

**THIS AGREEMENT** is made on the **13th day of February 2007**

**BETWEEN:**

- (1) The Borough Council of Bolton of the Town Hall, Bolton, BL1 1RU (the "Council"); and
- (2) Comensura Ltd (registered number 04085767), of 800 The Boulevard, Capability Green, Luton LU1 3BA (the "Service Provider").

**WHEREAS :**

- (1) The Council on behalf of fourteen (14) organisations within the Greater Manchester Boundary have agreed that the Service Provider will manage the supply of all Orders for Temporary Workers in accordance with the terms of this Framework Agreement and a Service Level Agreement as executed between each individual participating Organisation and the Service Provider; and
- (2) Each Organisation shall submit Orders for Temporary Workers and the Service Provider will manage, oversee and co-ordinate the process by which Temporary Workers are supplied ; and
- (3) The Service Provider shall enter into separate Panel Vendor Agreements with a panel of agreed third party companies, who will provide Temporary Workers in accordance with the conditions specified by the Council and participating Organisations.

## **PART I**

### **GENERAL**

#### **1. General interpretation**

The Form of Tender shall be deemed to form and be read as part of this Agreement save where the parties have agreed otherwise. For the avoidance of doubt where there is any conflict between the documents the following order of precedence shall apply:

- This Framework Agreement;
- Each applicable Service Level Agreement;
- The Service Providers Tender Submission;
- The Invitation to Tender.

#### **2. Definitions**

In this Framework Agreement and the Service Level Agreements the following words and expressions have the following meanings except where the context otherwise requires:

***"Applicable Legislation"***

means any legislation, regulation, decision or authorisation having the force of law from time to time in any Relevant Jurisdiction in relation to matters dealt with by this Agreement.

***"Assignment"***

means the period during which a Temporary Worker is engaged by a Panel Vendor to render work and/or services to the Organisation on a temporary basis.

***"Council"***

The Borough Council of Bolton, as lead Local Authority for up to fourteen (14) Organisations within the Greater Manchester Boundary, as set out in the Invitation To Tender.

***"Council's representative"***

means the person or persons appointed from time to time by the Council for the purposes of this Framework Agreement, and the Council shall notify the Service Provider of his, her or their appointment;

***"Order"***

means a request from the Organisation to the Service Provider for a Temporary Worker in accordance with the Agreement and the applicable Service Level Agreement;

***“Organisation”***

means each individual Local Authority, or partner organisation, which is party to this Framework Agreement, for the purpose of requesting Temporary Workers.

***“Organisation’s Representative”***

means the nominated officer from each Organisation, for the purposes of this Framework Agreement.

***“Panel Vendor”***

means any company, which has signed a Panel Vendor Agreement with the Service Provider and who supplies Temporary Workers to an Organisation in accordance with its terms and conditions.

***“Panel Vendor Agreement”***

means the agreement entered into between the Service Provider and a third party supplier which sets out the terms upon which Temporary Workers will be made available to the Customer by the relevant third party.

***“Service Level Agreement”***

means the agreement entered into between the Organisations and Comensura which will supplement this Framework Agreement and define any requirements or amendments appropriate to that participating Organisation only. A template is incorporated as Schedule 1.

***“Service Provider’s Representative”***

means the person or persons appointed from time to time by the Service Provider for the purposes of this Framework Agreement, and the Service Provider must notify the Council in writing of his, her or their appointment;

***‘Temporary Worker’***

means an individual put forward by a Panel Vendor via the Service Provider to perform work for an Organisation on a temporary basis, under the Organisation’s supervision and control.

**3. Meanings**

- 3.1 Reference to any statute or statutory provision includes a reference to:
- (i) that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated; and
  - (ii) all statutory instruments, orders or byelaws made pursuant to it.
- 3.2 Where the context requires:
- (i) words denoting the singular number only include the plural and vice versa;
  - (ii) words denoting any gender include all genders ; and
  - (iii) words denoting persons include firms, companies and corporations and vice versa.
- 3.3 Unless the context otherwise requires, references to any clause, sub-clause or schedule is to a clause, sub-clause or schedule (as the case may be) of or to this Agreement.
- 3.4 The headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.
- 3.5 The validity, construction and performance of this agreement shall be governed by English law.

#### **4. Commencement and Term of Agreement**

- 4.1 This Framework Agreement shall commence on January 29<sup>th</sup> 2007 for the term of three (3) years, and may be extended thereafter by the agreement of the Council and the Service Provider for a further two (2) consecutive years on a year-by-year basis, unless terminated earlier in accordance with the provisions of this Framework Agreement.
- 4.2 Each applicable Service Level Agreement shall commence on the date set out therein as agreed by the Service Provider and the applicable Organisation, and shall continue thereafter for the period of the Framework Agreement and any subsequent renewal, unless terminated earlier in accordance with the provisions of this Framework Agreement.



## **PART II**

### **TEMPORARY WORKERS**

#### **1. Supply of Temporary Workers**

- 1.1 In accordance with the terms and conditions of this Framework Agreement and any applicable Service Level Agreement, the Service Provider agrees to supply Temporary Workers from a panel of approved Panel Vendor as and when required in respect of each Organisation's requirements for Temporary Workers.
- 1.2 The volume or value of bookings made by each Organisation cannot be guaranteed, however in accordance with the Service Level Agreements signed by each participating Organisation, all Orders for Temporary Workers will be submitted to Comensura unless expressly agreed otherwise.
- 1.3 Save for any other provision of this Agreement or as may be required under Applicable Legislation, the parties agree that no Temporary Worker shall be or become an employee of the Organisation or the Service Provider for any purpose and that no Temporary Worker shall be entitled to exercise any rights, or seek any benefit, accruing to the regular employees of any Organisation or the Service Provider by virtue of the services rendered by the Service Provider to the Organisation.

#### **2 Screening and Background Checks**

- 2.1 Comensura shall require the Panel Vendors to perform or cause to be performed background checks on all Temporary Workers prior to assigning them to or placing them with any Organisation. Such background checks shall include the following:
- A minimum of two (2) years referencing, one reference the Panel Vendor shall use reasonable endeavours to obtain from the current or last employer;
  - Check history and evidence continuity of employment;
  - Evidence of their eligibility to work within the United Kingdom in accordance with the Asylum and Immigration Act.
  - Where applicable as advised by the Organisation, evidence of current Criminal Records Bureau disclosure certificate;
  - Where applicable as advised by the Organisation, evidence of a POCA & POVA certificate;

- Copies of relevant professional qualification certificates where appropriate;
- Reasonably verify the Temporary Worker's past qualifications and relevant experience in line with best industry practice and current legislative and regulatory requirements

The Panel Vendor shall be responsible for the reasonable costs associated with such screening.

- 2.2 Upon the request of the Organisation, Comensura shall require the Panel Vendors to ensure that all Temporary Workers assigned to the Organisation attend applicable orientation meetings regarding policies, procedures and expectations of the Organisation relating to the work or services to be provided by such Temporary Workers. Comensura shall require that all Temporary Workers assigned to the Organisation are provided with and execute all documents required by the Organisation prior to such Temporary Worker beginning any Assignment for the Organisation.

### **3. Suitability of Nominated Temporary Workers**

- 3.1 The Service Provider shall audit each Panel Vendor every six (6) months to assess their compliance with the Panel Vendor Agreement in accordance with its standard audit process to determine whether:-

(i) where required by an Organisation and set out in the Requirements Card, a search has been conducted of the records of the Criminal Records Bureau at the correct level (Enhanced or Standard and including POVA/C checks) for any reference to or details of the Temporary Worker;

(ii) the Panel Vendor has placed on Assignment any Temporary Worker who has declared unspent convictions to the Panel Vendor or where spent or unspent convictions have been disclosed as part of a CRB check and the matter has not been escalated to the Organisation;

(iii) the Temporary Worker has the specified qualifications ; and

(iv) the Temporary Worker's most recent employment references have been obtained;

- 3.2 The Service Provider should on request provide evidence to the Council of the regular audit with Panel Vendors in accordance with this Clause 3.

#### **4. The Organisations' Obligations**

- 4.1 Each Organisation shall provide Comensura with a copy of relevant policies and procedures. These will include as a minimum those covering, health and Safety, Data protection, Discrimination, use of IT, and Security.
- 4.2 Each Organisation shall designate the individuals with whom Comensura and/or the Temporary Workers should communicate (as necessary in each Order) with respect to the Service Provider's performance of the services and with respect to the Temporary Workers' performance of the Assignments.
- 4.3 The Organisations shall not solicit or cause or encourage any of the Service Provider's employees to terminate his or her employment with the Service Provider during the term of this Framework Agreement and for a period of six (6) months after the termination of this Framework Agreement.
- 4.4 Except as provided for in Part III, the Organisation shall not solicit or contract with or cause any Panel Vendor to provide management services, Temporary Workers, or other services related to the Organisation temporary workforce during the term of this Framework Agreement.
- 4.5 In respect of each Assignment, the Organisation shall give the Service Provider full details of:
  - (i) the intended duties of the Temporary Worker;
  - (ii) any special skills which it requires the Temporary Worker to have including any experience, training, qualifications or authorisations including those required by a professional body or by law;
  - (iii) any risks to health and safety known to the Organisation and any steps that may have been taken to prevent or control such risks;
  - (iv) any specific health and safety information which the Organisation wishes to be passed on to the Temporary Worker.

#### **5. Supervision of Temporary Workers**

- 5.1 Each Organisation acknowledges that neither the Service Provider nor any Panel Vendor has the obligation (or the opportunity) to supervise, direct or control the manner, time or place of any Temporary Worker's work, whilst they are on site. Each Organisation shall provide on behalf of the Service Provider and the Panel Vendor sufficient supervision, direction and control over the Temporary Worker

throughout the Assignment to ensure a reasonable standard of performance by the Temporary Worker.

- 5.2 Each Organisation undertakes to the Service Provider that it will discharge responsibility for the health and safety of each Temporary Worker from the start of any Assignment as if that Temporary Worker was an employee, and shall be responsible for all acts, errors and omissions of each Temporary Worker whilst on Assignment. This clause shall apply except to the extent any claim arises as a direct result of the negligent acts or omission of the Panel Vendor, including but not limited to the Panel Vendor failing to undertake the required checks prior to supplying a Temporary Worker.
- 5.3 Each Organisation shall at all times discharge on behalf of the Service Provider all statutory and common law duties which the Organisation may from time to time owe to the Temporary Worker or to which the Organisation may from time to time be subject to in respect of the Temporary Worker. Such duties include but are not limited to those required under the Working Time Regulations and the Health and Safety at Work Act 1974. Without limiting the generality of the foregoing, the Organisation shall ensure on behalf of the Service Provider that the Temporary Worker is provided with the necessary rest breaks and, where applicable, weekly rest periods prescribed by Applicable Legislation.
- 5.4 Each Organisation shall complete any health and safety checklist provided to it by the Service Provider for the purposes of providing Panel Vendors with health and safety information.
- 5.5 Temporary Workers supplied by the Panel Vendor will not be subject to the provisions of the Organisations' disciplinary Procedures. Problems relating to Temporary workers performance, attendance or conduct will be referred to the Service Provider who will immediately notify the Panel Vendor responsible for the supply of the Temporary Worker and, if necessary the booking will be terminated without further charge.

## **6. The Service Provider's Obligations**

- 6.1 The Service Provider shall require the Panel Vendors to comply with all reasonable instructions of the Organisation in relation to the Temporary Workers' access to the Organisation's premises at all times during an Assignment, including but not limited to instructions about ID cards, swipe cards or security measures.
- 6.2 The Service Provider shall provide to each Panel Vendor for supply to each Temporary Worker prior to the commencement of each new Assignment a copy of

the organisation's relevant personnel policies. These will include as a minimum those covering, health and Safety, Data protection, Discrimination, use of IT and Security.

- 6.3 The Service Provider shall require the Panel Vendors to keep the Service Provider informed where it becomes aware of any accident which has occurred during an Assignment involving any of the Temporary Workers and shall ensure that an accident report for the same, in such form as the Organisation may from time to time require, is completed promptly in respect of each such accident. Upon receipt of such information the Service Provider shall pass such information to the Organisation.
- 6.4 The Service Provider shall require the Panel Vendors to perform all interviews, curricula vitae verification, testing and/or background checks as specified in the Agreement in respect of each Temporary Worker proposed to be assigned to the Organisation.
- 6.5 At any time upon the Organisations request and where there are reasonable grounds for termination, the Service Provider shall require the Panel Vendor to remove any Temporary Worker assigned to the Organisation. Where this request is made within the first four (4) hours of commencement of an Assignment the Organisation will be not be charged. Where the same is required by the Organisation, The Service Provider shall require the Panel Vendor to arrange for the provision of a replacement Temporary Worker.
- 6.6 The Service Provider shall require the Panel Vendors to ensure that all Temporary Workers assigned to the Organisation are eligible to work legally in the Relevant Jurisdiction. In the event that a Temporary Worker is found to be ineligible to work in a Relevant Jurisdiction, then upon the Service Provider becoming aware of such ineligibility, the Service Provider shall require the Panel Vendor to cause the immediate termination of such Temporary Worker and shall require the Panel Vendors to arrange for the provision of a replacement Temporary Worker within a reasonable time thereafter.
- 6.7 The Service Provider shall manage the accounting and invoicing for the provision of Temporary Workers in accordance with the terms specified in Part III.

- 6.8 The Service Provider shall provide the Organisation with reports and information, as detailed in the tender response.
- 6.9 The Service Provider has entered into or shall enter into a Panel Vendor Agreement with each Panel Vendor in such format as is attached at Schedule 2.
- 6.10 The Panel Vendor Agreement shall set out the terms upon which the supply of Temporary Workers to the Organisation by the relevant Panel Vendor shall be made. Any requested amendment to the Panel Vendor Agreement which materially amends the Panel Vendor Agreement will be passed by The Service Provider to the Council for approval in writing
- 6.11 Where such approval in writing is given by the Council results in a discrepancy between the obligations of the Panel Vendor to The Service Provider and the obligations of the Service Provider to the Council, the Council shall indemnify the Service Provider for any resultant liability.
- 6.12 The Service Provider shall provide to each Panel Vendor for supply to each Temporary Worker any information disclosed by the Organisation to The Service Provider under its obligations set out in Clause 4 above.

## **7. Termination of an Assignment**

- 7.1 Each Organisation may request the Service Provider to terminate a Temporary Worker's Assignment before the expiry of his initial period of Assignment if, in the reasonable opinion of the appropriate line manager:
- (i) the Temporary Worker has failed to carry out the duties assigned to him;
  - (ii) the Temporary Worker is guilty of serious misconduct;
  - (iii) the Temporary Worker is no longer required; or
  - (iv) where there are other reasonable and lawful grounds for removal .
- 7.2 Following the termination of a Temporary Worker's Assignment for any of the reasons above, the Organisation will co-operate with any reasonable request of the Service Provider concerning any subsequent, necessary actions.

## **8. Absence of a Temporary Worker**

8.1 This clause applies where a Temporary Worker assigned under this Agreement is absent from his or her Assignment:

- (i) due to an unforeseen reason, such as an accident or illness;
- (ii) due to pre-booked absence, such as holiday or hospital attendance or otherwise; or
- (iii) due to an absence without explanation.

8.2 Where a Temporary Worker has notified that he is unable to undertake his or her Assignment due to an unforeseen reason, the Service Provider's Representative must immediately on becoming aware of the same inform the Organisation's Representative of:

- (i) the Temporary Worker's absence from the Assignment;
- (ii) the reason for the absence; and
- (iii) the likely period of absence from the Assignment.

8.3 Where a Temporary Worker is absent for any of the reasons specified, the Organisation's Representative may:

- (i) leave the Assignment vacant; or
- (ii) request an alternative Temporary Worker and the provisions of this Framework Agreement will apply to that Assignment.

## **PART V**

### **INDEMNITIES AND INSURANCE**

#### **1. Indemnities**

- 1.1 Save to the extent that the loss, damage or liability is caused or contributed to by the Council, its employees or agents or participating Organisations the Service Provider agrees with the Council to indemnify and keep indemnified the Council, and participating Organisations from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred resulting directly from a breach of this agreement by the Service Provider or its negligence or its breach of Applicable Legislation, including any breach of professional duty on the part of the Service Provider's employees;
- 1.2 The Service Provider shall not be responsible or obliged to indemnify the Council or participating Organisation for:
- (i) any loss, damage or liability under Clause 1.1 above, which arises as a direct result of a temporary worker acting on the instruction of his line manager or other authorised officer of the Council or Organisation, or as a result of the absence of appropriate levels of supervision and control over the Temporary Worker; and
  - (ii) any injury, loss, damage, cost and expense caused by the negligence of the Organisation or by the breach of its obligations under this agreement.
- 1.3 In no event shall either party be liable to the other party for any indirect, special or consequential damages or loss (including but not limited to, liability to or by a third party, loss of present or future profits, business, revenue, goodwill, anticipated savings and/or any claims made under third party contracts) in any way arising under or in connection with this Framework Agreement or otherwise.
- 1.4 The Service Provider's insurance must have the minimum limits as shown in Clause 2 below.
- 1.5 Where one party becomes liable to the other party under the provisions of this Framework Agreement, they shall

- (i) use all reasonable efforts to minimise any amounts claimed under any indemnities and /or liabilities;
- (ii) promptly notify the other Party in writing of any matter which may result in a claim under any such indemnities and /or liabilities;
- (iii) make no admission nor make any statement which may prejudice the defence of such a matter (the subject of the indemnity) ;
- (iv) give the other Party sole conduct and control of such matter ( and any related settlement negotiations); and
- (v) give the other party full assistance and co-operation in the defence of such claim.

## **2. Insurance**

2.1 The Service Provider undertakes to obtain insurance cover with an insurance company of good repute and financial standing in respect of the company's liabilities and obligations under this Framework Agreement, including where applicable the indemnities given by the Service Provider.

2.2 The terms of the Service Providers insurance shall be subject to the approval of the Council, which approval shall not be unreasonably withheld.

1.3 The Service Providers insurance shall:

(i) have a limit in respect of professional indemnity of not less than £2,000,000 (two million pounds) for any one claim or in the aggregate in any period of twelve (12) months;

(ii) have Public Liability Insurance to a minimum of £5,000,000 (five million pounds) for any one claim; and

(iii) have Employers Liability Insurance to a minimum of £5,000,000 (five million pounds) for any one claim; and

(iv) be for an annually renewable period over the full term of this Framework Agreement;

2.4 Except in the event of death or personal injury caused by the negligence of the Service Provider, the Service Provider's aggregate liability during any one (1) annual insurance period whether contractual, tortious, for breach of statutory duty or otherwise shall not exceed:

(i) in the case of a claim falling within the scope of the Service Provider's Professional indemnity insurance, £2,000,000.

(ii) in the case of a claim falling within the scope of the Service Provider's Public Liability insurance, £5,000,000.

(iii) in the case of a claim falling outside of the scope of either of the insurances as set out in (i) and (ii) above, £1,000,000.

2.4 The Service Provider further undertakes that:

(i) it will pay in full and when due all premiums payable under the Service Provider's insurance;

(ii) it will provide to the Council on request the receipts for all premiums and a copy of the policy; and

(iii) it will not cancel, surrender or terminate the insurance nor in any way mortgage, charge or otherwise deal with the Council's interest in the insurance except with the Council's prior written consent.

2.5 Prior to the commencement of the Framework Agreement and thereafter from time to time at the Council's written request, the Service Provider must provide the Council's Representative with a certificate from its insurers or brokers certifying that the Service Providers insurance cover complies with this clause.

**KPI's**

	<b>Comensura KPIS</b>	<b>Target</b>	<b>Reporting Frequency</b>
<b>1</b>	<b>General</b>		
1.1	Supply of all temporary workers via Comensura fully implemented by (Date (TBC))		
<b>2</b>	<b>Confirmation of Orders</b>		
2.1	Confirmation of orders in 20 minutes	100%	Weekly
<b>3</b>	<b>Fulfillment</b>		
3.1	Immediate Fill	50%	Weekly
3.2	Same Day Orders	80%	Weekly
3.3	Next Day Orders	90%	Weekly
3.4	Next Day +	95%	Weekly
<b>4</b>	<b>Background Checks/Audits</b>		
4.1	6 monthly audit programme to be in place ensuring all agencies are audited every 6 months against the Comensura.net Requirements Cards	100%	6 monthly
<b>5</b>	<b>Provision of MI</b>		
5.1	MI to be provided Weekly cost savings report:	100%	

## **PART VII**

### **CHANGE MANAGEMENT, MEDIATION, BREACHES & TERMINATION**

#### **1. Change Management Process**

1.1 This process (the “Change Management Process”) shall be utilised by the Service Provider and the Council to manage any change to the Agreement, Services or Charge Rates which either party deems necessary following a Service Review:

(i) Either party may request a change by submitting to the other party in writing a proposal which shall include full details in writing of the justification for the change proposed, any evidence supporting the requirement and its probable impact on the operational and commercial aspects of the Services and Agreement including the Charge Rates (the “Change Proposal”).

(ii) The Representatives of the parties shall meet within twenty-eight (28) days of the submission of the change proposal to discuss the Change Proposal. The party reviewing the Change Proposal submitted shall either accept or reject the change proposal in full or in part.

(iii) If the party submitting the Change Proposal is dissatisfied with the decision of the operational account manager, the Change Proposal shall be escalated to the Managing Director of the Service Provider and the Senior Procurement Team for the Council for a final decision.

(iv) Nothing in this Clause shall prevent either party from invoking the Dispute Resolution Process set out in Part VII of this Framework Agreement.

## **2. Mediation**

- 2.1 If any dispute arises between parties under or in relation to the Framework Agreement or any Service Level Agreement, it shall first be referred to the Organisation's Representative, and Service Provider's Representative. If it cannot be resolved to the satisfaction of both parties within ten (10) working days of such referral, it shall be referred to the line manager of each representative for resolution. The Service Provider's obligation to supply Temporary Workers shall not be affected by this procedure, or by any other procedure for the resolution of disputes referred to in this clause.
- 2.2 If the parties are unable to resolve any dispute under or in relation to the services provided under the Framework Agreement within ten (10) working days of its referral, the parties will attempt to settle it by mediation in accordance with the Centre for effective Dispute Resolutions (CEDRs) Model Mediation Procedure:
- (i) to initiate the mediation, either party must give notice in writing to the other party requesting mediation in accordance with this clause 21. The initiating party shall send a copy of such request to CEDR
  - (ii) if there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of any party, decide the issue for the parties having consulted with them.
  - (iii) if the dispute is not resolved within ninety (90) days of the initiation of mediation, or if either party will not participate in the mediation, either party may commence proceedings in accordance with English Law and subject to this Clause 21 and shall be subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.
- 1.3 Nothing in this clause shall prejudice the right of either party to apply to Court for interim relief to prevent the violation by the other party of any proprietary interest, or any breach of the other party's obligations which could cause irreparable harm to the first party.
- 2.4 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

### **3. Notice of Breach**

3.1 If the Service Provider commits a material breach of any of the terms and conditions of this Framework Agreement, or persistently breaches any of the terms and conditions of this Framework Agreement the Council shall have the right by written notice (a "default notice"):

(i) to require the Service Provider to remedy the breach within a reasonable specified time; and

(ii) if the breach complained of is not so remedied, to terminate immediately the relevant Service Level Agreement or Framework Agreement.

3.2 The Council may request the Service Provider to terminate any Panel Vendor Agreement at any time, if in the reasonable opinion of the Council, the Panel Vendor:

(i) supplied Temporary Workers who materially did not meet the required standard as set out in the Order.

(iii) did not carry out the appropriate vetting procedures and pre-employment checks.

3.3 The Council shall have the right to terminate this Framework Agreement on giving notice in writing to the Service Provider to that effect if:

(i) the Service Provider goes into compulsory or voluntary liquidation or enters into a composition or scheme of arrangement (otherwise than for the purpose of a genuine reconstruction or amalgamation):

(ii) an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Service Provider's assets,

(iii) the Service Provider makes an assignment for the benefit of or composition with its creditors, or

(iv) any similar occurrence under any jurisdiction affects the Service Provider, or

(v) if the Service Provider has offered paid or given directly or indirectly any gift

in money or in any other form to any member employee or agent of the Organisation as an inducement or reward in connection with their behaviour in relation to the Agreement or has committed any offence under the Prevention of Corruption Acts 1889 to 1916 to or has paid or offered any fee or reward contrary to section 117(2) of the Local Government Act 1972.

3.4 If the Council or any participating Organisation commits a material breach of any of the terms and conditions of this Framework Agreement, or persistently breaches any of the terms and conditions of this Framework Agreement, the Service Provider shall have the right by written notice (a "default notice"):

(i) to require the Council or any participating Organisation to remedy the breach within a reasonable specified time; and

(ii) if the breach complained of is not so remedied, to terminate immediately the relevant Service Level Agreement. or Framework Agreement.

3.5 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Framework Agreement or any Service Level Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all of the terms and conditions.

3.6 Either party may terminate this Framework Agreement or any individual Service Level Agreement for convenience at any time after the first twelve (12) months of the commencement date of that respective agreement by giving not less than one hundred and eighty (180) days written notice of termination to the other party.

#### **4. Consequences of Termination**

4.1 On termination of this Framework Agreement or any individual Service Level Agreement;

*(a) any Service Charges payable by the Council or Organisation under this Framework Agreement which have been invoiced to it by the Service Provider shall become immediately payable; and*

*(b) any Service Charges payable by the Organisation to the Service Provider under this Framework Agreement which are outstanding but have not been invoiced shall become*

*payable immediately on the issue of an invoice by the Service Provider to the Council or the Organisation.*

- 4.2 If either party terminates this Framework Agreement in accordance with its terms, it shall incur no liability to the other party as a result of such termination.
- 4.3 The Organisation agrees and acknowledges the substantial cost to the Service Provider of implementing the services and expended within the initial twelve (12) months of any contract period. The Organisation therefore agrees that where it invokes the right to terminate during the first twelve (12) months of any Service Level Agreement, the Service Provider shall immediately be entitled to recover the full costs of such implementation from the Organisation.

## **5. General Notices**

5.1 All notices and other communications relating to this Framework Agreement:

- (a) *shall be in English and in writing;*
- (b) *shall be delivered by hand or sent by post, facsimile or electronic mail (email).*
- (c) *shall be delivered or sent to the party at the address detailed in Clause 5.2.;*
- (d) *may in the case of any claim form, judgment or other notice of process on the Service Provider be delivered or sent to its registered office from time to time or on the Organisation be delivered or sent to the address referred to in Clause 5.2 below; and shall take effect:*
  - (i) if delivered, upon delivery, proof of which is required;
  - (ii) if posted, at the earlier of the time of delivery and (if posted in the United Kingdom by first class registered post) 10am on the second business day after posting provided that if any communication would otherwise become effective on a non-business day or after 5pm on a business day, it shall instead become effective at 10am on the next business day.

## **PART VIII**

### **MISCELLANEOUS**

#### **1. Compliance with statutory requirements**

- 1.1 The Service Provider shall comply with all statutory and other provisions to be observed and performed in both its capacity as an employer and in connection with its obligations under or arising from this Agreement.

## **2. Familiarisation with the Service Provider**

- 2.1 In its reasonable discretion, the Service Provider shall provide appropriate training and induction of Panel Vendors to the Panel Vendor Program and appropriate training and induction of the Organisation personnel of the processes and procedures The Service Provider shall use in providing the services described in this Framework Agreement. There shall be no additional cost for this service .

## **3. Additional Management Services**

- 3.1 The Service Provider shall assist each Organisation with the communications the Organisation reasonably considers necessary to inform the employees of the new process for managing the Temporary Workforce and/or Panel Vendors.
- 3.2 Each Organisation shall assist the Service Provider with the communications The Service Provider reasonably considers necessary to inform the Panel Vendors of the new process to facilitate compliance.

## **4. Reports and Information**

- 4.1 The Service Provider will provide the Council and the Organisations with all reports as set out in the tender at no additional cost, and leave in 4.4
- 4.2 The Service Provider shall provide each Organisation with additional reports and information as agreed upon from time to time by the parties. In addition overall management information will be provided to the Organisation.

## **5. Rewards, etc.**

5.1 The Service Provider shall not offer or give, or agree to give, to any person any gift, emolument, or consideration of any kind as an inducement or reward for:

- (i) doing, not doing, having done or not done, any action, or
- (ii) showing favour or disfavour, or not showing favour or disfavour, to any person,
- (iii) in relation to the obtaining or execution of this agreement or any other contract with the Council or participating Organisation.

5.2 The Service Provider shall be deemed to have breached sub-clause 6.1) if any person employed by it, or acting on its behalf, does anything, or fails to do anything, which would constitute a breach of that sub-clause if done by the Service Provider itself.

5.3 The Service Provider shall be deemed to be in breach of this agreement if in relation to any contract with the Council or partner organisation it, or any person empowered by it or acting on its behalf, has:

- (i) committed an offence under the Prevention of Corruption Acts 1889 to 1916; or
- (ii) given any fee or reward the receipt of which is an offence under subsection (2) and (3) of section 117 of the Local Government Act 1972.

## **6. Contracts (Rights of Third Parties) Act 1999**

6.1 Save as expressly provided for, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Framework Agreement.

## **7. Unforeseeable Events**

7.1 Neither the Council, or participating Organisation, nor the Service Provider shall be liable to the other because of any interference or delay in the carrying out of this Framework Agreement or Service Level Agreement in whole or in part by reason of circumstances beyond their respective control, including but not by way of limitation

war (whether declared or not), civil commotion and action of competent authority, strikes or other industrial action, act of God, abnormal weather conditions or other unavoidable accident or circumstances.

7.2 Clause 7.1 shall not apply where the event leading to the act or default by either party was reasonably foreseeable or within the reasonable contemplation of the party in breach.

## **8. Entire agreement**

8.1 This agreement (together with any documents referred to in it including all subsequent Service Level Agreements executed between participating Organisations and the Service Provider) constitutes the entire agreement between the Service Provider and the Council in connection with the supply of Temporary Workers by the Service Provider.

8.2 This Framework Agreement supersedes all prior discussion, representations, correspondence and agreements (whether oral or written) between the Service Provider and the Council and/or the Organisations in connection with the supply of Temporary Workers.

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Service Provider has signed the same as its Deed the day and year first before written

**THE COMMON SEAL of  
The Borough Council of Bolton  
was hereunto affixed to this deed  
in the presence of:  
The Mayor**

**Name:**

**Authorised Sealing Officer**

**SIGNED as a DEED by COMENSURA LIMITED  
Acting by a Director and its secretary/two Directors**

**Name:**

**Position**

**Secretary/Director**



