



# **FURTHER COMPETITION UNDER ESPO FRAMEWORK 653F\_15**

## **Managed Services for Temporary Agency Resources**

**(MSTAR<sup>2</sup>)**

# **INVITATION TO TENDER (Part A)**

**Closing date for submission of tender**

**PLEASE SUBMIT YOUR COMPLETED TENDER SUBMISSION – PART B –  
IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED**

**Bracknell Forest Borough Council**

**November 2015**



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This document is in two parts:

## **PART A**

Part A is the invitation to tender and provides all the background information, a description of what is required, and an overview and instructions for the completion and submission of the tender document. Note: Part A does not need to be returned to the Customer.

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## **PART B**

Part B is the tender submission document and this should be completed in full and returned in advance of the deadline, in accordance with the instructions given (see Section 4, Instructions for Completing and Submitting a Tender).

## **GLOSSARY OF KEY TERMS**

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A detailed description of the requirement, together with formal definitions of the most important terms and phrases, are given in the rest of the document and in the accompanying Schedules and Appendices. For tenderers' convenience however, the following key terms, which are used throughout this document, are defined as follows:

<b>Contract</b>	means this specific contract let by the Customer under ESPO's Managed Services for Temporary Agency Resources ( <b>ref: 653F_15</b> ).
<b>Customer</b>	means Bracknell Forest Borough Council (being the public body which has opted to use the Framework to select and appoint a Supplier to provide Managed Services for Temporary Agency Resources).
<b>ESPO</b>	means the Eastern Shires Purchasing Organisation.
<b>Framework</b>	means the framework arrangements established by ESPO for the provision of Managed Services for Temporary Agency Resources to Customers by Framework Suppliers.
<b>Framework Agreement</b>	means the over-arching agreement number 653F_15 for Managed Services for Temporary Agency Resources between ESPO and the Supplier, setting out the general terms and conditions which will apply to all specific contracts (including this one) let under the Framework Agreement.
<b>Framework Supplier(s)</b>	means a supplier appointed onto the Framework for the provision of Managed Services for Temporary Agency Resources.
<b>Further Competition</b>	means this exercise to reopen competition under the Framework, intended to secure formal quotations from Framework Suppliers tailored to suit the Customer's specific requirements.
<b>Invitation to Tender</b>	means this document, inviting Tenderers to submit a Tender.
<b>Supplier</b>	means the Supplier appointed by the Customer as a result of this further competition under the Framework.
<b>Services</b>	means the requirements of the Customer (as appropriate) for the Services from time to time as detailed in section 2 of this document, Requirement.
<b>Tender</b>	means the Tender submitted by the Supplier to the Customer.
<b>Tenderer</b>	means an organisation that submits a completed Tender in response to this Invitation to Tender.

# 1. INTRODUCTION

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This is an Invitation to Tender with information, instructions and guidance provided in Part A, following consideration of which the tender submission (Part B) should be completed and returned by all suppliers who wish to tender for the requirement described in the following pages.

In this present instance, the Customer is issuing this invitation to tender as a further competition under Lot 1 (Neutral Supply Chain Management) of the ESPO's Managed Services for Temporary Agency Resources (**reference 653F\_15**).

## Overview

Bracknell Forest Council is located in central Berkshire, approximately 30 miles from central London and between the M3 and M4 motorways. It contains six parishes; Bracknell Town, Binfield, Crowthorne, Sandhurst, Warfield and Winkfield. Covering an area of 10937 hectares (27024 acres) the Borough has as of 2003 an estimated population of 110100 (Office of National Statistics Mid Year Estimate).

The majority live in the built-up areas of Bracknell, Sandhurst, Crowthorne, Binfield and North Ascot. Bracknell town was designated a New Town in 1949 and its growth and development were controlled by the Bracknell Development Corporation until 1982.

Today, the Borough is administered by Bracknell Forest Council, whose services are divided between four Directorates;

- Corporate Services
- Environment, Culture and Communities
- Adult Social Care Health & Housing
- Children, Young People & Learning

In April 1998 Bracknell Forest Council became a unitary authority and took control of services from Berkshire County Council - including strategic planning, highways, education, social services, libraries and museums.

Bracknell Forest Council aims to assist people to live in the community for as long as possible and in an appropriate manner, or to help them to find suitable alternative accommodation if this is their wish and meets their needs.

The Bracknell Forest vision is of a community where people can thrive; living and working in a clean, safe and healthy environment, a vision that embraces the principles of sustainable communities. A sustainable community is one where all people will want to live and continue to want to live in the future - a community that can stand on its own feet and adapt to the changing and complex demands of modern life.

## Objectives

Through this tendering exercise, for the provision of its Agency Worker requirements, the Customer wishes to appoint a Supplier who shall offer throughout the contract period:

- A complete supply chain management solution
- Best Value for money
- Comprehensive management information
- Process improvement through innovation
- High levels of customer satisfaction
- Consistently high performance levels which meet or exceed KPI requirements
- Consolidated invoicing weekly/ monthly as required

- Expert advice on any legislative requirements related to Agency Workers

The Customer's annual total spend for Agency Workers is between \_\_\_\_\_, thus the estimated value over a four year period will be up to \_\_\_\_\_. As an illustration, the division between Care and Non-Care expenditure assuming a \_\_\_\_\_ annual spend is as follows:-

Category		Total Spend
Care	<ul style="list-style-type: none"> <li>• Care, Occupational Therapists, Physiotherapists, Rehab workers etc</li> </ul>	
Non Care	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Administrative</li> <li>• Cleaning</li> <li>• Catering</li> <li>• Management &amp; Professional, etc</li> <li>• Industrial (Transportation &amp; Traffic Management), etc</li> </ul>	
Total		

### The objectives of the procurement are:

- To deliver the highest quality Services which offer best value for money
- To deliver, in the event that the procurement exercise requires the transition to a new Managed Service Provider, a smooth and seamless transition
- To reduce, year on year, the level of off-contract spend which will require the proactive support of the Supplier

### Duration

The contract will be established from the Commencement Date for an initial period of 4 years.

### Contract Management

The contract will be managed by the Customer, with review meetings being held on a quarterly basis. The review meetings will enable the Customer and the supplier to review performance of the contract, discussing matters which may include but not be limited to;

- Performance against agreed KPI's
- Feedback from key stakeholders;
- Discussion regarding any complaints of poor performance and agreement of actions to address;
- Consideration of any improvements or developments;
- Any changes in key personnel, processes, or delivery;
- Performance in terms of reduction of off-contract spend.

The Supplier will send the appropriate personnel to each review with the Customer which will focus in detail on the service delivered to that Customer.

For the avoidance of doubt, attendance at such meetings will be at no cost to the Customer.

## Management Information

The supplier shall provide management information on a periodic basis relative to all activity undertaken by the supplier as requested by the Customer.

The content should include the areas detailed in the Specification at Schedule 2 to the Customer Agreement.

The frequency of management information will be every quarter.

Management information shall be presented in a format which can be exported into MS Office Applications or other similar packages used by the Customer that can be used to manipulate data.

The supplier shall provide management information to the Customer within a reasonable timescale (ideally within 48 hours) and at no additional cost to the Customer.

## Questions and Contact Details

All requests for clarification (whether in relation to this document, the requirement or the tender submission document) should be submitted as soon as possible in writing by email to:

	<b>Primary contact</b>		<b>Secondary contact</b>
<b>Name</b>			
<b>Position</b>			
<b>Tel</b>			
<b>Email</b>			
<b>Address</b>	Easthampstead House	<b>Address</b>	Easthampstead House
	Town Square		Town Square
	Bracknell		Bracknell
	Berkshire		Berkshire
	RG12 1AQ		RG12 1AQ

A copy of all questions and answers raised will be maintained and distributed periodically to all recipients of the invitation to tender. If the tenderer expresses that the question is confidential and the Customer agrees then the response will be sent only to the tenderer raising the question.

The Customer will circulate a complete list of answers to all questions submitted by (up to and including) close of business **2015**.

Questions received after this date may not be answered.

If you do not wish to submit a tender, please notify the Customer by emailing the Primary Contact named above. Under no circumstances should you pass this document on to a third party.

## **2. REQUIREMENT (including Specification)**

This section provides tenderers with as much detail as possible regarding the requirements and will help tenderers to compile their tender submission, and provides a specification for the services.

The MSTAR2 Core Specification (copy at Schedule 2 to the Customer Agreement) shall apply to this Contract.

The Customer currently has a Managed Service Provider (Comensura) which was established in 2012 following further competition under the previous ESPO MSTAR framework (653F). The competition was held under Lot 1(a) of the framework (Managed Service Provision for Corporate Staff Only – Supply Chain Management). The Customer’s Category Strategy for Agency Workers mandates the use of the Managed Service unless a case is made for doing otherwise. An objective for the new contract will be to further reduce such off-contract spend. Detailed below are relevant details of the Customer’s current arrangements:-

Relevant information regarding the Customer’s current arrangements are set-out below for the information of tenderers:-

A summary of roles filled by Comensura at Bracknell Forest Council during the period July 2014 to June 2015 are as follows:-

<b>Roles</b>	<b>No Filled</b>	<b>Total Spend</b>
Day and Night Care Assistant	149	
Administrator - ECC	8	
Social Worker (Standard) - CR&R	7	
Admin Assistant - Generic	5	
Social Worker - CMHT for Older Adults	4	
Housing Benefits Officer	4	
Social Worker - CSC	4	
Senior Occupational Therapist - CR&R	3	
Social Worker (Standard) - OPLTC	3	
Service Co-Ordinator	2	
Business Support Assistant	2	
Benefits Assessment Officer	2	
Admin Assistant - CMHT	2	
Senior Practitioner (CSC)	2	
Receptionist - CS	2	
Social Worker - AMHP	2	
Reviewing Officer	2	
Housing Options Officer	2	
Senior Benefits Officer	2	
Environmental Health Officer	2	
Team Manager - CSC	2	
Occupational Therapist - CRandR	2	
Residential Care Officer - Heathlands	1	
Mental Health Practitioner	1	
ICT Admin Network Officer	1	
Senior Planning Officer (Enforcement)	1	
Residential Care Home Manager	1	
Senior Practitioner (ASCHH)	1	
Assistant Team Manager (CR and R)	1	

Admin Assistant - DBS	1	
Social Worker/Best Interest Assessor	1	
Assistant Team Manager - CSC	1	
Crime and Anti Social Behaviour Analyst	1	
Physiotherapist	1	
<b>Grand Total</b>	<b>225</b>	

This spend is split against the various directorates in the following way:-

Adult Social Care, Health & Housing	
Chief Executives Office	
Children, Young People & Learning	
Corporate Services	
Environment, Culture & Communities	

This however, does not represent the total spend available within Bracknell Forest for Agency Workers, as there were a number of positions unsuccessfully filled during this period.

**\* Please note:** The following report assumes that any orders cancelled, unfilled or deleted were due to an inability to fill the post, however this list will also include genuine instances where the service user decided that the position was no longer required.

It can be assumed that roles unfilled through the contract resulted in off-contract spend.

<b>Roles</b>	<b>No of Positions</b>
Day and Night Care Assistant - Heathlands	31
Social Worker - CSC	7
Admin Assistant - Generic	5
Children's Residential Care Worker - Larchwood	5
Service Co-Ordinator	3
Intermediate Care Support Worker	3
Assistant Team Manager - CSC	2
Senior Occupational Therapist - CR&R	2
Assistant Team Manager (CR and R)	2
Admin Assistant - CMHT	2
Senior Practitioner (CSC)	2
Day and Night Care Assistant - Bridgewell	2
Accounts Receivable Assistant	2
Occupational Therapist - CRandR	2
Senior Planning Officer (Enforcement)	1
Environmental Protection Officer	1
Environmental Health Officer	1
Head of Community Response and Reablement	1
Senior Benefits Officer	1
Housing Benefits Officer	1
Administrator - ECC	1



ICT Admin Network Officer	1
Social Worker (Standard) - OPLTC	1
Benefits Assessment Officer	1
Residential Care Home Manager	1
Kitchen Porter - Heathlands	1
Chef/Cook - Heathlands	1
Landscape Operative	1
Senior Practitioner (ASCHH)	1
Contracts Officer	1
Agresso Systems Manager	1
Physiotherapist	1
Social Worker (Standard) - CR&R	1
Prevention Case Manager	1
Team Manager - CTPLD	1
Programme Officer	1
Receptionist - CS	1
Desktop Support Officer	1
System Support Officer	1
<b>Grand Total</b>	<b>95</b>

Any successful provider shall be expected to demonstrate how they will ensure that the number of roles 'unfilled' is reduced on any future agreement, which will ultimately increase the level of spend through the contract.

Many of the above roles (outside of Day and Night Care Assistants) fall within the 'professional' category.

Pay rates offered by Bracknell Forest Council can differ depending on the quality of the candidate and the difficulty in recruiting to that particular role.

The rates set up against a job role in the system, may therefore differ to the final pay rate agreed with the individual worker.

The following table shows the average pay rate per hour that we have actually secured an agency worker booking for at Bracknell Forest Council:-

<b>Job Role</b>	<b>Average of Job Title Rate per hour</b>
Admin Assistant - CMHT	
Admin Assistant - DBS	
Admin Assistant - EDS	
Admin Assistant - Generic	
Administrator - ECC	
Assistant Team Manager - CSC	
Assistant Team Manager (CR and R)	
Benefit Assessment Advisor	
Benefits Assessment Officer	
Business Support Assistant	
Call Centre Operator	
Catering Assistant - Care Setting	
Child Protection Secretary	

Children's Residential Care Worker - Larchwood  
Cleaner - ECC  
Clerical Assistant  
Community Support Worker  
Consultant  
Contracts Officer  
Crime and Anti Social Behaviour Analyst  
Day and Night Care Assistant - Bridgewell  
Day and Night Care Assistant - Heathlands  
Domestic - Heathlands  
Education Welfare Officer  
Environmental Health Officer  
Environmental Health Officer - Food/Safety  
Family Worker  
Gardener  
Generic LD Support Worker - Waymead  
Highways Engineer  
Housing Benefits Officer  
Housing Officer  
Housing Options Officer  
Housing Resources Officer  
HR Assistant  
ICT Admin Network Officer  
Kitchen Porter - ECC  
Kitchen Porter - Heathlands  
Landscape Operative  
Library Driver ELS  
Mainstream Support Worker - CSC  
Mental Health Practitioner  
Occupational Therapist - CRandR  
Occupational Therapist - OPLTC  
PA/ Secretary  
Physiotherapist  
Principal Accountant  
Programme Manager - Learning Village  
Project Administrator  
Project Manager Workforce  
Ranger  
Receptionist - CS  
Registered Manager - Bridgewell Centre  
Residential Care Home Manager  
Residential Care Officer - Heathlands  
Reviewing Officer  
Security Officer  
SEN (Special Educational Needs) Officer  
SEN Case Assistant  
Senior Benefits Officer  
Senior Department Accountant

Senior Occupational Therapist - CR&R	
Senior Planning Officer (Enforcement)	
Senior Practitioner (ASCHH)	
Senior Practitioner (CSC)	
Senior Support Officer	
Service Co-Ordinator	
Social Worker - AMHP	
Social Worker - CMHT	
Social Worker - CMHT for Older Adults	
Social Worker - CSC	
Social Worker (Standard) - CR&R	
Social Worker (Standard) - OPLTC	
Social Worker/Best Interest Assessor	
Team Manager - CSC	
Team Manager (OPLTC)	
Trading Standards Officer	

Bracknell Forest Council currently has approx. 225 users with access to be able to create orders from within the following directorates:-

Adult Social Care, Health & Housing	73 users
Chief Executives Office	9 users
Children, Young People & Learning	61 users
Corporate Services	56 users
Environment, Culture & Communities	26 users

- Please note that the above table includes users who are able to both order for themselves and authorise orders raised by other individuals.

Each directorate then has the following additional user accounts who are only permitted to authorise and not raise orders themselves, taking the total number of user accounts across the Council to approximately 260 accounts:

Adult Social Care, Health & Housing	7 users
Chief Executives Office	4 users
Children, Young People & Learning	6 users
Corporate Services	4 users
Environment, Culture & Communities	16 users

The following Agencies are currently supplying Agency Workers to the Customer through Comensura:-

### 3. PROCUREMENT PROCESS

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#### Overview

The Customer is using this invitation tender to conduct a further competition exercise underneath ESPO Framework Agreement reference 653F\_15 for the provision of Managed Services for Temporary Agency Resources.

All suppliers awarded on Lot 1, Neutral Supply Chain Management of the framework are invited to submit a tender. All tenders received (that are compliant i.e. submitted in accordance with the tendering instructions) will be evaluated in accordance with the evaluation criteria as set out below.

Tenders should be prepared and submitted (using Part B of this Invitation to Tender document) in accordance with section 5, Instructions for submitting a tender of this document.

At the Customer's discretion, tenderers may be invited to clarify their tender, as an aid for evaluators to fully understand their offers. All tenderers should nonetheless take care to fully explain their offering in their tender submission.

Presentations (system demonstrations) and/or interviews will be held as part of the evaluation process and more details are provided in the next section of this invitation to tender. As stated above however, the right is nonetheless reserved to seek additional information or clarification at any stage, which may include requesting additional information from tenderers if appropriate. Please see section 4, Evaluation of Tenders, for further information on how these will form part of the evaluation process.

The contract will be awarded to the tenderer which scores the highest marks following the evaluation of all tenders (in accordance with the scheme described in section 4, Evaluation of Tenders).

#### Indicative Procurement Timetable

The following indicative timetable is provided for tenderers' benefit. Please be aware that these are indicative timescales (with the exception of the deadlines in bold) and may be subject to change at the absolute discretion of the Customer.

<b>Stage / Activity</b>	<b>Indicative Date</b>
<b>Invitation to Tender document issued</b>	
<b>Closing date for clarification questions</b>	
<b>Closing date for submission of tenders</b>	
<b>Evaluation of tenders</b>	
<b>Presentations and/or interviews</b>	
<b>Contract award</b>	
<b>Contract start date</b>	

## 4. EVALUATION OF TENDERS

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### Overview

All completed tenders received will be evaluated by officers of the Customer (as appropriate). In order to be transparent, and in order that tenderers fully understand how their tender submission will be evaluated, full details of the evaluation process are described below. Should any tenderer not understand any element, they should in first instance make contact with the Customer as per the contact details on page 5.

The following price and quality weightings will be used to determine the most economically advantageous tender:

- Quality 50%
- Cost 50%

The methodology for evaluating tender submissions against these criteria is as follows:

### Cost 50%

It is understood that the cost of the service is made up of a range of component parts, and that various service delivery models proposed will be supported by different commercial models, specific to the Supplier.

The expectation is that the total cost charged will consist of the cost of the Temporary Agency Worker (the pay rate plus statutory contributions) plus the Agency Fee, plus the MSP Fee and the ESPO rebate. If Temporary Agency Workers who would typically command a higher rate of pay (higher than the set pay rate or maximum rate if a range is in operation) are provided, payment will only be made as per the grade requested.

The **Total Cost** score is out of 100 marks and will be awarded based on a mathematical formula taking into account the overall weighting allocated to this particular section. In this instance, it is calculated by taking the lowest Total Cost divided by the next lowest Total Cost and multiplied by 100. As a result, the lowest Total Cost (subject to the provisions of regulation 30(6) of the Public Contracts Regulations 2006) will be awarded a score of 100 for Cost alone, with tenderers thereafter being allocated a relative score. This will be combined with quality, to give an overall score for each tenderer. Should any tenderer fail to reach the overall quality threshold of 40% set then this tender will be excluded from further consideration.

The evaluation spreadsheet which details any **sub-criteria** and formulae used is attached at Appendix 1 of this ITT.

The Customer shall be under no obligation to award a contract for all or any part of the requirement set out in the Invitation to Tender, to any tenderer or at all.

Tenderers are invited to fully complete the Pricing Schedule at Schedule 3 which represents a typical model of the Customer's business covering a 12 month period, excluding off-contract spend. The total figure resulting will be used as the basis for Cost evaluation.

## Cost Model (figures for illustrative purposes only)

<b>Total MSP Charge to Customer</b>								
<b>Total Agency Charge to MSP</b>								
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
<b>Job Title</b>	<b>Pay rate (£/ph)</b>	<b>NI (13.8%)</b>	<b>WTR (12.07%)</b>	<b>Pensions Auto Enrolment (1%)</b>	<b>Agency Fee (£/p)</b>	<b>MSP Booking Fee (£/p)</b>	<b>ESPO rebate (£/p)</b>	<b>Total Charge Rate (£/p)</b>
<b>Administrator</b>	£7.00	£0.97	£0.85	0.07	£0.50	£0.10	£0.01	£9.50
<b>Social Worker</b>	£22.00	£3.04	£2.66	0.22	£2.50	£0.10	£0.01	£30.53

The example table above illustrates PAYE workers calculations only i.e. including separate columns for NI, WTR and Pension Auto Enrolment contributions.

### Pay Rates to Temporary Agency Workers

Pay rates to Temporary Agency Workers shall be agreed with the Customer for each of the Temporary Agency Worker job titles identified e.g. Secretary £7 per hour, Qualified Social Worker £20 per hour. Customers may operate pay ranges if they so wish (i.e. Secretary £7-£8 etc), though to create and maintain transparency and to seek to control spend, it is likely that specific pay rates will be established. Consequently, if Temporary Agency Workers who would typically command a higher rate of pay (higher than the set pay rate or maximum rate if a range is in operation) are provided, payment will only be made as per the grade requested.

The Assignment that the Temporary Agency Worker will undertake will be based on a maximum of standard Customer hours, for example: for a local authority this may be a standard 37 hours per week (if full-time) or for a school a typical 6.5 hours per day.

The rates of pay received by the Temporary Agency Worker shall be determined by the Customer's Contract Manager in agreement with the Managed Service Provider.

### Statutory Contributions

Statutory contributions including National Insurance contributions, Agency Workers Regulations contributions and Pension Auto Enrolment contributions shall be paid by the Agency as required by law. There is a preference for National Insurance contributions to be charged at the actual rate, taking into account the amount of NI contribution due on amounts earned, over and above the earnings threshold, i.e. allowing for the 'NI-free' period. It is noted that whilst statutory contributions will be applied and paid by the Agency in respect of PAYE workers, for those Temporary Agency Workers who work on a Limited Company basis, these will be addressed by the Limited Company and will therefore be included in the total pay rate.

### Agency Fee

Agencies are expected to charge a fixed fee per hour per type of job for fulfilment of the Assignment. The charge should cover all agency overheads associated with fulfilment of assignments, for example, recruitment, processing, administration, staffing costs etc. The Agency Margin shall be a fixed fee and not a percentage charge and may vary for different types of roles and pay rate bands within a job category; for example, it may be 50p per hour for Admin/Clerical roles earning £10 per hour, £4.50 per hour for Social Care roles earning

£20 per hour (values are for illustration purposes only).

The Managed Service Provider will be expected to work with the agencies to establish a pricing model that more closely reflects the actual costs incurred and to develop a pricing and profit model. The aim of this should be to create a fairer and more sustainable policy for agencies and to reduce the costs to the client.

### **Managed Service Provider Booking Fee (MSP Booking Fee)**

The Managed Service Provider shall charge for their services by applying a 'pence per hour' fee to the hourly charge rate of each Temporary Agency Worker. This rate shall be inclusive of all costs associated with providing the Services, to include, for example, but not be limited to Account Management, Implementation, Training, Electronic Systems, and end of contract procedures, including transfer of any data etc

The Managed Service Provider will be paid a fixed pence fee levied on the Total Agency Charge Rate charged for the Temporary Agency Worker and this shall be referred to as the Booking Fee.

### **ESPO Rebate**

In establishing the MSTAR<sup>2</sup> Framework, ESPO has incurred costs associated with the procurement exercise and ongoing contract management. ESPO has a statutory obligation to recover the costs of its operation and consequently will recover by way of a retrospective rebate which will be payable by the Managed Service Providers to ESPO based on the turnover of business conducted in the areas of operation.

This rate will be 1p per hour and will simply be added on, by the MSP, to the total charge per hour to the customer.

### **Temp to Perm and Introduction Fees**

As is also set out in [Schedule 9](#) to the Customer Agreement, the Customer shall not pay any introduction fee to either the Managed Service Provider or any Agency in the supply chain should any Temporary Agency Worker secure employment with a Customer (including the post in which the Temporary Agency Worker is temporarily engaged) where the worker applies for a job in response to an advertised vacancy (either internally/externally advertised), and no such fee shall be invoiced to the Customer by the Managed Service Provider or Agency. The Customer will provide, on request, evidence of advertising arrangements to the Managed Service Provider or Agency.

In addition, and where applicable, neither the Managed Service Provider or any Agency shall make any charge whatsoever relating to Introduction or Referral Fees to the Customer in the event that a Temporary Agency Worker previously registered with an Agency (or the Managed Service Provider where the Managed Service Provider proposes to supply Temporary Agency Workers) goes on to secure a role (temporary or permanent) with the Customer, through another Agency (or Managed Service Provider) at a later point in time.

The Managed Service Provider shall note that no commission or other fee shall be payable by the Customer in the event that employment is offered to a Temporary Agency Worker where the individual concerned has worked for the Customer for more than fourteen (14) weeks (whether continuous or not) in any twelve (12) month period. Where the Managed Service Provider is managing the Agencies, the Managed Service Provider shall make sure no Agencies raise any such charges either. This applies to Temporary Agency Workers required on a full-time, part-time or hourly basis.

The following are example scenarios.

1. If the temporary agency worker works for the customer and prior to 14 weeks from the start of the first assignment with the customer, the customer wants to take on the



temporary agency worker to a permanent contract (or fixed-term contract) without advertising the role and completing a recruitment process then a fee shall be incurred in relation to the rates below.

2. If the temporary agency worker has worked for more than 14 weeks in the role, no fee shall be incurred.
3. If the temporary agency worker has worked for less than 14 weeks, and identifies a position within the authority that has been advertised (either internally or externally) and applies for that position, providing the job has been openly and fairly advertised, no charge shall be made to the customer for the temporary agency worker by the MSP (either themselves or on behalf of one of their supply chain agencies).

The rates applicable to be paid by the customer to the supplier only in circumstances where a charge is legitimate are:

- 0-5 weeks 12.5%
- 5-10 weeks 7.5%
- 10-14 weeks 2.5%
- 14 weeks + no charge

Percentage charge is based on annualised salary.

An alternative to paying the transfer fee the customer may elect to hire the Temporary Agency Worker(s) in question for an extended period. This extended period should be of reasonable length and in no circumstances longer than 3 months.

Prices are requested from Tenderers for all elements of the service, including the Managed Service Provider Booking Fee, the Agency Fees, the proposed Temporary Agency Worker pay rates and guaranteed savings and gainshare.

### **Agency Fees**

Tenderers are required to state an Agency fee in £/p that will be applied to all bookings. The fee may vary from category to category and by each pay rate band within a category.

### **Savings**

Tenderers are required to state a guaranteed level of saving to be made (%). Where anticipated savings levels are exceeded, the excess saving shall be shared on a gainshare principal whereby the Customer receives [X%] of the amount saved, and the Supplier retains [Y%]. Tenderers are required to put forward their proposals for achieving savings, indicating what savings levels can be achieved, describing how the proposed saving/gainshare will be calculated (and from which baseline). It is recognised that the starting position for a Customer (in terms of their current temporary staffing arrangements) will have an impact on the gainshare offered.

### **Pricing General**

Any tender that is found too low to be credible will be excluded from further consideration. In this instance, the Customer will initially clarify with the tenderer whether the pricing is correct and has been interpreted correctly. As part of the clarification, evidence will be required to demonstrate that the charges are accurate, achievable and sustainable. If following the clarification, any charge is found to be abnormally low, that tender will be rejected in accordance with the Public Contract Regulations 2006 regardless of how many points it scores in all other aspects.

Any tender which is found to be too high to be acceptable will be excluded from further consideration. In this instance, [customer name] will initially clarify with the tenderer

concerned whether the pricing is correct and has been interpreted correctly. If following the clarification, any charge is found to be too high to be acceptable, that tender will be rejected in accordance with the Public Contract Regulations 2006 regardless of how many points it scores in all other aspects.

**Quality 50%**

Quality accounts for 50 % of the total tender score. Tenderers will be asked to provide a response to the following sections within the Tender Submission Document.

Section	Total Score Available
1. Company Details	
2. Method Statements	
3. Pricing Schedule	
4. Freedom of Information Exclusion Schedule	
5. Tendering Declaration	
6. Enclosures Checklist	

The method statement section will be assessed by reference to a number of method statements prepared by the tenderer, in response to questions posed. There are 14 method statements, with each of these having an individual weighting as shown alongside each method statement question.

When completing the method statement questions tenderers must make sure that they answer what is being asked. Anything that is not directly relevant to the particular method statement or question should not be included, but wherever possible tenderers should demonstrate how they will go further than what is being asked for, to add value.

Tenderers should also make sure that their answers inform not just what they will do, but how they will do it, and what their proposed timescales are (as relevant). It is useful to give examples or provide evidence to support your responses. The purpose should be to include as much relevant detail as required, so that the evaluation panel gets the fullest possible picture.

Each method statement will be evaluated individually, one by one in order. When scoring each statement, no consideration is given to information included in other answers so please do not cross reference to responses or information provided elsewhere in your tender submission.

**Scoring Scale**

Please note that scoring '0' for any one or more method statements will give grounds for excluding the tender from further consideration. For any tenders so excluded, that tenderer's price shall be excluded from the 'Cost' evaluation.

**Weightings**

Tenderers' scores for each method statement will be multiplied by the relevant weighting to result in a 'weighted score' for that method statement. The weighted scores will then be totalled, with the total expressed as an overall % score.

**Moderation**

Following the evaluation of the written tenders, tenderers may be invited to attend an

interview with the evaluation panel (which may include making a presentation/ system demonstration). The purpose of the interview, should it take place, is to moderate the scores awarded to the written tender, and to clarify any outstanding issues. No additional points have been reserved for this stage. Details of the interview arrangements and format will be provided to tenderers. In the interests of fairness and transparency, the Customer will, following initial scoring, advise any tenderers who stand little chance of winning the contract rather than putting them to the needless expense of attending the interviews.

### **Award of Contract**

Upon conclusion of the evaluation, the scores for price and non-price will be combined to give a total score out of 100 and the tenderer with the highest number of points will be awarded the contract.

The tenderer to be offered the contract will be advised accordingly by e-mail. Such award, offered pursuant to this Invitation to Tender, will be on the basis of the most economically advantageous tender, based on the evaluation criteria described above.

Tenderers whom it is proposed will not be offered the contract will be advised of this by letter which will include feedback on the relative merits and characteristics of their tender submission compared with that of the accepted tender.

All tenderers are advised that they should not take any action for example commencing the delivery of or implementation of services or commencement of works, until the award decision is finalised and communicated to you as above. Tenderers should also refrain from undertaking any publicity, marketing or promotional activity until such confirmation is received. In any event, tenderers must seek prior approval from the Customer, before undertaking any marketing activity.

The Customer does not bind itself to accept the lowest or 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.

Upon conclusion of all the above stages, a formal contract will be entered into between the the Customer and the successful tenderer. The terms and conditions governing the contract will be those agreed between ESPO and the successful tenderer as part of the overarching framework agreement. Unless and until a formal contract is prepared and executed, the tenderer's tender submission, together with the Customer's acceptance thereof, shall constitute a binding contract between the parties. Please see Section 7 for further details on the terms and conditions.

## **5. INSTRUCTIONS FOR COMPLETING AND SUBMITTING A TENDER**

### **Completing the invitation to tender**

To enable evaluating officers to assess fully the tenderer's suitability all of the information requested in this invitation to tender must be provided. Failure to complete the tender submission in full or failure to provide any of the documents requested may result in your tender being rejected. Questions should be answered as instructed:

- Please answer every question.
- Questions must be answered in English.
- When posed with Yes / No questions, please either circle your answer or delete as applicable.
- All other questions will require you to input text or numbers, or to tick boxes.
- Any figures requested should be stated in full (i.e. £4,000,000 not £4m) and in GBP. Where information relates to foreign accounts, amounts in alternative currencies may be stated, but must also be converted to GBP.
- If the question does not apply to you please write N/A; if you don't know the answer please write N/K.

Only the information contained within this invitation to tender or otherwise communicated in writing by the Customer to the tenderer should be considered when submitting your tender.

Any information and/or documents submitted on or with this tender must relate to the tenderer only - the tenderer being the organisation which it is proposed will enter into a formal contract should their tender be successful. (All responses and submissions provided by the tenderer will form part of that contract). The Customer may seek further clarification from the tenderer

### **Format of Tender Submission**

Tenderers are required to complete all of the documentation listed below. You may complete the documentation electronically but must not make any changes to the structure and/or order of the document provided (except as necessary to accommodate your responses, i.e. enlarging response boxes etc.). In particular, please do not undertake any substantive changes to formatting, or add appendices instead of completing the tables provided, and so on, except as may be expressly requested or are necessary to properly present your offer.

You should complete and submit all sections in Part B of this document, namely:

1. Company Details and General Information
2. Response to Specification (Method Statements)
3. Pricing Schedule
4. Freedom of Information Exclusion Schedule
5. Tendering Declaration
6. Enclosures Checklist

The declaration must be signed by a director, partner or other senior authorised representative in her / his own name and on behalf of the organisation. The details contained in each tenderer's response may be specified in any contract or may form an appendix thereof. Tenderers should therefore make sure that their responses are authorised at an appropriate level which would enable them, should they be successful, to become the subject of a binding contract.

## Submitting your tender

Please submit **5 hard copies** of your tender, plus one electronic copy on CD/DVD. Most business file types are acceptable; however any file containing code, password protection or seemingly inappropriate images will be rejected. **We are unable to accept tenders on USB stick.**

Where the Customer has indicated a maximum number of words against some questions. The number indicated includes words in any charts, appendices and diagrams which are incorporated into the tenderer's response unless otherwise clearly indicated. In the event that the number of words is exceeded, the Customer will only consider the first part of the tenderer's response up to the maximum allowed.

Where any external reference material, such as brochures, specifications and system descriptions, is used to support your tender, any statements within the reference material which may allow change to obligations or reduce liability, such as "specifications subject to change without notice", or other disclaimers will be regarded as void and shall not form part of the contract in the event that the tender is accepted.

Where a particular section of the tender response relates to information given in another section or in external reference material, then you must ensure that the response is clearly cross-referenced.

All pricing should be stated exclusive of VAT.

Tenders shall remain open for an initial acceptance for a minimum of **120** calendar days, although the Customer may ask you to extend of the period of validity.

The original, signed, tender must be returned by no later than Please address to:

If submitting hard copies, the envelope must not indicate the name of the sender; envelopes that do may be rejected unopened. Similarly, tenders received after the tender submission date/time may be rejected unless there is clear evidence of either posting (by first class post on a day preceding the closing date), or dispatch by an appropriate courier service booked to achieve the deadline. Tenders may NOT be submitted by fax or email.

## **6. CONDITIONS OF TENDER**

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In submitting a response to this Invitation to Tender, tenderers do so on the conditions set out below. In the event of any breach of the conditions the Customer shall be entitled to terminate any arrangement made as a result of such tender and to claim damages accordingly.

### **Warnings and disclaimers**

- Tenderers should consider only the information contained within this invitation to tender, or otherwise communicated in writing to tenderers, when preparing their tender.
- 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.

### **Tenderer conduct and conflicts of interest**

- Tenderers shall not, before the date and time specified for return 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.
- 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.
- Tenderers shall not enter into any agreement or arrangement with any other person with the intent that the other person shall refrain from tendering or agree as to the amount of any other tender to be submitted.
- Tenderers must not, in connection with the proposed contract:
  - offer any inducement, fee or reward to any member or officer of the Customer
  - do anything which would constitute a breach of the Bribery Act 2010 or the Section 117 (2) Local Government Act 1972, or
  - canvass any of the persons referred to above in connection with the contract; or contact any member or officer of the Customer or any person acting as an advisor to the Customer (except as authorised by this Invitation to Tender for the purpose of asking genuine questions about the process or the contract) about any aspect of the proposed contract or for soliciting information in connection therewith.
- Tenderers are responsible for ensuring that no conflicts of interest exist between the tenderer and its advisors and the Customer and its advisors. Any tenderer who fails to comply with this requirement may be disqualified from the procurement process at the discretion of the Customer.

### **Tenderer's responsibility to submit a complete tender**

- It is the tenderer's responsibility to ensure that their submitted tender is complete, prepared and submitted in accordance with the instructions contained herein, and signed and dated where required. The Customer are not obliged to consider any tender which is incomplete or not prepared or submitted in accordance with the 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.

- Unless specifically withdrawn in writing, tenders shall remain open for acceptance for a period of **120 days** from the return date.

### **Bid costs**

- The Customer will not be liable for any tender costs, expenditure, work, or effort incurred by a tenderer in proceeding with or participating in this procurement process, including if the procurement process is terminated or amended by the Customer.

### **The Customer's rights**

The Customer reserves the right to

- Seek additional information or clarification from tenderers at any time during the tender process.
- Disqualify any tenderer that does not submit a compliant tender, in accordance with the instructions given in this invitation to tender.
- Disqualify any tenderer that is guilty of serious misrepresentation in relation to its tender, expression of interest, the application form or the procurement process.
- Withdraw this invitation to tender at any time, and to re-invite tenders on the same or any alternative basis.
- Choose not to award any contract as a result of the procurement process.
- Make whatever changes it sees fit to the timetable, structure or content of the procurement process.
- Retain copies of all tender submissions to satisfy its audit obligations and for other purposes.

### **Confidentiality and Freedom of Information Act**

- This invitation to tender is made available on condition that its contents (including the fact that the tenderer has received this invitation to tender) is kept confidential by the tenderer and is not copied, reproduced, distributed or passed to any other person at any time, except for the purpose of enabling the tenderer to submit a tender.
- As a public body, the Customer is subject to the provisions of the Freedom of Information Act 2000 in respect of information it holds (including third-party information). Any member of the public or other interested party may make a request for information.
- The Customer shall treat all tenderers' responses as confidential during the procurement process. Requests for information received following the procurement process shall be considered on a case-by-case basis, applying the principles of the FOIA.
- While the Customer aims to consult with third-party providers of information before it is disclosed, it cannot guarantee that this will be done. Therefore, tenderers are responsible for ensuring that any confidential or commercially sensitive information has been clearly identified to the Customer in the form provided in the Tender Submission Document (i.e. the Freedom of Information Exclusion Schedule).
- Tenderers should be aware that, in compliance with its transparency obligations, the Customer may publish details of its contract(s), including the contract values and the identities of its suppliers on its website.
- More information is available on [www.ico.org.uk](http://www.ico.org.uk)

## **Publicity**

- No publicity regarding the contract or the award of any contract will be permitted unless and until the Customer has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any tender, its contents or any proposals relating to it without the prior written consent of the Customer.



## **7. TERMS AND CONDITIONS**

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By submitting a bid, tenderers are agreeing to be bound by the call-off terms and conditions without further negotiation or amendment, and must sign the Tendering Declaration accordingly.

Should a qualification of offer be made to change the terms and conditions by any tenderer, then grounds will exist to exclude such bids from further consideration.



<b>Confidential Information</b>	means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998
<b>Contract Manager</b>	means the nominated officer or employee of the Customer responsible for managing this Agreement for the provision of the Services
<b>Default</b>	means any breach of the obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other
<b>Equality Legislation</b>	means the Equality Act 2010, the Equality Act 2006, the Human Rights Act and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws
<b>ESPO</b>	means the Eastern Shires Purchasing Organisation being the central purchasing body responsible for creating the Framework Agreement
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation
<b>Framework Agreement</b>	means the Agreement between ESPO and the Supplier under which this Agreement is entered into by the Customer and the Supplier for the supply of the Services
<b>Hiring Manager</b>	means an officer of the Customer with the responsibility for hiring Temporary Agency Workers.
<b>Invitation to Tender</b>	means the invitation to tender issued to the Supplier in response to a request following the publication of the OJEU notice for the procurement of the Services

<b>Managed Services</b>	means where one Managed Service Provider takes responsibility for delivering Services on behalf of the Customer, as an alternative to the Customer managing a framework of individual Agencies. Managed Services can often involve the Managed Service Provider operating a Tier(ed) structure of Agencies to deliver the Services
<b>Order</b>	means an official order in such form as may be issued by the Customer to the Supplier in respect of the Services
<b>Pricing Schedule</b>	means the Pricing Schedule attached to the Supplier's Framework Agreement – attached hereto at <a href="#">Schedule 3</a>
<b>Protocol</b>	means the Customer Protocol describing the Customers obligations in relation to their local arrangements and contract management requirements and which is attached hereto as <a href="#">Schedule 1</a>
<b>Requests for Information</b>	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR
<b>Services</b>	means the provision of the managed services for Temporary Agency Workers more particularly set out in the Specification attached as <a href="#">Schedule 2</a> hereto
<b>Specification</b>	means the Specification for the Services which the Supplier is authorised to provide under the Framework Agreement and which is more particularly set out in <a href="#">Schedule 2</a> hereto
<b>Temporary Agency Worker</b>	means a temporary (non-permanent) worker offered and provided on Assignment by an Agency to fulfil a specific role for a defined period of time in return for a fee. The Temporary Agency Worker is not an employee of the Customer and will not be treated as if he/she is. The Temporary Agency Worker will complete a timesheet, signed by the Hiring Manager, which will be processed by the Agency and passed to the Managed Service Provider in order to invoice for the Agency fee
<b>Tender</b>	means the Supplier's tender submitted in response to the Invitation to Tender and attached to the Framework Agreement as <a href="#">Schedule 2</a>
<b>Term</b>	means the Contract period of 4 years
<b>Working Day</b>	means Monday to Friday in any week but excluding any public or bank holidays

1.1.2 the masculine includes the feminine and the neuter; and

1.1.3 the singular includes the plural and vice versa.

1.2 A reference 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 statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.4 References to Conditions and Schedules are, unless otherwise provided, references to conditions of and schedules to this Agreement.

1.5 In the event and to the extent only of any conflict between the Conditions and the Schedules or the Order, the Conditions shall prevail.

## **2. SUPPLIER'S OBLIGATIONS**

2.1 The Supplier shall supply the Services in accordance in all respects with the terms of the Framework Agreement and the terms of this Agreement and the terms and conditions of the relevant Order and in accordance with any local arrangements agreed and set out in **Schedule 4**

2.2 For the avoidance of doubt the Customer shall not be responsible for any Services that are delivered by the Supplier and are not the subject of a valid Order.

2.3 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict the terms of this Agreement shall be excluded and not form part of the Order.

2.4 The Services to be supplied under the Order shall be provided in accordance with the terms of the Order. Where the Order identifies that provision will be in accordance with an Implementation Plan, the Implementation Plan will be agreed between the Customer and the Supplier unless otherwise agreed in writing by the Customer. The Supplier acknowledges the importance to the Customer of performing the Services by the required date, and shall take all reasonable steps to achieve provision by those dates in accordance with best industry practice and the Service Level Agreement.

2.5 The Supplier shall use all reasonable endeavours to ensure that the Services meet the requirements of the Specification and where the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that particular purpose.

2.6 The Supplier warrants to all its reasonable endeavours that the Services to be supplied under the Order shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Services are supplied.

2.7 The Supplier shall be deemed to have satisfied itself as to the sufficiency and correctness of the Pricing Schedule. Unless otherwise expressly stated in the Order the Pricing Schedule shall cover all the Supplier's obligations and everything necessary for the supply of the Services under the Order.

2.8 Unless otherwise expressly stated in the Framework Agreement or the Order no claim by the Supplier will be allowed for any addition to the charges specified in the Pricing Schedule on the grounds of any matter relating to any document forming part of the Framework Agreement or the Order or any ambiguity or discrepancy therein on which an experienced supplier could have satisfied himself by reference to the Customer or any other appropriate means.

2.9 For the avoidance of doubt the Supplier shall have no liability for the negligent acts or omissions or wilful misconduct of the Agency (including its employees and agents) or any

Temporary Agency Worker provided by the Agency, except to the extent that any loss or damage suffered by the Customer results (in whole or in part) from the acts or omissions of the Supplier itself.

- 2.10 The Supplier will ensure that the correct amount of tax and National Insurance contributions are paid and/or deducted in respect of Temporary Agency Workers engaged via this Agreement and will comply and procure compliance by each Agency with all applicable requirements relating to tax and National Insurance including without limitation those relating to intermediaries (including those known as "IR35"), the Agency Legislation and any other legislation in force from time to time relating to any payments made to Temporary Agency Workers.

### **3. CUSTOMER'S OBLIGATIONS**

- 3.1 The Customer shall have selected a Supplier for Orders in accordance with the criteria outlined in the Framework Agreement.
- 3.2 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 3.3 The Customer shall respond to any reasonable request for information from the Supplier.
- 3.4 The Customer will assign an Authorised Representative who will interface with the Supplier's Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 3.5 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2006 (and any subsequent re-enactment thereof).
- 3.6 The Customer hereby agrees to comply with the Protocol set out in **Schedule 1** hereto.
- 3.7 If a Candidate is engaged, Customer must ensure that such Temporary Agency Worker is entered into the [System] within 24 hours of engagement. Failure to do so may result in delays in payment to temporary agency workers and suppliers.

### **4. PROVISION OF THE SERVICES**

- 4.1 The Supplier shall provide the Services identified in the Order in accordance with the **Services Description and Specification in Schedule 2 and the Service Level Agreement in Schedule 6**. The Charges in respect of such Services shall be as detailed in the **Pricing Schedule at Schedule 3**. And as may be supplemented by any **Local Arrangements** as set out in **Schedule 4**.
- 4.2 Without prejudice to any other remedies available, if the Supplier fails to provide the Services in accordance with the Specification and the Service levels are not met then the Customer shall be entitled to Service Credits calculated in accordance with the Service Level Agreement in **Schedule 6**
- 4.3 The Supplier will be responsible for providing all Temporary Agency Workers (either himself or through Agencies) as ordered from time to time from the Supplier by the Customer. This will include administrative and clerical, operational, social care, and professional including teaching and education ancillary staff and technical categories of Agency staff.
- 4.4 The Supplier shall in the provision of the Services ensure that where the Supplier is acting solely as a supply chain manager it shall not supply Temporary Agency Workers from its own register of Workers. The Supplier shall be permitted to utilise associated or subsidiary companies as a source of supply for the Services subject to the following additional conditions:

- 4.4.1 In sending requests for Temporary Agency Workers associated or subsidiary companies do not receive more favourable treatment or terms than other agencies in the Supplier's supply chain and
- 4.4.2 Any quotations thus received by the Supplier are treated equally and without any discrimination.
- 4.5 In the event that an Agency has failed an audit, or is unable to meet requirements of the Contract or, in the case of inherited suppliers, refuses to accept the terms and conditions of the Supplier for appointing agencies, such Agency will be removed from the supply chain.

## **5. CHARGES**

- 5.1 In consideration of the provision of the Services in accordance with the terms of the Framework Agreement and the Order, the Customer shall pay the Charges calculated in accordance with the **Pricing Schedule** of the Framework Agreement and published from time to time by ESPO therein and in accordance with the invoicing procedure and payment profile specified in **Schedule 3**
- 5.2 Payment shall be made within fourteen (14) calendar days of receipt by the Customer (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of **Schedule 3**, from the Supplier.
- 5.3 Where the Supplier enters into a sub-contract with an Agency for the purposes of performing its obligations under this Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the Agency to be within five (5) Working Days after the Supplier has been paid, and that in total, payment does not exceed twenty one (21) days from the issue of an undisputed invoice. The Supplier shall provide the Customer with evidence that it is acting in compliance with this clause as part of the Management Information that it is required to provide to the Customer in accordance with clause 8.1.2 of this Agreement. ESPO reserves the right to audit, carry out spot checks and take all other steps it considers necessary in respect of claims of late payment by the Supplier.
- 5.4 The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.

## **6. RECOVERY OF SUMS DUE**

- 6.1 If any undisputed sum of money shall be due from the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any other agreement with the Customer.

## **7. IMPLEMENTATION PLAN**

- 7.1 The Supplier shall provide the Services in accordance with any Implementation Plan as agreed with the Customer as attached hereto as **Schedule 5**.
- 7.2 The Supplier shall deliver a draft Implementation Plan to the Customer on or before the commencement of the Services to the Customer. The draft Implementation Plan shall be sufficiently detailed as is necessary to manage the implementation of the Services effectively. Once agreed with the Customer (agreement not to be unreasonably delayed or withheld) the Supplier shall monitor its performance jointly with the Customer against the Implementation Plan.

## **8. MONITORING AND REPORTING**

- 8.1 The Supplier shall:
- 8.1.1 appropriately manage the provisions of the Services that it provides under this Agreement;
  - 8.1.2 be required to provide to the Customer such management information as it reasonably requires including but not limited to the information identified in **Schedule 7** and the Framework Agreement.
  - 8.1.3 on reasonable notice grant to the Customer's external and internal auditors access to any relevant data or documentation relating to the Framework Agreement and Order and the supply of the Services for the purpose of carrying out an audit.
  - 8.1.4 Institute, keep and maintain proper and sufficient records in connection with business conducted under this Agreement and for the continuance of this Agreement and for a period of twelve (12) months thereafter allow any nominated representative of the Customer (including the Customer's Authorised Representative, the chief financial officer and the internal and external auditors of the Customer) reasonable access and co-operation with regard to such records.

## **9. SERVICE LEVELS**

- 9.1 The Supplier shall provide the Services to meet or exceed the service levels contained in any Service Level Agreement forming part of this Customer Agreement as attached hereto as **Schedule 6**.



## 10. SUPPLIER'S PERSONNEL

- 10.1 The Supplier shall select, employ, train, furnish and deploy in and about the performance of the Services only such persons as are of good character and who are appropriately skilled and experienced.
- 10.2 The Supplier shall comply with any statutory requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997. The Supplier shall ensure that all employees, servants or agents engaged by him in the discharge of his obligations under this Agreement who may be required to work within school premises, or other sites occupied by children and/or vulnerable adults shall be appropriately checked by the Disclosure and Barring Service (DBS) and shall upon reasonable request produce evidence of such satisfactory disclosure.
- 10.3 The Supplier and the Supplier's sub-contractors, staff and agents shall comply with all reasonable requirements of the Customer whilst present at the Customer's premises.
- 10.4 The Supplier shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of **Conditions 10.1, 10.2 and 10.3** above.
- 10.5 The Supplier, its agents, sub-contractors and suppliers shall employ sufficient staff to ensure that the Services are provided at all times in accordance with this Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to provide the Services in accordance with this Agreement during staff holidays or absence through sickness or any other cause.
- 10.6 The Customer, acting reasonably, shall have the right to refuse access to its premises at any time to any employee of the Supplier, its agents, sub-contractors or suppliers. The exercise of this right shall not diminish the Supplier's obligation of performance arising under this Agreement.
- 10.7 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of its staff nor the Agencies nor the Agencies' 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 the Supplier's staff and the duties owed to the Customer under the provisions of this Agreement.
- 10.8 The Supplier shall promptly notify and provide full particulars to ESPO or the relevant Customer if such conflict referred to in **Condition 10.7** above arises or may have reasonably been foreseen as arising.
- 10.9 The Customer reserves the right to terminate this Agreement 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 this Agreement. The action 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.
- 10.10 This clause 10 shall apply during the Term and until whichever is the later of the termination or expiry of this Agreement and the termination or expiry of the last Customer Agreement..

## **11 DEFAULT IN PERFORMANCE OF THE SERVICE**

- 11.1 The Supplier shall respond promptly to all complaints, oversights and omissions and shall immediately make good any default on its part at its own expense.
- 11.2 Where Services are required or ordered under the Agreement and the Supplier fails to provide such Services or any element thereof in accordance with the Agreement, or in the event of breach or default by the Supplier (which ESPO or the Customer has invited the Supplier to remedy but which has not been remedied) ESPO or the Customer may take whatever action it reasonably considers necessary or appropriate to effect a suitable remedy which may include (but not be limited to) the customer (or ESPO on the customers behalf) terminating part or all of the Agreement or obtaining substituted provision of the Services to be supplied under this Agreement. This shall be without prejudice to any other remedy for breach of this Agreement and shall be in addition to and without prejudice to the provisions of **Condition 15** hereof.
- 11.3 In taking such above mentioned remedial actions ESPO and/ or the Customer shall be entitled to claim from the Supplier any reasonable and demonstrable excess of costs so directly incurred by ESPO and/ or the Customer over the rates contained in the Pricing Schedule together with all associated costs, charges and expenses as direct losses (including professional fees and VAT). Such amount shall be due as a debt from the Supplier to ESPO or the Customer and payable within 28 days of demand.
- 11.4 Any dispute as to the reasonableness of any debt owed to ESPO and/or the Customer under **Condition 11.3** may be referred for determination in accordance with **Condition 29**.
- 11.5 The rights of ESPO and/ or the Customer under any of the **Conditions 11.1 to 11.4** shall be without prejudice to its rights under any other provision of this Agreement.

## **12 WARRANTIES AND REPRESENTATIONS**

- 12.1 The Supplier warrants and represents that:
- 12.1.1 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - 12.1.2 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;

## **13 INSURANCE AND INDEMNITY**

- 13.1 The Supplier shall indemnify and keep indemnified the Customer against all losses, damages, costs, charges and expenses at any time incurred or suffered by the Customer and arising directly from any breach by the Supplier of this Agreement, or any of its obligations to the Customer, or from any negligence, negligent act, negligent omission, default, or breach of contract, on the part of the Supplier or, its employees, and provided always that the Supplier's liability to indemnify the Customer shall be reduced proportionately to the extent that an act or omission the Customer, its servants or officers may have contributed to the said death, loss, injury or damage. The Supplier shall effect and maintain at all times during the continuance of this Agreement and for twelve months thereafter (or such longer period as, depending on the basis of claims covered by the insurance, will effect cover for the limitation period applicable to any relevant claim):
- 13.1.1 Public Liability insurance in the minimum sum of ten million pounds

13.1.2 Employers Liability insurance of not less than ten million pounds

13.1.3 Professional Indemnity insurance of not less than five million pounds

The levels of insurance cover stipulated for Public Liability and Employer's Liability shall be in respect of any one claim, and without limit, in respect of the number of claims made in any 12 month period of insurance, such insurance to be effected with a reputable insurance company and evidenced immediately upon any reasonable demand by the ESPO Contract Manager to do so.

13.2 Temporary Agency Workers engaged via this Agreement by the Supplier will be insured under the Supplier's own Employer's Liability and Public Liability insurance policies whilst under its direction and control.

13.3 Temporary Agency Workers engaged via this Agreement will be insured under the Customer's own Employer's Liability and Public Liability insurance policies whilst under its direction and control, except where the individual Temporary Agency Worker holds his or her own Public Liability insurance

13.4 Save to the extent that the cost, liability, expense or demand is caused by the Customer the Supplier shall procure and produce upon demand an indemnity from each Agency whereby the Agency indemnifies the Customer against each and every cost, liability, expense or demand (including redundancy payments or protective awards) and any liability for wrongful dismissal or unfair dismissal or otherwise incurred by the Customer in connection with any temporary placement under the terms of this Agreement, including without limitation any such matter relating to

13.4.1 Any claim, cost or proceeding arising directly as a result of the Agency's failure to co-operate or provide information in relation to any Temporary Agency Worker;

13.4.2 The Supplier's failures to pay the Agency and/ or the Agencies failure to pay any Temporary Agency Worker any sums properly due;

13.4.3 Any claim by a trade union, staff association or staff body in respect of any or all of the Temporary Agency Workers arising out of the Agency's failure to comply with its legal obligations;

13.4.4 Any circumstance where the Customer is deemed to be the employer of any Temporary Agency Worker engaged by the Customer under this Agreement. The Supplier will use all reasonable endeavours to alert the Customer to any circumstances where a Temporary Agency Worker might be deemed to have become an employee of the Customer.

13.5 Save to the extent that the claim, cost or proceeding is caused by the Customer, the Supplier shall indemnify the Customer against any claim, cost or proceeding arising directly as a result of:

13.5.1 The Supplier's failure to pay the Agency;

13.5.2 Any claim by a trade union, staff association or staff body in respect of any or all of the Temporary Agency Workers arising out of the Supplier's failure to comply with its legal obligations;

13.5.3 Any circumstance where the Customer is deemed to be the employer of any Temporary Agency Worker engaged by the Customer under this Agreement.

13.5.4 Provided that if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (in this clause referred to as "the Claim"), the Customer shall:

as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail

not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Customer may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Supplier, but without obtaining the Supplier's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;

give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, directors, employees, agents, representatives or advisers, and to any relevant accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

subject to the Supplier providing security to the reasonable satisfaction of the Customer to the Customer against any claim, liability, costs, expenses, damages or losses which may be incurred, permit the Supplier to take over the handling of the Claim and if the Supplier considers it appropriate to compromise or settle the Claim.

- 13.6 Neither party shall do anything or refrain from doing or omit doing anything, which might render any of the foregoing insurance policies void or voidable.
- 13.7 The Supplier shall ensure that Agencies are bound by the requirements of this Condition 13. In instances where the Customer agrees variations in the levels of insurances held by Agencies this will be recorded in the Customer Agreement.
- 13.8 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall exclude, restrict or limit either party's liability for death or personal injury resulting from its negligence.
- 13.9 Notwithstanding **Condition 13.2** above, the parties liability to each other under or in connection with this Agreement and the Services or otherwise, whether arising under contract, tort, negligence, breach of statutory duty or otherwise shall be the levels of cover specified in **Condition 13.1** where a claim falls within the Service Providers' insurance policy, or where a claim is not required to be covered by an insurance policy, [£1 million (one million pounds)].
- 13.10 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.
- 13.11 Neither party shall other than as a consequence of fraud or wilful default by that party, be liable for any claim by the other party for loss of profit or revenue, consequential, economic, special or indirect loss.
- 13.12 For the avoidance of doubt the Supplier will not be responsible for the acts and omissions of Temporary Agency Workers under the direction, supervision and control of ESPO or the Customer.

## **14 INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

- 14.1 The Supplier shall fully indemnify and hold the Customer harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other Intellectual Property Rights including any wrongful use of confidential information by the use or possession of the Services or any part thereof

provided by the Supplier or licensed by the Supplier to the Customer under the Agreement subject to:

- 14.1.1 the Customer promptly notifying the Supplier of any alleged infringement and, subject to **sub-condition 14.1.3** below, allowing the Supplier at their own expense to conduct all negotiations for settlement or litigation;
  - 14.1.2 the Customer making no admission without the Supplier's written consent unless and until the Supplier shall have failed to take over the conduct of the negotiations or litigation;
  - 14.1.3 the conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having given the Customer such reasonable security as the Customer may require for the compensation, damages, costs and expenses for which the Customer may become liable. The Customer at the Supplier's expense shall give the Supplier all available assistance.
- 14.2 If the Services or any part thereof becomes, or in the Supplier's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under **sub-condition 14.1** above, the Supplier shall at its own expense negotiate to obtain the right for the Customer to continue to use the infringing items, if necessary by replacing, remove or modifying them, but without reducing their quality or ability to meet the Customer's requirements as specified by the Agreement.
- 14.3 The Supplier shall indemnify the Customer against all losses, costs, damages and expenses whatsoever during the period that the Customer is deprived of the use of the Services by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by the issue of a Change Request which shall not entitle the Supplier to any addition to the Charges or any extension of the Order lead time.
- 14.4 The Supplier shall not be liable under **sub-condition 14.1 and 14.2** above for any such infringement or alleged infringement which arises as a result of the inclusion in the Services of any element supplied by the Customer or any use of the Services for a purpose or in a manner different from that specified in, or reasonably to be inferred from, the Agreement.

## **15 TERMINATION**

- 15.1 Either party may at any time by notice in writing terminate this Agreement as from the date of service of such notice:-
- 15.1.1 if there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the other party or its Parent Company; or
  - 15.1.2 the other party being an individual, or where the other party is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or
  - 15.1.3 the other party, being a company, passes a resolution, or the Court makes an order that the other party or its Parent Company be wound up otherwise than

for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the other party or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the other party or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

- 15.1.4 the Customer may at any time by notice in writing terminate this Agreement forthwith, if the Supplier is in Default of any material or fundamental breach of any obligation under this Agreement.
- 15.2 Throughout the Term the Customer shall monitor the Supplier's financial standing against the Supplier's financial position taken on the Commencement Date. In the event that the Supplier's financial position falls below the position recorded on the Commencement Date the Customer shall discuss the Supplier's circumstances with the Supplier. The Customer reserves the right to terminate this Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer) there is a material detrimental change in the financial standing of the Supplier which:
  - 15.2.1 adversely impacts on the Supplier's ability to provide the Services under this Agreement; or
  - 15.2.2 could reasonably be expected to have an adverse impact on the Supplier's ability to provide the Services under this Agreement.
- 15.3 Either party may at any time by notice in writing terminate this Agreement forthwith, if the other party is in Default of any obligation under this Agreement and:
  - 15.3.1 the Default is capable of remedy and the other party shall have failed to remedy the Default within thirty (30) days of written notice to the that party specifying the Default and requiring its remedy; or
  - 15.3.2 the Default is not capable of remedy.
- 15.4 Termination in accordance with this **Condition 15** shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party.
- 15.5 In the event of any termination of this Agreement whether under this **Condition 15** or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Customer under this Agreement or otherwise, the Customer shall be entitled to obtain a refund of any Charges paid by the Customer in respect of any Services which have not been performed by the Supplier in accordance with the terms of this Agreement.

## **16 CONFIDENTIALITY**

- 16.1 Each Party:
  - 16.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
  - 16.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

- 16.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Agreement:
- 16.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with the Agreement and only to the extent necessary for the performance of this Agreement;
  - 16.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-contractors or agents otherwise than for the purposes of this Agreement.
- 16.3 Where it is considered necessary in the opinion of the Customer, the Supplier shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Supplier shall ensure that its staff, sub-contractors and agents are aware of the Supplier's confidentiality obligations under this Agreement.
- 16.4 The Supplier shall not use any Confidential Information it receives from the Customer otherwise than for the purposes of this Agreement.
- 16.5 The provisions of **Conditions 16.1 to 16.4** shall not apply to any Confidential Information received by one Party from the other:-
- 16.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
  - 16.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - 16.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 16.5.4 is independently developed without access to the Confidential Information; or
  - 16.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR pursuant to **Condition 18**.
- 16.6 Nothing in this Condition shall prevent the Customer from:
- 16.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Customer's accounts
  - 16.6.2 disclosing any Confidential Information obtained from the Supplier to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Agreement;
  - 16.6.3 provided that in disclosing information under **Condition 16.6.2** the Customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.
- 16.7 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Agreement or any Order or disclose any information relating to or contained in the Agreement to any person who is not engaged in the performance of the Agreement.
- 16.8 In the event that the Supplier fails to comply with this **Condition 16** the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 16.9 The provisions of this **Condition 16** shall apply notwithstanding termination of the Agreement.

## **17 DATA PROTECTION ACT 1998**

- 17.1 The Parties shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998.
- 17.2 The Parties shall not disclose Personal Data to any third parties other than:
- 17.2.1 to staff, sub-contractors and agents to whom such disclosure is reasonably necessary in order to perform the Agreement; or
- 17.2.2 to the extent required under a court order
- provided that disclosure under **Condition 17.2.1** is made with the approval of the other Party and subject to written terms no less stringent than the terms contained in this Condition and that the Party shall give notice in writing to the other Party of any disclosure under **Condition 17.2.2** immediately it is aware of such a requirement.
- 17.3 The Parties shall indemnify and keep indemnified each other against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this condition by the Parties and/or any act or omission of any staff, sub-contractor or agent.
- 17.4 The Parties are required to comply with the obligations set out in Principle Seven of the Data Protection Act 1998.
- 17.5 In this condition Personal Data means personal data as defined in the Data Protection Act 1998 which is supplied by one Party to the other therein or obtained in the course of performing the Agreement.

## **18 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)**

- 18.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.
- 18.2 The Supplier shall and shall procure that its sub-contractors shall;
- 18.2.1 transfer any request for information to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information (or such other period as stipulated by the Customer requesting the information); and
- 18.2.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within seven (7) Working Days (or such other period as the Customer requesting the information); and
- 18.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 18.3 The Customer shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;
- 18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and
- 18.3.2 is to be disclosed in response to a request for information and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.
- 18.4 The Supplier acknowledges that the Customer may be obliged under the FOIA or the EIR to disclose information;



- 18.4.1 without consulting the Supplier; or
  - 18.4.2 following consultation with the Supplier and having taken its views into account.
- 18.5 The Supplier shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 18.6 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with **Condition 18.4**.

## **19 SOCIAL RESPONSIBILITY & HEALTH AND SAFETY**

- 19.1 The Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 19.2 The Supplier shall take all reasonable steps to secure the observance of clause 19.1 by all Staff employed in performance of this Agreement.
- 19.3 The Supplier shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation or any other law, enactment, order or regulation.
- 19.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of this Agreement being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Supplier's staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Supplier and any of the Supplier's staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 19.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or the Supplier's staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the Customer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment ESPO may have been ordered or required to pay to a third party.
- 19.6 The Supplier must ensure that all written information produced or used in connection with this Agreement is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 19.7 The Supplier acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Good and/or Services and the Supplier shall provide all necessary assistance and information to ESPO as may be required in relation to the performance of an impact analysis by ESPO. The Supplier shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by ESPO.

- 19.8 The Supplier shall ensure that all employees of the Supplier are eligible to work in the United Kingdom.
- 19.9 The Parties shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving goods or services from, the performance of this Agreement and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.
- 19.10 The Customer shall be entitled at the Customer's expense to inspect such books, accounts and records belonging to the Supplier as are necessary to demonstrate compliance with **Conditions 19.1 to 19.9** above.
- 19.11 The cost to the Supplier of complying with this **Condition 19** shall be included in the Charges.

## **20 CORRUPT GIFTS AND PAYMENTS**

- 20.1 The Customer shall be entitled to cancel and terminate the Agreement and to recover from the Supplier the amount of any loss resulting from such cancellation or termination if the Supplier or any person on its behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of the Agreement or any other contract with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Customer or if like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Customer the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.
- 20.2 The decision of the Customer shall be final and conclusive in any dispute, difference or question arising in respect of:
- 20.2.1 the interpretation of this **Condition 20**; or
- 20.2.2 the right of the Customer under this **Condition 20** to terminate the Agreement

## **21 FORCE MAJEURE**

- 21.1 For the purposes of the Agreement the expression Force Majeure shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- 21.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 21.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall

forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

- 21.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 21.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## **22 HEALTH AND SAFETY**

- 22.1 Both Parties shall comply with the provisions of the Health & Safety at Work Act 1974, the Management of Health & Safety at Work Regulations 1999 and the Provision and Use of Work Equipment Regulations 1998. All other health and safety assessments required by specific regulation and codes of practice relating to the Suppliers business must also be strictly applied. The Supplier is to have monitoring, inspection, review and, where appropriate, health surveillance arrangements in place to meet its responsibilities and may be required to produce documentation to prove that procedures have been carried out in accordance with the regulations upon reasonable request. All Temporary Agency Workers must be aware of and abide by Health & Safety standards and be aware of their duty of care to other employees and members of the public. Temporary Agency Workers shall adhere to a Customer's health and safety requirements at all times and work within the Customer's culture and values.
- 22.2 Both Parties shall in performing their obligations under this Agreement adopt safe methods of work in order to protect the health and safety of its own employees and to the extent applicable the employees of the Customer and all other persons, including members of the public provided that the Customer shall be responsible for the Health and Safety of the Temporary Agency Workers whilst they are under the Customer's control and shall supply the Supplier with any pertinent Health and Safety information relating to any Services. Save to the extent that the losses, costs, or damages are caused or contributed to by ESPO or the Customer, the Supplier shall indemnify ESPO and the Customer for any direct losses, costs, or damages, caused to ESPO and/ or the Customer for any breaches of health and safety laws, policies, or codes of practice, by the Supplier.
- 22.3 The Supplier shall request that any Agencies used are bound by the requirements of this **Condition 22**.
- 22.4 In respect of each Assignment, the Customer shall provide the Supplier full details of:
- 22.4.1 the intended duties of the Temporary Agency Worker;
  - 22.4.2 any special skills which it requires the Temporary Agency Worker to have including any experience, training, qualifications or authorisations including those required by a professional body or by law;
  - 22.4.3 any risks to health and safety known to the Customer and any steps that may have been taken to prevent or control such risks;
  - 22.4.4 any specific health and safety information which the Customer wishes to be passed on to the Temporary Agency Worker.

22.5 The Customer acknowledges that neither the Supplier nor any Agency has the obligation (or the opportunity) to supervise, direct or control the manner, time or place of any Temporary Agency Worker's work. The Customer shall provide sufficient supervision, direction and control over the Temporary Agency Worker throughout the Assignment.

### **23 TUPE**

23.1 The Customer warrants that it has to the best of its ability prior this agreement given to the Supplier sufficient and accurate information regarding each and every Relevant Employee as is necessary to enable the Supplier to assess fully the impact of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (or as may be amended) and the consequences for the Supplier

23.2 In the event that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or as may be amended) apply upon expiry or termination of this Agreement or any of the contracts of employment of any person employed or engaged by the Supplier shall be transferred from the Supplier to any third party (Replacement Supplier) engaged by Customer to perform any of the Services or any service equivalent or similar to any of the Services the Supplier shall indemnify and keep indemnified Customers and the Replacement Supplier(s) from and against all employment liabilities arising directly as a result of the acts or omissions of the Supplier and which relate to claims brought by any of the employees or by a Trade Union or other employee representative against Customers or any Replacement Supplier(s) in respect of or in any way relating to any period on or prior to the date of the employee transfer envisaged by this **Condition 23.2**. For the avoidance of doubt, this includes, but is not limited to, any claim for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise, whether brought in an Employment Tribunal or Civil Court, and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Customer or any Replacement Supplier

23.3 For the purposes of this clause "Relevant Employee" means person employed or engaged by the Customer or by any third party engaged by Customer to perform any of the Services or any service equivalent or similar to any of the Services prior to the commencement of this Agreement.

### **24 TRANSFER AND SUB-CONTRACTING**

24.1 The Agreement is personal to the Supplier. The Supplier shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the prior consent in writing of the Customer.

24.2 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

### **25 AMENDMENTS TO THE AGREEMENT**

25.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the respective Authorised Representative of the Customer and by a duly authorised representative of the Supplier. No variation of this Agreement shall limit or remove the Supplier's obligations under the Framework Agreement.

### **26 COMMUNICATIONS**

26.1 Any notice which either party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other party at its address specified in the Order form either by (a) hand, (b) first class post or recorded

delivery or, (c) facsimile, or (d) electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

- 26.2 Either party may change its address for service by notice as provided in this **Condition 26.1**.

## **27 SEVERABILITY**

- 27.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

## **28 WAIVER**

- 28.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 28.2 A waiver of any Default shall not constitute a waiver of any subsequent Default whether of the same or a different nature.
- 28.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of **Condition 26**.

## **29 DISPUTE RESOLUTION**

- 29.1 If any dispute or difference of any kind whatsoever shall arise between the Customer and the Supplier in connection with or arising out of this Agreement or the carrying out of the Services, including any disputes as to any decision, opinion, instruction, direction, certificate or valuation given by any officer of the Customer (whether during the progress of this Agreement or after its completion and whether before or after the termination, abandonment or breach of this Agreement, the Parties shall attempt in good faith to negotiate a settlement and to this end the respective Authorised Representative of the Customer and the Supplier shall meet to endeavour to resolve the conflict.
- 29.2 If the respective Authorised Representatives of the Customer and the Supplier fail to reach agreement within fifteen (15) Working Days of either Party notifying the other of the dispute the dispute shall be escalated to a discussion between the relevant Service Director of the Customer and the Managing Director (or equivalent) of the Supplier for resolution.
- 29.3 If the Parties fail to reach agreement within twenty (20) Working Days of reference to the Service Director and the Managing Director (or equivalent) the dispute shall be referred to the ESPO Contract Manager for mediation.
- 29.4 If the Parties remain unable to resolve the dispute within thirty (30) Working Days of the Mediator being appointed, or such longer period as may be agreed, then either Party may seek redress via the Courts.

## **30 ACTION UPON EXPIRY OR TERMINATION**

- 30.1 On expiry or termination of this Agreement the Parties will comply with the provisions of **Schedule 8** in order to maintain an orderly continuation of the Services.

**31 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

31.1 With the exception of ESPO which shall have the right to enforce the provisions set out in the Framework Agreement in relation to the payment of retrospective rebate neither party intends to confer any other right or benefit upon a third party and for the avoidance of doubt save as excepted herein the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

**32 LAW AND JURISDICTION**

32.1 This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

32.2 This Agreement is binding on the Customer and its successors and assignees and the Supplier and the Supplier’s successors and permitted assignees.

**33 ENTIRE AGREEMENT**

33.1 This Agreement together with the Framework Agreement and the Order constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referenced or referred to herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

**EXECUTED AS A DEED BY THE PARTIES**

Signed as a Deed on behalf of [ ] ( the Supplier )

By..... in the capacity of

.....

and.....in the capacity of

.....

The Common Seal of **BRACKNELL FOREST BOROUGH COUNCIL ( the Customer )** was hereunto affixed:

By..... in the capacity of BOROUGH SOLICITOR

## **SCHEDULE 1 to the CUSTOMER AGREEMENT PROTOCOL**

ESPO will maintain overall responsibility for the performance management, review and renewal of the Framework Agreement.

Customers will be responsible for managing their own local arrangements including contract reviews for their own service delivery needs.

As such Customers will be required to:

- a) Agree the local implementation of the provision of the Services and integration of electronic systems between their own organisation and the Supplier.
- b) Identify a named officer (Contract Manager) who shall be a single point of contact for the Supplier and ESPO.
- c) Agree their own (tiered) Agency lists for Temporary Staffing requirements (where applicable) and any variations to the performance management tool used to monitor and manage Agencies.
- d) Specify their own Job Descriptions and Person Specifications for Temporary Agency Workers.
- e) Communicate to the Supplier any organisational policies or procedures that the Supplier, Agencies or Temporary Agency Workers will be required to observe in the delivery of the Services including any requirements for the clearance checking of Temporary Agency Workers including DBS requirements.
- f) Communicate any requirements for access to data relating to Temporary Agency Workers.
- g) Confirm the suitability of the Key Performance Indicators detailed in the Service Level Agreement forming part of the Customer Agreement.
- h) Specify individual requirements for the provision of Management Information reporting.
- i) Specify individual requirements for data release to law enforcement agencies.
- j) Be responsible for the payment of invoices issued by the Supplier in respect of the Services delivered to them and to specify any local variations to invoicing requirements.
- k) Agree details of their own baseline against which savings will be calculated.
- l) Attend overarching contract review meetings as organised by ESPO from time to time.
- m) Manage locally any performance issues or continuous improvement actions and to escalate to ESPO only those matters that frustrate the local arrangements.
- n) Note that ESPO shall need to access all management information for the purpose of managing the Agreement.

If the Services include strategic services within the meaning set out in the Framework Agreement then, in addition to the obligations listed above, the Customer will be required to advise on the use of Job Centre Plus or any other local procurement initiatives relating to the selection of Agencies, together with any requirements for local work with other Customers on pay rates to Temporary Agency Workers.

Any service delivery requirements that are locally agreed relating to the above points and any other variations to the Customer Agreement including Contract Standards and the Service Level Agreement should be recorded in **Schedule 4 (Local Arrangements)** to this Customer Agreement

## **SCHEDULE 2 to the CUSTOMER AGREEMENT**

### **SERVICES DESCRIPTION (Service Delivery proposal offered by the Tenderer) and**

#### **SPECIFICATION (Specification provided in the Invitation to Tender)**

The Specification document consists of the following:-

The MSTAR2 Core Specification (copy at Schedule 2 to the Customer Agreement) shall apply to this Contract.

### **MSTAR<sup>2</sup> CORE SPECIFICATION**

In general terms all Customers want a similar service delivered in respect of a Managed Service for the provision of Temporary Agency Workers. However, as this is a national framework available for use by a range of Customers (County, Unitary, Metropolitan, and District Council Customers as well as Central Government, educational establishments, Housing Associations, wider public sector bodies such as NHS, Fire & Rescue Services, Police and Third Sector groups such as charities), suppliers must recognise that the Customers will have some differing needs in service delivery, and therefore they will need to offer a degree of flexibility and tailoring.

This core specification has been established to describe the fundamental Services and deliverables that are common requirements for all customers and that a Managed Service Provider therefore must be able to provide.

#### **2.1 General requirements**

- 2.1.1 The Managed Service Provider must be able to supply and manage the effective provision of Temporary Agency Workers across the Customer organisation.
- 2.1.2 The Managed Service Provider must be able to supply Temporary Agency Workers themselves or through Agencies:
  - 2.1.2.1 for all Assignments; this will be up to 24 hours a day, seven days a week, 365 days a year (dependent upon the type of Temporary Agency Worker required)
  - 2.1.2.2 in all skill sets required across the entire Customer organisation (a list giving a broad overview is enclosed at Appendix C of this Invitation to Tender)
  - 2.1.2.3 in a timely manner i.e. in accordance with the timescales set out in the SLA (see Schedule 6 of the Customer Agreement) or as otherwise for individual service delivery or Assignments
- 2.1.3 The Managed Service Provider should fill the vacancy with the Candidate that most closely meets the job description and person specification (or equivalent) as provided by the Hiring Manager with any adjustments made to make it a free and fair process.
- 2.1.4 The Managed Service Provider must deliver a service which meets the needs of the Customers to which they supply Services as described above; these may include county, unitary, metropolitan borough or district Council Customers, wider public sector bodies, Central Government, NHS and third sector groups.
- 2.1.5 In doing this the Managed Service Provider must deliver, to the Customer, Services which meet the needs of the various parties within the Customer organisation e.g. the HR department, the procurement team, and the Hiring Managers.



- 2.1.6 The Managed Service Provider is required to ensure that their staff provide Temporary Agency Workers with access to work in a fair and non-discriminatory manner
- 2.1.7 The Managed Service Provider must deliver a service which represents and continues to represent excellent value for money in light of pressures on spending that continue to exist within the public sector.
- 2.1.8 Regardless of the service model proposed, the Managed Service Provider must establish a process of year-on-year improvement, by setting measurement tools at the beginning of each year of the Contract in agreement with the customer. The Managed Service Provider shall be mindful of future developments and ensure that any service offering will be able to be further developed to meet future requirements as required, which will be measured against the relevant year's baseline.
- 2.1.9 Service delivery proposals offered must include direct cost savings that are delivered transparently on a year-on-year basis as well as indirect cost savings to be achieved through process efficiencies amongst other efficiencies. Savings should be calculated on a 2014 / 2015 baseline initially (or other appropriately current basis) and reviewed and re-set at the end of each year in consultation with the customer.

## **2.2 Recruitment and management of agencies**

- 2.2.1 Recognising that the service delivery model proposed will vary, where the Managed Service Provider is using Agencies to provide Temporary Agency Workers to fulfil Assignments, the Managed Service Provider shall be the interface for all new and existing Agencies wishing to supply Temporary Agency Workers to the Customer. The Managed Service Provider should actively source (and work with Agencies to ensure provision of) an accessible pool of Candidates to meet the Customer's needs.
- 2.2.2 Where applicable, the Managed Service Provider shall operate a structure of one or more Tiers of Agencies for the Customer. Where a tiering structure is offered, the Managed Service Provider should have the capability and capacity to vary the tiering structure dependent upon the structure and needs of the Customer, including but not limited to varying the Agencies and tiering across different categories of staff and the numbers of Agencies in the various Tiers.
- 2.2.3 Where a tiering structure is in place, the Customer and the Managed Service Provider shall agree which Agencies shall be placed and retained in which Tier, based upon Key Performance Indicators (KPIs) agreed with the Managed Service Provider.
- 2.2.4 The Customer reserves the right to add, keep or remove an Agency from the Tiers where such a structure is offered, and to specify the numbers of Agencies required for particular skill sets.
- 2.2.5 If the Managed Service Provider also wishes to be a supplier of Temporary Agency Workers they may with the agreement of the Customer be appropriately included in the Tiers and shall also be tiered, reviewed and managed based on their performance. Where the Customer wishes the Managed Service Provider to compete on an equal basis with all other Agencies (all having an equal opportunity to supply), the Managed Service Provider will be required to demonstrate full neutrality of provision in this event.
- 2.2.6 The Managed Service Provider must operate formal processes for:
  - 2.2.6.1 procuring, managing , reviewing performance and refreshing tiering of tiered Agencies (where tiers are in operation)

- 2.2.6.2 delivering Services against service level agreements and measuring performance
- 2.2.6.3 reviewing, negotiating and agreeing Agency margins
- 2.2.7 Where Agencies are used, the Managed Service Provider shall be responsible for ensuring all Agencies utilised meet the required standards and policies of the Customer. The Managed Service Provider shall vet potential Agencies, both in terms of business and financial suitability when signing them up to supply Services through the Managed Service Provider. The Managed Service Provider shall re-assess Agencies on an annual basis and at the individual request of the Customer.
- 2.2.8 Where Agencies are used, the Managed Service Provider shall be responsible for carrying out bi-annual audits and/or spot checks when specified by the Customer on Agency compliance with both legislative requirements and contract compliance and report to the Customer any anomalies in the form of an exception report. For some categories these audits and / or spot checks may be required more regularly, for example, the social care arena. The Managed Service Provider shall operate a process for addressing different levels of anomalies, including implementation of a plan to address the issues, and suspension from use for serious breaches. Where an anomaly is sufficiently serious to cause suspension, the Customer shall be notified immediately.
- 2.2.9 The Managed Service Provider shall have arrangements in place to ensure that they and Agencies, where applicable, understand and recognise their obligations under the Framework and that Agencies work with the Managed Service Provider to fulfil the Contract requirements.
  - 2.2.9.1 The Managed Service Provider shall operate a documented process for managing and working with the Agencies so that they can work together to fulfil the Contract requirements.
  - 2.2.9.2 The Managed Service Provider shall carry out, as a minimum, bi-annual reviews of Agency performance. In the case of social care agencies those reviews should be quarterly. Reviews will be in relation to the KPIs and performance levels agreed with the Customer and the managed Service Provider shall provide the outcome and details of such reviews to the Contract Manager, where required/requested (this shall be agreed in detail when defining the Service Level Agreement).
  - 2.2.9.3 The Managed Service Provider shall ensure that any feedback received from the Customer is shared with the Agency supplying the Temporary Agency Worker so that the Agency can learn from feedback given and act upon it. The Managed Service Provider shall also seek feedback from Agencies to identify issues with the Managed Service Provider and / or the Customer that are affecting Services or provide opportunities for savings.
  - 2.2.9.4 The Managed Service Provider is responsible for supplying regular updates and feedback to Agencies within the Tiers about the Customer so that Agencies can understand and aim to meet the needs of the Customer. For example this may include providing information on numbers and types of Temporary Agency Workers required, known peak requirements and known specific skill sets, in order that Agencies can seek to have the right calibre and skill sets of staff available for the Customer when they are needed.
  - 2.2.9.5 Any failures by the Managed Service Provider and the Agencies in their performance shall be addressed immediately by the Managed

Service Provider and to the satisfaction of the Customer. At no time will the Customer accept liability for poor performance by any Agency and the Managed Service Provider will be solely responsible for the resolution of the Customer's complaints to the Customer's satisfaction. Agencies may be suspended on a temporary or permanent basis if they fail to comply with performance and/or audit requirements.

- 2.2.9.6 The Managed Service Provider will provide Agencies with an appropriate means of contacting them, whether to register interest in supplying Temporary Agency Workers or to raise queries and resolve issues. Such means of contact shall be by telephone and/or email and where charges apply, these shall not be charged at premium rates.
  - 2.2.9.7 The Managed Service Provider must have an adequate complaints procedure in place for any complaints from Agencies. The Contract Manager shall be promptly informed of complaints and the Managed Service Provider's mechanisms for resolution, a summary of which must be provided as part of the performance review process.
  - 2.2.9.8 In the interest of equal treatment and objectivity, all Agencies shall be engaged on the same terms and conditions of supply. Exceptions to this are to be agreed by the Managed Service Provider with the Contract Manager at the discretion of the Customer. The terms and conditions between the Agencies and the Managed Service Provider shall be no less favourable than those afforded to the Managed Service Provider under the framework (except in relation to charge rates which may vary dependent upon the Managed Service Provider's service delivery model).
  - 2.2.9.9 It is recognised that there may need to be some operational variation of the terms and conditions of supply due to the nature of the Temporary Agency Worker, i.e. self-employed individuals and those provided via an Agency, but the Managed Service Provider needs to ensure that materially the agreements are consistent and fair in their approach
  - 2.2.9.10 The Managed Service Provider must make the necessary checks to ensure self-employed workers are compliant with the Intermediaries legislation IR35.
- 2.2.10 Where Agencies are used, the Managed Service Provider shall, at the request of the Customer, arrange or support the arrangement of a 'meet the buyer' session to enable Agencies to hear from and raise questions with the Customer directly.
- 2.2.11 The government recognises the invaluable contribution of SMEs to the economy and has made a commitment to "promote small business procurement, in particular by an aspiring to 25% of government contracts should be awarded to small and medium size businesses and by publishing government tenders in full online and free of charge". The Coalition: our programme for government May 2010 ([http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)).

The Two Years On report can be found here:

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/231994/SME\\_Two\\_Year\\_On\\_Report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/231994/SME_Two_Year_On_Report.pdf))

Where the customer so wishes, the Managed Service Provider shall advertise opportunities to ensure fair and open competition through services for example (but not limited to) websites like Contracts Finder (a free online 'one-stop shop' to search for and receive email

alerts on suitable central and wider public sector low value government contracting opportunities.

- 2.2.12 The Managed Service Provider shall ensure that Temporary Agency Workers are given access to Assignments in a fair and non-discriminatory manner and shall require any Agencies supplying Temporary Agency Workers to do the same. The Managed Service Provider shall monitor quality and seek to actively implement quality into their own working practices, and encourage Agencies to do the same.

### **2.3 Ordering of temporary agency workers and timesheet submission**

- 2.3.1 The Managed Service Provider shall have the facility for Hiring Managers to request a Temporary Agency Worker via a variety of channels (i.e. via email, telephone, or through an electronic booking system) and in a manner which is instantaneous. The Customer shall define the preferred method(s) of format(s) prior to the commencement of the Contract.
- 2.3.2 The Managed Service Provider shall ensure that sufficient information is collected at the time of the Hiring Manager's request to enable the correct skill set, experience level and grade (appropriately skilled and experienced for the role and available and willing to accept the relevant pay rate) of Temporary Agency Worker to be supplied and for the specified management information to be collected and provided.
- 2.3.3 A booking service is required 24 hours a day, seven days a week; staffed inside service hours, automated outside of the service hours
- 2.3.4 The Managed Service Provider shall also have available a telephone and fax booking system for the supply of Temporary Agency Workers for Customer locations without internet access.
- 2.3.5 The Managed Service Provider's response team shall be staffed by personnel that are suitably trained and experienced in the system being used, between the service hours of 7.30am and 5.30pm. Monday to Friday.
- 2.3.6 Outside of 7.30am and 5.30pm the Managed Service Provider shall have available suitable on call or out of hours arrangements to ensure that a Service is provided 24 hours a day, seven days a week. Ideally this should be the same or as similar as possible to the service received during normal hours.
- 2.3.7 A telephone booking system shall also be available for booking requests made outside regular office hours. Such a system should not be via a premium rate telephone number
- 2.3.8 The Managed Service Provider shall have the facility to operate an electronic timesheet process to support invoicing. The Managed Service Provider will manage timesheets to ensure:
- 2.3.8.1 Temporary Agency Workers / Agencies complete and submit a timesheet to the relevant Hiring Manager for authorisation before it is returned to the Managed Service Provider via the Agency.
  - 2.3.8.2 For locations without access to the internet the Managed Service Provider shall have the facility for either a paper timesheet to be used by the Temporary Agency Worker or to log the timesheet on behalf of the Temporary Agency Worker. All paper timesheets shall have a unique identifier.
  - 2.3.8.3 Auto-approval of timesheets must only be used at the request of the Contract Manager.

## **2.4 Provision of temporary agency workers**

### **Scope of temporary agency workers**

- 2.4.1 A wide range of Temporary Agency Workers are required and the Managed Service Provider must be able to supply all Temporary Agency Workers as needed by the Customer (relevant to the Lot for which the Tenderer is bidding). The list given within **Appendix B** describes the spectrum of the roles included, but Tenderers should note that this list is not exhaustive and other job roles outside of this list may also be required, therefore the list may be revised to include additional roles added during the duration of the Framework. The precise scope to be covered shall be defined by the Customer organisation entering into a Customer Agreement with the Managed Service Provider.
- 2.4.2 A list of the job categories that may be required by Customers is included at **Appendix C** of this Invitation to Tender document. Tenderers should note that this list is not exhaustive and other categories of staff outside of this list may also be required. It is inappropriate to include Job Descriptions and Person Specifications at this stage given the variation amongst potential Customers. Sample Job Descriptions and Person Specifications will either be confirmed at the point where the Customer calls off from the framework, or where Customers undertake a further competition exercise under the framework.
- 2.4.3 Where the Customer has not previously engaged a Managed Service Provider, it is anticipated that the Managed Service Provider will audit the Customer's current Temporary Agency Worker requirements prior to implementation, taking into account TUPE implications where applicable. Where Managed Service Provision is currently in operation, the Customer where possible / available, shall supply the new Managed Service Provider with the relevant historical data prior to implementation of the Contract.
- 2.4.4 Where the Customer has not previously engaged a Managed Service Provider, the Managed Service Provider will adopt the Customer's existing supply chain so that those Agencies can still submit candidates for roles that the Customer requests, subject to agreement with the Agencies concerned. In the event that the Managed Service Provider considers that an Agency from the Customer's existing supply chain does not or is unable to meet the requirements of the Contract or refuses to accept the terms and conditions of the Managed Service Provider for appointing Agencies then the Managed Service Provider shall seek agreement from the Customer to remove such an Agency from the supply chain.

### **Requests for temporary agency workers**

- 2.4.5 A list of all Authorised Users of the Service will be agreed by each Customer with the Managed Service Provider prior to commencement of the Contract. This authorisation list must be strictly adhered to when processing requests for temporary staff. The Customer will be able to add to and remove people from the list during the course of the Contract.
- 2.4.6 The type and grade of Temporary Agency Worker required will be detailed by the Hiring Manager. If Temporary Agency Workers of a higher grade are provided, payment will only be made as per the grade requested.
- 2.4.7 The Hiring Manager will specify whether they require a number of CVs to be submitted. The actual number of CVs to be submitted may be dictated by the Hiring Manager.
- 2.4.8 The Hiring Manager will specify the timescales in which they require responses to their request.

- 2.4.9 The Managed Service Provider is required to update the Hiring Manager on the progress in meeting their requirements and on outstanding orders.
- 2.4.10 All requests for Temporary Agency Workers will go via the Managed Service Provider and the Managed Service Provider shall ensure Agencies are aware that they must not send speculative emails to or make unsolicited calls to Customers, however Hiring Managers should be able to contact agencies to discuss the finer details of a requirement and this should be managed and administered by the Managed Service Provider.

#### **Provision of candidates**

- 2.4.11 The Managed Service Provider shall consistently provide Customers with high quality Temporary Agency Workers that have the right mix of skills, experience and qualifications as required and specified by the Hiring Manager, and have undergone the relevant safeguarding checks prior to placement. Temporary Agency Workers supplied into social care must have the relevant checks, as detailed later in this section 2.4. Evidence of these checks must be provided to the Hiring Manager prior to the Temporary Agency Worker commencing the Assignment.
- 2.4.12 The Managed Service Provider must ensure that they and Agencies provide Temporary Agency Workers that are at all times competent, punctual and appropriately trained.
- 2.4.13 The Managed Service Provider must ensure that all CVs or person specifications submitted by themselves and Agencies are anonymised / unbranded so that Hiring Managers cannot identify the Agency that is putting the Candidate forward. Customers would ideally like to be able to specify a standard format for such CVs to enable easy comparison to be made by the Hiring Manager.
- 2.4.14 Temporary Agency Workers provided in response to a request shall meet any Departmental or Service specific standards of the Customer. The Managed Service Provider will be responsible for ensuring they and all Agencies provide such details to the Temporary Agency Worker in advance of their assignment. Details of these will be made available to the Managed Service Provider at the implementation stage although the Customer may update these standard requirements from time to time in line with, for example, changes to legislation, addition of new services, re-structuring of the Customer organisation, unfilled requests for Temporary Agency Workers. The Contract Manager shall communicate such changes to the Managed Service Provider.
- 2.4.15 CVs or person specifications provided by the Managed Service Provider to the Hiring Manager should be sufficiently well detailed and fully aligned with the Hiring Manager's requirement to enable him to make an informed decision about which Temporary Agency Worker to hire.
- 2.4.16 The Managed Service Provider must recognise that there may be circumstances where a Temporary Agency Worker is required at very short notice or to fill an Assignment in an emergency. Ideally the Service will be able to accommodate such requests without simply relying on populating the system retrospectively after the request occurs.
- 2.4.17 The Managed Service Provider is required to ensure that they and all Agencies are fully informed and understand the individual needs of the Customer to which they are supplying Temporary Agency Workers.

#### **Selection and rejection of candidates**

- 2.4.18 The Managed Service Provider shall ensure that at least 2 references from previous employers are sought. One must be from the most recent previous employer. References should be verified as being genuine. The Managed Service Provider will

be required to seek references in accordance with the Customers standard practices for employees.

- 2.4.19 The Customer, where it deems it necessary, may wish to interview one or more Temporary Agency Workers prior to an Assignment and may wish to do this on a face-to-face basis. The Customer shall reserve the right to reject Candidates as unsuitable. Feedback shall be provided by the Hiring Manager as to the reasons for rejection which shall be passed onto the Agency for their information and review.

#### **Induction and performance**

- 2.4.20 The Managed Service Provider shall ensure that Temporary Agency Workers are given clear instructions in advance of their Assignment in relation to the following:
- Geographical location of the place of Assignment
  - Customer department location
  - When to report
  - Who to report to
  - The nature of the Assignment
  - Working hours (including provision for breaks) and potential duration of the assignment
  - Dress Code and any uniforms including Personal Protective Equipment (PPE) required
  - Any additional matters e.g. provision for parking, reimbursement of expenses
  - Any Customer specific policies in place that are relevant to the role
  - How to submit timesheets
  - Code of conduct
  - Confidentiality
  - Access to work adjustments
  - Data protection
  - Health and Safety
  - Any documents to be provided to the Hiring Manager on commencement of the Assignment
- 2.4.21 The Managed Service Provider shall ensure that Hiring Managers are given clear instructions of any specific requirements the Temporary Agency Worker may have e.g. equipment required for them to perform their duties effectively, in advance of the commencement of the Assignment. It is a legal duty for the Customer to make reasonable adjustments to enable disabled Temporary Agency Workers to access their Assignments, and the Managed Service Provider is expected to assist the Customer to achieve these aims.
- 2.4.22 Temporary Agency Workers on Assignment to the Customer shall work under the supervision, direction and control of the Customer's officers.
- 2.4.23 The Managed Service Provider undertakes to ensure that all Temporary Agency Workers are completely aware that at no time will the Customer class a Temporary Agency Worker as an employee and the Managed Service Provider is responsible for the conduct, negligence, performance and quality of Temporary Agency Workers and other employment issues. The Contract Manager will advise of any additional policies or revisions during the Contract period. The Managed Service

Provider will operate a process for addressing grievances that aligns with the Customer's grievance process.

- 2.4.24 Temporary Agency Workers are required to adhere to the Customer's policies and procedures including; fire, manual handling, health and safety requirements, matters of discipline. These policies and procedures will be supplied to the Managed Service Provider at Contract implementation.
- 2.4.25 Serious misconduct and poor performance by a Temporary Agency Worker will be conveyed to the Managed Service Provider (in the first instance verbally and subsequently in writing) who will, if so requested, terminate the Assignment of the Temporary Agency Worker(s) concerned. At no time is compliance with this clause to be used as evidence of a Temporary Agency Worker gaining employment status with the Customer. In the case of an allegation against an Temporary Agency Worker in respect of child protection or the protection of vulnerable adults, the Temporary Agency Worker, the Agency and the Managed Service Provider will comply with the requirements of the Customer with regards to attendance at hearings and case conferences and the implementation of any decisions.
- 2.4.26 The Managed Service Provider shall bring to the attention of all Temporary Agency Workers the need for any information gained during their placement with the Customer to remain confidential. The Managed Service Provider shall, if required, ensure that all Temporary Agency Workers sign a confidentiality agreement, as agreed with the Customer, prior to any placement and this signed agreement is to be filed within the Temporary Agency Worker's personnel file, a copy of which is held by either the Managed Service Provider (when providing workers themselves) or the Agency.
- 2.4.27 The standard of dress and hygiene of the Temporary Agency Worker shall be in accordance with the Customer's departmental standards. The Customer reserves the right to request a change in dress if it is deemed to be inappropriate, offensive or below the standard reasonably required. In the event that Temporary Agency Workers are required to wear Personal Protective Equipment as part of their placement with the Customer it will be the responsibility of the Managed Service Provider to ensure that they arrive for work correctly attired. The actual operational process to enable this will be agreed with the Managed Service Provider at the implementation of the contract.
- 2.4.28 Where use of a car is stated by the Hiring Manager to be required as part of the service and journeys have been undertaken by the Temporary Agency Worker, the Agency will pay appropriate mileage in line with the HMRC or Customer expense policies (as specified by the Customer). Agreement to pay mileage allowance must be with the prior agreement of the Hiring Manager. Mileage allowance will not be paid for travel to and from the place of work. These rates may be adjusted by the Customer during the Contract period.
- 2.4.29 The Managed Service Provider is required to ensure that the Agency has had sight of the Temporary Agency Worker's driving licence, MOT and insurance documents allowing for business use. Agencies are required to ensure that the Temporary Agency Worker is aware of the Customer's work force travel plans and policies for travel when on duty.
- 2.4.30 Temporary Agency Workers will be required to complete the Managed Service Provider's standard mileage claim form, which, when authorised by the Hiring Manager, will be submitted on a monthly basis. A copy of this document will be provided with the invoice.
- 2.4.31 The Managed Service Provider shall be solely responsible for all arrangements associated with the reimbursement of all expenses.



## **Cancellation of booking and rejection of workers**

- 2.4.32 In the event of any circumstance affecting the arrival of a Temporary Agency Worker the Managed Service Provider shall ensure that the Hiring Manager is notified without delay.
- 2.4.33 The Managed Service Provider shall use their best endeavours to find a suitable replacement Temporary Agency Worker. Data on numbers of and reasons for cancellations shall be kept and a breakdown by Agency provided to the Contract Manager on a (quarterly) basis as part of the performance management of Agencies. Repeat cancellations may result in Agencies being suspended or moved down Tiers (where a tiering system is in operation). The Customer reserves the right to cancel or amend any such booking.
- 2.4.34 The Customer shall notify the Managed Service Provider of the requirement for any change or cancellation of any booking no less than 90 minutes before the booking commencement. If the Customer cannot comply with this then they shall pay for 25% of the first day of the Assignment or where it is less than one day, 25% of the Assignment that is cancelled, if the Temporary Agency Worker cannot be placed elsewhere within the organisation. The payment from the Customer shall be passed on to the Agency supplying the Temporary Agency Worker (if this is not the Managed Service Provider himself) for payment to the Temporary Agency Worker.
- 2.4.35 The Managed Service Provider shall make no charge to the Customer in the event that a Temporary Agency Worker;
- fails to attend an Assignment at the reporting time
  - is rejected within a trial period for specified Assignments where such a period has been agreed between the Customer and the Managed Service Provider
  - has been rejected as unsuitable within the first 3 hours of the Assignment
  - rejects the Assignment or does not attend the Assignment
  - is found not to have the defined requirements for the role i.e. in terms of qualifications, eligibility to work, DBS check
  - is found not to have correct and valid credentials that would allow them to legally work
  - is identified as unfit to work or not being capable of carrying out the majority / most / or all of the specified tasks or activities required safely and to the necessary standard.

In any of the above circumstances the Managed Service Provider shall offer the Hiring Manager the option of cancelling the booking or use their best endeavours to find a suitable replacement Temporary Agency Worker as quickly as possible.

- 2.4.36 In the event that a Candidate is rejected by a Customer and where an Assignment is closed before the official Assignment closure date, the Managed Service Provider shall be responsible for investigating the circumstances of that rejection. Depending on the justification for the rejection;
- a) The Customer acting reasonably may request that the Temporary Agency Worker does not work for the particular department or directorate again and the Managed Service Provider shall ensure that if the Temporary Agency Worker is offered for other vacancies within that department or directorate that the Hiring Manager is made aware of previous reports on performance.

b) The Customer may request that the Temporary Agency Worker does not work for the organisation again and the Managed Service Provider shall ensure the Temporary Agency Worker is not offered for any vacancies within that organisation

c) Where a serious rejection occurs, it is the Managed Service Provider's responsibility to make Hiring Managers aware of such rejections when the Candidate in question is put forward for future Assignments to enable Hiring Managers to make an informed decision.

### **Vetting and compliance with policy and legislation**

- 2.4.37 The Managed Service provider must ensure that all vetting and compliance checks are carried out prior to the placement of Temporary Agency Workers.
- 2.4.38 The Managed Service Provider shall verify the identity and nationality of Agency Workers in accordance with UK Border and Immigration Agency guidelines and codes of practice. The Managed Service provider shall ensure that proof of address is kept on file, and must be kept up to date and/or revisited as required. The Managed Service Provider shall ensure suitable processes and procedures are in place to ensure that any permits granted to the Temporary Agency Worker are checked in advance of expiry in order that the Customer is not at risk of employing someone who is not eligible to work in the UK.
- 2.4.39 The Managed Service Provider shall ensure that any qualifications held by the Temporary Agency Worker in order to meet the Authorised Officer's person specification are verified by the Agency (or the Managed Service Provider if he is providing Temporary Agency Workers himself) having had sight of the original certificates. Certified photocopies of qualification certificates are to be held on file throughout the duration of a placement by the Managed Service Provider and/or Agency and for a period of at least 5 years to comply with the Customers' audit regulations.
- 2.4.40 In relation to the Immigration, Asylum and Nationality Act 2006 and any other relevant legislation and/or code of practice:
- 2.4.40.1 The Managed Service Provider shall be required to comply with the requirements of the Asylum and Immigration Act 2006 and shall be responsible for checking that all Temporary Agency Workers have the right to work in the United Kingdom either as a British Citizen or that necessary permits have been obtained and this should be evidenced in the Temporary Agency Workers employment portfolio. All certified photocopies are to be retained on file throughout the duration of a placement and for a period of at least 5 years to comply with the Customers' audit regulations. Evidence of this may be required of the Temporary Agency Worker when they attend the Assignment
  - 2.4.40.2 The Managed Service Provider should ensure that they (if the Managed Service Provider is providing Temporary Agency Workers himself) and Agencies have procedures for monitoring relevant clearance / visas on an ongoing basis allowing Temporary Agency Workers to work in different areas. This will involve monitoring status, expiry dates and hours worked and ensuring that visas / work permits do not restrict where the Temporary Agency Worker can work.
- 2.4.41 The Managed Service Provider is required to comply with all current as well as future legislation in respect of the Agency Worker Regulations, and any other relevant legislation to make certain that the requirements of such legislation is being met throughout the duration of the Contract period.

2.4.42 The Managed Service Provider is required to ensure that Agencies, where used, put forward Candidates on whom they hold and maintain up to date information on the following:

- A 5 year employment history, together with a satisfactory explanation of any gaps of 4 weeks or more in employment, including where owing to a disability
- A signed application form or Curriculum Vitae (CV)
- Documentary evidence of all relevant qualifications
- Proof of NI number for Right to Work where a passport is not available
- Applicable training i.e. manual handling
- Eligibility to work in the UK - in line with current Government requirements
- Proof of identity, including a recent photograph i.e. in the form of a valid and current passport or driving licence or a full form birth certificate with additional supporting evidence of any name changes plus a colour photograph.
- Proof of address, for example; utility bills/benefit statement/Bank statements issued in the last 3 months, mortgage statements or pension statements must be less than 12 months old, (Online statements can be accepted). P45/P60, EU national ID card, HM Forces ID card, a document from a Central/Local Government/Government Agency and letters from Head Teachers or Principals for younger candidates
- Verification of why employment / position was ended in the case where a Candidate has previously worked with children or vulnerable adults
- 2 written references, 1 which is from the most recent previous employer Where written references are not possible, for lower skilled roles 2 verbal references should be obtained
- DBS/PVG disclosure check which is appropriate to the role offered i.e. the relevant barred list children / adult has been checked
- Details of any criminal offences including where detailed on Candidate's DBS/PVG disclosure
- Driving licence / motor vehicle insurance and a current MOT certificate
- Professional memberships; i.e. for security staff professionals valid SIA registration is required and must be renewed before the expiry date, not after the expiry date

2.4.43 Where qualified social care workers are to be put forward the following requirements and safeguarding checks must be followed/completed as a minimum prior to the placement of staff.

- Policies and procedures must be in place covering the agencies recruitment process and safeguarding checks.
- New candidate registration process undertaken before placement.
- Employment history should be obtained for the last 10 years of employment/education. Any gaps of 4 weeks or more will need to be investigated and verified.
- A rehabilitation of offenders declaration signed and dated.
- Proof of Identity by means of original documentation showing photographic evidence. A valid UK passport, both parts of a UK or EU driving licence or a

full form birth certificate with additional supporting evidence of any name changes plus a colour photograph.

- Proof of address, for example; utility bills/benefit statement/Bank statement statements issued in the last 3 months, mortgage statements or pension statements must be less than 12 months old, (Online statements can be accepted). P45/P60, EU national ID card, HM Forces ID card, a document from a Central/Local Government/Government Agency and letters from Head Teachers or Principals for younger candidates
- Eligibility to work in the UK - in line with current Government requirements
- Proof of NI number for Right to Work where a passport is not available
- Documentary evidence of all relevant qualifications
- Health and Care Professions Council (HCPC) check for England or CCW in Wales, SSSC in Scotland
- DBS check or PVG in Scotland
- Overseas candidates' police checks should be obtained where a candidate has worked or lived overseas during the last 5 years for a period of 6 months or more.
- References to cover the previous 5 years with at least 2 references commenting on the candidates social work practice
- Overseas qualified social workers must be able to provide their qualifications and be registered with the HCPC/CCW/SSSC. Checks to both identify and verify the qualifications must be in place.
- Secure retention of all records in relation to safeguarding, in line with the data protection act, must be kept for 2 years after the worker leaves the post.

MSP's will be responsible for validating the accuracy of the information supplied by all Agencies

- 2.4.44 A number of jobs may have a requirement for additional checks to be undertaken on Temporary Agency Workers before they are put forward for placement to any Customer. These will be identified by Hiring Managers at the implementation stage of the contract, and if required a charging structure agreed for the provision of this service. Charges will not be raised where checks have already been made and evidenced to the satisfaction of the Customer.
- 2.4.45 The Managed Service Provider will be responsible for ensuring that they, if they are providing Temporary Agency Workers themselves and Agencies are undertaking such checks and must make available on request to the Customer the reference number and date of the DBS/PVG check of any Temporary Agency Worker put forward for placement by the Managed Service Provider. The Managed Service Provider will not put forward for placement any individual who appears unsuitable as a result of the information received from the checks.
- 2.4.46 The Managed Service Provider will ensure that they, if they are providing Temporary Agency Workers themselves, and Agencies comply with the requirements of the DBS and that the hiring Manager is shown a copy of the disclosure prior to the commencement of the Assignment. Managed Service Providers are also required to be compliant with the Safer Recruitment in Education Guidance and to hold the DfE Quality Mark for Education if providing roles within the education sector.

- 2.4.47 The Managed Service Provider must ensure that the Customer is informed where a Candidate is under investigation from external agencies. This includes but is not limited to, the HCPC / CCW / SSSC.
- 2.4.48 The Managed Service Provider must ensure that if they, where providing Temporary Agency Workers themselves, and the Agency receive 'additional information' about a Candidate from the DBS that a Chief Constable considers relevant to the post applied for and where this cannot be shared with the Customer, this may well affect their ability to be engaged to fulfil an Assignment. Such a Candidate will not be allocated any Assignment within the Customer organisation which involves working in areas requiring a DBS check.
- 2.4.49 The Managed Service Provider must also ensure that Temporary Agency Workers make a signed and dated declaration regarding unspent previous criminal convictions subject to the Rehabilitation of Offenders Act 1974. A copy must be held on file by the Provider and form part of their risk assessment process. Existing Temporary Agency Workers and new applicants for temporary work who have a previous criminal record should only commence work after the approval of the Customer is sought. All applicants for placement at any of the Customers must be informed in writing that undeclared criminal convictions which subsequently become known may result in the Customer instructing the Managed Service Provider that the Temporary Agency Worker may be removed from the delivery of services. If a Temporary Agency Worker is convicted of an offence whilst on Assignment, the Managed Service Provider shall notify the Customer immediately and seek to reach agreement on the appropriate course of action. Generally speaking this shall not include motoring offences though for certain posts motoring offences may need to be reviewed. Customers shall agree with the Managed Service Provider which posts motoring offences must be reviewed.
- 2.4.50 The Managed Service Provider should ensure that Agencies provide current and suitable references for Candidates put forward for an Assignment
- 2.4.51 In the unlikely event that a waiver to any of the above vetting and compliance issues is sought by the Hiring Manager, the Managed Service Provider shall not agree to such a waiver without the express consent of the Customer's Contract Manager. Such a waiver should be treated as temporary and only until such a point where any waived items/checks are completed as agreed between the Managed Service Provider and the Customer's Contract Manager.

## **2.5 Service delivery**

- 2.5.1 Fulfilment of a request shall be defined as the supply of a suitable Temporary Agency Worker, accepted by the Hiring Manager, within the timeframe as set out in the Service Level Agreement for the skill group to be established during contract implementation.
- 2.5.2 The Managed Service Provider shall aim to fulfil 100% of each Customer's requirements but is required to meet a minimum of 98% of requests at all times.
- 2.5.3 For individual positions that are considered to be 'difficult to fill' this figure may be reviewed at a later date, with the consent of the Customer.
- 2.5.4 If the Managed Service Provider falls below 98% for more than 2 consecutive months or below 90% for 1 month the Customer shall require an exception report detailing the action being taken by the Managed Service Provider to remedy the situation and the timescale for rectification. Until the service provided meets the required level an update report shall be submitted to the Customer's nominated Contract Manager on a regular basis.

## **2.6 Managed service provider personnel & contract management**

- 2.6.1 The Managed Service Provider shall ensure that only suitably experienced and qualified staff shall be used to provide the Services.
- 2.6.2 The Managed Service Provider shall demonstrate how they manage business continuity and ensure effective recruitment and retention of staff.
- 2.6.3 The Managed Service Provider shall nominate an Account Manager to the Contract who is the primary and single point of contact for the Customer's Contract Manager.
- 2.6.4 The Managed Service Provider will ensure that there is a suitable structure and level of resource in place to deliver the Services which will be fronted by the nominated Account Manager.
- 2.6.5 Once operational, significant changes or reductions in the assigned personnel will not be made without prior written consent of the Contract Manager; such consent will not be refused unreasonably.
- 2.6.6 The Managed Service Provider will participate in regular contract review meetings with the Contract Manager. Attendance at regular review meetings is essential and will be at no cost to the Customer.
- 2.6.7 The Customer reserves the right to request additional meetings where necessary to address any matters arising in between the review meetings. Such requests shall not be made unreasonably and again will be at no cost to the Customer.
- 2.6.8 The Managed Service Provider will manage the supply chain in a systematic manner which can enable them to organise and regularly provide feedback to the Agency in respect of:
- the Agency's performance – feedback in terms of the standard of service they are supplying.
  - the Temporary Agency Worker – why their Applicant was accepted / rejected, general feedback in terms of the Temporary Agency Worker's ability, suitability for the post and conduct.
- 2.6.9 The Managed Service Provider shall provide evidence that they are actively seeking feedback from Agencies on their performance and that of the Customer to maintain and improve Service standards. Such feedback shall be shared with the Contract Manager at regular review meetings.

## **2.7 Pay rates to temporary agency workers**

- 2.7.1 The rates of pay received by the Temporary Agency Worker shall be determined by the Customer's Contract Manager in agreement with the Managed Service Provider. Any such agreement shall take into account the provisions of the Agency Worker Regulation and any other such relevant legislation which comes into effect.
- 2.7.2 The Managed Service Provider will use their knowledge and expertise to work with the Customer to identify appropriate pay rates for roles.
- 2.7.3 For PAYE Temporary Agency Workers the Managed Service Provider will ideally charge actual NI on the earnings of the Temporary Agency Worker as well as WTR and Pension Auto Enrolment contributions which will equate to the total wage costs.
- 2.7.4 For Limited Company Workers their total wage costs will be equal to their pay rate as tax and statutory costs will be paid through their company.

2.7.5 Payments shall be in line with Working Time Regulations. This payment and employer's NI charged will be itemised separately on invoices and available as part of all management information.

## **2.8 Fees and savings**

2.8.1 The Managed Service Provider Fees to be charged by the Managed Service Provider shall be agreed at the outset and capped for the duration of the contract.

2.8.2 The Managed Service Provider Fees should provide excellent value for money, and be transparent to all parties; including the Agencies and the Customers. The MSP must recognise the potential for fees to be benchmarked following any re-opening of competition and in particular those competitions utilising reverse e-auction technology. MSP should avoid multiple pricing policies and must use their best endeavours to provide managed services at a consistent best value rate across the Framework provision.

2.8.3 The Service must deliver savings for the Customer and any savings generated must be objectively measured and demonstrable, to assist Customers to reach their savings targets.

2.8.4 Taking geography into account, the Managed Service Provider will advise the Customer of the most competitive Agency Fees that they have achieved with Agencies across all Customers and will endeavour to secure similar or comparable rates for that Customer where appropriate. The Agency Fee charged will be available as part of all Management Information.

## **2.9 Invoicing and payment requirements – managed service provider**

2.9.1 It is envisaged that most Customers will require a single consolidated invoice, although some may require a small number (e.g. 3 or 4) of departmental invoices. Invoices are to be submitted in arrears on a weekly basis (unless otherwise agreed with the Customer). The Managed Service Provider must ensure that invoices are raised without delay, enabling Agencies to be paid promptly.

2.9.2 Payments will be made by BACS.

2.9.3 Invoices shall be supported by detailed electronic information in a format as agreed with the Customer to enable internal charging to relevant budget holders. This is likely to include:-

- Order reference number
- Job title
- Hours worked; regular hours, overtime hours (including night shifts), double time hours and total hours
- Unique work record per individual not per assignment
- Total hourly / daily rate
- Hourly / daily pay rate to Temporary Agency Worker
- National Insurance contributions
- Working Time Regulations (WTR)
- Pension Auto Enrolment (PAE)
- Value Added Tax
- Agency Commission (Agency Fee)
- Managed Service Provider Commission (Booking fee)
- Department and/or Section

- Cost Centre Code and if required Hiring Manager
- Name of individual that the Temporary Agency Worker reports to
- Date timesheet submitted and approved
- Name of Hiring Manager timesheet approved by

This detailed electronic information is to be presented in a format prescribed by the Customer in order to allow immediate uploading onto the Customer's financial system.

- 2.9.4 In support of the invoice the Managed Service Provider shall provide each Agency with a timesheet (electronic where required by the Customer) that must be used by all Temporary Agency Workers. Timesheets must indicate that all breaks are unpaid and must not be added to hours worked.
- 2.9.5 Completed timesheets shall be submitted electronically (either by the Temporary Agency Worker or the Managed Service Provider) to the Hiring Manager for authorisation. The Managed Service Provider should provide the Contract Manager with an exception report of unauthorised timesheets, ideally accessible with real-time information, but at a minimum on a weekly basis.
- 2.9.6 Where the Customer has implemented an internal policy restricting the number of hours a Temporary Agency Worker can work, the Managed Service Provider will ensure that this restriction is reflected in the invoicing and payment to Agencies. Allowance for time off in lieu may also be required by some Customers.
- 2.9.7 The Managed Service Provider shall only process timesheets that have been authorised by the appropriate Hiring Manager. In the event that a Hiring Manager refuses to certify a timesheet the Managed Service Provider shall be notified within 2 Working Days and resolve with the Hiring Manager in the first instance. If further resolution is required the incident should be referred to the Contract Manager.
- 2.9.8 The Customer will advise the Managed Service Provider if auto-approval of timesheets is required for their Contract prior to commencement of the Contract. As a rule, the default position will be that timesheets are not approved automatically.
- 2.9.9 Should there be a dispute regarding hours worked, the hourly rate, statutory contributions or the commission claimed by the Managed Service Provider in respect of a Temporary Agency Worker, the Customer reserves the right to withhold payment of the sum in dispute until such time as the matter can be resolved. The Managed Service Provider will ensure that the consolidated invoice does not include such amounts so as not to delay payment of the remaining authorised sums.
- 2.9.10 The Managed Service Provider is required to ensure fair and agreed payment terms, for all elements of the total charge, are in place for all (Tiered) Agencies i.e. terms that do not allow payment to Agencies to be delayed beyond 5 Working Days after the Managed Service Provider has been paid and that in total, in any event, payment takes no longer than 21 days from submission of an undisputed invoice.
- 2.9.11 The Customer is required to pay the MSP within 14 calendar days of undisputed invoice.
- 2.9.12 Where the Customer has agreed shorter payment terms in order to meet policy obligations or to support their suppliers, the benefit of this must also be reflected through the supply chain to the Tiered Agencies.



- 2.9.13 The Managed Service Provider is required to ensure agreed payment terms are in place for all Temporary Agency Workers i.e. no more than 14 days from submission of a timesheet.
- 2.9.14 The cost model proposed by the Managed Service Provider is required to be financially transparent, particularly in relation to:
- Pay rate
  - National insurance
  - WTD
  - National insurance on holiday pay
  - Pension Auto Enrolment (PAE)
  - Agency fee
  - Total amount paid to the Agency
  - Managed Service Provider transaction charge
  - Total charge to the Customer
  - Temporary Agency Worker's status in terms of whether they are PAYE or a Ltd Company also needs to be stated.

The aim of the Managed Service Provider providing this breakdown is to provide Customers with overall clarity of what costs are built up from.

## **2.10 Management information**

- 2.10.1 The Managed Service Provider must be able to provide configurable and comprehensive real time management information from implementation and on an ongoing basis relative to all activity under this contract at no cost to the Customer
- 2.10.2 The Managed Service Provider will provide, management reports in a suitable electronic format on a monthly basis. The type and level of detail of the reports will be decided at the implementation of the Contract so that they are tailored to only provide the information that each individual Customer specified is relevant to them. This does not preclude changes being made during the life of the Contract should the Customer require it. This information should be provided in a clear format which is both easy to understand and easy to interpret. Tenderers are required to provide details of the suite of reports and data that they are able to provide, and its typical use by the Customer.
- 2.10.3 The System proposed by the Managed Service Provider shall offer a flexible management information tool that can be tailored to only provide the information that each individual Customer specifies is relevant to them. The Managed Service Provider will be able to offer as a minimum a suite of pre-defined reports, which can be tailored to the Customer, but it is also desirable that the Customer can run their own reports where the system allows.
- 2.10.4 Reports and data should be presented in a format which can be exported into MS Office Applications or other similar packages used by the Customer that can be used to manipulate data.

- 2.10.5 Customers shall be able to specify the Management Information reports that they require which can include but are not limited to the following:
- 2.10.5.1 Active assignments (current headcount report)
  - 2.10.5.2 Detailed order status report – showing individual order information
  - 2.10.5.3 Usage by department – scheduled end dates for each order, sorted by Customer department and position
  - 2.10.5.4 Comparison of old and new Agency Fees/Margins (in pence)
    - By Customer department
    - By job discipline
  - 2.10.5.5 Temporary Agency Worker assignments undertaken by Customer Residents
  - 2.10.5.6 Temporary Agency Worker assignments (numbers and value) filled by Agencies supplying from an address within the Customer’s region, including size of company (number of employees)
  - 2.10.5.7 Performance monitoring report: time taken to fill each booking (from initial order and from Cost Centre Manager authorisation) compared against agreed service levels:
    - By Customer department
    - By job discipline
  - 2.10.5.8 Full details of any posts that could not be filled.
  - 2.10.5.9 Summary of comments/complaints with corrective action taken
  - 2.10.5.10 Agency usage – Agencies ranked in terms of number of Assignments
  - 2.10.5.11 Ethnic profile – The ethnic profile of interim workers assigned to the Customer where applicable / appropriate
  - 2.10.5.12 Disability profile – Volumes of disabled and non-disabled interim workers assigned to the Customer
  - 2.10.5.13 Gender profile – Volumes of male and female Temporary Agency Workers assigned to the Customer
  - 2.10.5.14 Age profile – The age profile of Temporary Agency Workers assigned to the Customer
  - 2.10.5.15 Temporary Agency Workers – a list of Temporary Agency Workers who have been assigned to a specific order, showing:
    - Name of worker
    - Geographical profile
    - Religion
    - Sexual orientation
    - Order reference number
    - Job discipline
    - Job title
    - Council Department
    - Cost Centre Manager
    - Start date of assignment

- Anticipated end date of assignment
- Assignment duration report – by Temporary Agency Worker

The system proposed by the Managed Service Provider must be flexible to accommodate additional requirements / changes to the above.

- 2.10.6 In addition, the Managed Service Provider shall comply with the following:
- 2.10.6.1 The Managed Service Provider agrees to provide ESPO with information relating to the services procured and any payments made under the Contract.
  - 2.10.6.2 The Managed Service Provider shall supply the Management Information to ESPO and in the form set out at Schedule 5 of the Framework Agreement, during the framework Contract period.
  - 2.10.6.3 Upon receipt of the Management Information supplied by the Managed Service Provider in accordance with 2.10.6.2, the Customer and the Managed Service Provider hereby consent to ESPO:
    - storing and analysing the Management Information and producing statistics; and
    - sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Customer.
  - 2.10.6.4 ESPO may, but not unreasonably, make changes to the Management Information which the Managed Service Provider is required to supply and shall give the Managed Service Provider at least 1 month's written notice of any changes.

## **2.11 System requirements**

- 2.11.1 The appearance and operation of the System should be similar to those in general widespread and common use for other functions to enable Hiring Managers to be able to use the System easily from Implementation.
- 2.11.2 The System must be able to accommodate various account coding from the Customer's financial management system e.g. Oracle, SAP, Agresso.
- 2.11.3 Ideally the System will not use any jargon or technical terminology and will use language easily recognisable by the Customer's officers. Where use of jargon or technical terminology is unavoidable the Managed Service Provider will include easily accessible and clearly identifiable help functions and/or user manuals to enable users to use the System effectively with minimum support.
- 2.11.4 The System will be supported by online / interactive documentation, manuals and FAQs which may be delivered in the form of tutorials.
- 2.11.5 The structure of any System or processes implemented by the Managed Service Provider in order to deliver the Services must be flexible, Customer-driven and easy to adopt in a public sector environment.
- 2.11.6 The Managed Service Provider must give a minimum of 3 months' notice to any Customer where fundamental changes to the System or platform are proposed.
- 2.11.7 The Managed Service Provider shall ensure that a log of System issues, including but not limited to major failures and system bugs, is established and maintained and is supported by a proposed programme for resolution which recognises the need for business continuity, disaster recovery procedures, timescales for rectification and escalation to appropriate levels within the Managed Service Provider's organisation.

- 2.11.8 The Managed Service Provider must be able to provide by the date of Contract award / Implementation the following customers data transfer:
- 2.11.8.1 Online ordering and candidate selection
  - 2.11.8.2 Online electronic time sheeting
  - 2.11.8.3 Online electronic invoicing and or/payment systems
  - 2.11.8.4 real-time management reporting
  - 2.11.8.5 Online monitoring of AWR requirements
  - 2.11.8.6 Online audit trail of compliance requirements
  - 2.11.8.7 Integration of any or all of the above; with each other, and ability to integrate with Customer legacy systems
- 2.11.9 The Managed Service Provider shall offer full online or in-system training for Customers (and any Agencies used as part of the supply chain). The Managed Service Provider must offer training via a variety of methods if online and in-system training is not deemed sufficient and should be aware that on-going training may be required for additional and/or new users of the System, as new Hiring Managers join the Customer or new Agencies commence supply of the Services
- 2.11.10 The Managed Service Provider's solution shall provide 24-hour system support for functional and/or technical problems to help and support service users as required for example a help desk. If the proposed solution is via telephone, this 24-hour system should not be premium rate and preferably calls shall be charged at local rate or lower. This may include online support outside of typical working hours and some means of logging emergency or major Systems issues may be required.
- 2.11.11 The Managed Service Provider must confirm that the proposed solution will be compliant with the requirements of the Data Protection Act in accordance with (but not limited to) the following criteria:
- 2.11.11.1 Ensure integrity of data
  - 2.11.11.2 Have adequate privacy enhancement techniques
  - 2.11.11.3 Allow archive and deletion of data
  - 2.11.11.4 Rejection of duplicate records with meaningful error messages at the point of data entry
- 2.11.12 User Access and Data
- 2.11.12.1 The Hiring Manager must be able to specify all relevant information for an Assignment including; start/end date, location, job type, reason for use, skill requirements and other parameters and the System shall support definition of standardised job groups, job descriptions and skill sets. The Customer should define which fields will be mandatory for their organisation; however the Managed Service Provider should ensure that there are appropriate mandatory fields within the System to capture the data.
  - 2.11.12.2 The System should support the entry and display of all relevant Contract data for the Temporary Agency Workers requisitioning process e.g. pricing conditions, delivery conditions, payment terms, etc.
  - 2.11.12.3 Users must be able to track the status of an order from order creation via approval to invoice receipt and payment. The Contract

Manager should be able to see an overview or 'dashboard' containing details of any open requests.

- 2.11.12.4 All data must be maintained centrally or locally, dependent upon access rights granted. The Customer maintains ownership of this data and will have access to download data in its entirety at any time during the duration of the contract as well as on expiration of the contract period.
- 2.11.12.5 The Hiring Manager shall be notified via email when a Temporary Agency Worker's assignment (of longer than 4 weeks) is approaching expiry. The Hiring Manager along with the Contract Manager shall be notified via email when an individual Temporary Agency Worker has been on an assignment approaching 8 weeks (or to a timescale as agreed by the Customer at Implementation) in order that the Customer can review and decide the future of the Assignment prior to the Temporary Agency Worker having been on Assignment for more than 12 weeks.
- 2.11.12.6 The System shall include processes for the approvals of requests for Candidates, extensions to Assignments and approval of timesheets. The Customer must be able to define parameters for the system, including but not limited to; maximum assignment durations, blocking of certain categories of worker, requirements for post numbers/ authorisation for workers and any other data which is required by the Customer.
- 2.11.12.7 The System shall enable Hiring Managers to re-assign approval rights when there is a period of absence. Should this be unplanned, there will be a defined process to enable the Contract Manager or Managed Service Provider to re-assign rights as necessary.

- 2.11.13 The System proposed by the Managed Service Provider shall allow for straightforward management of timesheets for the Customer, Agency and Temporary Agency Worker that does not cause unnecessary complexity for any of the parties.
- 2.11.14 The System proposed by the Managed Service Provider must provide Management Information that enables sharing of data and experiences of the Customers that are using the Managed Service Provider's System via the framework in order that Customers can use this information in benchmarking activities. Any Management Information should be easily exported into a commonly used spreadsheet format.

## **2.12 Implementation**

- 2.12.1 The Managed Service Provider shall provide to the Contract Manager details of its:
  - 2.12.1.1 Strategy for obtaining / defining baseline information against which service improvements and financial savings (direct and indirect) can be measured. This baseline should be the most current year prior to entering into this contract, and the evidence should be shared with the Customer.
  - 2.12.1.2 Strategy for dealing with current Agencies
  - 2.12.1.3 Strategy for dealing with current Temporary Agency Workers
  - 2.12.1.4 Strategy for communication before and during the implementation
  - 2.12.1.5 Proposals for Implementation for each Customer, as relevant, either by Department, Temporary Agency Worker category, or the organisation as a whole.

2.12.1.6 The Managed Service Provider will be required to facilitate the adoption of existing supply chain of Agencies and existing Temporary Agency Workers where requested by the Contract Manager.

2.12.2 The Managed Service Provider shall draft and agree Service Levels with each Customer in respect of fulfilment rates, response times, request fulfilment timescales and the reduction of Agency margins. These shall be shared with ESPO to support the overall management of the Framework.

2.12.3 The Managed Service Provider shall provide detailed timescales for the Implementation of the Service from Contract award to the Customer specified go live date. The Managed Service Provider must ensure they have sufficient capacity to enable the implementation timescales to be adhered to when implementing multiple organisations at the same time.

During the Implementation period the Managed Service Provider may be required to organise and deliver a small number of workshops for the Customer's staff and proposed Agencies at no extra cost to the Customer or attendees to promote and market the new arrangements.

**SCHEDULE 3 to the CUSTOMER AGREEMENT**  
**PRICING SCHEDULE**  
**(including Invoicing Procedures)**

*Included at Section 3 of the Tender Submission Document (Part B)*

**SCHEDULE 4 to the CUSTOMER AGREEMENT**  
**LOCAL ARRANGEMENTS**

**See Council Locations – Building Addresses at Appendix 3**



## **SCHEDULE 5 to the CUSTOMER AGREEMENT**

### **EXAMPLE IMPLEMENTATION PLAN**

1. An Implementation Plan will be required where identified in the order.
2. An Implementation Plan will be requested from the Supplier by the Customer in one of two ways:
  - a. Where customers are calling off from the Framework, an Implementation Plan will be requested by the Customer.
  - b. Where customers are re-opening competition underneath the Framework and invite tenders as part of a further competition process, an Implementation Plan will be requested as part of the tender submission.
3. The Implementation Plan will vary in degrees of complexity and timescales depending on the Customer's specific requirements and the Customer's current position.
4. The Implementation Plan will include a schedule of tasks to be undertaken, against a set timescale and will identify the responsibilities of the Supplier and Customer in implementing the Agreement. Such tasks may include but not be limited to, provision of details of all hiring managers, job descriptions and person specifications for the roles, drafting and preparation of guidance documents for Hiring Managers and appropriate training for key users. The Supplier will (with full agreement with the Customer) create the Implementation Plan with milestone dates for achieving delivery and commencement of the Services.

**SCHEDULE 6 to the CUSTOMER AGREEMENT**  
**EXAMPLE SERVICE LEVEL AGREEMENT**

Between  
Bracknell Forest Borough Council (the Customer)  
and  
[name of Supplier] (the Supplier)

This Service Level Agreement (SLA) is intended to provide a framework for the way in which the Customer and the Supplier will work together to maximise the benefits of using the Supplier's services for their temporary agency resources.

Both parties agree to deliver the services in accordance with the contents of this agreement.

**1. Services covered**

- 1.1. This Service Level Agreement sets out the agreed Service Levels to be provided by the Supplier to the Customer under the Contract entered into between the Customer and the Supplier under ESPO Framework **reference number 653F/15**.
- 1.2. The managed service for temporary agency resources includes but is not limited to provision of suitably experienced and qualified Temporary Agency Workers in a timely manner to fulfil Assignments as required by the Customer, provision of all supporting management information as well as all related services, including but not limited to implementation and training.
- 1.3. This Service Level Agreement (SLA) covers the core level of service applicable to all Services provided as defined in the Specification (see **Section 12** of the Invitation to Tender document)

**2. Duration**

- 2.1. This Service Level Agreement (SLA) will be valid for as long as there are Services still in use by the Customer which have been supplied in accordance with the Agreement let under the ESPO Framework reference 653F/15

**3. Services required**

- 3.1. The Services shall be delivered in accordance with the Supplier's Tender submitted and accepted by the Customer.

**4. Ordering of Temporary Agency Workers**

- 4.1. The Customer shall ensure that requests for Temporary Agency Workers are made in accordance with the Framework Agreement and that;
  - 4.1.1. Hiring Managers provide the Supplier with sufficient detail to enable the Supplier to fill the Assignment with a suitably qualified and experienced Temporary Agency Worker, supplying or referring to a relevant job description and/or person specification when placing the order
  - 4.1.2. requests for Temporary Agency Workers are authorised promptly
- 4.2. The Supplier shall ensure that;
  - 4.2.1. the Hiring Manager can request an Temporary Agency Worker via a variety of channels

4.2.2. all Assignments are filled quickly with a suitably qualified and experienced Temporary Agency Worker within the following set timeframes

below table included as an example

<b>Urgency of Assignment request</b>	<b>Timescale</b>
Temporary Agency Worker required to commence an Assignment	Assignment Fulfilment Timescales from the Supplier required
within 4 hours	within 30 minutes
within 24 hours	within 1 hour
within 2-3 days	within 4 hours
within 4-7 days	within 48 hours

4.2.3. If the Hiring Manager wants to see CVs and conduct interviews, the Hiring Manager shall stipulate this in requesting the Temporary Agency Worker and shall indicate the timescale within which the Supplier shall supply CVs. Any specific format or technique required for any such interview will be confirmed to the Managed Service Provider by the Customer.

4.2.4. All detail regarding the Assignment is shared with all tiered Agencies to enable the Agencies to promptly respond to the Assignment request.

## 5. Provision of Temporary Agency Workers

5.1. Fulfilment of a request shall be defined as the supply of a suitable Temporary Agency Worker, accepted by the Hiring Manager within the timeframe as set out in at **4.2.2** above.

5.2. The Supplier shall meet the following service levels

<b>Type of assignment</b>	<b>Fulfilment rate</b>
standard assignments	Minimum of 98%
'hard to fill' assignments ( <i>to be defined and agreed between the Customer and the Supplier</i> )	Minimum of XX%

5.3. The Customer shall require an exception report detailing the action being taken by the Supplier to remedy the situation and the associated timescale for the remedy, in the event that;

5.3.1. the Supplier falls below the above stated levels for more than two consecutive months,

5.3.2. the Supplier falls below 90% for standard assignments in any one month

5.3.3. the Supplier falls below XX% for hard to fill assignments in any one month

## 6. Rejection of Temporary Agency Workers and cancellation of Assignments

6.1. the Supplier shall ensure that appropriately qualified and experienced Temporary Agency Workers are supplied that are appropriate for the Assignment concerned

- 6.2. in the event that a Temporary Agency Worker shall not arrive on time to commence an Assignment the Supplier shall ensure that the Hiring Manager is notified **without delay**.
- 6.3. in accordance with the specification the Supplier shall make no charge to the Customer in the event that;
  - 6.3.1. the Temporary Agency Worker fails to attend at the Assignment at the reporting time
  - 6.3.2. the Temporary Agency Worker fails to attend or rejects the Assignment
  - 6.3.3. the Temporary Agency Worker is rejected within the trial period (where such a trial period is agreed)
  - 6.3.4. the Temporary Agency Worker is rejected within the first three hours
  - 6.3.5. the Temporary Agency Worker is found not to have the defined requirements for the role
  - 6.3.6. the Temporary Agency Worker is found not to have the correct and valid credentials to allow them to legally work in the UK
  - 6.3.7. the Temporary Agency Worker is defined as being unfit for work or not being capable of carrying out the majority, or most of the specified tasks required safely and to the necessary standard.
- 6.4. The Customer shall notify the Supplier of the requirement for any change or cancellation of the assignment **at least 90 minutes** prior to the agreed Assignment start time.
- 6.5. If the Customer fails to comply with the requirement of 6.4 above they shall pay 25% of the cost of the first day or where the Assignment is less than one day, 25% of the Assignment charges, unless the Temporary Agency Worker can be placed elsewhere.

## **7. Communications and Account Management**

### **7.1. Account Management**

- 7.1.1. The Customer's Contract Manager is [*state name and job title*] who can be contacted for further information or any issues or to give feedback on [*insert contact details*]
- 7.1.2. The Contract Manager shall be available for queries during Normal Working Hours [*07:30 to 17:30*]
- 7.1.3. The Supplier has nominated an Account Manager for the Customer. Any contact the Customer makes with the Supplier, should, in the first instance be made through [*state name and job title*] by contacting [*insert contact details*]
- 7.1.4. the Account Manager shall be available for queries during Normal Working Hours [*07:30 to 17:30*]

### **7.2. Service Helpdesk**

#### **7.2.1. Role**

- 7.2.1.1. the Supplier shall provide a Service Helpdesk which will be the first point of contact for all Customer enquiries and service delivery related issues. The Service Helpdesk shall be manned by suitably experienced individuals who are familiar with this Customer Agreement (and should not simply be an answering service).

#### **7.2.2. Hours of cover**

- 7.2.2.1. the period for which the helpdesk service is available is between the hours of [*07:30 and 17:30 Monday to Friday*], excluding all United Kingdom Public Holidays.

7.2.2.2. the working hours, upon which response and resolution times are calculated will be [07:30 and 17:30 Monday to Friday], excluding all United Kingdom Public Holidays.

### 7.2.3. Contacting the service helpdesk and call logging

7.2.3.1. enquiry/enquiries may be placed by email or telephone. In either case the processing of the call will only take place between the hours of [07:30 and 17:30 Monday to Friday], excluding all United Kingdom public holidays.

7.2.3.2. calls to the helpdesk shall be charged at local rate or lower. No charges at premium rate shall be made.

7.2.3.3. the Customer call logging procedure shall achieve the following functions

- provide a standard call logging procedure for the services provided
- minimises the risk of calls being unanswered or missed
- achieve customer satisfaction

7.2.3.4. the service desk can be contacted

- by telephone [*telephone number to be inserted*]
- by e-mail [*email address to be inserted*]

## 7.3. Out of Hours Service

### 7.3.1. Role

7.3.1.1. the Supplier shall provide an Out of Hours Service which will be the first point of contact for all Customer enquiries and service delivery related issues outside of the Normal Working Hours detailed above

### 7.3.2. Hours of cover

7.3.2.1. the period for which the helpdesk service is available is between the hours of [17:30 and 07:30 Monday to Sunday], including all United Kingdom Public Holidays.

7.3.2.2. the working hours, upon which response and resolution times are calculated will be [17:30 and 07:30 Monday to Sunday], including all United Kingdom Public Holidays.

### 7.3.3. Contacting the service helpdesk and call logging

7.3.3.1. calls may be placed by email or telephone. In either case the processing of the call will only take place between the hours of [17:30 and 07:30 Monday to Sunday], excluding all United Kingdom public holidays.

7.3.3.2. the Customer call logging procedure shall achieve the following functions

- provide a standard call logging procedure for the services provided
- minimises the risk of calls being unanswered or missed
- achieve customer satisfaction

7.3.3.3. the service desk can be contacted

- by telephone [*telephone number to be inserted*]
- by e-mail [*email address to be inserted*]

Contact	Response Times	Resolution Times
Customer enquiries by telephone	90% of calls answered within 4 seconds 95% of calls answered within 7 seconds 100% of calls answered within 10 seconds	90% of enquiries answered within 24 hours 95% of enquiries answered within 48 hours 100% of enquiries answered within 5 days
Customer enquiries by email	90% of emails answered within 30 minutes 95% of emails answered within 1 hour 99% of emails answered within 2 hours	90% of enquiries answered within 24 hours 95% of enquiries answered within 48 hours 100% of enquiries answered within 5 days

## 8. Web Services

8.1. High up-time of web service are critical to all Customers, and represent the amount of time the Service is available

Uptime	Level
Average level	98%
Minimum level	96%

## 9. Monitoring and Review

9.1. The Customer requires regular contact from their Account Manager with additional attendance by the Account Manager at ad-hoc internal review meetings. Initially for the first six months, monthly meetings should be diarised, with quarterly meetings thereafter. The Customer and the Supplier may agree to move this to less frequently, if this proves appropriate for the circumstances.

9.2. ESPO established the framework on behalf of the Customer, and as and when it considers necessary ESPO will also conduct review meetings with the Supplier addressing any strategic issues arising across all Customers. If the Customer need to raise any issues with ESPO, please advise the Customer's Contract manager who will make contact with ESPO accordingly ([see 7.1.1](#))

9.3. Management Information

9.3.1. The Supplier shall provide to the Customer on a quarterly basis management information which should provide the detail as included in **Schedule 7 of the Customer Agreement** at no cost to the Customer

9.3.2. notwithstanding 9.3.1 above the Customer shall be able to run Management Information reports themselves from the system on an 'as-required' basis

## **10. Complaints and Resolution**

- 10.1. In the event of any issues, the Customer's Contract Manager shall in the first instance contact the Supplier's Account Manager for resolution.
- 10.2. Any complaints raised will be managed in accordance with the Supplier's complaints procedure. This process ensures that all complaints are dealt with in a professional manner, and to the satisfaction of the Customer.
- 10.3. If the issue is not resolved satisfactorily or escalation is needed, the Customer's Contract Manager shall escalate the issue to ESPO, for discussion with the Supplier's [*Business Development Director*].

**SCHEDULE 7 to the CUSTOMER AGREEMENT**

**MONITORING AND MANAGEMENT INFORMATION**

The following data is required for performance management purposes. This summary data must be submitted to the Customer on a quarterly basis (every three months from the commencement of the customer contract) or as otherwise agreed with the Customer. Provision of such data shall not prevent the Customer requesting additional reports when required, or running their own reports from the system.

Data should be from the period in question unless stated otherwise.

This list is not exhaustive, and may change over the life of the contract.

<b>Data required by Customers</b>	
<b>Measure</b>	<b>Additional summary data to be provided (beyond that listed in the Data Definition)</b>
<b>1 Financial</b>	
1.1 Spend via contract by customer	Total spend in Quarter
1.2 Spend via by directorate and service	Total spend per directorate and service
1.3 Savings to date	Summary of savings during quarter per customer – to ensure no additional inaccurate savings are being accrued, savings are in addition to the spend figure
1.4 MSP fee	Total MSP fee charged per client in Quarter (excluding any Gainshare elements)
1.5 ESPO fee	Total ESPO fee accumulated in Quarter
1.6 Agency fees	Maximum hourly charge to all clients at the current point in time per specialism (overall, not per client)
1.7 Average savings expressed in both pence and percentage	Average savings during quarter in £ and % per specialism for each client
<b>2 Process / Operations</b>	
2.1 Total hours billed	Summary of hours billed, per specialism
2.2 Total no. assignments filled	Summary of number of assignments filled in given period, per specialism (figures may be less than 2.3)
2.3 Fill rates	% of requested assignments which have been filled in given period, per specialism
2.4 Time to fill	Average length of time in days taken to fill an assignment, overall and per specialism
2.5 System issues raised	System issues which are resolved within Service Level Agreements Supplier responses, within Service Level



	Agreements, regarding considerations of future system developments
2.6 Time to resolve system issues	Average length of time taken, in days, to resolve systems issues in given period
2.7 Timesheets on time	% of timesheets which are authorised on time, broken down by business area
<b>3 Customer and Quality ( * denotes measures which will be assessed using feedback from customer satisfaction survey, see below example)</b>	
3.1 Complaints made	Summary and/or number of complaints received from customers
3.2 Complaints resolved, and time taken to resolve.	Summary and/or number of complaints from customers resolved in accordance with the agreed complaints procedure
3.3 % interviewed for role	% of CVs which are put forward and are interviewed
3.4 % offered after interview	% of assignments offered after interview
3.5 Assignment extensions	Number of assignments extensions
3.6 Assignment cancellations	Number of assignments which are withdrawn / cancelled prior to the start
<b>4 Contract &amp; Supply Chain Management</b>	
4.1 % SMEs in supply chain	% of spend that is going through SMEs % of tiered suppliers which are SMEs
4.5 Maximum overall time took to pay supply chain in quarter	Maximum number of days taken to pay the supply chain, following the issue of an undisputed invoice to the customer. Please note clause 5.3 of this Customer Agreement.
4.5.1 I hereby agree and have complied with clause 5.3 within this Agreement.	Yes / No                      Signed .....
4.2 Agencies passing audit	% agencies which have passed an audit
4.3 Supplier complaints	Summary and/or number of complaints received from supply chain
4.4 Assignments > 13 weeks	Summary of number of assignments which are longer than 13 weeks

## Example of Customer Satisfaction Survey

Sample customer satisfaction survey to be used to support data provision

### To be completed by recruiting/ hiring managers for each assignment

#### To what extent did you:

receive submitted CVs to your specified timescale?  Better than expected  As expected  Worse than expected

receive as many CVs as requested/ expected?  Better than expected  As expected  Worse than expected

find the CVs matched your specified requirements?  Better than expected  As expected  Worse than expected

Did all candidates offered an interview turn up?  Yes  No

If not – were you notified ahead of time?  Yes  No

Did you appoint?  Yes  No

#### Did the candidate:

arrive on time?  Yes  No

If not – were you notified ahead of time?  Yes  No

dress appropriately?  Yes  No

Perform the required tasks to the required standard?  Yes  No

Promptly submit accurate timesheets?  Yes  No

Behave appropriately?  Yes  No

#### Comments:

**NB** – This specific format is not mandatory but MSPs will need to collect data in order to provide statistic

**SCHEDULE 8 to the CUSTOMER AGREEMENT**  
**ACTION ON EXPIRY OR TERMINATION**

**1. TRANSFER OF RESPONSIBILITY**

- 1.1 The Supplier acknowledges that on termination or expiry of this Agreement for any reason, the continuity of the Service is of paramount importance. The Supplier shall minimise disruption caused and assist the implementation of any contingency plan proposed by the Customer to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 1.2 The Supplier shall promptly provide such assistance and comply with such timetable as the Customer may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent) in the period immediately before the expiry or other termination of this Agreement. The Supplier shall ensure that its sub-contractors are under a similar obligation. The Customer shall be entitled to require the provision of such assistance both prior to and up to twelve (12) months after the expiry or other termination of this Agreement. If the Customer requires such assistance after the expiry or other termination of this Agreement and within twelve (12) months of the expiry or other termination of this Agreement, the Customer shall reimburse any reasonable costs incurred by the Supplier in the course of providing such assistance.
- 1.3 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Supplier or its subcontractors which relate to performance, monitoring, management and reporting of the Services, including the documents and data, if any, and which the Supplier may otherwise be obliged to disclose under this Agreement or otherwise beneficial to orderly transfer.
- 1.4 The Supplier shall not knowingly or purposely obstruct the ability of the Customer to ensure an orderly transfer of responsibility for service provision.
- 1.5 Within 21 days of being so requested by the Authorised Representative, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Customer to issue tender documents for the future provision of temporary agency worker services.
- 1.6 The Customer shall take all necessary precautions to ensure that the information referred to in paragraph 1.5 above is given only to Suppliers who have qualified to tender or/have been successful in being selected as the Supplier following a tender exercise for the future provision of temporary agency worker services. The Customer shall require that such suppliers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose.
- 1.7 The Supplier shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information which the Supplier is required to provide under paragraph 1.5 above.

**2. TRANSFER OF UNDERTAKINGS**

- 2.1 Where, in the opinion of the Supplier and/or the Authorised Representative, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are likely to apply on the termination or expiration of the Agreement, the information to be provided by the Supplier under paragraph 1.5 shall include, as applicable, accurate information relating to the Staff or Agency Workers who would be transferred under the same terms of employment under those Regulations, including in particular:-

- 2.2 the number of Staff or Agency Workers who would be transferred, but with no obligation on the Supplier to specify their names;
- 2.3 in respect of each of those members of Staff or Agency Workers their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- 2.4 the general terms and conditions applicable to those members of Staff or Agency Workers, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.
- 2.5 The Supplier agrees that if upon termination of this Framework Agreement, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are applicable, the Supplier shall in good faith co-operate with the Customer in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties
- 2.6 The Supplier shall comply with the requirements of those Regulations in respect any personnel who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Supplier.
- 2.7 The Supplier shall indemnify the Customer in full and upon demand against any claim made against the Customer at any time by any person currently or previously employed by the Customer or by the Supplier for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Customer) resulting from any act or omission of the Supplier on or after the date of this Agreement, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Customer.
- 2.8 Where it is considered, in the opinion of the Supplier and Authorised Representative, that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended) shall apply on the expiry or termination of this agreement and shall operate so as to transfer the contracts of employment of any employees engaged in the provision of the Services to the Customer, the Customer shall indemnify, and keep indemnified, the Supplier from and against all employment liabilities arising directly as a result of the acts or omissions of the Customer on or after the date of the employee transfer envisaged by this paragraph and which relate to claims brought by any of the employees or by a Trade Union or other employee representative against the Supplier in respect of or in any way relating to any period on or after the date of the employee transfer.

**SCHEDULE 9 to the CUSTOMER AGREEMENT**  
**TEMP TO PERM AND INTRODUCTION FEES**

**Temp to Perm and Introduction Fees**

The Customer shall not pay any introduction fee to either the Managed Service Provider or any Agency in the supply chain should any Temporary Agency Worker secure employment with a Customer (including the post in which the Temporary Agency Worker is temporarily engaged) where the worker applies for a job in response to an advertised vacancy (either internally/externally advertised), and no such fee shall be invoiced to the Customer by the Managed Service Provider or Agency. The Customer will provide, on request, evidence of advertising arrangements to the Managed Service Provider or Agency.

In addition, and where applicable, neither the Managed Service Provider or any Agency shall make any charge whatsoever relating to Introduction or Referral Fees to the Customer in the event that a Temporary Agency Worker previously registered with an Agency (or the Managed Service Provider where the Managed Service Provider proposes to supply Temporary Agency Workers) goes on to secure a role (temporary or permanent) with the Customer, through another Agency (or Managed Service Provider) at a later point in time.

The Managed Service Provider shall note that no commission or other fee shall be payable by the Customer in the event that employment is offered to a Temporary Agency Worker where the individual concerned has worked for the Customer for more than fourteen (14) weeks (whether continuous or not) in any twelve (12) month period. Where the Managed Service Provider is managing the Agencies, the Managed Service Provider shall make sure no Agencies raise any such charges either. This applies to Temporary Agency Workers required on a full-time, part-time or hourly basis.

The following are example scenarios.

- 100 If the temporary agency worker works for the customer and prior to 14 weeks from the start of the first assignment with the customer, the customer wants to take on the temporary agency worker to a permanent contract (or fixed-term contract) without advertising the role and completing a recruitment process then a fee shall be incurred in relation to the rates below.
- 101 If the temporary agency worker has worked for more than 14 weeks in the role, no fee shall be incurred.
- 102 If the temporary agency worker has worked for less than 14 weeks, and identifies a position within the authority that has been advertised (either internally or externally) and applies for that position, providing the job has been openly and fairly advertised, no charge shall be made to the customer for the temporary agency worker by the MSP (either themselves or on behalf of one of their supply chain agencies).

The rates applicable to be paid by the customer to the supplier only in circumstances where a charge is legitimate are:

- 0-5 weeks 12.5%
- 5-10 weeks 7.5%
- 10-14 weeks 2.5%
- 14 weeks + no charge

Percentage charge is based on annualised salary.

An alternative to paying the transfer fee the customer may elect to hire the Temporary Agency Worker(s) in question for an extended period. This extended period should be of reasonable length and in no circumstances longer than 3 months.