

DATED \_\_\_\_\_ 16<sup>th</sup> September \_\_\_\_\_ 2024

**HEREFORD AND WORCESTER FIRE AUTHORITY (1)**

**-and -**

**[●INSERT COMPANY NAME●] (2)**

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**AGREEMENT**

For Alarm Receiving Centres and Telecare Service Providers to the use of ex-directory British Telecom incoming exchange telephone lines at Hereford & Worcester Fire and Rescue Service, Hindlip Park. Worcester, WR3 8SP

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DATED

2024

**BETWEEN**

- (1) HEREFORD & WORCESTER FIRE AUTHORITY of Hindlip Park, Worcester, WR3 8SP ( the “Authority”); and
- (2) [●INSERT●] (company number [●INSERT●]) whose registered office is at [●INSERT●] ( the “Operator”).

**WHEREAS**

- (A) The Authority has installed and will maintain ex-directory British Telecom incoming exchange telephone lines ( the “**Telephone Lines**”) at the Authority’s Fire Control Room located at Hindlip Park, Worcester, WR3 8SP (the “**Control Room**”) which are dedicated to receiving emergency calls from the Operator and other alarm receiving centres (each an “**ARC**”) for the purpose of providing them with direct telephone line access to fire control operators at the Control Room.
- (B) The Authority has agreed, subject to the terms and conditions hereinafter appearing, to provide the Operator with access to the Telephone Lines so that emergency calls made by the Operator to the Authority will be connected via a direct telephone line to the Control Room rather than via a telephone line provided by a telephone network operator.
- (C) The Operator intends to use such access to the Telephone Lines as part of a fire alarm service that it will provide to its customers for the purpose of assisting them in protecting their premises in Herefordshire and Worcestershire.
- (D) The Operator has agreed with the Authority to share its use of the Telephone Lines in common with all other parties with whom agreements similar to this Agreement have or will be made with the Authority.

**NOW IT IS AGREED** as follows:

1. **Interpretation:**

- a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- c) Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
  - d) A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  - e) Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
  - f) Any obligation in this Agreement on a person to do something includes an obligation to ensure that any person under its control complies with that obligation.
2. Subject to the Operator's performance of its obligations hereunder the Authority hereby grants to the Operator with effect from 30<sup>th</sup> September 2024 (the "**Commencement Date**") and throughout the continuance of this Agreement, access to the Telephone Lines (in common with any other persons so entitled) for the purpose of the Operator providing a fire alarm service to the Operator's customers (each an "**Operator Customer**") that will assist them in protecting their premises in Herefordshire and Worcestershire (the "**Permitted Use**"). The Operator acknowledges and agrees that this Agreement is personal to the Operator and is not assignable and the rights given in this clause may only be exercised by the Operator.
3. This Agreement shall take effect from the Commencement Date and shall continue for a period of 12 (twelve) calendar months (the "**Agreement Period**") whereupon it shall automatically renew for further twelve month periods unless terminated earlier in accordance with the provisions of clause 20.
4. The Operator understands that the Authority will apply a call filtering towards Automatic Fire Alarms between 08:00 and 18:00 hrs on a daily basis, with a view to maintaining a response towards those higher risk premises which have a sleeping risk including places of higher education, schools and public buildings. For other commercial premises such as shops, factories and offices a response will not routinely be sent during 08:00 and 18:00 unless there are confirmed signs of fire.
5. The Operator acknowledges and agrees that notwithstanding anything contained in this Agreement, the Authority does not have any obligation to mobilise any fire engine(s) or other emergency vehicles or equipment in response to any emergency call that is received at the Control Room via the Telephone Lines from the Operator

and that the Authority accepts no liability for any loss arising therefrom or from any claim or proceeding in respect thereof.

6. The Operator further acknowledges and agrees that notwithstanding anything contained in this Agreement, any emergency call that is received at the Control Room via the Telephone Lines from the Operator during spate call conditions shall be placed in a queue together with all other calls that are received at the Control Room. For the avoidance of doubt, the Operator acknowledges and agrees that any emergency call that is received at the Control Room via the Telephone Lines from the Operator during spate call conditions shall not be given priority by the Authority over any other emergency call that is received at the Control Room.
7. The Operator agrees and undertakes to pay the Authority the agreed sum upon written request from the Authority. The Authority agree not to charge any more than £250 per annum (together with such VAT as may be payable) (the “**Agreement Fee**”). The Authority will give the Operator 30 days written notice to pay the monies on receipt of an invoice.
8. The Operator shall indemnify the Authority its employees servants agents and visitors and keep the Authority its employees servants agents and visitors indemnified against all losses actions costs claims damages expenses demands and proceedings or other liability howsoever arising in relation to the use of the Telephone Lines by the Operator and of any other right granted by this Agreement or any failure on the part of the Operator to comply with its obligations hereunder.
9. The Operator shall upon request provide the Control Room with a list of all Operator Customers and the premises in relation to which the Operator is providing fire alarm services using the Telephone Lines.
10. The Control Room may from time to time issue directions to the Operator in connection with the Operator’s use of the Telephone Lines and the Operator shall immediately take all reasonable steps necessary to comply with such directions.
11. The Operator shall take all reasonable steps necessary to ensure that no false alarms are raised during the continuance of this Agreement as a result of any call that is received at the Control Room via the Telephone Lines from the Operator (including, without limitation, any call(s) made by or through ARCs or other automated/IT systems).
12. The Operator is required to have a full understanding of the Operator’s Customer’s premises. This includes:-

- (a) Is the premises residential, commercial, or of mixed use
  - (b) Are the premises occupied or evacuated
  - (c) Does the premises operate at night or are they unoccupied
  - (d) What activities are carried out at the premises eg retail, fast food shop
  - (e) What are the operating hours
  - (f) Full and up to date contact details for all keyholders or other responsible persons
  - (g) To liaise with the premises to ensure a robust call back procedure is in place for actions to take in the event of a fire alarm signal
13. On receipt of a fire alarm, the Operator will endeavour to confirm the cause of the alarm by calling the premises and/or the keyholder(s) before contacting the Authority. The Operator is to find out whether the cause of the alarm has been investigated to determine if there are actual signs of a fire eg flames, heat, smoke, smell or burning etc.
14. The Operator will ensure that any Operator's Customer's premises conducting any fire alarm tests will notify the Operator prior to the fire alarm test being undertaken. The Operator is to pass this information onto the Authority.
15. Limitation of Authority's liability:
- a) Subject to clause 15.b), the Authority is not liable for:
    - (i) the death of, or injury to, the Operator or the Operator's employees or Operator Customers;
    - (ii) any damage, destruction or loss of any property of whatever nature owned by the Operator or any Operator Customer;
    - (iii) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Operator or the Operator's employees or Operator Customers in the exercise or purported exercise of the rights granted under this Agreement; or
    - (iv) any loss or damage suffered by the Operator or the Operator's employees or Operator Customers as a result of any cause beyond the Authority's control that prevents the Operator from using the

Telephone Lines or any difficulty or interruption in obtaining access to the Telephone Lines by reason of temporary works of repair or maintenance of the Telephone Lines.

- b) Without prejudice to clause 5, nothing in this clause 15 shall limit or exclude the Authority's liability for death or personal injury caused by negligence on the part of the Authority or its employees or agents; or any matter in respect of which it would be unlawful for the Authority to exclude or restrict liability.
16. The Operator shall inform its Operator Customers in writing that, subject to clause 15.b), neither the Authority nor their employees servants or agents accept any responsibility whatsoever for any failure or defect arising from the Telephone Lines (whether such failure or defect arises from the act default or negligence of the Authority or their employees servants or agents or otherwise) and that neither the Authority nor their employees, servants or agents assume any liability to the Operator Customers or to any other person or persons having interest whatsoever in any premises directly or indirectly protected by the Telephone Lines or any other person or persons for any injury (whether fatal or otherwise) damage or loss whatsoever resulting from the failure of the Authority to respond to any call that is received at the Control Room via the Telephone Lines from the Operator during the continuance of this Agreement.
17. The Operator shall inform all of its Operator Customers that the Authority shall bear no responsibility, liability or obligation in respect of any failure by the Operator Customer to act upon any recommendation made by the Authority or any failure by the Operator to act in accordance with its obligations under this Agreement.
18. The Operator agrees and undertakes not to use the Telephone Lines other than for the Permitted Use and not to allow any other person to use the Telephone Lines.
19. The Operator shall not at any time permit any reference to the Authority or any employee, servant or agent of the Authority to be made in any advertisement notice or otherwise unless permission is previously given in writing by the Monitoring Officer or Head of Legal Services. If any such permission is given to the Operator the Operator shall comply with all conditions and/or requirements imposed on it in connection therewith.
20. Termination by notice:
- a) The Authority may by written notice served on the Operator terminate this Agreement immediately if the Operator breaches any obligation of the

Operator under this Agreement and, if the breach is capable of remedy, it has failed to remedy the breach within 28 (twenty eight) days after receipt of a written notice of the breach and requiring its remedy.

- b) The Authority may by written notice served on the Operator terminate this Agreement immediately if the Operator breaches any obligation of the Operator under this Agreement which is not in the opinion of the Authority capable of remedy.
- c) The Authority may by written notice served on the Operator terminate this Agreement immediately if false alarms are repeatedly raised as a result of calls that are received at the Control Room from the Operator via the Telephone Lines to the extent that it reasonably justifies the opinion that the Operator's conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- d) Either party may terminate this Agreement at any time on giving one months' prior written notice to the other party, such notice to expire at the end of the relevant calendar month.

21. On termination of this Agreement, each party will upon request by the other party return any documents in its possession or control which belong to the other party.

22. Termination of this Agreement shall not affect the rights of either party in connection with any breach of any obligation under this Agreement which existed at or before the date of termination.

23. Notices:

- a) Any notice given under this Agreement shall be in writing and shall be delivered by hand, email or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:
  - (i) to the Authority at: Hindlip Park, Worcester, WR3 8SP and marked for the attention of the Station Commander, Fire Control; and
  - (ii) to the Operator at: [INSERT ADDRESS] and marked for the attention of [INSERT NAME OR POSITION],

or as otherwise specified by the relevant party by notice in writing to each other party.

- b) Any notice given in accordance with this clause 23 will be deemed to have been received:
    - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
    - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.
  - c) This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution
24. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
25. The invalidity or unenforceability of any provision of this Agreement shall not affect the remainder of this Agreement which shall continue in full force and effect in accordance with its terms.
26. No right or remedy conferred upon either party by this Agreement shall be exclusive of any other remedy provided for herein or by law and all such rights and remedies shall be cumulative. The exercise of any power or remedy or the enforcement of any right shall not be construed as a waiver of the right to exercise any other power or remedy or to enforce any other right. Any forbearance or indulgence granted by either party to the other shall not constitute a waiver of the right or remedy in respect of which such forbearance or indulgence is granted and such party shall be entitled to exercise such right or remedy at any time thereafter.
27. This Agreement together with the documents referred to herein or any additional agreement between the parties which is stated to form part of this Agreement contains the whole agreement between the parties in respect of the subject matter of agreement and supersedes any prior written or oral agreement between them relating to that subject matter and the parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated in



this Agreement. With the exception of liability for fraud all other terms in relation to any aspect of this Agreement whether statutory or otherwise are hereby excluded.

- 28. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 29. Any dispute or difference arising out of or in connection with this Agreement shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Deputy President of the Chartered Institute of Arbitrators.

This Agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of the **Authority**



.....  
Authorised Signatory

Name: .....George Marshall.....

Title: Assistant Director - Protection.....

Signed on behalf of the **Operator**

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Authorised Signatory

Name: .....

Title: .....