

DATED: 29 JUNE 2017

LONDON BOROUGH OF BARNET

AND

PA CONSULTING SERVICES LIMITED

**CALL-OFF CONTRACT FOR LOT 2 (MANAGED SERVICE PROVISION) OF
ESPS FRAMEWORK AGREEMENT REF 201 FOR TELECARE AND
TELEHEALTH PRODUCTS AND SERVICES**



Eastern Shires Purchasing Organisation

on behalf of the Pro5 group of professional buying organisations

Conditions of Tender

1 General

- 1.1 In these Conditions of Tender, the term 'Customer' shall mean the London Borough of Barnet.
- 1.2 In submitting a tender in response to this Invitation to Tender, tenderers do so on the conditions specified or referred to herein and on the following express conditions which shall be paramount, and in the event of any breach thereof the Customer shall be entitled to determine any arrangement made pursuant to such tender and to claim damages accordingly.
- 1.3 Tenderers should consider only the information contained within this invitation to tender and in the framework agreement (ESPO ref 201) under which this invitation to tender is issued, or otherwise communicated in writing to tenderers, when making their offer.
- 1.4 Information supplied by the Customer (whether in this document or otherwise) is supplied for general guidance in the preparation of Tenders. Tenderers must satisfy themselves by their own investigations with regard to the accuracy of such information. The Customer cannot accept responsibility for any inaccurate information obtained by tenderers.
- 1.5 Tenderers shall not, before the date and time specified for submission of the tender, communicate to any person the amount or approximate amount of the tender or proposed tender, except where the disclosure in confidence of the approximate amount of tender is necessary to obtain insurance cover required for the purpose of the tender.
- 1.6 The tender shall be a bona-fide tender and shall not be fixed or adjusted by or under or in accordance with any agreement or arrangement with any other person.
- 1.7 Tenderers shall not enter into any agreement or arrangement with any other person with the intent that the other person shall refrain from tendering.
- 1.8 The Customer shall not be liable for, or pay any direct or indirect costs howsoever incurred by any tenderer in the preparation of their tender, or for the costs of any post-tender clarification meetings, presentations, demonstrations or by any tenderer who fails to respond by the deadline set.
- 1.9 Unless specifically withdrawn in writing, tenders shall remain open for acceptance for a period of 90 days from the return date.

- 1.10 The Customer may seek additional information or clarification from tenderers at any time during the tender process.

2 Terms and Conditions

- 2.1 Any contract awarded pursuant to this invitation to tender shall be governed by the framework agreement ref 201 between the supplier and ESPO and (unless otherwise agreed between the Customer and the supplier) by the call-off terms and conditions supplied with this invitation to tender.

3 Canvassing

- 3.1 Tenderers must not, in connection with the proposed contract: offer any inducement, fee or reward to any officer of the Customer; do anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916; canvass any person in connection with the tender exercise; or contact any officer of the Customer or any person acting as an adviser to the Customer about any aspect of the proposed contract or for soliciting information in connection therewith.

4 Qualifications of offer

- 4.1 Tenderers are given an opportunity before the closing date for tender submission to propose amendments to the draft call off contract terms and conditions. Tenders submitted must therefore not be qualified in any way.

5 Award of contract

- 5.1 Tenders will be evaluated in accordance with the evaluation scheme set out in this invitation to tender.
- 5.2 Upon conclusion of the evaluation of tenders, the tenderer(s) to whom it is proposed to award a contract will be notified accordingly. Tenderers to whom it is not proposed to award a contract will be notified at the same time, whereupon at the Customer's sole discretion a 'standstill' period of at least 10 calendar days may commence.
- 5.3 The Customer does not bind itself to accept any tender, and unless a tenderer expressly states that a partial award will not be acceptable, then the right is reserved to accept a tender in part.
- 5.4 In the absence of a formal contract document signed by the parties and setting out the terms of the agreement between them, and for as long as such absence persists, then the acceptance by or on behalf of the Customer of the tenderer's written tender shall itself constitute a binding agreement between the parties, the terms of which shall be as per the framework agreement (ESPO ref 201) and call off terms and conditions agreed pursuant to the said framework agreement, together with the prices and operational proposals set out by the tenderer in their tender.

6 Freedom of Information Act 2000:

- 6.1 Information in relation to this tender may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000.

- 6.2 Tenderers should identify any information supplied by them which they regard as confidential or commercially sensitive or which should not be disclosed in response to a request for information under the act. Tenderers should state why they consider the information to be confidential or commercially sensitive. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the act.
- 6.3 It is important to note that information may be commercially sensitive for a time, for example, during a tender process, but afterwards it may not be. The timing of any request for information may be extremely important in determining whether or not information is exempt. Tenderers should however note that no information is likely to be regarded as exempt forever.

7 Tenderer's responsibility to submit a complete tender

- 7.1 It is the tenderer's responsibility to ensure that their submitted tender documentation is complete, prepared and submitted in accordance with the instructions contained herein, and signed and dated where required. The Customer is not obliged to consider any tender which is incomplete or not prepared or submitted in accordance with the relevant said instructions, but at its sole discretion the Customer may offer a tenderer who submits such a tender an opportunity to remedy the omission before evaluation of the tender takes place, provided that in the judgement of the Customer this does not adversely affect the integrity and fairness of the tender exercise.

Conditions of Contract

CONTRACT

comprising the Call-off Order Terms for Lot 2 (Managed Service Provision) of ESPO Framework Agreement ref 201 for Telecare and Telehealth Products and Services, together with the Order Form to be placed by the Customer with the Supplier.

BETWEEN

- (1) The Customer identified in the Order Form ("**Customer**"); and
- (2) The company identified in the Order Form (the "**Supplier**").

WHEREAS

- A. The Eastern Shires Purchasing Organisation ("**ESPO**") selected Framework Suppliers, including the Supplier, to provide Services;
- B. the Supplier undertook to provide the Services on the terms set out in a Framework Agreement number 201 dated 8 October 2013 (the "**Framework Agreement**");
- C. ESPO established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies.
- D. ESPO and the Supplier agree that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Supplier for the Supplier to supply Services;
- E. The Customer is granted rights by ESPO to enter into a Contract under the Framework Agreement pursuant to an Order Form served by the Customer on the Supplier;
- F. the Customer served an Order Form for Services on the Supplier; and
- G. the Supplier confirmed its agreement to the terms of this Contract by its acceptance of the Order Form.

1. INTERPRETATION

1.1 In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

Affiliates	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
Affected Party	means the party seeking to claim relief in respect of a Force Majeure;
Approval	means the prior written consent of the Customer (not to be unreasonably delayed or withheld) and “ Approve ” and “ Approved ” shall be construed accordingly;
Auditor	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
BCDR Plan	means any plan relating to business continuity and disaster recovery as referred to in Paragraph 2.5 of the Order Form;
Call-Off Agreement	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Services made between a Customer and the Supplier pursuant to Framework Schedule 4 (Ordering Procedure) of the Framework Agreement;
CEDR	means the Centre for Effective Dispute Resolution;
Change in Law	means any change in Law or policy which impacts on the supply of the Services and performance of the Order Terms which comes into force after the Commencement Date
Change of Control	shall have the meaning as set out in Clause 23.2;
Commencement Date	means the date set out in Paragraph 1.1 of the Order Form;
Commercially Sensitive Information	means the Confidential information listed in Paragraph 7 of the Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
Confidential Information	means the Customer’s Confidential Information and/or the Supplier’s Confidential Information;
Supplier Solution	means the Supplier’s solution for the provision of the Services as referred to in Paragraph 3.1 of the Order Form;
Contract	means the written agreement between the Customer and the Supplier consisting of the Order Form and the Order Terms save that for the purposes of Clause 1.2.11 only, reference to Contract shall not include the Order Form;

Contract Period	means the period from the Commencement Date to: <ul style="list-style-type: none"> (a) the Expiry Date; or (b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;
Contract Charges	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in Paragraph 6.1 of the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract;
Contracting Authority	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Customer;
Control	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
Conviction	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
Critical Service Failure	shall have the meaning given in Paragraph 4.3 of the Order Form;
Crown	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
Customer	means the customer(s) identified in the Order Form;
Customer Data	means: <ul style="list-style-type: none"> (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which: <ul style="list-style-type: none"> (i) are supplied to the Supplier by or on behalf of the Customer; or

- (ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract other than in respect of such items which constitute the Supplier's or a third party's Intellectual Property Rights; or

- (b) any Personal Data for which the Customer is the Data Controller;

Customer Pre-Existing IPR	shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
Customer's Premises	the premises identified in Paragraph 2.3 of the Order Form and which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Contract;
Customer Responsibilities	means the responsibilities of the Customer set out in Paragraph 5.1 of the Order Form;
Customer Representative	means the representative appointed by the Customer from time to time in relation to the Contract;
Customer's Confidential Information	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked " confidential ") or which ought reasonably be considered to be confidential;
Data Controller	shall have the same meaning as set out in the Data Protection Act 1998;
Data Processor	shall have the same meaning as set out in the Data Protection Act 1998;
Data Protection Legislation	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Data Subject	shall have the same meaning as set out in the Data Protection Act 1998;

Default	means any breach of the obligations of the Supplier (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier or Supplier's Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer;
Deliverables	means those deliverables listed in Paragraph 2.1 of the Order Form (if any);
Delivery	means the time at which the Services have been delivered by the Supplier and the Customer has issued the Supplier with confirmation in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
Dispute Resolution Procedure	means the dispute resolution procedure set out in Clause 45.2;
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Equipment	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract;
ESPO	means the Eastern Shires Purchasing Organisation of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES;
Expiry Date	means the date set out in Paragraph 1.2 of the Order Form;
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 or relevant government department in relation to such legislation;
Force Majeure	means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of government, local government or Regulatory Bodies;
- d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

Framework Agreement	means the framework agreement between ESPO and the Supplier referred to in the Order Form;
Framework Suppliers	means the suppliers (including the Supplier) appointed under the Framework Agreement;
Fraud	means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Customer;
General Change in Law	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier);
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
Guidance	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations;
Holding Company	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
Implementation Plan	means the plan referred to in Paragraph 4.1 of the Order Form;
Information	has the meaning given under section 84 of the FOIA;

Intellectual Property Rights or IPRs	<p>means:</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
Key Personnel	means the individuals (if any) identified in Paragraph 3.2 of the Order Form;
Know-How	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;
Law	means any applicable Act of Parliament, subordinate 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, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;
Management Information	means the management information specified in Framework Schedule 7 (Management Information Requirements);
Mediator	shall have the meaning as set out in Clause 45.2.5.1;
Milestone	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
Milestone Date	means the date set against the relevant Milestone in the Implementation Plan;
Minimum Insurance Period	has the meaning given in Paragraph 8.1 of the Order Form;
Month	means calendar month and "monthly" shall be interpreted accordingly;
Order	means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement;

Order Form	means the form containing details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied agreed between the parties;
Order Terms	means these terms and conditions in respect of the provision of the Services, together with the schedules and any appendices hereto;
Parent Company	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term " Holding or Parent Company " shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
Party	means the Supplier or the Customer and " Parties " shall mean both of them;
Personal Data	shall have the same meaning as set out in the Data Protection Act 1998;
Premises	means the location where the Services are to be provided, as set out in Paragraph 2.3 of the Order Form;
Process	has the meaning given to " Processing " under the Data Protection Act 1998 (but shall include both manual and automatic processing) , and " Process " and " Processed " shall be interpreted accordingly;
Prohibited Act	<p>means:</p> <ol style="list-style-type: none"> 1) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or ESPO a financial or other advantage to: <ol style="list-style-type: none"> a. induce that person to perform improperly a relevant function or activity; or b. reward that person for improper performance of a relevant function or activity; or 2) committing any offence: <ol style="list-style-type: none"> i) under the Bribery Act 2010; or ii) under legislation creating offences concerning fraudulent acts; or iii) at common law concerning fraudulent acts relating to this Call-Off Agreement or any other contract with ESPO and/or Customer and/or any other Contracting Body; or <p>defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer any other Contracting Body.</p>
Project Specific IPRs	means:

(a) IPRs in the Services and Deliverables provided by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or

a. IPRs arising as a result of the provision of the Services and Deliverables by the Supplier (or by a third party on behalf of the Supplier) under the Contract,

including the rights in or to any database developed and supplied by the Supplier to the Customer in accordance with the terms of this Contract;

Property

means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with the Contract;

Quality Standards

means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in Paragraph 2.4 of the Order Form) and any other applicable quality standards, Government codes of practice and guidance;

Regulatory Bodies

means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;

Related Supplier

means any person who provides services to the Customer which are related to the Services from time to time;

Relevant Conviction

means a Conviction that is relevant to the nature of the Services to be provided or as specified in Paragraph 3.3 of the Order Form;

Replacement Supplier

any third party service provider of Replacement Services appointed by the Customer from time to time;

Replacement Service

any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services immediately following the expiry or termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;

Request for Information

means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

Service Credits	means the sums agreed between the Parties and referred to in Paragraph 4.2 of the Order Form as being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;
Service Levels	means any service levels applicable to the provision of the Services agreed between the Parties and as referred to in Paragraph 4.2 of the Order Form;
Services	means the services to be supplied as referred to in Paragraph 2.1 of the Order Form;
Sites	means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services;
Staff	means all persons employed by the Supplier and/or any Sub-contractor to perform its obligations under the Contract together with the Supplier's and/or any Sub-contractor's servants, Suppliers, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;
Staff Vetting Procedures	means the Customer's procedures and departmental policies for the vetting of personnel as set out in Paragraph 2.5 of the Order Form;
Sub-contract	means any material contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any material part thereof or facilities, goods or services necessary for the provision of the Services or any material part thereof or necessary for the management, direction or control of the Services or any material part thereof;
Sub-contractor	means the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
Supplier	means the person, firm or company (including any consultant or consultancy firm) with whom the Customer enters into the Contract as identified in the Order Form;
Supplier's Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " confidential ") or which ought reasonably to be considered to be confidential;

Supplier's Pre-Existing IPR	shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and design;
Supplier Representative	means the representative appointed by the Supplier from time to time in relation to the Contract;
Technical Standards	means the technical standards set out in Paragraph 2.4 of the Order Form."
Tender	means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to Suppliers for formal offers to supply it with the Services pursuant to the Framework Agreement;
Term	shall have the meaning set out in Clause 3;
Undisputed Sums Time Period	has the meaning given in Paragraph 9.1 of the Order Form or where no period is stated 30 days;
Valid Invoice	means an invoice issued by the Supplier to the Customer that complies with Clause 10.2.2;
Variation	has the meaning given to it in Clause 36;
Variation Form	means the variation form set out in Annex 2;
Variation Procedure	means the procedure set out in Clause 36;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994 and any other sales or similar taxes applicable to the supply of the Goods or Services;
Working Day	means any day other than a Saturday or Sunday or public holiday in England and Wales;
Year	means a calendar year.

- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- 1.2.5 the schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the schedules;
- 1.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to "Paragraphs" are, unless otherwise provided, references to Paragraphs of the Schedule in which the references are made;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in this Clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract, any document referred to in the Clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.11.1 the Framework Agreement;
 - 1.2.11.2 the Clauses of the Contract;
 - 1.2.11.3 the Order Form; and
 - 1.2.11.4 any other document referred to in the Clauses of the Contract.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that it:

- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
- 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
- 2.1.3 has entered into this Contract in reliance on its own due diligence alone.

3. CONTRACT PERIOD

- 3.1 This Contract shall take effect on the Commencement Date and shall either expire on the date specified in the Order Form unless terminated earlier pursuant to Clause 23.

- 3.2 For the purposes of this Contract, the initial period and any extensions thereof shall be referred to as the "Term".

4. SUPPLY OF SERVICES

4.1 Supply of the Services

- 4.1.1 The Supplier shall supply the Services in accordance with the Implementation Plan.
- 4.1.2 The Supplier shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Charges. The Customer may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice. Such inspection shall not be carried out with a frequency likely to cause undue disruption to Service performance without good cause.
- 4.1.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 4.1.4 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Services and the performance of its obligations under the Contract.

4.2 Provision and Removal of Equipment

- 4.2.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 4.2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 4.2.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 4.2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 4.2.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- 4.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
- 4.2.5.2 replace such item with a suitable substitute item of Equipment.
- 4.2.6 Upon termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clear, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or the Supplier's Staff.

4.3 Quality

- 4.3.1 The Supplier shall at all times comply with the Technical Standards and Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Services must be provided has not been specified in the Contract, the Supplier shall agree the relevant standard for the provision of the Services with the Customer prior to the supply of the Services commencing and in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 4.3.2 The Supplier shall ensure that the Staff shall at all times during the Contract Period:
- 4.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary for the provision of the Services specified in the Contract;
 - 4.3.2.2 obey all lawful instructions and reasonable directions of the Customer that may reasonably be anticipated in the Contract and provide the Services in accordance with the Contract; and
 - 4.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 4.3.3 The Supplier shall perform its obligations under the Contract in a timely manner.
- 4.3.4 The Supplier shall supply the Services in accordance with the specification in the Framework Agreement, the Order Form and in accordance with all applicable Laws, including but not limited to, any obligation implied by section 2 of the Supply of Goods and Services Act 1982.
- 4.3.5 The Supplier shall at all times during the Contract Period ensure that:
- 4.3.5.1 the Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;
 - 4.3.5.2 the Services operate in accordance with the relevant technical specifications and correspond with all requirements in accordance with the Order Form;
 - 4.3.5.3 the Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
 - 4.3.5.4 the Services are supplied in accordance with the Supplier Solution.

4.4 Delivery

- 4.4.1 The Supplier shall provide the Services in accordance with the Implementation Plan and Milestones. The Customer acknowledges and agrees that the ability of the supplier to comply with the Specification and to meet any milestones and KPIs specified in the Framework Agreement and each Order is dependent on the Customer and any third party contractors engaged by the Customer performing all associated activities and satisfying all related service dependencies in a timely manner
- 4.4.2 The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.
- 4.4.3 Time of delivery in relation to commencing and/or supplying the Services shall be of the essence where such Milestone Dates are specified as such on the Order Form and where so specified if the Supplier fails to deliver the Services within the time specified in accordance with Clause 4.1.1 and Paragraph 4.1 of the Order Form and without prior written Approval, the Customer may release itself from any obligation to accept and pay

for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.

4.4.4 Except where otherwise provided in the Contract, the Services shall be provided by the Supplier's Staff or the Sub-contractors at such place or places as set out in Paragraph 2.3 of the Order Form.

4.4.5 In the event that not all of the Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("Undelivered Services") then the Customer shall be entitled to withhold payment of the Contract Charges for any Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Services are Delivered provided that such failure to meet the relevant milestone is not due to the Customer's failure to comply with the Contract.

4.5 Service Levels

4.5.1 The Supplier shall provide the Services to meet the Service Levels and where Service Credits are specified on the Order Form to apply any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of either Annex 1 or a replacement thereof specified on the Order Form. Where a Critical Service Failure is specified on the Order Form to apply then in the event of a Critical Service Failure occurring shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Supplier.

4.5.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

4.6 Complaints

4.6.1 The Supplier shall handle all complaints of a minor or routine nature received from the Customer in accordance with the Supplier's usual complaints handling procedure.

4.6.2 Notwithstanding the provisions of Clause 4.6.1 and without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement and/or the Order and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or the Order, the Supplier shall use its reasonable endeavours to close or resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.

5. ASSISTANCE ON EXPIRY OR TERMINATION

5.1 In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Customer and for a period not exceeding twelve months from the expiry or effective date of termination of the Contract, provide reasonable assistance free of additional charge to the Customer to migrate the provision of the Services to a Replacement Supplier. Such free of additional charge assistance shall be limited to those actions reasonably necessary to effect an orderly transfer of the Services to the Replacement Supplier.

6. MONITORING OF CONTRACT PERFORMANCE

6.1 The Supplier shall comply with the monitoring arrangements referred to in Paragraph 4.4 of the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

- 6.2 Where requested by the Customer, the Supplier shall supply the Management Information to the Customer on such date during the Contract Period as specified in Paragraph 4.4 of the Order Form.

7. DISRUPTION

- 7.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 7.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Contract.
- 7.3 In the event of industrial action by the Staff, the Supplier shall notify the Customer of its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 7.4 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

8. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

- 8.1 Without prejudice to any other right or remedy which the Customer may have, if any Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract in any material respects then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
- 8.1.1 at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any failure in the performance of the Services together with any damage resulting from such failure (and where such failure is capable of remedy) or supply replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - 8.1.2 refuse to accept any further Services to be Delivered but without any liability to the Customer;
 - 8.1.3 if the Services have not been provided due to a Milestone Date having not been achieved due to a Default and Paragraph 4.1 of the Order Form provides for the payment of delay payments ("Delay Payments"), then the Supplier shall pay such amounts (calculated in accordance with Paragraph 4.1 of the Order Form which shall be liquidated and a genuine pre-estimate of loss) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is met;
 - 8.1.4 carry out at the Supplier's expense any work necessary to make the Services comply with the Contract;
 - 8.1.5 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining providing or procuring replacement Services;
 - 8.1.6 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Charges shall

be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

- 8.1.7 charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

8.2 In the event that the Supplier:

- 8.2.1 fails to comply with Clause 8.1 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- 8.2.2 persistently fails to comply with Clause 8.1 above,

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

- 8.3 The Parties acknowledge and agree that in the event that a Delay Payment or Service Credit is payable in relation to the relevant delay or Service Level failure such payment shall be the Customer's sole remedy save for any termination right of the Customer in accordance with the provisions of the Contract.

- 8.4 The Supplier shall have no liability for any failure or delay in the performance of its obligations under the Contract to the extent that such failure or delay arises as a result of any failure or delay by the Customer in meeting its own obligations under the Contract.

9. PREMISES

9.1 Licence to occupy Premises

- 9.1.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract.
- 9.1.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 9.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 9.1.1 and set out in Paragraph 2.3 of the Order Form, should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Customer's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 9.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 9.1.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by