

SERVICES FOR TEMPORARY AGENCY WORKERS
AND WHERE NECESSARY PERMANENT MEMBERS OF STAFF

CUSTOMER AGREEMENT

This Customer Agreement together with relevant Order comprise the contractual provisions which apply to the Order that is entered into between the Customer and the MSP and which govern the provision of the Services to the Customer.

CONDITIONS OF CONTRACT

THIS CUSTOMER AGREEMENT is made the day of 2015

BETWEEN:

- (1) [] of [] (the “**Customer**”)
and
(2) [] whose registered office is at [] (the “**Managed Service Provider**”)

WHEREAS:

- A. The Customer wishes to purchase the Services.
- B. The Managed Service Provider (“**MSP**”) having been awarded supplier status under a Framework Agreement with the Eastern Shires Purchasing Organisation (“**ESPO**”) the ‘**Framework Agreement**’ (a copy of which is available upon request) will supply the Services in accordance with his obligations to the Customer.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 As used in this Customer Agreement:

- 1.1.1 the terms and expressions set out below shall have the meanings ascribed therein;

Agency(ies) means the MSP and/or those Agencies with whom the MSP will sub-contract with to supply Temporary Agency Workers (and Permanent Members of Staff as required) to the Customer

Agency Legislation means Part 2 Chapter 7 Income Tax (Earnings and Pensions) Act 2003 sections 44-47 as amended and the Social Security (Categorisation of Earners) Regulations 1978 as amended

Assignment means the required duties and periods of time where a Temporary Agency Worker is working within the Customer’s organisation or means the appointment of a Permanent Member of Staff

Authorised Officer means a representative of the Customer for the

purposes of this Customer Agreement

Charges

means the charges set out in the Pricing Schedule
(Schedule 3)

Commencement Date

means 1st April 2016

Confidential Information

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 MSPs of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998

Contract Manager

means the person nominated by the MSP who will be responsible for managing this Customer Agreement for the provision of the Services

Customer

means [Cheshire East Borough Council and where relevant all Cheshire East Borough Council subsidiary and associated companies, including, but not limited to: Tatton Park Enterprises Ltd; East Cheshire Engine of the North; Ansa Environmental Services Ltd; Orbitas, Bereavement Services Ltd; Civicance Ltd; Co-Socious Ltd and Everybody Sports and Recreational Trust Ltd. (Trading as Everybody Ltd.); Transport Service Solutions Ltd and any other wholly or partly owned companies created by Cheshire East Borough Council]

[Cheshire West and Chester Borough Council and where relevant all Cheshire West and Chester Borough Council subsidiary and associated companies, including, but not limited to Co-Socious Ltd, VIVO Care Choices, Brio Leisure Ltd. and any other wholly or partly owned companies created by Cheshire West and Chester Borough Council]

Customer Agreement

means this Customer Agreement between the Customer and the MSP, comprised of the Conditions and the Schedules and Annexes thereto and any Order

Default

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 Customer Agreement and in respect of which such Party is liable to the other.

Direct Hire means where the Customer has identified a specific individual they seek to appoint as a temporary worker and the MSP agrees to set them up on-line so that they can complete timesheets online, the MSP will be liable to verify matters relating to the appointment of the Direct Hire in accordance with the Service Specification.

Equality Legislation 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

ESPO means the Eastern Shires Purchasing Organisation being the central purchasing body responsible for creating the Framework Agreement

FOIA 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

Framework Agreement means the Agreement between ESPO and the MSP under which this Customer Agreement is entered into by the Customer and the MSP for the supply of the Services

Hiring Manager means an officer within the Customer organisation who has been given permission to place orders on the MSP under this Customer Agreement

Implementation Plan means the plan to be developed by the Customer and the MSP in accordance with **Schedule 5** and which will contain a schedule of tasks to be done, the timescale for completion of those tasks, identifying the Party responsible for those tasks, together with the milestones to be achieved and against which payment will be made

Invitation to Tender means the invitation to tender issued to the MSP in response to a request following the publication of the OJEU notice for the procurement of the Services.

Order means an official order in such form as may be issued by the Customer to the MSP in respect of the

Services.

Parent Company

means any company which is the ultimate Holding Company of the MSP or any other company of which the ultimate Holding Company of the MSP is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the MSP or which is engaged in the same or similar business to the MSP. The term Holding Company shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto.

Permanent Member of Staff

means an employee who has been hired for a position without a pre-determined time limit. A permanent member of staff differs from a term or temporary employee, both of which have a pre-determined period of employment.

Pricing Schedule

means the Pricing Schedule attached to the MSP's tender return - attached hereto at **Schedule 3**

Protocol

means the Customer Protocol describing the Customers obligations in relation to their local arrangements and contract management requirements and which is attached hereto as **Schedule 1**

Requests for Information

shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR

Relevant Employee

means those Employees who are employed in the undertaking which is being transferred under TUPE shall have their employment transferred to the new employer. Employees can refuse to transfer (or "opt-out"), but depending on the circumstances of the case, they can lose valuable legal rights if they do. TUPE states that "all the transferor's rights, powers, duties and liabilities under or in connection with the transferring employees' contracts of employment are transferred to the transferee". This all-embracing concept encompasses rights under the contract of employment, statutory rights and continuity of employment and includes employees' rights to bring a claim against their employer for unfair dismissal, redundancy or discrimination, unpaid wages, bonuses or holidays and personal injury claims etc.

Services

means the provision of the Services for Temporary Agency Workers (or Permanent Members of Staff as may be required) more particularly set out in the Specification attached as **Schedule 2** hereto

Specification	means the Specification for the Services which the MSP shall provide as set out in Schedule 2 hereto
System	means a Vendor Management System (VMS) or technology platform that supports the procurement and management of temporary workers which the Hiring Manager will use to record requests to supply temporary workers under this Customer Agreement
Temporary Agency Worker	means a temporary (non-permanent) worker offered and provided on Assignment by an Agency or a Direct Hire nominated by the customer to the MSP to fulfil a specific role for the Customer 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 MSP in order to invoice the Customer for the Agency fee. The Direct Hire will complete a timesheet, signed by the Hiring Manager, which will be processed by the MSP in order to invoice the Customer for the fee due to the Direct Hire.
Tender	means the MSP's tender submitted in response to a mini competition carried out by the Customer under the Framework Agreement and attached to this Customer Agreement as Schedule 2
Term	means a period of three [3] years with the option of a one [1] year extension from the Commencement Date
Working Day	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 Customer Agreement for ease of reference only and shall not affect the interpretation or construction of this Customer Agreement.
- 1.4 References to Conditions and Schedules are, unless otherwise provided, references to conditions of and schedules to this Customer 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. MSP'S OBLIGATIONS

- 2.1 Where the MSP seeks to appoint an Agency to discharge any of his obligations under this Customer Agreement, the MSP shall warrant to the Customer that they have an agreement in place with the Agency subject to conditions which are no less onerous than those contained in this Customer Agreement.
- 2.2 The MSP shall supply the Services in accordance in all respects with the terms of the Framework Agreement and the terms of this Customer Agreement and the terms and conditions of the relevant Order and in accordance the Specification and any local arrangements agreed and set out in **Schedule 4**.
- 2.3 For the avoidance of doubt the Customer shall not be responsible for any Services that are delivered by the MSP which are not the subject of a valid Order.
- 2.4 For the avoidance of doubt any terms that the MSP may seek to impose and which in any way seek to vary or contradict the terms of this Customer Agreement shall be excluded and shall not form part of the Order.
- 2.5 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 MSP unless otherwise agreed in writing by the Customer. The MSP 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 provisions of **Schedule 6**.
- 2.6 The MSP 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.
- 2.7 The MSP 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.
- 2.8 The MSP 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 MSP's obligations and everything necessary for the supply of the Services under the Order.
- 2.9 Unless otherwise expressly stated in this Customer Agreement or the Order no claim by the MSP 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 this Customer Agreement or the Order or any ambiguity or discrepancy therein on which an experienced MSP could have satisfied himself by reference to the Customer or any other appropriate means.
- 2.10 Subject to the MSP evidencing to the Customer that he has a warranty in place for his Agencies to be liable to the Customer for any negligence claims the Customer may make under the Customer Agreement, the MSP 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 MSP itself.
- 2.11 Where arranging for the supply of Temporary Agency Workers the MSP will ensure that the correct amount of tax and National Insurance contributions are paid and/or deducted in respect of those Temporary Agency Workers engaged via this Customer 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 MSP 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 MSP.
- 3.4 The Customer will assign an Authorised Officer who will interface with the MSP's Contract Manager, to ensure both Parties use reasonable endeavours to meet the Specification and any milestones determined in the Implementation Plan (if 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 Temporary Agency Worker is engaged, the Hiring Manager must ensure that such person is entered onto the System within twenty-four [24] hours of engagement. The Customer acknowledges that any failure to do so may result in delays in payment to Temporary Agency Workers.

4. PROVISION OF THE SERVICES

- 4.1 The MSP shall provide the Services identified in the Order in accordance with the Services Description and Specification in **Schedule 2** and the Service Levels and Key Performance Indicators in **Schedule 6**, and as may be supplemented by any Local Arrangements as set out in **Schedule 4**. The Charges in respect of such Services shall be as detailed in the Pricing Schedule at **Schedule 3**.
- 4.2 Without prejudice to any other remedies available, if the MSP fails to provide the Services in accordance with the Specification and the Key Performance Indicators are not met then the Customer shall be entitled to Service Credits (from Month 7 of this Customer Agreement) calculated in accordance with **Schedule 6**.
- 4.3 The MSP will be responsible for providing all Temporary Agency Workers (in agreed categories) through Agencies as ordered from time to time by the Customer from the MSP.
- 4.4 If requested the MSP will be responsible for providing any Permanent Members of Staff as requested by the Customer.
- 4.5 The MSP shall in the provision of the Services ensure that where the MSP is acting solely as a supply chain manager it shall not supply Temporary Agency Workers from its own register of Workers. The MSP shall be permitted to utilise associated or subsidiary companies as a source of supply for the Services subject to the following additional conditions:

- 4.5.1 the MSP shall provide the Services on the basis that it shall provide for all the Customer's requirements for Temporary Agency Workers in named categories and no other(s); and
 - 4.5.2 with the exception of the Services provided for and described in the preceding Condition hereof the MSP shall expose all Customer's requirements for the Services to the wider network of Agencies within its management and control; and
 - 4.5.3 for the avoidance of doubt any associate or subsidiary company of the MSP shall be subject to the same restriction as the MSP referred to in **Condition 4.4.1** and shall not therefore be permitted to provide the Services beyond the scope of the category or categories referred to therein; and
 - 4.5.4 all quotations requested from Agencies (save as may be provided for otherwise in this Condition) shall be treated equally and without discrimination by the MSP.
- 4.5 In the event that an Agency has failed an audit, or is unable to meet requirements of this Customer Agreement or, in the case of an Agency refusing to accept the terms and conditions of the MSP 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 this Customer Agreement and the Order, the Customer shall pay the Charges calculated in accordance with the **Pricing Schedule** specified in **Schedule 3**
- 5.2 Payment shall be made by the Customer within fourteen (14) calendar days of receipt by the Customer of a valid invoice (subject to any later reconciliation of the invoice) in accordance with the provisions of **Schedule 3**, from the MSP.
- 5.3 Where the MSP enters into a sub-contract with an Agency for the purposes of performing its obligations under this Customer Agreement, the MSP shall ensure that a provision is included in such sub-contracting agreement requiring payment to be made of all sums due by the MSP to the Agency to be made within five (5) Working Days after the MSP has been paid by the Customer, and that in total, payment to the Agency shall not exceed twenty one (21) days from the issue of any undisputed invoice being submitted to the Customer.
- 5.4 The MSP shall provide the Customer with evidence that it is acting in compliance with **Condition 5.3** as part of the Management Information that the MSP is required to provide to the Customer in accordance with **Condition 8.1.2** of this Customer Agreement. The Customer 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 MSP.
- 5.5 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 upon receipt of a bona-fide VAT invoice.

6. RECOVERY OF SUMS DUE

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

7. IMPLEMENTATION PLAN

- 7.1 The MSP shall provide the Services in accordance with any Implementation Plan as agreed with the Customer and attached hereto at Schedule 5.
- 7.2 The MSP shall deliver a draft Implementation Plan to the Customer during the mobilisation period of this Customer Agreement. The draft Implementation Plan shall be sufficiently detailed as is necessary to manage the implementation of the Services from the Commencement Date effectively. Once the Implementation Plan has been agreed with the Customer (such agreement not to be unreasonably delayed or withheld) the MSP shall monitor its performance jointly with the Customer against the Implementation Plan.

8. MONITORING AND REPORTING

- 8.1 The MSP shall:
- 8.1.1 appropriately manage the provisions of the Services that it provides under this Customer 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 Customer Agreement and Order and the supply of the Services for the purpose of carrying out an audit; and
 - 8.1.4 institute, keep and maintain proper and sufficient records in connection with business conducted under this Customer Agreement and for the continuance of this Customer 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

The MSP shall provide the Services to meet or exceed the Service Levels and Key Performance Indicators contained in **Schedule 6**.

10. MSP'S PERSONNEL

- 10.1 The MSP shall ensure that Agencies engaged by him in the discharge of his obligations under this Customer Agreement who supply Temporary Agency Workers 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 MSP shall comply with (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall comply with) any statutory requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997.
- 10.3 The MSP shall ensure that the Agencies engaged by him to supply Temporary Agency Workers who may be required to work within school premises, or other sites occupied by children and/or vulnerable adults shall ensure that the Temporary Agency Workers are

appropriately checked by the Disclosure and Barring Service (DBS) and shall upon reasonable request produce evidence to the Customer of such satisfactory disclosure.

- 10.4 The MSP shall comply with (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall comply with) all reasonable requirements of the Customer whilst present at the Customer's premises.
- 10.5 The MSP shall employ (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall employ) sufficient staff to ensure that the Services are provided at all times in accordance with this Customer Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the MSP to ensure that its Agencies have a sufficient reserve of staff available to provide the Services in accordance with this Customer Agreement during staff holidays or absence through sickness or any other cause.
- 10.6 The MSP shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of **Conditions 10.1 - 10.5** (above).
- 10.7 The Customer (acting reasonably) shall have the right to refuse access to its premises at any time to any Temporary Agency Worker and any employee of the MSP, its agents, sub-contractors and suppliers. The exercise of this right shall not diminish the MSP's obligations of performance arising under this Customer Agreement.
- 10.8 The MSP shall take appropriate steps to ensure that neither the MSP 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 MSP or the MSP's staff and the duties owed to the Customer under the provisions of this Customer Agreement.
- 10.9 The MSP shall promptly notify and provide full particulars to the Customer if such conflict referred to in **Condition 10.8** (above) arises or may have reasonably been foreseen as arising.
- 10.10 The Customer reserves the right to terminate this Customer Agreement immediately by giving notice in writing to the MSP 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 MSP and the duties owed to the Customer under the provisions of this Customer Agreement. The action of the Customer pursuant to this Condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 10.11 This **Condition 10** shall apply during the Term and until whichever is the later of the termination or expiry of this Customer Agreement and the termination or expiry of the last Customer Agreement.

11. DEFAULT IN PERFORMANCE OF THE SERVICE

- 11.1 The MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement 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 this Customer Agreement and the MSP persistently fails to provide such Services or any element thereof in accordance with this Customer Agreement, or in the event of breach or default by the MSP (which the Customer has invited the MSP to remedy but which has not been remedied) 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 terminating part or all of this Customer Agreement or obtaining substituted provision of the Services to be supplied under this Customer Agreement. This shall be without prejudice to any other remedy for breach of this Customer 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 the Customer shall be entitled to claim from the MSP any reasonable and demonstrable excess of costs so directly incurred by 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 MSP to the Customer and payable within 28 days of demand.
- 11.4 Any dispute as to the reasonableness of any debt owed to the Customer under **Condition 11.3** may be referred for determination in accordance the Dispute Resolution provisions at **Condition 30**.
- 11.5 The rights of 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 Customer Agreement.

12. WARRANTIES AND REPRESENTATIONS

- 12.1 The MSP 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 MSP 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 MSP 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 MSP of this Customer 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 MSP or, its employees, and provided always that the MSP'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.

- 13.2 The MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall) effect and maintain Public and Employers liability insurance during the continuance of this Customer Agreement and in respect of the obligation to hold Professional Indemnity insurance for a period of twelve [12] years after expiry of this Customer Agreement. It will be a matter for the MSP to agree back to back liabilities with its Agencies in respect of any insurance obligations they may wish to pass onto their supply chain.
- 13.2.1 Public Liability insurance in the minimum sum of ten million pounds; and
- 13.2.2 Employers Liability insurance of not less than ten million pounds; and
- 13.2.3 Professional Indemnity insurance of not less than five million pounds
- 13.3 The MSP will be liable to check that a Direct Hire holds the levels of insurance as specified by the Customer (unless they have no employees which means that Employers Liability Insurance will not apply). The Customer minimum insurance levels may need to be increased depending on the specific role of the Direct Hire and the MSP will indemnify the Customer in any failing by the MSP in verifying a Direct Hire's insurances.
- 13.4 The levels of insurance cover stipulated shall be in respect of any one claim, and without limit, in respect of the number of claims made in any twelve [12] month period of insurance, such insurance to be effected with a reputable insurance company and evidenced immediately upon any reasonable demand by the Authorised Officer to do so.
- 13.5 Temporary Agency Workers (other than Direct Hires) engaged via this Customer Agreement will be insured under the Agencies own Employer's Liability and Public Liability insurance policies whilst under its direction and control.
- 13.6 (Other than having been notified by the Authorised Officer that individual Temporary Agency Workers are required to hold their own Professional Indemnity insurance) Temporary Agency Workers (other than Direct Hires) engaged via this Customer Agreement will be insured under the MSP's own Professional Indemnity insurance policy whilst delivering services under this Customer Agreement.
- 13.7 Temporary Agency Workers (other than Direct Hires) engaged via this Customer Agreement will be insured under the Customer's own Employer's Liability and Public Liability insurance policies whilst under its direction and control.
- 13.8 Save to the extent that the cost, liability, expense or demand is caused by the Customer the MSP 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 Customer Agreement, including without limitation any such matter relating to:
- 13.8.1 any negligent act on behalf of the Agency or Temporary Agency Workers;
- 13.8.2 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;
- 13.8.3 the MSP's failure to pay the Agency and/ or the Agencies failure to pay any Temporary Agency Worker any sums on time and properly due;
- 13.8.4 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; and

- 13.8.5 any circumstance whereby the Customer may be deemed by an Employment Tribunal to become the employer of any Temporary Agency Worker engaged by the Customer under this Customer Agreement. The MSP will use all reasonable endeavours to inform the Authorised Officer of any circumstances whereby a Temporary Agency Worker might be deemed to have become an employee of the Customer.
- 13.9 Save to the extent that the claim, cost or proceeding is caused by the Customer, the MSP shall indemnify the Customer against any claim, cost or proceeding arising directly as a result of:
- 13.9.1 the MSP's failure to pay the Agency;
 - 13.9.2 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 MSP's failure to comply with its legal obligations;
 - 13.9.3 any circumstance where an Employment Tribunal deems the Customer to be the employer of any Temporary Agency Worker engaged by the Customer under this Customer Agreement;
 - 13.9.4 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 Condition referred to as "the **Claim**"), the Customer shall:
 - (i) as soon as reasonably practicable, give written notice of the Claim to the MSP, specifying the nature of the Claim in reasonable detail;
 - (ii) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the MSP (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 MSP, but without obtaining the MSP's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - (iii) give the MSP 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 MSP and its professional advisers to examine them and to take copies (at the MSP's expense) for the purpose of assessing the Claim; and
 - (iv) subject to the MSP 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 MSP to take over the handling of the Claim and if the MSP considers it appropriate to compromise or settle the Claim.
- 13.10 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.
- 13.11 The MSP shall ensure that its Agencies are bound by the requirements of this **Condition 13**.
- 13.12 In instances where the Customer agrees variations in the levels of insurances to be held this will be recorded in this Customer Agreement.

- 13.13 Notwithstanding anything to the contrary, nothing in this Customer Agreement shall exclude, restrict or limit either Party's liability for death or personal injury resulting from its negligence.
- 13.14 Notwithstanding **Condition 13.13** above, the Parties liability to each other under or in connection with this Customer 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 13.2** where a claim falls within the Service Providers' insurance policy, or where a claim is not required to be covered by an insurance policy, the limitation of liability will be £1 million (one million pounds).
- 13.15 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Customer 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.
- 13.16 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.

14. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 14.1 The MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement 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 MSP or licensed by the MSP to the Customer under this Customer Agreement subject to:
- 14.1.1 the Customer promptly notifying the MSP of any alleged infringement and, subject to **sub-condition 14.1.3** below, allowing the MSP at their own expense to conduct all negotiations for settlement or litigation;
 - 14.1.2 the Customer making no admission without the MSP's written consent unless and until the MSP shall have failed to take over the conduct of the negotiations or litigation;
 - 14.1.3 the conduct by the MSP of such negotiations or litigation shall be conditional upon the MSP 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 MSP's expense shall give the MSP all available assistance.
- 14.2 If the Services or any part thereof becomes, or in the MSP's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under **Condition 14.1** above, the MSP 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 this Customer Agreement.
- 14.3 The MSP 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 MSP to any addition to the Charges or any extension of the Order lead time.

- 14.4 The MSP shall not be liable under **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, this Customer Agreement.

15. TERMINATION

- 15.1 Either Party may at any time by notice in writing terminate this Customer 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 Customer Agreement forthwith, if the MSP is in Default of any material or fundamental breach of any obligation under this Customer Agreement.

- 15.2 Either Party may at any time by notice in writing terminate this Customer Agreement forthwith, if the other Party is in Default of any obligation under this Customer Agreement and:

- 15.2.1 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
- 15.2.2 the Default is not capable of remedy.

- 15.3 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.
- 15.4 In the event of any termination of this Customer 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 Customer 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 MSP in accordance with the terms of this Customer 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 Customer Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Customer Agreement.
- 16.2 The MSP shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with this Customer Agreement:
- 16.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with this Customer Agreement and only to the extent necessary for the performance of this Customer Agreement; and
 - 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 Customer Agreement.
- 16.3 Where it is considered necessary in the opinion of the Customer, the MSP shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Customer Agreement. The MSP shall ensure that its staff, sub-contractors and agents are aware of the MSP's confidentiality obligations under this Customer Agreement.
- 16.4 The MSP shall not use any Confidential Information it receives from the Customer otherwise than for the purposes of this Customer 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 MSP to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to this Customer Agreement; or
 - 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 MSP shall not without the prior written consent of the Customer divulge the existence of this Customer Agreement or any Order or disclose any information relating to or contained in this Customer Agreement to any person who is not engaged in the performance of this Customer Agreement.
- 16.8 In the event that the MSP fails to comply with this **Condition 16** the Customer reserves the right to terminate this Customer Agreement by notice in writing with immediate effect.
- 16.9 The provisions of this **Condition 16** shall apply notwithstanding termination of this Customer Agreement.

17. DATA PROTECTION ACT 1998

- 17.1 The MSP shall (and shall procure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with this Customer Agreement.
- 17.2 Notwithstanding the general obligation in **Condition 17.1**, where the MSP is processing Personal Data for the Customer as a data processor (as defined by the DPA) the MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall):
- 17.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
- 17.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the MSP is complying with its obligations under the DPA;
- 17.2.3 promptly notify the Customer of:
- (a) any breach of the security requirements of the Customer as referred to in this **Condition 17**; and
 - (b) any request for personal data; and
 - (c) ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.
- 17.3 When handling Customer data (whether or not Personal Data), the MSP shall ensure (and shall procure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall ensure) the security of the data is maintained in line with the security requirements of the Customer as notified to the MSP from time to time. The MSP shall not cause or allow any of the Customer's data to be transferred outside of the European Economic Area.

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

- 18.1 The MSP 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 MSP's expense) to enable the Customer to comply with these information disclosure requirements.
- 18.2 The MSP shall (and shall procure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall comply with);
- 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 MSP respond directly to a request for information unless expressly authorised to do so by the Customer.
- 18.4 The MSP acknowledges that the Customer may be obliged under the FOIA or the EIR to disclose information;
 - 18.4.1 without consulting the MSP; or
 - 18.4.2 following consultation with the MSP and having taken its views into account.
- 18.5 The MSP shall ensure that all information produced in the course of this Customer Agreement or relating to this Customer Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 18.6 The MSP 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. EQUALITY

- 19.1 The MSP shall not (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement 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 MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall) take all reasonable steps to secure the observance of **Condition 19.1**(above) by all Staff employed in performance of this Customer Agreement.
- 19.3 The MSP shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the MSP or its Agencies 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 MSP's performance of this Customer Agreement being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall) free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the MSP's and its Agencies staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the MSP and any of the MSP's or

Agencies staff to appear as witnesses 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 MSP, its agents or Sub-Contractors, or the MSP's staff, and where there is a finding against the MSP in such investigation or proceedings, the MSP 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 the Customer or ESPO (as the case may be) may have been ordered or required to pay to a third Party.
- 19.6 The MSP must ensure that (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall ensure that) all written information produced or used in connection with this Customer Agreement is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 19.7 The MSP 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 Services and the MSP shall provide all necessary assistance and information to the Customer as may be required in relation to the performance of an impact analysis by the Customer. The MSP 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 the Customer.
- 19.8 The MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall) ensure that all Temporary Agency Staff are eligible to work in the United Kingdom.
- 19.9 The Customer shall be entitled at the Customer's expense to inspect such books, accounts and records belonging to the MSP or Agencies (as the case may be) as are necessary to demonstrate compliance with **Conditions 19.1 to 19.8** (above).
- 19.11 The cost to the MSP of ensuring compliance with this **Condition 19** shall be included in the Charges.

20. SOCIAL VALUE

- 20.1 The MSP acknowledges that under the Public Services (Social Value) Act 2012, the Customer is required to consider how Services which they procure can improve the economic, social and environmental well-being of their local area.
- 20.2 The MSP shall be required to deliver any agreed social value elements that were set out in their tender or shall agree with the Authorised Officer reasonable endeavours to ensure that, in providing the Services, he improves the economic, social and environmental well-being of [the Borough of Cheshire West and Chester] [the Borough of Cheshire East].

21. CORRUPT GIFTS AND PAYMENTS

- 21.1 The Customer shall be entitled to cancel and terminate this Customer Agreement and to recover from the MSP the amount of any loss resulting from such cancellation or termination if the MSP 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 this Customer Agreement or any other contract with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to this Customer Agreement or any other contract with the Customer or if like acts shall have been done by any person employed by the MSP or acting on its behalf (whether with or without the knowledge of the MSP) or if in relation to any contract with the Customer the MSP or any person employed by the MSP 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.

21.2 The decision of the Customer shall be final and conclusive in any dispute, difference or question arising in respect of:

21.2.1 the interpretation of this **Condition 21**; or

21.2.2 the right of the Customer under this **Condition 21** to terminate this Customer Agreement.

22. FORCE MAJEURE

22.1 For the purposes of this Customer 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.

22.2 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.

22.3 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.

22.4 It is expressly agreed that any failure by the MSP to perform or any delay by the MSP in performing its obligations under this Customer Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the MSP 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.

22.5 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.

- 22.6 If a Force Majeure event continues for more than sixty [60] days either Party may give written notice to the other to terminate the Contract immediately or on a set termination date.

23. HEALTH AND SAFETY

- 23.1 Both Parties shall (and the MSP shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement 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 MSPs business must also be strictly applied. The MSP shall (and shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall) 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.
- 23.2 Both Parties shall (and the MSP shall ensure that the Agencies engaged by him in the discharge of his obligations under this Customer Agreement shall) in performing their obligations under this Customer 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 MSP 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 the Customer, the MSP shall indemnify the Customer for any direct losses, costs, or damages, caused to the Customer for any breaches of health and safety laws, policies, or codes of practice, by the MSP.
- 23.3 The MSP shall request that any Agencies used are bound by the requirements of this **Condition 23**.
- 23.4 In respect of each Assignment, the Customer shall provide the MSP with full details of:
- 23.4.1 the intended duties of the Temporary Agency Worker;
 - 23.4.2 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;
 - 23.4.3 any risks to health and safety known to the Customer and any steps that may have been taken to prevent or control such risks; and
 - 23.4.4 any specific health and safety information which the Customer wishes to be passed on to the Temporary Agency Worker.
- 23.5 The Customer acknowledges that neither the MSP nor any Agencies engaged by him in the discharge of his obligations under this Customer Agreement 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.

24. TUPE

- 24.1 The Customer has been advised by the current incumbent MSP that they do not feel that TUPE applies in respect this Tender.
- 24.2 The MSP will be under an obligation to take their own legal advice in respect of the TUPE position and in the event that the MSP feels that TUPE should apply they will comply with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or as may be amended).
- 24.3 Upon termination or expiry of this Customer Agreement the MSP warrants that it shall to the best of its ability give to any replacement MSP sufficient and accurate information regarding each and every Relevant Employee as is necessary to enable the replacement MSP 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 replacement MSP.
- 24.4 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 Customer Agreement the MSP will comply with the provisions of **Schedule 8**.

25. TRANSFER AND SUB-CONTRACTING

- 25.1 This Customer Agreement is personal to the MSP, and other than consent being granted to permit the MSP to subcontract the provision of Temporary Agency Workers to Agencies, the MSP 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.
- 25.2 Notwithstanding any sub-contracting permitted hereunder, the MSP shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

26. AMENDMENTS TO THIS CUSTOMER AGREEMENT

This Customer Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Authorised Officer and the Contract Manager. No variation of this Customer Agreement shall limit or remove the MSP's obligations under the Framework Agreement.

27. COMMUNICATIONS

- 27.1 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.
- 27.2 Either Party may change its address for service by notice as provided in this **Condition 27**.

28. SEVERABILITY

If any provision of this Customer 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 Customer 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 Customer Agreement, the Customer and the MSP shall immediately commence good faith negotiations to remedy such invalidity.

29. WAIVER

- 29.1 The failure of either Party to insist upon strict performance of any provision of this Customer 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 Customer Agreement.
- 29.2 A waiver of any Default shall not constitute a waiver of any subsequent Default whether of the same or a different nature.
- 29.3 No waiver of any of the provisions of this Customer 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**.

30. DISPUTE RESOLUTION

If any dispute or difference of any kind whatsoever shall arise between the Customer and the MSP in connection with or arising out of this Customer 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 Customer Agreement or after its completion and whether before or after the termination, abandonment or breach of this Customer Agreement, the Parties shall attempt in good faith to negotiate a settlement and shall comply with the Dispute Resolution provisions at **Schedule 9**.

31. ACTION UPON EXPIRY OR TERMINATION

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

32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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 a retrospective rebate by the MSP to ESPO, 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 Customer Agreement.

33. LAW AND JURISDICTION

- 33.1 This Customer Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the Courts of England and Wales to which both Parties hereby submit.
- 33.2 This Customer Agreement is binding on the Customer and its successors and assignees and the MSP and the MSP's successors and permitted assignees.

34. ENTIRE AGREEMENT

This Customer Agreement together with the Framework Agreement and the Order constitutes the entire understanding between the Parties relating to the subject matter of this Customer 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.

T&Cs for issue with Tender Pack

SEALING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Customer Agreement as a DEED the day first above written

For and on behalf of Customer

Authorised Signatory:

Name:

Title:

Date:

Witness

I hereby witness and attest the signature of the above named Authorised Signatory

Signature:

Name:

Title:

Date:

For and on behalf of the MSP

Authorised Signatory:

Name:

Title:

Date:

Witness

I hereby witness and attest the signature of the above named Authorised Signatory

Signature:

Name:

Title:

Date:

**THE COMMON SEAL OF
[CHESHIRE WEST AND CHESTER BOROUGH COUNCIL]
[CHESHIRE EAST BOROUGH COUNCIL]
[ANSA]
[COSOCIUS]
[VIVO]**

was hereunto affixed in the presence of

AUTHORISED SIGNATORY

SCHEDULE 1 to this 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 MSP.
- b) Identify a named officer (Authorised Officer) who shall be a single point of contact for the MSP and ESPO.
- c) Agree their own (tiered) Agency lists for Temporary Staffing requirements (where applicable) and any variations to the performance management tool which is used to monitor and manage Agencies.
- d) Specify their own Job Descriptions and Person Specifications for Temporary Agency Workers.
- e) Communicate to the MSP any organisational policies or procedures that the MSP, 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 Service Levels and Key Performance Indicators detailed in the **Schedule 6** forming part of this 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 MSP 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 any local arrangements in **Schedule 4**.
- n) Note that ESPO shall need to access all management information for the purpose of managing the Framework 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 this 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 this Customer Agreement
SERVICES DESCRIPTION (Service Delivery proposal offered by the Tenderer) and
SPECIFICATION (Specification provided in the Invitation to Tender)
[to be inserted]

T&Cs for issue with Tender Pack

SCHEDULE 3 to this Customer Agreement

CONTRACT PRICE AND PAYMENTS

1. The Contract price for the Services is [£] and is exclusive of VAT.
2. Where the MSP is VAT registered VAT shall be added by the MSP at the prevailing rate as applicable and will be paid by the Customer following delivery of a valid VAT invoice.
3. Every invoice shall include the purchase order number provided by the Authorised Officer and invoices will not be processed by the Customer without a purchase order number.
4. The Contract price is fixed in respect of the Services specified in the Service Specification.
5. If any additional changes to the Service Specification are deemed necessary and are authorised in writing by the Authorised Officer, any revisions to the fee shall form an addendum to the Contract, to be added as an appendix to this Schedule.
6. Where requested, if the MSP fails without due cause to provide verifiable records to the reasonable satisfaction of the Authorised Officer to evidence the due payment of the fee then the Customer shall be entitled to withhold payments until such time as such verifiable records are provided and once provided the Customer shall verify the accuracy of the invoice without undue delay and any failure to comply with this obligation shall not be sufficient justification for failing to regard an invoice as valid and undisputed

Invoicing and Payments

Invoices must be sent if by Post to:

[Cosocius
PO Box 3657
Cheshire West and Chester Borough Council
Purchasing and Exchequer Department
HQ Building, Nicholas Street
Chester, CH1 2NP

If by Email to: supplier@cosocius.co.uk]

[Cheshire East Council
PO Box 3655
Chester
CH1 9PP]

[CoSocius Ltd
PO Box 3801
Cheshire East Borough Council
Chester
CH1 9ZL]

[ANSA Environmental Services
PO Box 3799
Chester
CH1 9ZH]

7. The MSP shall invoice the Customer weekly in arrears for payment of the Contract Price detailing the Services that have been provided during the preceding month and the amount payable by the Customer. Each invoice shall include the purchase order number provided by the Customer and Invoices will not be processed by the Customer without a purchase order number.
8. The Customer shall make all payments to the MSP via the bankers' automated clearing service ("**BACS**").

T&Cs for issue with Tender Pack

SCHEDULE 4 to this Customer Agreement
LOCAL ARRANGEMENTS

SCHEDULE NOT USED

T&Cs for issue with Tender Pack

SCHEDULE 5 to this Customer Agreement

EXAMPLE IMPLEMENTATION PLAN

1. An Implementation Plan will be required to be drafted during the mobilisation period so the MSP is in a position to implement it from the Commencement Date of the Customer Agreement.
2. The Implementation Plan will vary in degrees of complexity and timescales depending on the Customer's specific requirements and the Customer's current position.
3. The Implementation Plan will include a schedule of tasks to be undertaken, against a set timescale and will identify the responsibilities of the MSP 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.
4. The MSP 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 this Customer Agreement

SERVICE LEVELS, KEY PERFORMANCE INDICATORS & SERVICE CREDITS

This **Schedule 6** sets out how the Customer and the MSP will work together to maximise the benefits of using the MSP's services for their temporary agency resources and any request to supply Permanent Members of Staff.

Both Parties agree to deliver the services in accordance with the Customer Agreement and the contents of this **Schedule 6**.

The Customer agrees that Service Credits will not be enforced until Month 7 of this Customer Agreement allowing the Parties sufficient time to ensure that the KPI's are achievable before Service Credits are enforced.

1. Services Covered

- 1.1. This **Schedule 6** sets out the agreed Service Levels to be provided by the MSP to the Customer under the Contract entered into between the Customer and the MSP under ESPO Framework **reference number 653F/15**.
- 1.2. The Customer Agreement 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 **Schedule 6** covers the core Service Levels applicable to all Services provided as defined in the Specification as well as any KPI's which the Customer seeks to rely on.

2. Service Levels

Service Levels will be agreed between the Customer and MSP during the mobilisation period and once agreed the will appended to this **Condition 2**.

SERVICE LEVEL	QUANTIFIABLE REQUIREMENT

3. Duration

This **Schedule 6** will be valid for as long as there are Services still in use by the Customer which have been supplied in accordance with the Customer Agreement let under the ESPO Framework reference 653F/15.

4. Services required

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

5. Ordering of Temporary Agency Workers

- 5.1 The Customer shall ensure that requests for Temporary Agency Workers are made in accordance with the Framework Agreement and that;
- i) Hiring Managers provide the MSP with sufficient detail to enable the MSP 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; and
 - ii) requests for Temporary Agency Workers are authorised promptly.
- 5.2 The MSP shall ensure that;
- i) the Hiring Manager can request an Temporary Agency Worker via a variety of channels; and
 - ii) all Assignments are filled quickly with a suitably qualified and experienced Temporary Agency Worker within the following set timeframes.
- 5.3 The MSP shall comply with the following Key Performance Indicators ("KPI's").

Specific Measurable KPI	Level to be achieved
The MSP shall meet the Customer requirements to fill positions for Temporary Agency Workers for standard assignments. <i>Note: placements where a Temporary Agency Worker is rejected within an agreed trial period shall not count towards the KPI.</i>	98%
The MSP shall meet the Customer requirements to fill positions for Temporary Agency Workers for 'difficult to fill' assignments <i>(time scales and definition of difficult to fill to be agreed between the Customer and the MSP)</i> <i>Note: placements where a Temporary Agency Worker is rejected within an agreed trial period shall not count towards the KPI.</i>	90%

- 5.4 If the MSP fails to deliver the Services in the situations set out in sub-Conditions 5.4.1 to 5.4.3 the Customer shall require a Remediation Plan to be delivered within seven [7] days of notification by the Authorised Officer of the breach of the KPI's to the Customer, such Remediation Plan shall detail the action to be taken by the MSP to remedy the situation and the associated timescale for the remedy, in the event that;

5.4.1 the MSP falls below the above KPI's for more than two [2] consecutive months, or

5.4.2 the MSP falls below 90% for standard assignments in any one month; or

5.4.3. the MSP falls below 80% for hard to fill assignments in any one month.

5.5 If the MSP submits a Remediation Plan the Authorised Officer shall either approve the Remediation Plan within five [5] Days of its receipt, or shall (acting reasonably) inform the MSP that the Remediation Plan is rejected and request a revised Remediation Plan.

5.6 Once a Remediation Plan has been agreed by the Parties the MSP shall immediately start work on the actions set out in the Remediation Plan.

5.7 If a Remediation Plan is agreed between the Parties, but the MSP (in the sole opinion of the Customer) fails to implement or successfully complete the Remediation Plan by the required completion date, the Customer may:

5.7.1 grant the MSP a further opportunity to fully implement the Remediation Plan; or

5.7.2 escalate any issues arising out of the failure to implement the Remediation Plan under the Dispute Resolution procedures of the Customer Agreement; or

5.7.3 terminate the Customer Agreement with immediate effect by serving a termination notice.

5.8 The Authorised Officer will have an obligation to carry out an inspection to verify that the actions required under the Remediation Notice have been properly implemented by the MSP and the MSP shall not be entitled to consider that a Remediation Plan has been accepted as concluded until the Authorised Officer has put in writing that the remediation process has been completed to his satisfaction.

5.9 The administrative costs, officers time, the cost of travel and re-inspection incurred by the Customer in respect of a Remediation Plan has been assessed to cost the Customer two hundred pounds [£200.00] and the Customer shall be entitled to deduct such sum from the MSPs quarterly statement.

6. General Provisions

6.1 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 MSP shall supply CVs. Any specific format or technique required for any such interview will be confirmed to the MSP by the Customer.

6.2 If the Assignment is being filled by an Agency which is not the MSP all details regarding the Assignment shall be shared with all tiered Agencies to enable the Agencies to promptly respond to the Assignment request.

7. Rejection of Temporary Agency Workers and cancellation of Assignments

7.1 The MSP shall ensure that appropriately qualified and experienced Temporary Agency Workers are supplied that are appropriate for the Assignment concerned.

7.2 In the event that a Temporary Agency Worker shall not arrive on time to commence an Assignment the Customer shall ensure that the MSP is notified without delay.

7.3 In accordance with the specification the MSP shall make no charge to the Customer in the event that;

- 7.3.1 the Temporary Agency Worker fails to attend or rejects the Assignment;
 - 7.3.2 the Temporary Agency Worker is rejected within the first three hours;
 - 7.3.3 the Temporary Agency Worker is found not to have the defined qualifications or requirements for the role; or
 - 7.3.4 the Temporary Agency Worker is found not to have the correct and valid credentials to allow them to legally work in the UK.
- 7.4 In accordance with the specification the MSP shall only charge the Customer on a pro-rata basis in the event that:
- 7.4.1 the Temporary Agency Worker fails to attend at the Assignment at the reporting time; but is allowed to work having arrived late;
 - 7.4.2 the Temporary Agency Worker while at work is defined as being unfit for work or not being capable of carrying out the majority, or most of the specified required tasks safely and to the necessary standard and is stood down.
- 7.5 The Customer shall notify the MSP of the requirement for any change or cancellation of an assignment **at least 90 minutes** prior to the agreed assignment start time.
- 7.6 If the Customer fails to comply with the requirement of 7.5 (above) they shall pay to the MSP 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.

8. Communications and Account Management

8.1 Account Management

- i) The Customer's Authorised Officer is [state name and job title] who can be contacted for further information or any issues on [insert contact details]
- ii) The Authorised Officer shall be available for queries during Normal Working Hours *Monday to Friday 09.00 to 17:00*.
- iii) The MSP has nominated a Contract Manager for the Customer. Any contact the Customer makes with the MSP, should, in the first instance be made through [state name and job title] by contacting [insert contact details].
- iv) the Contract Manager shall be available for queries during Normal Working Hours *Monday to Friday 09.00 to 17:00*.

8.2 Staffed Service Helpdesk

8.2.1 Role

- 8.2.1.1 the MSP shall provide a staffed 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).

8.2.2 Hours of cover

- 8.2.2.1 the period for which the helpdesk service is available is between the hours of *7:30 and 17:30 Monday to Friday*, excluding all United Kingdom Public Holidays.

8.2.2.2 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.

8.2.3 Contacting the service helpdesk and call logging

8.2.3.1 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.

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

8.2.3.3 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

8.2.3.4 the service desk can be contacted

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

8.3 Staffed Out of Hours Service

8.3.1 Role

8.3.1.1 the MSP shall provide a staffed 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

8.3.2 Hours of cover

8.3.2.1 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.

8.3.2.2 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.

8.3.3 Contacting the service helpdesk and call logging

8.3.3.1 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.

8.3.3.2 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
- respond promptly to the Customer's request and, if unable to resolve the issue, to facilitate the Customer contacting a tiered Agency directly.

8.3.3.3 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

9 Web Services

- 9.1 High up-time of web service is **critical** to the Customer, and the table sets out acceptable levels for the Customer for the amount of time the Service is to be available.

Uptime	KPI Level
Average level	99%
Minimum level	98%

- 9.2 If the up-time of web service falls below the minimum KPI Level the Customer will be entitled to levy a service credit of £200 each day until the up-time of web service returns to the average level.
- 9.3 In the event that the MSP's web-service crashes and is down in excess of three [3] hours the MSP shall ensure that a telephone booking service is available to the Customer after this three [3] hours allowance period.

10 Monitoring and Review

- 10.1 The Customer requires regular contact from the Contract Manager with additional attendance by the Contract Manager at internal review meetings. Initially for the first six [6] months, monthly meetings should be diarised, with quarterly meetings thereafter. The Customer and the MSP may agree to move this to less frequently, if this proves appropriate for the circumstances.
- 10.2 ESPO has established the framework on behalf of the Customer, and as and when it considers necessary ESPO will also conduct review meetings with the Parties addressing any strategic issues arising across all Customers, the Customer should raise any issues with ESPO and they will be taken up with the MSP.

10.3 Management Information

10.3.1 the MSP shall provide to the Customer on a quarterly basis management information which should provide the detail as included in **Schedule 7 of this Customer Agreement** at no cost to the Customer;

10.3.2 notwithstanding **10.3.1** (above) the Customer shall be able to run Management Information reports themselves from the system on an '**as-required**' basis.

11 **Complaints and Resolution**

- 11.1 In the event of any issues, the Authorised Officer shall in the first instance contact the Contract Manager for resolution.
- 11.2 Any complaints raised will be managed in accordance with the MSP's complaints procedure. This process shall ensure that all complaints are dealt with in a professional manner, and to the satisfaction of the Customer.
- 11.3 If the issue is not resolved satisfactorily or escalation is needed, the Authorised Officer shall escalate the issue to ESPO, for discussion with the Contract Manager.

SCHEDULE 7 to this 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.

Data required by Customers	
Measure	Additional summary data to be provided (beyond that listed in the Data Definition)
1 Financial	
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 gain share elements)
1.5 ESPO fee	Total ESPO fee accumulated in Quarter
1.6 Agency fees	<i>Maximum hourly charge to all clients at the current point in time per specialism (overall, not per client)</i>
1.7 Average savings expressed in both pence and percentage	Average savings during quarter in £ and % per specialism for each client
2 Process / Operations	
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 MSP 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
3 Customer and Quality (* denotes measures which will be assessed using feedback from customer satisfaction survey, see below example)	
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
4 Contract & Supply Chain Management	
4.1 % SMEs in supply chain	% of spend that is going through SMEs % of tiered MSPs 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 Condition 5.3 of this Customer Agreement.
4.5.1 I hereby agree and have complied with Condition 5.3 within this Customer Agreement.	Yes / No Signed
4.2 Agencies passing audit	% agencies which have passed an audit
4.3 MSP 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
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T&Cs for issue with Tender Pack

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

☐

Yes

☐

No

accurate timesheets?	<input type="checkbox"/>	<input type="checkbox"/>
Behave appropriately?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Comments:		

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

T&Cs for issue with Tender Pack

SCHEDULE 8 to this Customer Agreement

ACTION ON EXPIRY OR TERMINATION

1. TRANSFER OF RESPONSIBILITY

- 1.1 The MSP acknowledges that on termination or expiry of this Customer Agreement for any reason, the continuity of the Service is of paramount importance. The MSP 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 MSP 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 Customer Agreement. The MSP 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 Customer Agreement. If the Customer requires such assistance after the expiry or other termination of this Customer Agreement and within twelve (12) months of the expiry or other termination of this Customer Agreement, the Customer shall reimburse any reasonable costs incurred by the MSP 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 MSP or its subcontractors which relate to performance, monitoring, management and reporting of the Services, including the documents and data, if any, and which the MSP may otherwise be obliged to disclose under this Customer Agreement or otherwise beneficial to orderly transfer.
- 1.4 The MSP 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 MSP shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary (including TUPE information) to enable the Customer to issue tender documents for the future provision of the Service.
- 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 MSPs who have qualified to tender or/have been successful in being selected as the MSP following a tender exercise for the future provision of temporary agency worker services. The Customer shall require that such MSP's 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 MSP 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 MSP is required to provide under paragraph 1.5 above.

2. TRANSFER OF UNDERTAKINGS

- 2.1 Where, in the opinion of the MSP and/or the Customer, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (TUPE) are likely to apply on the termination or expiration of the Agreement, the information to be provided by the MSP 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:-
- i) the number of Staff or Agency Workers who would be transferred, but with no obligation on the MSP to specify their names;
 - ii) 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;
 - iii) 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.
- 2.2 The MSP agrees that if upon termination of this Framework Agreement, circumstances arise in which TUPE is applicable, the MSP 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
- 2.3 The MSP shall comply with the requirements of TUPE 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 MSP.
- 2.4 The MSP 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 MSP 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 MSP on or after the date of this Customer 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.
- 2.5 Where it is considered, in the opinion of the MSP and Authorised Representative, that TUPE shall apply on the expiry or termination of this Customer 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 MSP 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 MSP in respect of or in any way relating to any period on or after the date of the employee transfer.

SCHEDULE 9 (to this Customer Agreement)

DISPUTE RESOLUTION

1. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
2. The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Customer Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts may involve a meeting of senior representatives from the Parties along with an ESPO Representative to agree a resolution to any dispute.
3. The obligations of the Parties under this Customer Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this **Schedule 9** and the MSP and its employees, personnel and associates shall comply fully with the requirements of this Customer Agreement at all times.
4. If the dispute cannot be resolved by the Parties pursuant to **Condition 2**, either Party may refer the matter to mediation pursuant to the procedure set out in this **Schedule 9**.
5. If a dispute is referred to mediation the Parties shall comply with the following provisions:
 - i) a neutral adviser or mediator ("the **Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Mediator;
 - ii) the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
 - iii) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - iv) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties with effect from its signature by their duly authorised representatives;
 - v) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and

- vi) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

T&Cs for issue with Tender Pack