adding and Withdrawing Services**

1. Following commencement of the Services, Participating Organisations shall be able to add or withdraw individual Service Options to/from their individual specifications.
2. The Service Provider shall collaborate fully with each Participating Organisation to set up additional Out of Hours Service Options and this shall be achieved within six (6) weeks of receipt by the Service Provider of notification from the Participating Organisation, or over a longer period as agreed by the Participating Organisation. The price for implementing an additional Service Option shall be as set out in the Pricing Schedule; this fixed cost shall include ALL activities related to the service set up and implementation.
3. Participating Organisations shall be required to provide the Service Provider with written notice of the required withdrawal of any Service Option. The Service Provider shall make no charge, unless the Service Option is linked to other Service Options. In the latter scenario change control will apply. The provisions relating to call volume changes affecting commercial recovery in the DFM will also apply.

**Hourly rate for skilled technical support activity**

1. In the event that any additional, skilled technical support activities are requested by a Participating Organisation in accordance with paragraph 16.5 of the Specification, an additional hourly price of £[ ] (as set out in the Pricing Schedule) shall be charged by the Service Provider for the provision of such services. This hourly rate shall apply to such activities as:

* requested variations to the initial IT, telecommunications and data interchange set up;
* variations to system integration development;
* variations to the existing data capture forms which necessitate adding, changing or removing fields and/or changing the form’s business logic;
* requested one-off variations (such as Major Variations to existing Service Options or the development of additional reports);
* ICT set up costs relating to particular one-off integration exercises (including real-time) to individual Participating Organisation’s systems for service request details, where a Participating Organisation requests this.

29. The parties may meet to discuss any change under this Change Control Procedure. The form of the meeting will be as follows:-

1. The change(s) will be identified and agreed a topic for discussion under change control

2. The change will be specified in the Change Request Form

3. The Service Provider will identify on an open book basis the costs and other financial effects of the change

4. The PO(s) will consider the effects on value for money and service quality of the change

5. The parties will consider the change in the context of their inalienable rights as specified

#### Example 1

#### Change Request Form

|  |  |
| --- | --- |
| **Part 1** to be completed by the requesting organisation | |
| **Change Control Reference No.** |  |

|  |  |
| --- | --- |
| **Requesting Organisation** |  |
| **Title of Variation** |  |
| **Raised By** |  |
| **Date Raised** |  |
| **Classification of Variation if Major** | New Service / Major variation to current process / Service removal / IT or telecoms variation / Other (If ‘Other’ provide detail) |
| **Classification of Variation if Minor** | Script change/Handover procedure change/Minor change to existing process/Other (If ‘Other’ provide detail) |
| **Name of process to be varied (where applicable)** |  |
| **Reason for Variation** |  |
| **Requested effective date of change** |  |

|  |  |
| --- | --- |
| **Details of Variation (including impact on Price on an open book basis)** |  |
|  |  |

|  |  |
| --- | --- |
| **Part 2(a)** to be completed by SERVICE PROVIDER if request is to be rejected | |
| **Reason for rejection/objection or deferring of request for Variation** |  |

|  |  |
| --- | --- |
| **Part 2(b)** to be completed by SERVICE PROVIDER if request is to be pursued | |
| **Date Accepted as Major Variation** |  |
| **Date Accepted as Minor Variation** |  |
| **Detail of resources required for Major Variation (type & quantity)** |  |
| **Charges for Completing the Variation** |  |
| **Proposed Effective Date for the Variation** |  |
| **Impact on other aspects of the Services** |  |

|  |  |
| --- | --- |
| **Part 3** to be completed by participating organisation if Service Provider proposal for resources for Major Variation is to be authorised | |
| **Charges and effective date agreed on behalf of requesting organisation by:** | |
| **Name:** |  |
| **Date:** |  |

**APPENDIX 5**

**COMMERCIALLY SENSITIVE INFORMATION SCHEDULE**

*[insert commercially sensitive information schedule as appropriate]*

**APPENDIX 6**

**DOCUMENT SCHEDULE**

*[insert documentation relevant to this Services Agreement]*

APPENDIX 7

BULK TRANSFER TERMS

*(insert where relevant)*

APPENDIX 8

BUSINESS CONTINUITY PLAN

*(insert where relevant)*

APPENDIX 9

Exit Strategy

*(to be inserted)*

**Section IV – Services Agreement Procedure**

The Lead Authority and Service Provider will execute the Overarching Agreement. Use of this Overarching Agreement will be open to Existing Participants and any New Participants within the scope of the FTS Notice as published on [ 202 ].

Where a New Participant is interested in entering into a Services Agreement for the provision of the Services, the following procedure shall be applied. The New Participant will document and submit to the Service Provider its high level requirements for the Services (for example, initial list of Service Options required, maximum hours of operation, current call volumes, required timescales for implementation, IT interfaces etc.). The New Participant and the Service Provider shall execute the Agreement to Proceed document (as appended below), that sets out the terms upon which the Service Provider shall undertake the defined activities relating to contract/service implementation as set out in the Pricing Schedule, in return for payment by the New Participant of the appropriate Implementation Price.

Arising from these activities, the Service Provider shall submit a detailed timetable, operational service specification, implementation plan and pricing proposal to the New Participant, covering all set-up prices and any additional charges based upon the List of Prices and the agreed TUPE Formula as set out in the Pricing Schedule. This proposal will include a full set of Service Documentation as set out in Paragraph 13 of the Specification, along with implementation arrangements covering the items listed at Paragraph 9.1.11 of the Specification.

In the event that the Service Provider’s proposal is accepted by the New Participant, the Service Provider and the New Participant shall execute a Services Agreement in the form set out in Section III, to which shall be annexed the relevant Schedules, supplemented where necessary by any specific requirements of the Participating Organisation.

Arrangements for staff training, handover, user acceptance testing, service commencement and initial review, will be the arrangements as set out in Section XI Transition Procedures.

Where New Participants seek to enter into a Services Agreement, TUPE may apply in respect of their existing call handling staff.

**AGREEMENT TO PROCEED**

*(To be sent on New Participant’s letterhead)*

|  |  |  |
| --- | --- | --- |
| [Service Provider] | Reference: |  |
|  | Phone: |  |
|  | Fax: |  |
| E-mail: |  |
|  |  |
|  |  |
| Date: |  |
|  |  |

## Subject to Contract

##### **Dear Sir,**

**Re: Out of Hours Call Handling Services - Agreement to Proceed and Non-Disclosure Agreement**

On behalf of the *[insert name of New Participant]*, I write to inform you that it is our present intention to enter into a contract with you for the provision of the above Services on the terms of the Services Agreement contained within the Overarching Agreement dated [ 2025, subject to the agreement of the *[New Participant]* and the conclusion of a mutually acceptable contract.

In order to achieve the objectives of the Services Agreement, there is a need to proceed now with certain elements of the Services in advance of executing the Services Agreement. Pending terms and conditions being agreed, you are hereby authorised to proceed with the provision of the necessary preparatory work, which shall be performed in accordance with your implementation plan and the terms of the Overarching Agreement and Services Agreement subject to a limit of expenditure of £[ ] plus VAT being total sum of the Implementation Price as defined in the Overarching Agreement The Implementation Price shall cover all agreed arrangements necessary to enable the Service Provider to provide the Services to the New Participants including the build of the Microsoft Cloud platforms and necessary software licenses, the creation and/ or modification of scripts, the build and configuration of the portal and the creation of such interfaces as the New Participants may specify.

This preparatory work shall include those activities defined as relating to contract implementation as set out in the Specification at Section II of the Overarching Agreement, as well as the [New Participant]’s particular requirements for service implementation as set out below. Payment of the Implementation Price shall only be paid upon the successful completion of the preparatory work and Service commencement, and Payment by us of a total of £[ ] under this Agreement to Proceed, shall be full payment of the Implementation Price and shall cover all such required preparatory work.

This Agreement to Proceed is subject to the following mutually agreed terms:

1. Any activities carried out by you in connection with the Services shall be governed by and rendered in accordance with your Implementation Plan (as agreed) and the terms of the Overarching Agreement and Services Agreements.
2. Payment of the Implementation Price shall be made in two (2) instalments. The first instalment, which represents 40% of the Implementation Price, shall be paid in advance of the commencement of the preparatory work. The second instalment (the remaining 60% of the Implementation Price) shall be paid in arrears following the successful completion of the preparatory work to the agreed standard. Unless otherwise agreed by the parties, the second instalment shall be paid within 30 days of the receipt of an invoice from you, subject to the invoice submitted being correct.
3. If for any reason we inform you in writing that we do not intend to proceed with the procurement of the Services, prior to the signing of the Services Agreement, then this Agreement to Proceed shall terminate at midnight on that date, whereupon:
   1. you shall be entitled to payment of all sums payable for work completed up to and including the date of termination;
   2. in the event that this Agreement to Proceed is terminated prior to the commencement of any preparatory work, then the [*New Participant*] shall not be liable to pay you any of the Implementation Price, including the first instalment;
   3. neither party shall otherwise be under any liability to the other by reason of such termination;
   4. you shall have no claim against the [*New Participant*] for breach of contract, damages, claims, costs, losses, expenses, loss of profit, loss of expectation or otherwise arising from the failure to enter into the Services Agreement.
4. Each party undertakes not to disclose to any third party any confidential or proprietary information relating to all belonging to the other party or its operations, without the prior consent of the other party.
5. Your liability to us, howsoever arising, in connection with the work performed under this Agreement to Proceed, shall:
   1. for death and personal injury caused by your negligence or fraud, be unlimited; and
   2. for all other circumstances, liability shall be limited to (£5 million) five million pounds in aggregate: and
   3. you shall maintain sufficient insurance to cover any claims, costs, losses, expenses, damages or otherwise arising.
6. Amendments to this Agreement to Proceed must be made in writing and agreed by both parties in order to be effective.
7. Unless the executed Services Agreement itself otherwise provides, it shall supersede this Agreement to Proceed and retrospectively include all work performed under this Agreement to Proceed.
8. If we do not enter into an Services Agreement and this Agreement to Proceed is terminated, paragraphs 3, 4 and 5 above, shall survive such termination.

9. Service Provider shall be liable for losses associated with delay to commencing the provision of the Services not within the timescales agreed or on a specified date.

Please sign and return the enclosed copy of this letter as evidence of your agreement as to its terms and your willingness to proceed on the basis outlined above.

Yours faithfully,

*[Name and Title]*

*[New Participant]*

Agreed for and on behalf of [*Service Provider*] on ………………………… 20[ ]

………………………………………………………………….

## Authorised Signatory

…………………………………………………………………

Name and title (print)

**Section V – List of Existing Participants**

**Existing Participants**

London Borough of Ealing

London Borough of Enfield

London Borough of Haringey

London Borough of Barnet  
Royal Borough of Hammersmith & Fulham

London Borough of Barking and Dagenham

London Borough of Waltham Forest

**Scope of Overarching Agreement**

The scope of the Overarching Agreement encompasses the following organisations:

* All UK Councils and Housing Sector Arm’s Length Management Organisations (ALMO) s who offer an out of hour’s service including without limitation the existing participants London Boroughs of Barnet, Haringey, Enfield, Barnet, Barking and Dagenham, Ealing and Waltham Forest Councils
* all central government departments offices and bodies.
* Any Registered Social Landlords
* Any Integrated Care Systems and Integrated Care Boards in UK
* Any Local Authority Trading Companies
* Any Local Authority Direct Service Organisations

s

**Section VI – Performance Monitoring**

**Part A**

**1. Definitions and Interpretation**

1.1 In this Section unless the context otherwise requires the following terms shall have the meanings given to them below:

**“Default Notice”** means a notice served on the Service Provider by the Participating Organisation in the event of poor performance with respect to the Services on the part of the Service Provider in accordance with **Clause** **36** (Default and Termination) of the Services Agreement.

**“Performance Standards Table”** means the table appended to the end of Part A herein.

**“Persistent Failure”** means the accumulation of 5 failures of the same type of failure in a month

**“Call Handling Workflow”** means the processes, workflows and scripts agreed by the Parties in respect of each of the Service Options and set out in the Services Agreement in relation to the way the Service Provider responds to contacts received from Customers.

**“Improvement Plan”** means a plan devised by the Service Provider and agreed by the relevant PO which sets out how the Service Provider will ensure that the Default is remedied, to ensure that it does not occur again and the time scales within which such an Improvement Plan shall be implemented.

**“Target”** means the target identified as a percentage of the KPI Measure set within the Performance Standards Table

1.2 Except for paragraph 5.1 of this Section VI, the provisions of this Section VI will be enforceable by each Participating Organisation in relation to the Services Agreement entered into by that Participating Organisation.

**2. NOT USED**

**3. Performance Reporting**

3.1 The Service Provider shall at all times comply with the requirements of Paragraph 11 of the Specification (Reporting & Monitoring) and, in particular, Paragraphs 11.5 to 11.9 which set out the Service Provider’s daily, weekly, monthly, annual and general reporting obligations. The Service Provider shall provide all such performance reporting data and any other documents and/or materials required to be provided to the Participating Organisation in the form and within the timescales specified therein and in accordance with Article 6 of the Overarching Agreement and Clause 14 (Standard of Work & Performance Monitoring) of the Services Agreement.

**4. Performance Review Meetings**

4.1 The Service Provider shall be required to attend regular Performance Review Meetings with individual Participating Organisations, which shall be held at least quarterly to consider the local performance of the Service Provider. Such meetings shall be conducted in accordance with paragraph 11.11 (Review Meetings) of the Specification.

4.2 The Service Provider’s Key Personnel shall also be required to attend Joint Contract Review Meetings with the Joint Management Board, which shall be held at least quarterly (or as otherwise agreed by the parties), to consider the Service Provider’s performance in relation to the Service as a whole.

**5. Poor Performance and Default**

5.1 The Service Provider’s Contract Manager shall work with the Strategic Monitoring Manager to seek to overcome any problems with the operation of the Services across all Services Agreements, including any occasions when performance may for a short period fall below the minimum Performance Standards, which relate to each of the defined performance measures as specified in the Performance Standards Table below.

5.2 The relevant Participating Organisation may issue a Default Notice and levy an Abatement, in connection with their Service Delivery only, on the occurrence of any of the following events 5.2.1 to 5.2.4:

5.2.1 Where the Service Provider fails to meet any of the Targets set out in the KPI Performance Standards Table for the same Service Option on 5 or more occasions in one (1) calendar month;

5.2.2 Where the Service Provider fails to meet any of the Targets set out in the KPI Performance Standards Table for any of the Service Options on 10 or more occasions in one (1) calendar month;

5.2.3 Persistent Failure to meet the required timescales for the delivery of Minor Variations may also trigger a Default Notice to which clause 5.3 will apply.

5.2A For the avoidance of doubt, more than one (1) Default Notice may be issued however no more than one (1) Abatement per Participating Organisation may be levied in respect of the same monthly period, on the occurrence of any of the events set out above in clause 5.2 or in 5.2B. A failed Service Option (as set out in clause 5.2), Call Handling Workflows failure in accordance with clause 5.2B or Persistent Failure for Minor Variations may only be counted towards a Default Notice once in any month. and shall not be counted twice for the purposes of categorising whether the failure is a Service Option, Call Handling Workflow Failure and or Persistent Failure for Minor Variations.

5.2B Where reports on the Service Provider’s performance show that the Service Provider has failed to comply with any Call Handling Workflows on 1 or more occasion in one (1) calendar month for the same Service Option or for any Service Option then without prejudice to clause 5.3 the relevant Participating Organisation may issue only one Default Notice per month and require the Service Provider to generate an Improvement Plan (WorkFlow) (“IPW”) within 5 days of being notified to do so in writing. The IPW shall be submitted to the Supervising Officer for approval which shall not be unreasonably withheld or delayed. The Supervising Officer shall be entitled to suggest reasonable amendments to the IPW which the Service Provider shall incorporate.

5.2C The Service Provider shall implement the approved IPW within the agreed timescales. Failure to resolve any Call Handling Workflow non- compliance within the timescale of the IPW shall result in an Abatement being levied as per the table at clause 5.4 below. Where the parties (acting reasonably and in good faith) are unable to agree the timescales for the Improvement Plan within 5 days then the disagreement shall be resolved in accordance with the Dispute Resolution Procedure.

5.3. On receipt of a Default Notice (other than a Default Notice for failure to comply with Call Handling Workflows) the Service Provider must generate an Improvement Plan and submit to the PO within 14 days of the end of the calendar month to which the Default Notice(s) relate. The Improvement Plan shall be submitted to the Supervising Officer for approval which shall not be unreasonably withheld or delayed. The Supervisor shall be entitled to suggest reasonable amendments to the Improvement Plan which the Service Provider shall incorporate. The Service Provider shall implement the approved Improvement Plan within the agreed timescales.

5.4 For any month in which a Default Notice has been issued or there has been failure by the Service Provider to meet the timescales set out in an IPW an Abatement will be levied as set out in the table below notwithstanding that an Improvement Plan is in place. The Abatement will only be levied where the event which caused of the Default Notice to be issued (“the Default Event”) has not been rectified by the end of 90 days from the date the Default Notice was issued. If the Default Event has not been rectified within those 90 days then the Abatements for months 1, 2 and 3 shall be levied at the percentage rates set out in the table below. Abatements for subsequent months shall be levied until the Default Event has been rectified. The PO may issue a Default Notice for each month where the same Default Event has not rectified. Where a month passes without a Default Notice being issued the % deduction shall revert to 0% and there shall be a reset. The consecutive accumulation shall recommence at Month 1 for purposes thereafter on Default and the reset shall apply automatically on a quarterly basis.

5.4A The Parties agree that the percentage reduction is to appropriately reflect the diminution in the Services provided by the Service Provider during the relevant period.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Consecutive Months | Default Notice Issued? | Improvement Plan Required in respect of that month’s performance | Percentage deduction from the monthly payment to the Service Provider for that Participating Organisation in respect of the month | |
| Month 1 (with the first Month 1 to commence 6 months after Initial Services Commencement Date) | Yes | Yes | 10% | |
| Month 2 | Yes | Yes | 20% | |
| Month 3 | Yes | Yes | 45% | |
| Month 4  . | | Yes | 45% | |
| Month 5 | | Yes | Yes | 45% |
| Month 6 | | Yes | Yes | 45% |
| Month 7 | | Yes | Yes | 45% |
| Month 8 | | Yes | Yes | 45% |
| Month 9 | | Yes | Yes | 45% |
| Month 10 | | Yes | Yes | 45% |
| Month 11 | | Yes | Yes | 45% |
| Month 12 | | Yes | Yes | 45% |

Each Abatement levied will be equivalent to a percentage of the sum chargeable for all incoming calls handled by the Service Provider for the Participating Organisation during the month in question.

5.5 In the event that the Service Provider fails to adhere to any agreed timescales or any other part of the Improvement Plan or the Service Provider accumulates more than 6 Default Notices in a twelve (12) month period the relevant Participating Organisation may require the Service Provider’s Managing Director to attend a meeting at the Participating Organisation’s premises within three (3) Working Days of being requested to do so, in order to ascertain the reason for the failure to provide the Services adequately and, where agreeable to the Participating Organisation, agree a solution (which must be in writing), in order to prevent any further failures to provide the Services in accordance with the Performance Standards. Where so requested to attend a meeting in accordance with this clause the Service Provider’s Managing Director shall attend.

5.6 In the event that Service Provider has received more than five (5) Default Notices as a consequence of poor performance in any three (3) consecutive months, the Participating Organisation reserves the right to invoke any of the default and termination procedures set out in Clause 36.2 of the Services Agreement, namely:

5.6.1 The Participating Organisation may make Abatements in accordance with Section Vl – (Performance Monitoring) of the Overarching Agreement in accordance with paragraphs 5.2 – 5.4 above.

5.6.2 without terminating the Services Agreement, the Participating Organisation may itself provide or procure the provision of any part of the Services until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Participating Organisation’s Supervising Officer that the Service Provider is able to perform the Services Agreement to a standard acceptable to the Participating Organisation.

5.6.3 without terminating the whole Services Agreement, the Participating Organisation may determine that part of the Services shall no longer be provided by the Service Provider and itself provide or procure a third party to provide that part of the Services.

5.6.4 without terminating the Services Agreement, the Participating Organisation may require the Service Provider to remedy the default within a specified timescale at the discretion of the Participating Organisation; and/or

5.6.5 the Participating Organisation may terminate the whole of the Services Agreement in accordance with Clause 36.4 of the Services Agreement.

5.7 In the event that termination is invoked by the Participating Organisation in accordance with Clause 36 of the Services Agreement and as set out in paragraph 5.6 above, the Participating Organisation shall determine which of the following two options it shall pursue:

* the Participating Organisation shall have the right to reallocate its calls to an alternative arrangement of its choice with immediate effect, with no obligation to make any further payments of the Price to the Service Provider; or
* the Participating Organisation shall have the right to opt to continue to receive the Services from the Service Provider for a period of up to nine (9) months, which shall be delivered in accordance with the terms of the Services Agreement.

In addition, the Participating Organisation shall inform and liaise with the other Participating Organisations, to ensure that they are fully aware of the circumstances.

5.8 In the event that termination is invoked by a Participating Organisation in accordance with Clause 36 of the Services Agreement, the full requirements of Clauses 39 (Consequences of Termination), 40 (Recovery upon Termination) and 49 (Business Continuity & Exit Management) shall apply.

**Performance Standards Tables:**

**KPI’s pertaining to the Services Agreement and the Participating Organisations**

| Measure number | Subject Area | Description | Measure | Target is a % of the Measure required to be delivered |
| --- | --- | --- | --- | --- |
| 1 | Daily Performance Report | On a daily basis between Sunday and Thursday, no later than 10 a.m. the following morning (or Monday where reporting on a Friday or a Saturday ), the Service Provider will make available for each Participating Organisation information detailing the total calls offered and answered under each of the Gold and Silver Standards as appropriate and the percentages that were answered within the minimum Performance Standards | Percentage of daily reports delivered in compliance with the Description within the calendar month | 96% daily reports (as a percentage of calendar days) made available by 10.00 a.m. on the next Working Day |
| 7 | Weekly Performance Report | The Service Provider shall compile and make available information for each Participating Organisation on a weekly basis, no later than 10 a.m. the Wednesday following the end of week, which shall contain the following data for each Service Option and/or each access number: Number of calls attempted (by hour, for each day and with total for week). This data must relate to calls detected by the Service Provider’s telephone network rather than by the Service Provider’s ACD facilities; Number and percentage of answered calls relative to total call attempts (by hour, for each day and total for week); The relevant service standard being operated (i.e. Gold or Silver);   * + 1. Of all attempted calls, the numbers and percentage of calls (by hour, for each day, and overall for the week) which were:   (a) abandoned overall  (b) answered and abandoned within 20 seconds  (c) answered and abandoned within 60 seconds  (d) answered and abandoned within 20 to 60 seconds  (e) answered and abandoned above 60 seconds;   * + 1. Numbers of outbound calls made to pass details of the services requested to On-Call Duty Staff (for each day & total for the week), with the same information for e-mails, SMS texts & pager messages (where applicable).     2. To also include base call loading data:   Number of calls attempted on the Service Provider’s network (by hour, for each day and with total for week). This should be classified by service standard e.g. Gold, Silver etc. | Percentage of weekly reports delivered in compliance with the Description within the calendar month | 75% of weekly reports made available by 10.00 a.m. the third Working Day following the end of week |
| 13 | Out of Hours Calls accurately handed off report (“outbound action report”) | The Service Provider shall compile and make available information for each Participating Organisation on a weekly basis, no later than 10 a.m. the Wednesday following the end of week, which shall contain the following data numbers of outbound calls made to pass details of the services requested to On-Call Duty Staff or external supplier (by hour, for each day & total for the week), classified by service type, with the same information for e-mails, SMS texts & pager messages (where applicable). | Percentage of weekly reports delivered in compliance with the Description within the calendar month | 75% of weekly reports made available by 10.00 a.m. the third Working Day following the end of week |
| 14 | Monthly Performance Report | The Service Provider will compile and submit to the Participating Organisation by the close of the 5th Working Day following the end of relevant calendar month the monthly report that shall contain the following data:  1 Monthly totals and percentages for each of the specified weekly reports (above) for both each individual access number and each Service Option;  2 Overall totals of the numbers of calls handled under each of the Platinum, Gold, Silver, Bronze and End to End call standards covering all Service Options;  3 The prescribed data for each Service Option applicable to that Participating Organisation+ | Monthly report to be delivered in line with the Description by the fifth Working Day following the end of the month in question. | 100% of monthly reports are made available within 5 Working Days of the end of the calendar month |

Non KPI reporting requirements:

* End to end calls -percentage answered pertaining to that specific PO service level selected as set out in the Specification– note these will only be reported at the overall level achieved for whichever category these calls sit for that PO unless there is a separate telephone number or an IVR has allowed for a separate queue
* Ad Hoc requests report - This report will detail how the Service Provider has responded to urgent ad-hoc requests from any Participating Organisation for simple aggregated data that may reasonably be required (e.g. for an update on call volumes by the Participating Organisation) concerned)

Both reports to be provided at every Joint Management Board meeting and as reasonable requested by the Participating Organisation.

**Performance Standards for the Overarching Agreement**

**+** percentage of all attempted calls that were answered and abandoned (where the service required for an abandoned call can be established by the access number dialled or by agreed use of Automated Attendant/IVR);

b) average talk time;

c) average call handling time (includes talk time and after-call work time, including time for outbound calls);

d) number of minutes where the Service Option was not available due to system or other failure;

e) the number of individual calls made to On-Call Duty Staff together with their average call duration in minutes and seconds;

f) separate totals and percentages are also required for each of various specified categories of ‘out of scope’ call types.**\***

g) Time taken to signpost for each Service Option **\*\***

h) An exception report setting out full details of each service request requiring dispatch of an e-mail where that dispatch has taken longer than the maximum period allowed under the service standards for that Participating Organisation **\*\*\***

**\***The Service Provider shall obtain details of these call types by ensuring that Call Handlers record details of them as they arrive, using lists of categories of such ‘out of scope’ calls as provide by each Participating Organisation. This data is required to allow Participating Organisations to take any relevant action to minimise the volume of such calls;

**\*\***covering those calls where a service request was passed to an On-Call Duty Staff member or external contractor using phone, e-mail, SMS text or pager, information on the time taken to pass such service requests shall be provided. This shall include the total number of cases, the average time taken to pass on the request, the maximum time taken to pass on a request and a separate list of all cases where the time taken was above the maximum period allowed under the service standards for that Participating Organisation (as defined in Paragraph 6 of the Specification or as separately defined in the Service Documentation for the Participating Organisation). In the case of e-mails, SMS texts and pager contacts, the time reported will be the time from completion of the incoming call until successful dispatch of the e-mail or text;

**\*\*\***giving the reasons for the delay (e.g. error by Call Handler, technical problems with the operation of the provider's e-mail service, etc); in addition, in the case of e-mails, and where service standards for that organisation require use of auto receipt facilities when sent to On-Call Duty Staff, the Service Provider will monitor responses and provide a summary and exception report; in addition, in the case of e-mails, and where service standards for that organisation require use of auto receipt facilities when sent to On-Call Duty Staff, the Service Provider will monitor responses and provide a summary and exception report; List of any period of the non-availability to the public of any Service Option during any period of scheduled access, giving full details of:

a) the cause of the incident

b) the total duration

c) steps taken to resolve

together with a rolling total of such incidents and total time lost for each Service Option over the last year; full details of the reasons why the Service Provider has failed to comply with agreed escalation procedures, in the event of any such incident. A list of all Services complaints in any way dealt with by the Service Provider over the last period, providing: a) a summary of the complaint b) name and address of complainant c) date received d) date of acknowledgement e) date of response f) summary of outcome of investigation into complaint d) whether or not the complaint was fully or partially justified.

**++** To be reported within 5 Working Days- of notification of any telephony issues.

**+++**Report to include (a) The total number of Call Centre Staff (Full time equivalent) currently employed to deliver the Services (split between Daytime and Out of Hours Services) and the percentage turnover amongst these Staff for the last twelve (12) month period (rolling figure); Full details of any period of non-availability of the Service Provider’s Personnel A full report of any scheduled business continuity test (as described in Method Statement 8) giving details of its completion and outcomes;

**++++** The Participating Organisation shall also be given full access to all data captured on each and every Call, where required. This will be provided by secure remote access.

**Section VII – Service Provider Document Schedule**

1. **Documentation to be provided by the Service Provider**

1.1 The Service Provider shall ensure that its company procedures manual is available for inspection on request by the Participating Organisation in electronic form. An index of procedures shall be provided to the Participating Organisation in paper form and shall be subject to annual revision by the Service Provider.

1.2 The Service Provider shall also make available to the Participating Organisation a soft copy of the following documents in real time. A hard copy is to be maintained by the Service Provider and made available to the Supervising Officer immediately upon request.

(i) Environmental Policy;

(ii) Quality Manual;

(iii) List of the Service Provider’s Sub-contractors;

(iv) Risk Register;

(v) Broker’s letter detailing the Insurance Policies the Service Provider has in place;

(vi) Risk Assessment Method Statement;

(vii) Health & Safety Policy;

(viii) Initial Business Continuity and Disaster Recovery Plans;

(ix) Equal Opportunities Policy;

(x) Initial Exit Strategy;

(xi) Anti-Bribery Policy.

(xii) Business Continuity and Exit Plan

2.3 The Service Provider shall make available to the Participating Organisation such additional documentation as agreed with the Participating Organisation during the term of the Agreement.

2.4 The Service Provider shall ensure that all documentation is current and up to date.

**Section VIII – Service Provider’s Key Personnel Schedule**

1. Unless otherwise specified, the Service Provider is required to provide all staff necessary to deliver the Services in accordance with the terms of the Overarching Agreement and Services Agreement, including the Specification.

2. **Key Personnel**

2.1 The following staff are deemed to be Key Personnel for the purposes of this Agreement as defined in Section III of this Agreement:

2.1.1 *Director of Service Management* (Board Level Post) - the Director of Service Management shall be responsible for overall operational and service delivery of the Managed Services Department

2.1.2 *Head of Service Management* - the Head of Service Management shall be responsible for third party management, Contract Liaison Officer(s) and Call Centre Manager(s)

2.1.3 *Contract Manager(s)* (and any other allocated contract lead officers) - the Contract Manager(s) will be responsible for all aspects of the Agreement throughout its term.

2.2 The Service Provider shall ensure that staff are in post to fulfil the following roles:

2.2.1 *Technical Manager* - the Technical Manager shall be responsible for support, development and implementation of telecommunications and software applications that underpin the provision of the Service.

**Section IX – Business Continuity Requirements, Disaster Recovery and Data Retention Schedule**

**Section X – Service Provider’s Exit Strategy**

**Section XI – Transition Procedures**

**1. The Transition Process - Introduction**

1.1 The Parties acknowledge that where a new Service Provider is awarded the Overarching Agreement for the delivery of the Services, there will be a period of transition within which the Service Provider will mobilise and prepare to take over the responsibility for the delivery of the Services from the Current Provider. The existing contract and Access Agreements expire on 20 September 2025 and the effective operation of the Services for all Existing Participants will be from the Initial Services Commencement Date

1.2 It is a condition precedent of this Overarching Agreement that Transition shall be undertaken in a manner which results in the timely and successful operation of the Services for all Existing Participants by 21st October 2025 and avoids any disruption to the current services.

**2. Transition Plan**

2.1 Each Existing Participant that wishes the Service Provider to deliver the Services for it will complete a Transition Agreement with the Service Provider. The Existing Participant will submit a Transition Agreement to the Service Provider within two (2) weeks of Overarching Agreement award and expiry of any standstill or scrutiny call in periods or such later date as agreed between the parties. The Service Provider will carry out the Transition of each Existing Participant’s services in accordance with the requirements of these Transition Procedures and the terms of the Transition Agreement. Existing Participants will not be have to pay the Service Provider any Transition Price for this transitional work, as it is incorporated into the unit price of each Call in the DFM.

2.2 Tenderers must provide a credible Transition Plan (in Method Statement 7- Mobilisation including a detailed project plan) for the successful transition of the current services and operations of the Existing Participants from the Current Provider within agreed timescales and the Service Provider is required to provide full details of the methodology and resources to be utilised as part of the Transition.

Following the award of the Overarching Agreement, the Service Provider shall revisit its Transition Plan and revise it as necessary with the agreement of the Existing Participants. The Service Provider shall implement its Transition Plan to enable the successful transition of the current services and operations of the Existing Participants from the Current Provider within the agreed timescales.

2.3 The Transition Plan shall include the full range of transition activities for each of the Existing Participants and each Service Option delivered, as well as any IT, telecommunications and systems arrangements required to undertake the work. It shall also include all the activities required to set up and operate the Service Provider’s call handling arrangements as set out in the Specification.

The Transition Plan shall therefore include:

1. full details of how the Service Provider shall meet the requirements set out in paragraph 1 above;
2. a detailed, co-ordinated plan of all aspects of contract preparation including user acceptance testing and implementation of all required Service Options for each Existing Participant;
3. structures and timescales (including specific dates) for the delivery of the Transition of the Services, including liaison with the Existing Participants and their staff, along with the preparation by Service Provider of all necessary documentation to enable each of the Existing Participants to enter into a Services Agreement in accordance with the terms set out in paragraph 6 (Conditions for entering into Services Agreements) below;
4. full and tested adaptation of appropriate Service Provider Call Management System to meet the requirements of the Services including required interfaces and real time integration;
5. Staff recruitment, set-up and details of Initial Training;
6. processes and procedures to facilitate the successful transfer of Services from the Current Provider;
7. a risk management procedure and risk log;
8. full details of all related technical support activity;
9. establishing the reporting and billing arrangements;
10. contingency arrangements.

2.4 The Transition Plan shall be continuously and adequately monitored by the Service Provider, who shall provide up to date reports to the Existing Participants on a weekly basis. The Service Provider shall maintain and regularly update its risk log for Transition to facilitate the effective risk management of the Transition procedure.

2.5 The Service Provider must ensure that it has sufficient resources (including labour, assets, equipment and materials) to perform its obligations under these procedures and in accordance with the terms of the Overarching Agreement and successfully complete Transition to the agreed timescales.

2.6 For every Service Option to be operated for each Existing Participant, the Service Provider shall provide appropriate support for user acceptance testing of the proposed processes, scripts and procedures until a satisfactory outcome is achieved. Such acceptance testing shall include the testing of all likely operational scenarios and shall involve, where required by the Participating Organisation, the relevant Participating Organisation’s back-office staff for that particular Service Option. The Transition Plan must allow sufficient time and resources for user acceptance testing and for full testing and acceptance of all ICT and systems requirements by the PO.

2.7 These arrangements including without limitation acceptance testing must be fully and successfully executed between Overarching Agreement completion and Services Agreement commencement.

**3. Project Management**

3.1 Given the volume of transitioning work required, the Service Provider shall allocate at least one project manager (and more if required) and an overall project coordinator to manage the task of Transition. The Service Provider shall confirm in writing the names and CVs of these individuals (if there is any variation from the individuals cited in its tender submission).

3.2 The Service Provider’s project coordinator and project managers shall meet with the **Transition Co-ordinator** (defined being an employee of one of the Existing Participants or the Lead Authority as appointed by the Joint Management Board, who will co-ordinate the Transition with the Service Provider) and Existing Participants’ Supervising Officers and any other relevant staff of the Existing Participants, as and when required by the Existing Participants but no less than fortnightly during the period of Transition, unless otherwise agreed. The Service Provider’s project coordinator and project managers shall also attend meetings with the Joint Management Board as required by the Joint Management Board.

**4. Existing Participants**

4.1 The Existing Participants shall provide details of current call handling procedures for all Services Options currently delivered within two (2) weeks of Transition Agreement completion or such other date as agreed by the parties in writing. Each Existing Participant shall nominate a project manager for Transition to work with the Service Provider.

4.2 Where an Existing Participant wishes to proceed with Transition of its service requirements, the Existing Participant shall submit a Transition Agreement to the Service Provider (in the form attached at end of this Section XI) and the Service Provider shall sign and return the Transition Agreement to the Existing Participant to confirm its acceptance of the Transition work.

4.3 It is possible that Existing Participants may require Major Variation or Minor Variations to one or more of their existing Service Options at the Initial Services Commencement Date or shortly thereafter. To assist the Service Provider with the planning and implementation of Transition, full details of any such variations required by an Existing Participant at that point of Services commencement or up to three (3) months after commencement, will be provided to the Service Provider within two (2) weeks of the completion date of Transition Agreement or such other date as agreed by the parties in writing. Also, to assist the Service Provider with planning and implementing the transition, Existing Participants will be restricted in respect of the implementation of any new Service Options they require; any new Service Option requirements cannot be requested for implementation during the first three (3) months following the Initial Services Commencement Date.

**5. New Participants**

5.1 To facilitate successful Transition, no New Participants will be allowed implement the Services during the first six (6) months following the Initial Services Commencement Date.

**6. Conditions for entering into Services Agreements**

6.1 No earlier than one (1) month or such earlier date as agreed by the parties in writing prior to the commencement of the Overarching Agreement, providing that the Service Provider has fully satisfied each Existing Participant that the Services will be fully operational on the Initial Services Commencement Date and has satisfactory and correctly prepared all the necessary documentation as detailed below, the Service Provider and each Existing Participant shall enter into an Services Agreement and agree all necessary appended Service Documentation including:

1. A full set of Service Documentation as set out in paragraph 13 of the Specification;
2. Arrangements for the handovers of all necessary data from the Current Provider;
3. ICT and data interchange arrangements for the Existing Participants in accordance with paragraph 7 of the Specification;
4. detailed escalation procedures for the Existing Participant;
5. Business Continuity and Contact Protocols;
6. full details of initial staff training;
7. User acceptance testing timescales;
8. Plans to commence live operation of the Services;
9. Contingency arrangements covering operational commencement;
10. Post implementation review mechanism.

**7. NOT USED**

**8. Staff and Training**

8.1 The Service Provider must ensure the timely availability of sufficient staff numbers of the necessary calibre and their comprehensive training (as set out in paragraph 4.4 (Training & Development) of the Specification) to be able to operate the required Services for all Existing Participants from the commencement of the period of Transition.

8.2 The Service Provider shall work closely with the Existing Participants’ Supervising Officers and/or their authorised representatives to develop a strategic briefing note for Call Handlers and their line managers, which shall include background on the rationale and benefits of a shared Services and an overview of the roles and responsibilities of the Service Provider and its staff, as well as the role of the Participating Organisations.

8.3 The Service Provider shall work in partnership with each Existing Participant to prepare staff induction sessions. At the end of such induction sessions, staff shall be conversant with:

1. the area and demographics of the Existing Participants;
2. key local issues which impact on demand for particular out of hours services;
3. the corporate objectives of the Existing Participants;
4. the particular Service Options required by the Existing Participants;
5. the appropriate scripts, guides and software relevant to the Service Options;
6. requirements for handling specific types of calls (see paragraph 5 of the Specification);
7. appropriate systems and conventions for text phone, email, pager and SMS responses (where required).

8.4 The Service Provider shall be responsible for all aspects of Call Handler training. Existing Participants will support this by providing assistance to train the Service Provider's training staff. In order to motivate staff and create good relations, opportunities should be sought for Call Handlers to meet key Existing Participant’s staff (senior sponsors or front line On-Call Duty officers etc.).

**9. Handover Arrangements**

9.1 Each Existing Participant shall assist the Service Provider where necessary with implementing the Services. This shall include the provision of relevant information relating to the existing out of hours service such as point(s) of contact, call handling times and distribution by day and hour, which the Service Provider may wish to utilise for the purpose of workforce planning.

**10. Acceptance Testing**

10.1 This phase will start no later than three (3) months prior to the Initial Services Commencement Date for each Existing Participant and shall require the Service Provider to work closely with nominated staff from each Existing Participant in order to test the suitability, validity and state of readiness of the Service Provider and the Services to be provided from the Initial Services Commencement Date. The acceptance testing shall include:

1. the Service Options for each Existing Participant and all associated processes and procedures within each Service Option;
2. all types of call information to be sent to and received by Existing Participant staff and/or its contractors;
3. the operation of all relevant ICT and telephony systems including the Call Management System;
4. interface and/or integration between Existing Participant and Service Provider’s systems;
5. Call Handler skills and knowledge (using ‘dummy’ calls);
6. Escalation procedures;
7. The Service Provider’s Business Continuity Plan and associated procedures/arrangements;
8. monitoring and reporting systems.

The aim of this phase is to identify any problems as early as possible so that they can be resolved prior to the Initial Services Commencement Date. Acceptance testing must be successfully completed, with sign off by the Existing Participant concerned, before the provision of the Services can commence.

**11. Service Commencement and Initial Review**

11.1 Despite careful planning and testing, it is possible that some systems or arrangements may prove difficult to use in practice and may be subject to early revision. The Service Provider will therefore need to have the flexibility to allocate resources in order to resolve any significant issues as soon as possible in the run up to Transition and certainly before the Initial Services Commencement Date.

11.2 The Service Provider shall continue to maintain very close contact with each Existing Participant in the early stages of the provision of the Services and hold an initial review meeting within one (1) month of Service commencement and thereafter as required by each Existing Participant. On-going service review meetings between the Service Provider and the Existing Participant will be held at least quarterly throughout the Term of Services Agreement.

**TRANSITION AGREEMENT**

*(To be sent on Existing Participant’s letterhead)*

|  |  |  |
| --- | --- | --- |
| [Service Provider] | Reference: |  |
|  | Phone: |  |
|  | Fax: |  |
| E-mail: |  |
|  |  |
|  |  |
| Date: |  |
|  |  |

## Subject to Contract

##### **Dear Sir,**

**Re: Out of Hours and Call Handling Services – Transition and Non-Disclosure Agreement**

On behalf of the *[insert name of Existing Participant]*, I write to inform you that it is our present intention to enter into a contract with you for the provision of the above Services on the terms of the Services Agreement contained within the Overarching Agreement made between you and the London Borough of Ealing dated [ 2025], subject to the agreement of the *[Existing Participant]* and to the conclusion of a mutually acceptable contract.

In order to achieve the objectives of the Services Agreement, there is a need to commence with the transition of the Services from the Existing Service Provider in advance of executing the Services Agreement. Pending terms and conditions being agreed, you are hereby authorised to proceed with the provision of the necessary transition work, which shall be performed in accordance with your Transition Plan, Section XI (Transition Procedures) of the Overarching Agreement and the terms of the Services Agreement.

This transition work shall include those activities defined as relating to contract implementation as set out in the Transition Procedures Section XI of the Overarching Agreement, as well as the [*Existing Participant*]’s particular requirements for transition and service implementation as set out below. Subject to paragraph 2 below the [*Existing Participant*] is not obliged to make any payments to you for the transition activities given that cost of the transition activities have been included by you in your price per call and your Definitive Financial Model

This Transition Agreement is subject to the following mutually agreed terms:

1. Any activities carried out by you in connection with the Services shall be governed by and rendered in accordance with your Transition Plan (as agreed by the [*Existing Participant*]) and the terms of the Overarching Agreement and Services Agreements.

2. If for any reason we inform you in writing that we do not intend to proceed with the procurement of the Services, prior to the signing of the Services Agreement, then this Transition Agreement shall terminate at midnight on that date, whereupon:

* 1. you shall be entitled to payment of our share of the Transition Price determined in accordance with the mechanism set out in the DFM sheet entitled Transition Price Recovery – PO Exit Calc;
  2. in the event that this Transition Agreement is terminated prior to the commencement of any transitional work, then the [*Existing Participant*] shall not be liable to pay you any of the Transition Charge;
  3. neither party shall otherwise be under any liability to the other by reason of such termination;
  4. you shall have no other claim against the [*Existing Participant*] for breach of contract, damages, claims, costs, losses, expenses, loss of profit, loss of expectation or otherwise arising from the failure to enter into the Services Agreement.

4. Each party undertakes not to disclose to any third party any confidential or proprietary information relating to all belonging to the other party or its operations, without the prior consent of the other party.

5. Your liability to us, howsoever arising, in connection with the work performed under this Transition Agreement, shall:

1. for death and personal injury caused by your negligence or fraud, be unlimited;
   1. for all other circumstances, liability shall be limited to (£5 million) five million pounds in aggregate: and

and

(ii) you shall maintain sufficient insurance to cover any claims, costs, losses, expenses, damages or otherwise arising.

6. Amendments to this Transition Agreement must be made in writing and agreed by both parties in order to be effective.

7. Unless the executed Services Agreement itself otherwise provides, it shall supersede this Transition Agreement and retrospectively include all work performed under the Transition Agreement.

8. If we do not enter into a Services Agreement and this Transition Agreement is terminated, paragraphs 3, 4 and 5 above shall survive such termination.

9. Service Provider shall be liable for losses associated with delay to commencing the provision of the Services not within the timescales agreed or on a specified date.

Please sign and return the enclosed copy of this Transition Agreement as evidence of your agreement as to its terms and your willingness to proceed on the basis outlined above.

Yours faithfully,

*[Name and Title]*

*[Existing Participant]*

Agreed for and on behalf of [*Service Provider*] on ………………………… 201

………………………………………………………………….

## Authorised Signatory

…………………………………………………………………

Name and title (print)

**Section XII – Collateral Warranty**

**FORM OF COLLATERAL WARRANTY TO BE GIVEN BY**

**A SUB-CONTRACTOR IN FAVOUR OF THE PARTICIPATING ORGANISATION**

**THIS COLLATERAL WARRANTY** is made the day of 20[ ]

**by**

**(1) [ SUB-CONTRACTOR ]** whose registered office is at [ address ] (“the Sub-contractor”)

**in favour of**

**(2) [ PARTICIPATING ORGANISATION ]** of [ address] (“the Participating Organisation”)

**WHEREAS**

The Participating Organisation has entered into a contract for the provision of Out of Hours Call Handling Services (“the Contract”) with [name of Service Provider] (“the Service Provider”).

The Sub-contractor carries on business as a firm of [ ] and has been appointed to provide [ ] services (“the Services”) in that capacity by the Service Provider under a sub-contract dated [ ] (“the Sub-contract”).

**NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1.00) RECEIPT OF WHICH THE SUB-CONTRACTOR HEREBY ACKNOWLEDGES THIS DEED WITNESSETH** as follows:

1. In this Deed the words and expressions shall where the context so admits be deemed to n have the same meanings as set out in the Contract.

2. The Sub-contractor hereby warrants to the Participating Organisation in relation to the Contract that the Sub-contractor has exercised and will continue to exercise skill, care and due diligence appropriate to its role, responsibilities and expertise under the Sub-contract in relation to the Services and within the scope of the Sub-contract and that it has complied and will comply in all respects with the terms of the Sub-contract.

3. The Sub-contractor hereby further warrants to the Participating Organisation in relation to the Services that the Sub-contractor shall effect and maintain, with a reputable insurance company, a policy or policies of insurance (which shall include professional indemnity insurance) providing an adequate level of cover in respect of all risks which may be incurred by the Sub-contractor, arising out of the Sub-contractor’s performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Sub-contractor, all in accordance with the Contract and/or as required by the Participating Organisation.

4. The Sub-contractor undertakes to provide to the Participating Organisation within seven (7) days from the date hereof evidence of the insurances referred to in Clause 3 above duly completed and signed by the Sub-contractor's insurers or brokers, and further undertakes to provide to the Participating Organisation copies of each annual renewal notice in respect of such policy and written confirmation from the Sub-contractor's insurers or brokers that each annual premium has been paid, within seven (7) days of each renewal date of such policy.

5. Without prejudice to the generality of Clause 2, the Sub-contractor further warrants to the Participating Organisation that it has used and will continue to use skill, care and due diligence referred to in Clause 2 to ensure that it shall not use, in any part of the Services, any materials or substances generally known at the time of the Contract to be deleterious to health or safety or to the integrity of buildings or other structures or finishes or plant, vehicles and machinery.

6. Not Used

7. Not Used

8. In the event of breach of any of the aforesaid undertakings by the Sub-contractor, the Sub-contractor will indemnify the Participating Organisation against all losses, costs, damages, expenses and liabilities the Participating Organisation may incur as a consequence thereof.

9. The Participating Organisation may upon written notice to the Sub-contractor assign, charge and/or transfer the benefit of this Deed or any part or parts thereof to further parties without the consent of the Sub-contractor being sought.

10. It is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years following Contract expiry or termination in accordance with the terms of the Contract.

11. Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to the other party at its aforementioned address shall be deemed to have been received by such party forty-eight (48) hours after being posted.

12. The Sub-contractor agrees not to vary the terms of the Sub-contract in a manner that would prejudice the benefit of this Deed, without the prior written consent of the Participating Organisation.

13. This Deed shall in no way prejudice or effect any other rights or remedies of the Participating Organisation against the Sub-contractor whether in common law or otherwise in respect of the Services or other matters referred to herein.

14. This Deed shall be governed by and construed in accordance with the Laws of England.

15. Notwithstanding the completion of the Services or any part thereof, this Deed shall continue to have effect.

16. If any dispute or difference shall arise between the parties at any time out of or in connection with this Deed, then such dispute or difference shall be resolved in accordance with the Contract save that any reference to “the Service Provider” shall mean “the Sub-contractor”.

17. The parties agree that in the event of any dispute or difference between the Sub-contractor and the Service Provider under the Sub-Contract being referred to adjudication and the subject matter of the dispute or difference is any matter which concerns the Contract then either party may request that the Participating Organisation be joined in the adjudication.

**IN WITNESS WHEREOF** the Sub-contractor has executed this document as a deed the day and year first above written

Executed as a deed by

[ ]