

without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 23.1.

24.3 The Customer shall not be liable under Clause 24.2 to pay any sum which:

24.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

24.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.

24.4 On the termination of the Contract for any reason, the Supplier shall:

24.4.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

24.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in a standard format and on media agreed with the Customer and/or the Replacement Supplier;

24.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed;

24.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under Clause 4.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);

24.4.5 where permitted transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the licences and third party contracts as are notified to it by the Replacement Supplier and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Supplier in respect of such licences and third party contracts and/or any other items of relevance;

24.4.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or provide all such assistance and co-operation as the Customer may reasonably require;

24.4.7 return to the Customer any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising); and

24.4.8 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer (taking into account the Supplier's Intellectual Property Rights and the Customer's obligations in respect of Confidential Information) for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

- 24.5 If the Supplier fails to comply with Clause 24.4.1 and 24.4.8, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-contractors where any such items may be held.
- 24.6 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 24.4.5 and 24.4.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 24.7 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 9.1 shall automatically terminate without the need to serve notice.
- 24.8 Save as otherwise expressly provided in the Contract:
- 24.8.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 24.8.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 10.2 (Payment and VAT), 10.3 (Recovery of Sums Due), 15 (Intellectual Property Rights), 17 (Protection of Personal Data), 18 (Confidentiality), 19 (Freedom of Information), 22 (Liabilities), 24 (Consequences of Expiry or Termination), 28 (Prevention of Bribery and Corruption), 29 (Records and Audit Access), 30 (Prevention of Fraud), 34 (Cumulative Remedies), 40 (Conflicts of Interest), 42 (The Contracts (Rights of Third parties Act 1999) and 45.1 (Governing Law and Jurisdiction).

25. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 25.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and Suppliers comply with this Clause 25. Any such press announcements or publicity proposed under this Clause 25 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- 25.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, and with the Supplier's prior written approval (such approval not to be unreasonably withheld) the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 25.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

26. HEALTH AND SAFETY

- 26.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 26.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 26.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the

performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

26.4 The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Services under the Contract.

26.5 The Supplier 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 Customer on request.

27. ENVIRONMENTAL REQUIREMENTS

27.1 The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

28. PREVENTION OF BRIBERY AND CORRUPTION

28.1 The Supplier shall not:

28.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

28.1.2 engage in and shall procure that all Supplier's Staff, Suppliers, agents or Sub-contractors or any person acting on the Supplier's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and

28.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

28.2 The Supplier warrants, represents and undertakes that it has not:

28.2.1 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and

28.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and ESPO before execution of this Contract;

28.2.3 For the avoidance of doubt the Parties agree that the retrospective rebate payable to ESPO in accordance with the Framework Agreement does not constitute a payment of commission for the purposes of this Clause 28.2.

28.3 The Supplier shall:

28.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

- 28.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this Clause 28;
- 28.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 28 and the Supplier shall co-operate with any investigation and allow the Customer to audit appropriate Supplier's books, records and any other relevant documentation in connection with the breach;
- 28.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or other persons who are supplying the Services in connection with this Contract compliance with this Clause 28;
- 28.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, Suppliers, agents or Sub-contractors, or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

28.4 If the Supplier, its Staff, Suppliers, agents or Sub-contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

- 28.4.1 this Clause 28; or
- 28.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

28.5 Without prejudice to its other rights and remedies under this Clause 28 and to the Customer acting reasonably to mitigate its loss, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:

- 28.5.1 the amount of value of any such gift, consideration or commission; and
- 28.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 28.

save to the extent that such claims are caused due to the negligence or default of the Customer.

29. RECORDS AND AUDIT ACCESS

- 29.1 The Supplier shall keep and maintain for the prevailing statutory minimum period (which for the avoidance of doubt at the Commencement Date of the Framework Agreement is six (6) years) after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, and the amounts paid by the Customer.
- 29.2 The Supplier shall keep the records and accounts referred to in Clause 29.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 29.3 The Supplier shall afford the Customer and the Auditors reasonable access to the records and accounts referred to in Clause 29.1 (and in any event no more frequent than one routine audit in any year) at the Supplier's premises during normal business hours and with reasonable notice and/or provide copies of such records and accounts, as related to the provision of the Goods and Services, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:

- 29.3.1 to verify the accuracy of the Contract Charges (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Supplier (including Sub-contractors) of the Services;
 - 29.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
 - 29.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
 - 29.3.4 to review the Supplier's compliance with its security obligations set out in Clause 13;
 - 29.3.5 to review any books of account kept by the Supplier in connection with the provision of the Service;
 - 29.3.6 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - 29.3.7 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
 - 29.3.8 to ensure that the Supplier is complying with its obligations under this Contract.
 - 29.3.9 To ensure that the Council is getting value for money on equipment packages and that telecare installations are appropriate and proportionate.
- 29.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time, save that the Supplier may withhold personnel records and records which are of a commercially confidential nature.
- 29.6 Where requested by the Customer the Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for the period specified in Paragraph 11 of the Order Form after the date of termination or expiry of the Contract to the Customer and the Auditor.
- 29.7 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 29.8 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:
- 29.8.1 all reasonable information requested by the Customer within the scope of the audit;
 - 29.8.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
 - 29.8.3 reasonable access to the appropriate Staff.
- 29.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 29, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

30. PREVENTION OF FRAUD

- 30.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 30.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 30.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:
- 30.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing; and/or
 - 30.3.2 subject to the Customer acting reasonably to mitigate its loss recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this Clause 30 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period save to the extent that such claims are caused due to the negligence or default of the Customer.

31. TRANSFER AND SUB-CONTRACTING

- 31.1 Subject to Clause 31.4, the Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval (such Approval to be not unreasonably withheld) save that the Supplier may on notifying the Customer in writing assign or novate this Contract to an associated company within the definition of Section 1159 of the Companies Act 2006.
- 31.2 The Supplier shall not substitute or remove a material Sub-contractor or appoint an additional material sub-contractor without the prior written consent of ESPO and the Customer. Notwithstanding any permitted sub-contract in accordance with this Clause 31, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and the Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing. The Customer has already given its consent to the Supplier to sub-contract to the Sub-Contractors detailed in paragraph 3.5 of the Order Form and to any licenced distributors and/or original manufacturers or owners of hardware, software and commercially off the shelf software packages.
- 31.3 Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract. The Supplier shall supply such information about proposed Sub-contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 31.4 The Supplier may assign to a third party ("the Assignee") the right to receive payment of the Contract Charges or any part thereof due to the Supplier under this Contract (including any interest which the Customer incurs under Clause 10.2.6). Any assignment under this clause shall be subject to:
- 31.4.1 reduction of any sums in respect of which the Customer exercises its right of recovery under Clause 10.3;

- 31.4.2 all related rights of the Customer under the contract in relation to the recovery of sums due but unpaid; and
- 31.4.3 the Customer receiving notification under both Clauses 31.5 and 31.6.
- 31.5 In the event that the Supplier assigns the right to receive the Contract Charges under Clause 31.4, the Supplier or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 31.6 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 31.7 The provisions of Clause 10.2 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Customer.
- 31.8 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 31.9 Where the Customer has consented to the placing of sub-contracts and such sub-contracts solely relate to the supply of Goods and/or Services in respect of this Contract, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 31.10 The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-contract shall include:
 - 31.10.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-contract as if it were the Supplier;
 - 31.10.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Customer;
 - 31.10.3 a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 18 (Confidentiality);
 - 31.10.4 a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to Clauses 16 (Customer Data) and 17 (Protection of Personal Data);
 - 31.10.5 a provision requiring the Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to Clause 28 (Prevention of Bribery and Corruption);
 - 31.10.6 require the Supplier to pay any undisputed sum due to the relevant Sub-contractor within a specified period that does not exceed thirty (30) days from the date the Supplier receives the Sub-contractor's invoice; and
 - 31.10.7 a provision restricting the ability of the Sub-contractor to further sub-contract material elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and ESPO.
- 31.11 If the Customer is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Services, then the Customer may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item.
- 31.12 If the Customer exercises the option pursuant to Clause 31.11, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

- 31.13 Subject to Clause 31.15, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 31.13.1 any Contracting Authority; or
 - 31.13.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
 - 31.13.3 any private sector body (who is not a direct competitor of the Supplier) which substantially performs the functions of the Customer,
 - 31.13.4 provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations or the Supplier's financial risk under the Contract.
- 31.14 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 31.15, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.
- 31.15 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 31.13 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "the Transferee"):
- 31.15.1 the rights of termination of the Customer in Clauses 23.1 (Termination on insolvency) 23.2 (Termination on change of control) and 23.3 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - 31.15.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.
- 31.16 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 31.17 For the purposes of Clause 31.15 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

32. FORCE MAJEURE

- 32.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.
- 32.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as 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 Supplier.

32.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 32.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

32.4 If an event of Force Majeure event affects the Services, the Customer may direct the Supplier to procure those Services from a third party service provider in which case the Supplier will be liable for payment for the provision of those Services for as long as the delay in performance continues.

32.5 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a Replacement Supplier pursuant to Clause 32.4, then the Customer will pay the Supplier (a) the Contract Charges; and (b) the difference between the Contract Charges and the new Supplier's costs if, in respect of the Services that are subject to Force Majeure, the new service provider's costs are greater than the Contract Price.

33. WAIVER

33.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, 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 Contract.

33.2 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 Clause 43 (Notices).

33.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

34. CUMULATIVE REMEDIES

34.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract 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.

35. FURTHER ASSURANCES

35.1 Each party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

36. VARIATION

36.1 Subject to the provisions of this Clause 36, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".

36.2 The Customer may request a Variation by completing and sending the Variation form set out in Annex 2 ("the Variation Form") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such

time limits shall be reasonable having regard to the nature of the Order.

36.3 In the event that the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Charges, the Customer may:

36.3.1 agree to continue to perform their obligations under the Contract without the Variation; or

36.3.2 invoke the Dispute Resolution process to further determine if agreement to the proposed variation can be reached.

36.4 If the Parties agree the Variation and any variation in the Contract Charges, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

37. SEVERABILITY

37.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

37.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

38. MISTAKES IN INFORMATION

38.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where:

i) such mistakes are the fault of the Customer; or

ii) the matter relates to material which the Supplier had previously identified to the Customer could not be relied upon; or

iii) the material was relied on by the Customer for a purpose remote from that for which it was produced.

39. SUPPLIER'S STATUS

39.1 At all times during the Contract Period the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

40. CONFLICTS OF INTEREST

40.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.

40.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if

any conflict referred to in Clause 40.1 above arises or is reasonably foreseeable.

40.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

40.4 This clause shall apply during the Contract Period.

41. ENTIRE AGREEMENT

41.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

41.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

41.3 The Supplier acknowledges that it has:

41.3.1 entered into the Contract in reliance on its own due diligence alone; and

41.3.2 received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Contract.

41.4 Nothing in Clauses 41.1 and 41.2 shall operate to exclude Fraud or fraudulent misrepresentation.

41.5 The Contract may be executed in counterpart: each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

42. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

42.1 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

42.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more clauses of it.

43. NOTICES

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

43.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed by letter). Such letters shall be addressed to the other

Party in the manner referred to in Clause 43.3. 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, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

43.3 For the purposes of Clause 43.2, the address, email address or fax number of each Party shall be the address, email address and fax number set out in the Order Form.

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

44. LEGISLATIVE CHANGE

44.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a General Change in Law.

44.2 If a Specific Change in Law occurs or will occur during the Term the Supplier shall notify the Customer of the likely effects of that change, including whether any change is required to the Goods and/or Services (or Ordered Goods and/or Services, as appropriate), or this Contract.

44.3 As soon as practicable after any notification in accordance with Clause 44.2, the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

- a) providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;
- c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services (or Ordered Goods and/or Services, as appropriate).

44.4 Any increase in the Framework Prices or relief from the Supplier's obligations agreed by the Parties pursuant to Clause 44 shall be implemented by means of the variation mechanism described in Clause 36 of this Contract.

45. DISPUTES AND LAW

45.1 Governing Law and Jurisdiction

45.1.1 The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

45.2 Dispute Resolution

45.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of the Customer's Representative and the Supplier's Representative.

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

- 45.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 45.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 45.2.5 unless:
- 45.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
 - 45.2.3.2 the Supplier does not agree to mediation.
- 45.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 45.2.5 The procedure for mediation is as follows:
- 45.2.5.1 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 ("CEDR") to appoint a Mediator;
 - 45.2.5.2 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 mediation provider appointed by CEDR to provide guidance on a suitable procedure;
 - 45.2.5.3 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;
 - 45.2.5.4 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;
 - 45.2.5.5 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 Contract without the prior written consent of both Parties; and
 - 45.2.5.6 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.

ORDER FORM

This Order Form is issued subject to the provisions of the framework agreement reference ESPO 201 entered into between ESPO and the Supplier in October 2013 ("**Framework Agreement**"). The Supplier agrees to supply the services specified below on and subject to the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and the Order Terms, together with any appendices thereto.

Date	February 2017	Order Number	N/A
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FROM

Customer	London Borough of Barnet "Customer"
Customer's Address	Barnet House, 1255 High Road, London N20 0EJ
Invoice Address	As above
Contact Ref	Name: James Mass Address: As above Phone: 020 8359 4610 / 07853 308 795 Mobile E-mail: james.mass@barnet.gov.uk

TO

Supplier	PA Consulting Services Limited "Supplier"
Supplier's Address	123 Buckingham Palace Road Victoria London SW1W 9SR
Account Manager	Name: [REDACTED] Address: As above Phone: [REDACTED] E-mail: [REDACTED] Fax: [REDACTED]

This Order Form is subject to the Order Terms which form part of the Framework Agreement. References to clause numbers shall refer to clauses in the Order Terms unless otherwise stated.

1. TERM
<p>(1.1) Commencement Date: 6 March 2017</p>
<p>(1.2) Expiry Date: This Contract shall expire on 31 March 2020 unless this Contract is extended for a period of up to 2 years (on a 1 year plus 1 year basis) or unless terminated earlier pursuant to this Contract. Subject to earlier termination of the Contract in accordance with Clause 23, the Contract shall expire on the Expiry Date provided.</p>
2. SERVICES REQUIREMENTS
<p>(2.1) Services and Deliverables required: Services - Telecare and Telehealth Products and Services set out in Schedule 1 (Specification) attached. Deliverables - Telecare and Telehealth Products and Services set out in Schedule 1 (Specification) attached.</p>
<p>(2.2) Performance/Delivery Location/Premises: In accordance with the Specification (Schedule 1) attached and at the Service User's/client's address(es), as required.</p>
<p>(2.3) Standards: Quality Standards As per the Specification (Schedule 1) attached and as per the Supplier's tender response (attached). Technical Standards As per the Specification (Schedule 1) attached and as per the Supplier's tender response (attached)..</p>
<p>(2.4) Staff Vetting Procedures: As per the Specification (Schedule 1) attached and the Supplier's Safeguarding Vulnerable Adults Policy (attached).</p>
<p>(2.5) Disaster Recovery and Business Continuity: As per the Supplier's tender response (attached) which contains an outline Business Continuity Plan and upon contract award the Supplier will work with the Customer to confirm details and align to local practice.</p>

3. SUPPLIER'S SOLUTION

(3.1) Supplier's Solution:

As per the Supplier's tender response attached to this Order Form.

(3.2) Key Personnel of the Supplier to be involved in the provision of the Services and Deliverables:

As per the Supplier's tender response attached to this Order Form.

(3.3) Relevant Convictions

Not applicable.

(3.4) Training

As per the Specification (Schedule 1) attached and as per Supplier's tender response (attached).

(3.5) Subcontractors

As per the Supplier's tender response (attached).

4. PERFORMANCE OF THE SERVICES AND DELIVERABLES

(4.1) Implementation Plan and Milestones (including dates for completion and/or delivery):

If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier

shall ensure that each version of the Implementation Plan is subject to Approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.

The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

- (i) The Supplier shall perform its obligations so as to meet each Milestone by the Milestone Date.
- (ii) Unless otherwise agreed between the Customer and the Supplier, changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date). The Customer acknowledges and agrees that the ability of the Supplier to comply with the Implementation Plan and to meet any Milestones is dependent on the Customer performing associated activities and satisfying all related service dependencies in a timely manner.

(4.2) Service Levels and Key Performance Indicators

Service Levels:

As per the Specification (Schedule 1) attached and such further key performance indicator which have been agreed between the parties as set out in Schedule 2.

(4.3) Critical Service Failure

See Schedule 2 for minor and critical service failure levels and the process to be followed if these occur.

(4.4) Monitoring:

As per the Specification (Schedule 1 - attached) and Schedule 2.

5. CUSTOMER RESPONSIBILITIES

(5.1) Customer's Responsibilities:

As per the Specification (Schedule 1) attached and Supplier's tender response (attached).

(5.2) Customer's Equipment:

Not applicable.

6. CHARGES AND PAYMENT

(6.1) Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS):

Are as per the Supplier's Pricing Schedules (contained within their tender response which are attached to this Order Form.

(6.2) Invoicing and Payment:

The payment schedule will consist of quarterly payments with two elements:

- Fixed costs; and
- Variable costs.

The fixed and variable costs will be reconciled each quarter, the exact mechanism of which is to be agreed in writing by the parties.

7. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information or Confidential Information:
Supplier's Pricing Schedules contained in their tender response - attached.

8. AUDIT AND ACCESS

12 months after the expiry of the Contract Period or following termination of the Contract.