

## MANAGED SERVICES FOR TEMPORARY AGENCY RESOURCES

### CUSTOMER AGREEMENT

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

### CONDITIONS OF CONTRACT

**THIS AGREEMENT** is made the 02 day of December 2013

**BETWEEN:** Solihull MBC, Council House, Manor Square, Solihull B91 3QB

(1) Solihull MBC, Council House, Manor Square, Solihull B91 3QB (the Customer)

(2) Coventry CCC, House, Earl Street, Coventry CV1 5RR (the Customer)

(3) Warwickshire CC, Shire Hall, Warwick CV34 4RL (the Customer)

and

(2) Pertemps Recruitment Partnership Ltd whose registered office is at Meriden Hall, Main Road, Meriden CV7 7PT (the Supplier)

### WHEREAS:

A. The Customer wishes to purchase the Services, specifically Lot 1(b)

B. The Supplier having been awarded Supplier status under a Framework Agreement with the Eastern Shires Purchasing Organisation 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 Agreement:

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

<b>Agreement</b>	means this agreement between the Customer and the Supplier, comprised of the Conditions and the Schedules and Annexes thereto and any Order.
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<b>Assignment</b>	means the required duties and period of time where a Temporary Agency Worker is working within the Customer's organisation
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<b>Authorised Representative</b>	means a representative of the Customer or the Supplier as appropriate for the purposes of this Agreement
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<b>Charges</b>	means the charges set out in the Pricing Schedule
<b>Commencement Date</b>	Means 02 December 2013
<b>Confidential Information</b>	means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.
<b>Contract Manager</b>	means the nominated officer or employee of the Customer responsible for managing this Agreement for the provision of the Services
<b>Default</b>	means any breach of the obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other.
<b>EIR</b>	means the Environmental Information Regulations 2004
<b>ESPO</b>	means the Eastern Shires Purchasing Organisation being the central purchasing body responsible for creating the Framework Agreement
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation
<b>Framework Agreement</b>	means the Agreement between ESPO (on behalf of Pro5) and the Supplier under which this contract is entered into by the Customer and the Supplier for the supply of the Services
<b>Implementation Plan</b>	means the plan to be developed by the Customer and the Supplier 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
<b>Invitation to Tender</b>	means the invitation to tender issued to the Supplier in response to a request following the publication of the OJEU notice for the procurement of the Services
<b>Order</b>	means an official order in such form as may be issued by the Customer to the Supplier in respect of the Services
<b>Parent Company</b>	means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. 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

<b>Pricing Schedule</b>	means the Pricing Schedule attached to the Supplier's Framework Agreement – attached hereto at Schedule 3
<b>Protocol</b>	means the Customer Protocol describing the Customers obligations in relation to their local arrangements and contract management requirements and which is attached hereto as Schedule 1
<b>Pro5</b>	means all or any of the following professional buying organisations: Central Buying Consortium (CBC), Eastern Shires Purchasing Organisation (ESPO), North Eastern Purchasing Organisation (NEPO), West Mercia Supplies (WMS) and Yorkshire Purchasing Organisation (YPO).
<b>Requests for Information</b>	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR
<b>Services</b>	means the provision of the managed services for Temporary Agency Workers more particularly set out in the Specification attached as Schedule 2 hereto
<b>Specification</b>	means the Specification for the Services which the Supplier is authorised to provide under the Framework Agreement and which is more particularly set out in Schedule 2 hereto
<b>Temporary Agency Worker</b>	means a temporary (non-permanent) worker offered and provided on Assignment by an Agency to fulfil a specific role for a defined period of time in return for a Fee. The Temporary Agency Worker is not an employee of the Customer and will not be treated as if he/she is. The Temporary Agency Worker will complete a timesheet, signed by the Hiring Manager, which will be processed by the Agency and passed to the Managed Service Provider in order to invoice for the Agency Fee
<b>Tender</b>	means the Supplier's tender submitted in response to the Invitation to Tender and attached to the Framework Agreement as Schedule 2
<b>Term</b>	means the period of three (3) years plus the option of up to a further twelve (12) months from the Commencement Date
<b>Working Day</b>	means Monday to Friday in any week but excluding any public or bank holidays

1.1.2 the masculine includes the feminine and the neuter; and

1.1.3 the singular includes the plural and vice versa.

- 1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.4 References to Conditions and Schedules are, unless otherwise provided, references to conditions of and schedules to this Agreement.
- 1.5 In the event and to the extent only of any conflict between the Conditions and the Schedules or the Order, the Conditions shall prevail.

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

- 2.1 The Supplier shall supply the Services in accordance in all respects with the terms of the Framework Agreement and the terms of this Agreement and the terms and conditions of the relevant Order and in accordance with any local arrangements agreed and set out in **Schedule 4**
- 2.2 For the avoidance of doubt the Customer shall not be responsible for any Services that are delivered by the Supplier and are not the subject of a valid Order.
- 2.3 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict the terms of this Agreement shall be excluded and not form part of the Order.
- 2.4 The Services to be supplied under the Order shall be provided in accordance with the terms of the Order. Where the Order identifies that provision will be in accordance with an Implementation Plan, the Implementation Plan will be agreed between the Customer and the Supplier unless otherwise agreed in writing by the Customer. The Supplier acknowledges the importance to the Customer of performing the Services by the required date, and shall take all reasonable steps to achieve provision by those dates in accordance with best industry practice and the Service Level Agreement.
- 2.5 The Supplier shall use all reasonable endeavours to ensure that the Services meet the requirements of the Specification and where the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that particular purpose.
- 2.6 The Supplier warrants to all its reasonable endeavours that the Services to be supplied under the Order shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Services are supplied.
- 2.7 The Supplier shall be deemed to have satisfied itself as to the sufficiency and correctness of the Pricing Schedule. Unless otherwise expressly stated in the Order the Pricing Schedule shall cover all the Supplier's obligations and everything necessary for the supply of the Services under the Order.
- 2.8 Unless otherwise expressly stated in the Framework Agreement or the Order no claim by the Supplier will be allowed for any addition to the charges specified in the Pricing Schedule on the grounds of any matter relating to any document forming part of the Framework Agreement or the Order or any ambiguity or discrepancy therein on which an experienced supplier could have satisfied himself by reference to the Customer or any other appropriate means.
- 2.9 The supplier must submit timesheets to the customer for signature within 6 weeks or they will not be accepted for signature. The supplier must submit invoices to the customer within 6 weeks or they will not be paid.

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

- 3.1 The Customer shall select a Supplier for Orders in accordance with the criteria outlined in the Framework Agreement.
- 3.2 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 3.3 The Customer shall respond to any reasonable request for information from the Supplier.
- 3.4 The Customer will assign an Authorised Representative who will interface with the Supplier's Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 3.5 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2006 (and any subsequent re-enactment thereof).

3.6 The Customer hereby agrees to comply with the Protocol set out in **Schedule 1** hereto.

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

4.1 The Supplier shall provide the Services identified in the Order in accordance with the **Services Description and Specification in Schedule 2 and the Service Level Agreement in Schedule 6**. The Charges in respect of such Services shall be as detailed in the **Pricing Schedule at Schedule 3**. And as may be supplemented by any **Local Arrangements** as set out in **Schedule 4**.

4.2 Without prejudice to any other remedies available, if the Supplier fails to provide the Services in accordance with the Specification and the Service levels are not met then the Customer shall be entitled to Service Credits calculated in accordance with the Service Level Agreement in **Schedule 6**

4.3 The Supplier will be responsible for providing all Temporary Agency Workers (either himself or through Agencies) as ordered from time to time from the Supplier by the Customer. This will include administrative and clerical, operational, social care, and professional including teaching and education ancillary staff and technical categories of Agency staff.

4.4 The Supplier shall in the provision of the Services ensure that where the Supplier acts as a Resource Pool Manager it shall do so subject to the following additional conditions:-

##### Option 1 (Supplier Category Lead)

4.4.1 The Supplier shall provide the Services on the basis that it shall provide for all the Customer's requirements for Temporary Agency Workers in a Lot 1(b) and no other.

4.4.2 With the exception of the Services provided for and described in the preceding condition hereof the Supplier shall expose all Customer's requirements for the Services to the wider network of Agencies within its management and control.

4.4.3 For the avoidance of doubt any associate or subsidiary company of the Supplier shall be subject to the same restriction as the Supplier 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.

4.4.4 All quotations requested from Agencies (save as may be provided for otherwise in this Condition) shall be treated equally and without discrimination by the Supplier.

#### **5. CHARGES**

5.1 In consideration of the provision of the Services in accordance with the terms of the Framework Agreement and the Order, the Customer shall pay the Charges calculated in accordance with the **Pricing Schedule** of the Framework Agreement and published from time to time by ESPO therein and in accordance with the invoicing procedure and payment profile specified in **Schedule 3**

5.2 Payment shall be made within Thirty (30) days of receipt by the Customer (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of **Schedule 3**, from the Supplier.

5.3 Where the Supplier enters into a sub-contract with an Agency for the purposes of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the Agency to be within ten (10) Working Days after the Supplier has been paid, and that in total, payment does not exceed thirty (30) days from the receipt of a valid invoice.

5.4 The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.

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

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

## **7. IMPLEMENTATION PLAN**

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

## **8. MONITORING AND REPORTING**

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

## **9. SERVICE LEVELS**

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

## **10. SUPPLIER'S PERSONNEL**

- 10.1 The Supplier shall select, employ, train, furnish and deploy in and about the performance of the Services only such persons as are of good character and who are appropriately skilled and experienced.
- 10.2 The Supplier shall comply with any statutory requirements in relation to the recruitment of ex-offenders and disclosures under the Protections of Freedom Act 2012. The Supplier shall ensure that all employees, servants or agents engaged by him in the discharge of his obligations under this Agreement who may be required to work within school premises, or other sites occupied by children

and/or vulnerable adults shall be appropriately checked by the Criminal Records Bureau and shall upon reasonable request produce evidence of such satisfactory disclosure.

- 10.3 The Supplier and the Supplier's sub-contractors, staff and agents shall comply with all reasonable requirements of the Customer whilst present at the Customer's premises.
- 10.4 The Supplier shall ensure that its sub-contractors are subject to the provisions of **conditions 10.1, 10.2 and 10.3** above.
- 10.5 The Supplier, its agents, sub-contractors and suppliers shall employ sufficient staff to ensure that the Services are provided at all times in accordance with this Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to provide the Services in accordance with this Agreement during staff holidays or absence through sickness or any other cause.
- 10.6 The Customer, acting reasonably, shall have the right to refuse access to its premises at any time to any employee of the Supplier, its agents, sub-contractors or suppliers. The exercise of this right shall not diminish the Supplier's obligation of performance arising under this Agreement.

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

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

## **12. WARRANTIES AND REPRESENTATIONS**

- 12.1 The Supplier warrants and represents that:
  - 12.1.1 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

- 12.1.2 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;

### **13. INSURANCE AND INDEMNITY**

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

13.1.1 Public Liability insurance in the minimum sum of ten million pounds

13.1.2 Employers Liability insurance of not less than ten million pounds

13.1.3 Professional Indemnity insurance of not less than five million pounds

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

- 13.2 Temporary Agency Workers engaged via this Agreement by the Supplier will be insured under the Supplier's own Employer's Liability and Public Liability insurance policies whilst under its direction and control.
- 13.3 The Council will maintain Public and Employer's Liability cover which will provide indemnity in the event that an agency worker suffers loss, damage or injury as a result of negligence or / and breach of statutory duty that is owed to them.

The Council will insure agency workers who are directed to drive a Council owned or operated vehicle during the course of their employment with the Council in accordance with the Road Traffic Act 1988.

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

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

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

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

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



Agency Worker might be deemed to have become an employee of either the Supplier or the Agency or the Customer.

- 13.5 Save to the extent that the claim, cost or proceeding is caused by the Customer, the Supplier shall indemnify the Customer against any claim, cost or proceeding arising directly as a result of:
- 13.5.1 The Supplier's failure to pay the Agency;
  - 13.5.2 Any claim by a trade union, staff association or staff body in respect of any or all of the Temporary Agency Workers arising out of the Supplier's failure to comply with its legal obligations;
  - 13.5.3 Any circumstance where the Supplier is deemed to be the employer of any Temporary Agency Worker engaged by the Customer under this Agreement.
- 13.6 Neither party shall do anything or refrain from doing or omit doing anything, which might render any of the foregoing insurance policies void or voidable.
- 13.7 The Supplier shall ensure that Agencies are bound by the requirements of this Condition 10. In instances where the Customer agrees variations in the levels of insurances held by Agencies this will be recorded in the Customer Agreement.
- 13.8 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall exclude, restrict or limit either party's liability for death or personal injury resulting from its negligence.
- 13.9 Notwithstanding **13.2** above, the parties liability to each other under or in connection with this Agreement and the Services or otherwise, whether arising under contract, tort, negligence, breach of statutory duty or otherwise shall be the levels of cover specified in **Condition 13.1** where a claim falls within the Service Providers' insurance policy, or where a claim is not required to be covered by an insurance policy, [£1 million (one million pounds)].
- 13.10 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.
- 13.11 Neither party shall other than as a consequence of fraud or wilful default by that party, be liable for any claim by the other party for loss of profit or revenue, consequential, economic, special or indirect loss.

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

- 14.1 The Supplier shall fully indemnify and hold the Customer harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other Intellectual Property Rights including any wrongful use of confidential information by the use or possession of the Services or any part thereof provided by the Supplier or licensed by the Supplier to the Customer under the Agreement subject to:
- 14.1.1 the Customer promptly notifying the Supplier of any alleged infringement and, subject to **sub-condition 14.1.3** below, allowing the Supplier at their own expense to conduct all negotiations for settlement or litigation;
  - 14.1.2 the Customer making no admission without the Supplier's written consent unless and until the Supplier shall have failed to take over the conduct of the negotiations or litigation;
  - 14.1.3 the conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having given the Customer such reasonable security as the Customer may require for the compensation, damages, costs and expenses for which the Customer may become

liable. The Customer at the Supplier's expense shall give the Supplier all available assistance.

- 14.2 If the Services or any part thereof becomes, or in the Supplier's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under **sub-condition 14.1.1** above, the Supplier shall at its own expense negotiate to obtain the right for the Customer to continue to use the infringing items, if necessary by replacing, remove or modifying them, but without reducing their quality or ability to meet the Customer's requirements as specified by the Agreement.
- 14.3 The Supplier shall indemnify the Customer against all losses, costs, damages and expenses whatsoever during the period that the Customer is deprived of the use of the Services by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by the issue of a Change Request which shall not entitle the Supplier to any addition to the Charges or any extension of the Order lead time.
- 14.4 The Supplier shall not be liable under **sub-condition 14.1.1 and 14.1.2** above for any such infringement or alleged infringement which arises as a result of the including in the Services or any element supplied by the Customer or any use of the Services for a purpose or in a manner different from that specified in, or reasonably to be inferred from, the Agreement.

## **15. TERMINATION**

- 15.1 Either party may at any time by notice in writing terminate this Agreement as from the date of service of such notice:-
- 15.1.1 if there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the other party or its Parent Company; or
- 15.1.2 the other party being an individual, or where the other party is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or
- 15.1.3 the other party, being a company, passes a resolution, or the Court makes an order that the other party or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the other party or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the other party or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.
- 15.1.4 The Customer may at any time by notice in writing terminate this Agreement forthwith, if the Supplier is in Default of any obligation under this Agreement and:
- 15.1.4.1 the Default is capable of remedy and the Supplier shall have failed to remedy the Default within thirty (30) days of written notice to the Supplier specifying the Default and requiring its remedy; or

15.1.4.2 the Default is not capable of remedy.

15.2 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.

15.3 In the event of any termination of this Agreement whether under this Condition 15 or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Customer under this Agreement or otherwise, the Customer shall be entitled to:

15.3.1 obtain a refund of any Charges paid by the Customer in respect of any Services which have not been performed by the Supplier in accordance with the terms of this Agreement.

## 16. CONFIDENTIALITY

16.1 Each Party:

16.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

16.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

16.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Agreement:

16.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with the Agreement and only to the extent necessary for the performance of this Agreement;

16.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-contractors or agents otherwise than for the purposes of this Agreement.

16.3 Where it is considered necessary in the opinion of the Customer, the Supplier shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Supplier shall ensure that its staff, sub-contractors and agents are aware of the Supplier's confidentiality obligations under this Agreement.

16.4 The Supplier shall not use any Confidential Information it receives from the Council, Contracting Authority or the Customer otherwise than for the purposes of this Agreement.

16.5 The provisions of **Conditions 16.1 to 16.4** shall not apply to any Confidential Information received by one Party from the other:-

16.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

16.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

16.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

16.5.4 is independently developed without access to the Confidential Information; or

16.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR pursuant to **Condition 18**.

16.6 Nothing in this Condition shall prevent the Customer from:

- 16.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Customer's accounts
  - 16.6.2 disclosing any Confidential Information obtained from the Supplier to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Agreement;
  - 16.6.3 provided that in disclosing information under **condition 16.6.2** the Customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.
- 16.7 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Agreement or any Order or disclose any information relating to or contained in the Agreement to any person who is not engaged in the performance of the Agreement.
- 16.8 In the event that the Supplier fails to comply with this **Condition 16** the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 16.9 The provisions of this **Condition 16** shall apply notwithstanding termination of the Agreement.

## **17. DATA PROTECTION ACT 1998**

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

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

- 18.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.
- 18.2 The Supplier shall and shall procure that its sub-contractors shall;
- 18.2.1 transfer any request for information to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information (or such other period as stipulated by the Customer requesting the information); and

- 18.2.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within seven (7) Working Days (or such other period as the Customer requesting the information; and
- 18.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 18.3 The Customer shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;
  - 18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and
  - 18.3.2 is to be disclosed in response to a request for information and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.
- 18.4 The Supplier acknowledges that the Customer may be obliged under the FOIA or the EIR to disclose information;
  - 18.4.1 without consulting the Supplier; or
  - 18.4.2 following consultation with the Supplier and having taken its views into account.
- 18.5 The Supplier shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 18.6 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with **Condition 18.4**.

## **19. SOCIAL RESPONSIBILITY**

- 19.1 The Parties agree that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.
- 19.2 The Parties shall in all matters arising in the performance of the Agreement comply with the provisions of the Disability Discrimination Act 1995 and any regulations made there under.
- 19.3 The Parties shall in all matters arising in the performance of the Agreement comply with the provisions of the Employment Equality (Age) Regulations 2006.
- 19.4 The Parties must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and shall ensure that they perform their responsibilities under this Agreement with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups.
- 19.5 The Parties shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving goods or services from, the performance of the Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.
- 19.6 ESPO and the Customer shall be entitled at ESPO's and the Customer's expense to inspect such books, accounts and records belonging to the Supplier as are necessary to demonstrate compliance with **Conditions 19.1 to 19.5** above.
- 19.7 The cost to the Supplier of complying with this **Condition 19** shall be included in the Charges.

## **20. CORRUPT GIFTS AND PAYMENTS**

- 20.1 The Customer shall be entitled to cancel and terminate the Agreement and to recover from the Supplier the amount of any loss resulting from such cancellation or termination if the Supplier or any person on its behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of the Agreement or any other contract with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Customer or if like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Customer the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.
- 20.2 The decision of the Customer shall be final and conclusive in any dispute, difference or question arising in respect of:
- 20.2.1 the interpretation of this **Condition 20**; or
- 20.2.2 the right of the Customer under this **Condition 20** to terminate the Agreement

## **21. FORCE MAJEURE**

- 21.1 For the purposes of the Agreement the expression Force Majeure shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- 21.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 21.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 21.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 21.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## 22. HEALTH AND SAFETY

- 22.1 Both Parties shall comply with the provisions of the Health & Safety at Work Act 1974, the Management of Health & Safety at Work Regulations 1999 and the Provision and Use of Work Equipment Regulations 1998. All other health and safety assessments required by specific regulation and codes of practice relating to your business must also be strictly applied. The Supplier is to have monitoring, inspection, review and, where appropriate, health surveillance arrangements in place to meet its responsibilities and may be required to produce documentation to prove that procedures have been carried out in accordance with the regulations upon reasonable request. All Temporary Agency Workers must be aware of and abide by Health & Safety standards and be aware of their duty of care to other employees and members of the public. Temporary Agency Workers shall adhere to a Customer's health and safety requirements at all times and work within the Customer's culture and values.
- 22.2 Both Parties shall in performing the Services adopt safe methods of work in order to protect the health and safety of its own employees and to the extent applicable the employees of the Customer and all other persons, including members of the public provided that the Customer shall be responsible for the Health and Safety of the Temporary Agency Workers whilst they are under the Customer's control and shall supply the Supplier with any pertinent Health and Safety information relating to any Services. Save to the extent that the losses, costs, or damages are caused or contributed to by ESPO or the Customer, the Supplier shall indemnify ESPO and the Customer for any direct losses, costs, or damages, caused to ESPO and/ or the Customer for any breaches of health and safety laws, policies, or codes of practice, by the Supplier.
- 22.3 The Supplier shall request that any Agencies used are bound by the requirements of this **Condition 22**.
- 22.4 In respect of each Assignment, the Customer shall provide the Supplier full details of:
- 22.4.1 the intended duties of the Temporary Agency Worker;
  - 22.4.2 any special skills which it requires the Temporary Agency Worker to have including any experience, training, qualifications or authorisations including those required by a professional body or by law;
  - 22.4.3 any risks to health and safety known to the Customer and any steps that may have been taken to prevent or control such risks;
  - 22.4.4 any specific health and safety information which the Customer wishes to be passed on to the Temporary Agency Worker.
- 22.5 The Customer acknowledges that neither the Supplier nor any Agency has the obligation (or the opportunity) to supervise, direct or control the manner, time or place of any Temporary Agency Worker's work. The Customer shall provide on behalf of the Supplier and the Agency sufficient supervision, direction and control over the Temporary Agency Worker throughout the Assignment.

## 23. TUPE

- 23.1 In the event that the Transfer of Undertaking (Protection of Employment) Regulations 2006 (or as may be amended) apply upon expiry or termination of this Agreement or any of the contracts of employment of any person employed or engaged by the Supplier shall be transferred from the Supplier to any third party (Replacement Supplier) engaged by Customer to perform any of the Services or any service equivalent or similar to any of the Services the Supplier shall indemnify and keep indemnified Customers and the Replacement Supplier(s) from and against all employment liabilities arising directly as a result of the acts or omissions of the Supplier and which relate to claims

brought by any of the employees or by a Trade Union or other employee representative against Customers or any Replacement Supplier in respect of or in any way relating to any period on or prior to the date of the employee transfer envisaged by this Condition 23.

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

- 24.1 The Agreement is personal to the Supplier. The Supplier shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the prior consent in writing of the Customer.
- 24.2 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

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

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

## **26. COMMUNICATIONS**

- 26.1 Any notice which either party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other party at its address specified in the Order form either by (a) hand, (b) first class post or recorded delivery or, (c) facsimile, or (d) electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.
- 26.2 Either party may change its address for service by notice as provided in this **Condition 26.1**.

## **27. SEVERABILITY**

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

## **28. WAIVER**

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



## **29. DISPUTE RESOLUTION**

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

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

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

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

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

## **32. LAW AND JURISDICTION**

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

## **33. ENTIRE AGREEMENT**

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

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day first above written

SIGNED for and on behalf of

**Solihull MBC** the Customer

By:

Name: Elizabeth Welton

Title: Head of Shared Procurement Service

Date:

**Coventry CC** the Customer

By:

Name:

Title:

Date:

**Warwickshire CC** the Customer

By:

Name:

Title:

Date:

**Warwickshire CC** the Customer

By:

Name:

Title:

Date:

SIGNED for and on behalf of

Pertemps Recruitment Partnership Ltd the Supplier

By:

Name:

Title:

Date:

## SCHEDULE 1 to the CUSTOMER AGREEMENT

### PROTOCOL

ESPO on behalf of Pro5 is the lead contracting body and as such will maintain overall responsibility for the performance management, review and renewal of the Framework Agreement unless otherwise agreed within Pro5.

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

As such Customers will be required to:

- a) Agree the local implementation of the provision of the Services and integration of electronic systems between their own organisation and the Supplier.
- b) Identify a named officer (Contract Manager) who shall be a single point of contact for the Supplier and ESPO and/or Pro5 member.
- c) Agree their own (tiered) Agency lists for Temporary Staffing requirements (where applicable) and any variations to the performance management tool used to monitor and manage Agencies.
- d) Specify their own Job Descriptions and Person Specifications for Temporary Agency Workers.
- e) Communicate to the Supplier any organisational policies or procedures that the Supplier, Agencies or Temporary Agency Workers will be required to observe in the delivery of the Services including any requirements for the clearance checking of Temporary Agency Workers including DBS requirements.
- f) Communicate any requirements for access to data relating to Temporary Agency Workers.
- g) 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.
- h) Confirm the suitability of the Key Performance Indicators detailed in the Service Level Agreement forming part of the Customer Agreement.
- i) Specify individual requirements for the provision of Management Information reporting.
- j) Specify individual requirements for data release to law enforcement agencies.
- k) Be responsible for the payment of invoices issued by the Supplier in respect of the Services delivered to them and to specify any local variations to invoicing requirements.
- l) Agree details of their own baseline against which savings will be calculated.
- m) Attend overarching contract review meetings as organised by ESPO from time to time.
- n) Manage locally any performance issues or continuous improvement actions and to escalate to ESPO only those matters that frustrate the local arrangements.
- o) Note that ESPO shall need to access all management information for the purpose of managing the Agreement.

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

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

### **SERVICES DESCRIPTION and SPECIFICATION**

The Specification document consists of following:

- Core requirements (Section 12.1 – 12.13) - describe the fundamental Services and deliverables that a Supplier must be able to provide
- Added value (Section 12.14)
- Optional extra (Section 12.15)

#### **Core Requirements**

The following service requirements are core for the Customer:

##### **12.1 GENERAL REQUIREMENTS**

- 12.1.1 The Supplier must be able to source and manage the effective provision of Temporary Agency Workers across the Customer organisation.
- 12.1.2 The Supplier must be able to supply Temporary Agency Workers through Agencies:
- 12.1.2.1 for all Assignments; this will be up to 24 hours a day, seven days a week, 365 days a year (dependant upon the type of Temporary Agency Worker required)
  - 12.1.2.2 in all skill sets required across the entire Customer organisation (a list giving a broad overview is enclosed at **Appendix 2** of this Invitation to Tender)
  - 12.1.2.3 in a timely manner i.e. in accordance with the timescales set out in the SLA (see **Schedule 6 of the Customer Agreement** or as otherwise for individual service delivery or Assignments)
- 12.1.3 The Supplier shall fill the vacancy with the Candidate that most closely meets the job description and person specification (or equivalent) as provided (**verbal or written**) by the Hiring Manager with any adjustments made to make it a free and fair process.
- 12.1.4 The Supplier must deliver a service which meets the needs of the Customers to which they supply Services as described above;
- 12.1.5 In doing this the Supplier must deliver, to the Customer, Services which meet the needs of the various parties within the Customer organisation e.g. the HR department, the procurement team, and the Hiring Managers.
- 12.1.6 The Supplier is required to ensure that their staff provide Temporary Agency Workers with access to work in a fair and non-discriminatory manner
- 12.1.7 The Supplier must deliver a service which represents and continues to represent excellent value for money in light of current pressures on spending that exist within the public sector.
- 12.1.8 Regardless of the service model proposed, the Supplier must establish a process of year-on-year improvement, by setting measurement tools at the beginning of each year of the Contract. The Supplier shall be mindful of future developments and ensure that any service offering will be able to be further developed to meet future requirements as required, which will be measured against the relevant year's baseline.
- 12.1.9 Service delivery proposals offered must include direct cost savings that are delivered transparently on a year-on-year basis as well as indirect cost savings to be achieved through process efficiencies

amongst other efficiencies. Savings should be calculated on a 2009 / 2010 baseline initially (or other appropriately current basis) and reviewed and re-set at the end of each year.

## **12.2 RECRUITMENT AND MANAGEMENT OF AGENCIES**

- 12.2.1 Recognising that the service delivery model proposed will vary, where the Supplier is using Agencies to provide Temporary Agency Workers to fulfil Assignments, the Supplier shall be the interface for all new and existing Agencies wishing to supply Temporary Agency Workers to the Customer. The Supplier should actively source (and work with Agencies to ensure provision of) an accessible pool of Candidates to meet the Customer's needs.
- 12.2.2 Where applicable, the Supplier shall operate a structure of one or more Tiers of Agencies for the Customer. Where a tiering structure is offered, the Supplier should have the capability and capacity to vary the tiering structure dependent upon the structure and needs of the Customer, including but not limited to varying the Agencies and tiering across different categories of staff and the numbers of Agencies in the various Tiers.
- 12.2.3 Where a tiering structure is in place, the Customer and the Supplier shall agree which Agencies shall be placed and retained in which Tier, based upon Key Performance Indicators (KPIs) agreed with the Supplier.
- 12.2.4 The Customer reserves the right to add, keep or remove an Agency from the Tiers where such a structure is offered, and to specify the numbers of Agencies required for particular skill sets.
- 12.2.5 The Supplier must operate formal processes for:
  - 12.2.5.1 procuring, managing , reviewing performance and refreshing tiering of tiered Agencies (where tiers are in operation)
  - 12.2.5.2 delivering Services against service level agreements and measuring performance
  - 12.2.5.3 reviewing, negotiating and agreeing Agency margins
- 12.2.6 Where Agencies are used, the Supplier shall be responsible for ensuring all Agencies utilised meet the required standards and policies of the Customer. The Supplier shall vet potential Agencies, both in terms of business and financial suitability when signing them up to supply Services through the Supplier. The Supplier shall re-assess Agencies on an annual basis and at the individual request of the Customer.
- 12.2.7 Where Agencies are used, the Supplier shall be responsible for carrying out quarterly audits and/or spot checks when specified by the Customer on Agency compliance with both legislative requirements and contract compliance and report to the Customer any anomalies in the form of an exception report. For some categories these audits and / or spot checks may be required more regularly, for example, the social care arena. The Supplier shall operate a process for addressing different levels of anomalies, including implementation of a plan to address the issues, and suspension from use for serious breaches. Where an anomaly is sufficiently serious to cause suspension, the Customer shall be notified immediately.
- 12.2.8 The Supplier shall have arrangements in place to ensure that they and Agencies, where applicable, understand and recognise their obligations under the Framework and work with the Supplier to fulfil the Contract requirements.
  - 12.2.8.1 The Supplier shall operate a documented process for managing and working with the Agencies so that they can work together to fulfil the Contract requirements.
  - 12.2.8.2 The Supplier shall carry out quarterly reviews of Agency performance in relation to the KPIs and performance levels agreed with the Customer and provide the outcome and details of such reviews to the Contract Manager, where required/requested (this shall be agreed in detail when defining the Service Level Agreement).

- 12.2.8.3 The Supplier shall ensure that any feedback received from the Customer is shared with the Agency supplying the Temporary Agency Worker so that the Agency can learn from feedback given and act upon it. The Supplier shall also seek feedback from Agencies to identify issues with the Supplier and / or the Customer that are affecting Services or provide opportunities for savings.
- 12.2.8.4 The Supplier is responsible for supplying regular updates and feedback to Agencies within the Tiers about the Customer so that Agencies can understand and aim to meet the needs of the Customer. For example this may include providing information on numbers and types of Temporary Agency Workers required, known peak requirements and known specific skill sets, in order that Agencies can seek to have the right calibre and skill sets of staff available for the Customer when they are needed.
- 12.2.8.5 Any failures by the Supplier and the Agencies in their performance shall be addressed immediately by the Supplier and to the satisfaction of the Customer. At no time will the Customer accept liability for poor performance by any Agency and the Supplier shall be solely responsible for the resolution of the Customer's complaints to the Customer's satisfaction. Agencies may be suspended on a temporary or permanent basis if they fail to comply with performance and audit requirements.
- 12.2.8.6 The Supplier shall provide Agencies with an appropriate means of contacting them, whether to register interest in supplying Temporary Agency Workers or to raise queries and resolve issues. Such means of contact shall be by telephone and/or email and where charges apply, these shall not be charged at premium rates.
- 12.2.8.7 The Supplier must have an adequate complaints procedure in place for any complaints from Agencies. The Contract Manager shall be promptly informed of complaints and the Supplier's mechanisms for resolution, a summary of which must be provided as part of the performance review process.
- 12.2.8.8 In the interest of equal treatment and objectivity, all Agencies shall be engaged on the same terms and conditions of supply. Exceptions to this are to be agreed by the Supplier with the Contract Manager at the discretion of the Customer. The terms and conditions between the Agencies and the Supplier shall be no less favourable than those afforded to the Supplier under the framework (except in relation to charge rates which may vary dependent upon the Supplier's service delivery model).
- 12.2.8.9 It is recognised that there may need to be some operational variation of the terms and conditions of supply due to the nature of the Temporary Agency Worker, i.e. self employed individuals and those provided via an Agency, but the Supplier needs to ensure that materially the agreements are consistent and fair in their approach
- 12.2.9 Where Agencies are used, the Supplier shall, at the request of the Customer, arrange or support the arrangement of a 'meet the buyer' session to enable Agencies to hear from and raise questions with the Customer directly.
- 12.2.10 The government recognises the invaluable contribution of SMEs to the economy and has made a commitment to *"promote small business procurement, in particular by introducing an aspiration that 25% of government contracts should be awarded to small and medium size businesses and by publishing government tenders in full online and free of charge"*. The Coalition: our programme for government May 2010 ([http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)). Where the client so wishes, the Supplier shall advertise supply chain and/or resource pool opportunities to ensure fair and open competition through services for example (but not limited to) websites like the Contracts Finder (a free online 'one-stop shop' to search for and receive email alerts on suitable central and wider public sector low value government contracting opportunities).
- 12.2.11 The Supplier shall ensure that Temporary Agency Workers are given access to Assignments in a fair and non-discriminatory manner and shall require any Agencies supplying Temporary Agency Workers to do the same. The Supplier shall monitor quality and seek to actively implement quality into their own working practices, and encourage Agencies to the same.

## **12.3 ORDERING OF TEMPORARY AGENCY WORKERS**

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

## **12.4 PROVISION OF TEMPORARY AGENCY WORKERS**

### **SCOPE OF TEMPORARY AGENCY WORKERS**

- 12.4.1 A wide range of Temporary Agency Workers are required and the Supplier must be able to supply all Temporary Agency Workers as needed by the Customer (relevant to the sub-lot for which the Tenderer is bidding). The following list describes the spectrum of the roles included, but Tenderers should note that this list is not exhaustive and other categories of staff outside of this list may be also be required, therefore the list may be revised to include additional roles added during the duration of the Framework. The precise scope to be covered shall be defined by the Customer organisation entering into a Customer Agreement with the Supplier.

<b>Clerical</b>	Admin, Customer Service, PA, Secretarial
<b>Manual Labour</b>	Catering, Cleaning, and General Labour
<b>Professional &amp; Technical</b>	Audit & Regulatory, Revenues & Benefits, Communication & Marketing, Community Support, Construction & Building, Finance, Housing, HR, IT, Management & Executive, Mechanical & Engineering, Project & Regeneration, and Transport & Planning
<b>Social Care</b>	Qualified and Unqualified Social Workers and Social Care Workers for Adults and Children including Nursery and Youth Workers
<b>Trades &amp; Operatives</b>	Driving and General Trades
<b>Educational</b>	Supply Teachers, Cover Supervisors, Clerical, Teaching & Classroom Assistants, Midday Supervisors, Caretakers, Invigilators, Business Managers and School Bursars

- 12.4.2 Where the Customer has not previously engaged a Supplier, it is anticipated that the Supplier will audit the Customer's current Temporary Agency Worker requirements prior to implementation, taking into account TUPE implications where applicable. Where Managed Service Provision is currently in operation, the Customer where possible / available, shall supply the managed services provision with the relevant historical data prior to implementation of the Contract.
- 12.4.3 Where the Customer has not previously engaged a Supplier, the Supplier will adopt the Customer's existing supply chain so that those Agencies can still submit candidates for roles that the Customer requests, subject to agreement with the Agencies concerned. In the event that the Supplier considers that an Agency from the Customer's existing supply chain does not or is unable to meet the requirements of the Contract or refuses to accept the terms and conditions of the Supplier for appointing Agencies then the Supplier shall seek agreement from the Customer to remove such an Agency from the supply chain.

#### **REQUESTS FOR TEMPORARY AGENCY WORKERS**

- 12.4.4 A list of all Authorised Users of the Service will be agreed by each Customer with the Supplier prior to commencement of the Agreement. This authorisation list must be strictly adhered to when processing requests for temporary staff. The Customer will be able to add to and remove people from the list during the course of the Contract.
- 12.4.5 The type and grade of Temporary Agency Worker required will be detailed by the Hiring Manager. If Temporary Agency Workers of a higher grade are provided, payment will only be made as per the grade requested.
- 12.4.6 The Hiring Manager will specify whether they require a number of CVs to be submitted or whether a suitable candidate should be selected by the Supplier. The number of CVs to be submitted may be dictated by the Hiring Manager.
- 12.4.7 The Hiring Manager will specify the timescales in which they require responses to their request.
- 12.4.8 The Supplier is required to update the Hiring Manager on the progress in meeting their requirements and on outstanding orders.
- 12.4.9 All requests for Temporary Agency Workers will go via the Supplier and the Supplier shall ensure Agencies are aware that they must not send speculative emails to or make unsolicited calls to Customers.

#### **PROVISION OF CANDIDATES**

- 12.4.10 The Supplier shall consistently provide Customers with high quality Temporary Agency Workers that have the right mix of skills, experience and qualifications as required and specified by the Hiring Manager, and have undergone the relevant safeguarding checks. Temporary Agency Workers supplied into Education establishments must have Child Protection Level 1 training that has been approved by the Safeguarding Board. Evidence of this training must be provided to the Hiring Manager when the Temporary Agency Worker commences the Assignment.



- 12.4.11 The Supplier must ensure that they and Agencies provide Temporary Agency Workers that are at all times competent, punctual and appropriately trained as well as meet the requirements of inspection bodies such as the Office for the Standard of Education (OFSTED) and the Commission for Social Care (CSC).
- 12.4.12 The Supplier must ensure that all CVs or person specifications submitted by themselves and Agencies are anonymised / unbranded so that Hiring Managers cannot identify the Agency that is putting the Candidate forward. Customers would ideally like to be able to specify a standard format for such CVs to enable easy comparison to be made by the Hiring Manager.
- 12.4.13 Temporary Agency Workers provided in response to a request shall meet any Departmental or Service specific standards of the Customer. The Supplier will be responsible for ensuring they and all Agencies provide such details to the Temporary Agency Worker in advance of their assignment. Details of these will be made available to the Supplier at the implementation stage although the Customer may update these standard requirements from time to time in line with, for example, changes to legislation, addition of new services, re-structuring of the Customer organisation, unfilled requests for Temporary Agency Workers. The Contract Manager shall communicate such changes to the Supplier.
- 12.4.14 CVs or person specifications provided by the Supplier to the Hiring Manager should be sufficiently well detailed and fully aligned with the Hiring Manager's requirement to enable him to make an informed decision about which Temporary Agency Worker to hire.
- 12.4.15 The Supplier must recognise that there may be circumstances where a Temporary Agency Worker is required at very short notice or to fill an Assignment in an emergency. Ideally the Service will be able to accommodate such requests without simply relying on populating the system retrospectively after the request occurs.
- 12.4.16 The Supplier is required to ensure that they and all Agencies are fully informed and understand the individual needs of the Customer to which they are supplying Temporary Agency Workers.

#### **SELECTION AND REJECTION OF CANDIDATES**

- 12.4.17 The Supplier shall ensure that at least two references from previous employers are sought. One must be from the most recent previous employer. References should be verified as being genuine. The Supplier shall be required to seek references in accordance with the Customers standard practices for employees.
- 12.4.18 The Customer, where it deems it necessary, may wish to interview one or more Temporary Agency Workers prior to an Assignment and may wish to do this on a face-to-face basis. In order for educational establishments to comply with the DfE's Safeguarding Children and Safer Recruitment in Education policy a face to face interview must be undertaken.
- 12.4.19 The Supplier shall on request arrange interviews with selected Candidates.
- 12.4.20 The Customer shall reserve the right to reject Candidates as unsuitable. Feedback shall be provided by the Hiring Manager as to the reasons for rejection which shall be passed onto the Agency for their information and review.

#### **INDUCTION AND PERFORMANCE**

- 12.4.21 The Supplier shall ensure that Temporary Agency Workers are given clear instructions in advance of their Assignment in relation to the following:
- Geographical location of the place of Assignment
  - Customer department location
  - When to report
  - Who to report to

- The nature of the Assignment
- Working hours (including provision for breaks) and potential duration of the assignment
- Dress Code and any uniforms including Personal Protective Equipment (PPE) required
- Any additional matters e.g. provision for parking, reimbursement of expenses
- Any Customer specific policies in place that are relevant to the role
- How to submit timesheets
- Code of conduct
- Confidentiality
- Access to work adjustments
- Data protection
- Health and Safety
- Any documents to be provided to the Hiring Manager on commencement of the Assignment

- 12.4.22 The Supplier shall ensure that Hiring Managers are given clear instructions of any specific requirements the Temporary Agency Worker may have e.g. equipment required for them to perform their duties effectively, in advance of the commencement of the Assignment. It is a priority for Government to move people off invalidity benefit into employment and therefore the Customers are required to make reasonable adjustments to enable disabled Temporary Agency Workers to access their Assignments, and the Supplier is expected to assist the Customer to achieve these aims.
- 12.4.23 Temporary Agency Workers on Assignment to the Customer shall work under the supervision, direction and control of the Customer's officers.
- 12.4.24 The Supplier must ensure that all Temporary Agency Workers are given an induction pack in advance of their first day or shift. This should cover code of conduct, confidentiality, internet and telephone policies, complaints procedures, and act as a checking mechanism over pay rates and (if applicable) tiered supply services and introduce the relationship between Customer, Supplier, Agency and Temporary Agency Worker.
- 12.4.25 The Supplier undertakes to ensure that all Temporary Agency Workers are completely aware that at no time will the Customer class a Temporary Agency Worker as an employee and the Supplier is responsible for the conduct, negligence, performance and quality of Temporary Agency Workers and other employment issues. The Contract Manager will advise of any additional policies or revisions during the Contract period. The Supplier shall operate a process for addressing grievances that aligns with the Customer's grievance process.
- 12.4.26 Temporary Agency Workers are required to adhere to the Customer's policies and procedures including; fire, manual handling, health and safety requirements, matters of discipline. These policies and procedures will be supplied to the Supplier at Contract implementation.
- 12.4.27 Serious misconduct and poor performance by a Temporary Agency Worker will be conveyed to the Supplier (in the first instance verbally and subsequently in writing) who will, if so requested, terminate the Assignment of the Temporary Agency Worker(s) concerned. At no time is compliance with this clause to be used as evidence of a Temporary Agency Worker gaining employment status with the Customer. In the case of an allegation against an Temporary Agency Worker in respect of child protection or the protection of vulnerable adults, the Temporary Agency Worker, the Agency and the Supplier will comply with the requirements of the Customer with regards to attendance at hearings and case conferences and the implementation of any decisions, including referrals to ISA and List 99.

- 12.4.28 The Supplier shall bring to the attention of all Temporary Agency Workers the need for any information gained during their placement with the Customer to remain confidential. The Supplier shall, if required, ensure that all Temporary Agency Workers sign a confidentiality agreement, as agreed with the Customer, prior to any placement and this signed agreement is to be filed within the Temporary Agency Worker's personnel file, a copy of which is held by the Supplier and the Agency.
- 12.4.29 When requested, the Supplier shall arrange for a Temporary Agency Worker to be tested to ensure that they meet specified capabilities prior to being assigned to the Customer. Details of any test results shall be made available to the Customer.
- 12.4.30 The standard of dress and hygiene of the Temporary Agency Worker shall be in accordance with the Customer's departmental standards. The Customer reserves the right to request a change in dress if it is deemed to be inappropriate, offensive or below the standard reasonably required. In the event that Temporary Agency Workers are required to wear Personal Protective Equipment as part of their placement with the Customer it will be the responsibility of the Supplier to ensure that they arrive for work correctly attired. The actual operational process to enable this will be agreed with the Supplier at the implementation of the Agreement.
- 12.4.31 Where use of a car is stated by the Hiring Manager to be required as part of the Services and journeys have been undertaken by the Temporary Agency Worker, the Agency will pay appropriate mileage in line with the HMRC policies. Agreement to pay mileage allowance must be with the prior agreement of the Hiring Manager. Mileage allowance will not be paid for travel to and from the place of work. These rates may be adjusted by the Customer during the Agreement period.
- 12.4.32 The Supplier is required to ensure that the Agency has had sight of the Temporary Agency Worker's driving licence, MOT and insurance documents allowing for business use. Agencies are required to ensure that the Temporary Agency Worker is aware of the Customer's work force travel plans and policies for travel when on duty.
- 12.4.33 Temporary Agency Workers will be required to complete the Supplier's standard mileage claim form, which, when authorised by the Hiring Manager, will be submitted on a monthly basis. A copy of this document will be provided with the invoice.
- 12.4.34 The Supplier shall be solely responsible for all arrangements associated with the reimbursement of all expenses.

#### **CANCELLATION OF BOOKING AND REJECTION OF WORKERS**

- 12.4.35 In the event of any circumstance affecting the arrival of a Temporary Agency Worker the Supplier shall ensure that the Hiring Manager is notified without delay.
- 12.4.36 The Supplier shall use their best endeavours to find a suitable replacement Temporary Agency Worker. Data on numbers of and reasons for cancellations shall be kept and a breakdown by Agency provided to the Contract Manager on a **(quarterly)** basis as part of the performance management of Agencies. Repeat cancellations may result in Agencies being suspended or moved down Tiers (where a tiering system is in operation). The Customer reserves the right to cancel or amend any such booking.
- 12.4.37 The Customer shall notify the Supplier of the requirement for any change or cancellation of any booking no less than **ninety (90) minutes** before the booking commencement. If the Customer cannot comply with this then they shall pay for **25% of the first day** or where it is less than one day, **25% of the Assignment** that is cancelled, if the Temporary Agency Worker cannot be placed elsewhere within the organisation. The payment from the Customer shall be passed on to the Agency supplying the Temporary Agency Worker for payment to the Temporary Agency Worker.
- 12.4.38 The Supplier shall make no charge to the Customer in the event that a Temporary Agency Worker;
- fails to attend an Assignment at the reporting time
  - is rejected within a trial period for specified Assignments where such a period has been agreed between the Customer and the Supplier

- has been rejected as unsuitable within the first three (3) hours of the Assignment
- rejects the Assignment or does not attend the Assignment
- is found not to have the defined requirements for the role i.e. in terms of qualifications, eligibility to work, DBS/ISA checks
- is found not to have correct and valid credentials that would allow them to legally work
- is identified as unfit to work or not being capable of carrying out the majority / most / or all of the specified tasks or activities required safely and to the necessary standard.

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

12.4.39 In the event that a Candidate is rejected by a Customer and where an Assignment is closed before the official Assignment closure date, the Supplier shall be responsible for investigating the circumstances of that rejection. Depending on the justification for the rejection;

- a) The Customer acting reasonably may request that the Temporary Agency Worker does not work for the particular department or directorate again and the Supplier shall ensure that if the Temporary Agency Worker is offered for other vacancies within that department or directorate that the Hiring Manager is made aware of previous reports on performance.
- b) The Customer may request that the Temporary Agency Worker does not work for the organisation again and the Supplier shall ensure the Temporary Agency Worker is not offered for any vacancies within that organisation
- c) Where a serious rejection occurs, it is the Supplier's responsibility to make Hiring Managers aware of such rejections when the Candidate in question is put forward for future Assignments to enable Hiring Managers to make an informed decision.

## **VETTING AND COMPLIANCE WITH POLICY AND LEGISLATION**

12.4.40 The Supplier shall verify the identity and nationality of Agency Workers in accordance with UK Border and Immigration Agency guidelines and codes of practice. The Supplier shall ensure that two (2) proofs of address are kept on file, and must be kept up to date and/or revisited as required. The Supplier shall ensure suitable processes and procedures are in place to ensure that any permits granted to the Temporary Agency Worker are checked in advance of expiry in order that the Customer is not at risk of employing someone who is not eligible to work in the UK.

12.4.41 The Supplier shall ensure that any qualifications held by the Temporary Agency Worker in order to meet the Authorised Officer's person specification are verified by the Agency (or the Supplier if he is providing Temporary Agency Workers himself) having had sight of the original certificates. Certified photocopies of qualification certificates are to be held on file throughout the duration of a placement by the Supplier and/or Agency and for a period of at least five (5) years to comply with the Customers' audit regulations.

12.4.42 In relation to the Immigration, Asylum and Nationality Act 2006 and any other relevant legislation and/or code of practice:

12.4.42.1 The Supplier shall be required to comply with the requirements of the Asylum and Immigration Act 2006 and shall be responsible for checking that all Temporary Agency Workers have the right to work in the United Kingdom either as a British Citizen or that necessary permits have been obtained and this should be evidenced in the Temporary Agency Workers employment portfolio. The identity and nationality of Temporary Agency Workers shall be verified through passport or photo-card driving licence. In addition proof of address shall be required e.g. utility bills / council tax. All certified photocopies are to be retained on file throughout the duration of a placement and for a period of at least five (5) years to comply with the Customers' audit regulations.

Evidence of this may be required of the Temporary Agency Worker when they attend the Assignment

- 12.4.42.2 The Supplier shall ensure that they and Agencies have procedures for monitoring relevant clearance / visas on an ongoing basis allowing Temporary Agency Workers to work in different areas. This will involve monitoring status, expiry dates and hours worked and ensuring that visas / work permits do not restrict where the Temporary Agency Worker can work.
- 12.4.43 The Supplier is required to comply with all current as well as future legislation in respect of the Temporary Agency Worker Directive, and any other relevant legislation to make certain that the requirements of such legislation is being met throughout the duration of contract period.
- 12.4.44 The Supplier is required to ensure that Agencies, where used, put forward Candidates on whom they hold and maintain up to date information on the following:
- A full employment history, together with a satisfactory written explanation of any gaps in employment, including where owing to a disability
  - A signed application form and Curriculum Vitae (CV)
  - Documentary evidence of all relevant qualifications
  - Applicable training i.e. manual handling
  - Proof of right to work in the UK
  - Proof of identity including a recent photograph i.e. in the form of a valid and current passport or driving licence
  - Proof of address
  - Verification of why employment / position was ended in the case where a Candidate has previously worked with children or vulnerable adults
  - Two (2) written references, one (1) which is from the most recent previous employer
  - DBS disclosure check which is appropriate to the role offered i.e. the relevant ISA barred list children / adult has been checked
  - Details of any criminal offences including where detailed on Candidate's DBS disclosure
  - Driving licence / motor vehicle insurance and a current MOT certificate
  - Professional memberships; i.e. for social care professionals valid GSCC registration is required and must be renewed before the expiry date, not after the expiry date

Agencies, where used, will be responsible for validating the accuracy of the information supplied by all Candidates

- 12.4.45 A number of jobs may have a requirement for Criminal Records Bureau, POVA and/or ISA checks to be undertaken on Temporary Agency Workers before they are put forward for placement in any of the Customers. These will be identified by Hiring Managers at the implementation stage of the contract, and if required a charging structure agreed for the provision of this service. Charges will not be raised where checks have already been made and evidenced to the satisfaction of the Customer.
- 12.4.46 The Supplier shall be responsible for ensuring that Agencies are undertaking such checks and must make available on request to the Customer the reference number and date of the DBS check of any Temporary Agency Worker put forward for placement by the Supplier. The Supplier will not put

forward for placement any individual who appears unsuitable as a result of the information received from the checks.

- 12.4.47 The Supplier shall ensure that Agencies comply with the requirements of the DBS and ISA and that the Temporary Agency Worker takes a copy of the disclosure to the commencement of each Assignment for review by the Hiring Manager prior to commencing the Assignment. Suppliers are also required to be compliant with the Safer Recruitment in Education Guidance and to hold the DfE Quality Mark for Education.
- 12.4.48 The Supplier must ensure that the Customer is informed where a Candidate is under investigation from external agencies. This includes but is not limited to, the General Social Care Council (GSCC).
- 12.4.49 The Supplier must ensure that Agency receives 'additional information' about a Candidate from the DBS that a Chief Constable considers relevant to the post applied for and where this cannot be shared with the Customer, this may well affect their ability to be engaged to fulfil an Assignment. Such a Candidate will not be allocated any Assignment within the Customer organisation which involves working in areas requiring a DBS check.
- 12.4.50 The Supplier must also ensure that Temporary Agency Workers make a signed and dated declaration regarding unspent previous criminal convictions subject to the Rehabilitation of Offenders Act 1974. A copy must be provided to the Customer within three (3) Working Days. Existing Temporary Agency Workers and new applicants for temporary work who have a previous criminal record should only commence work after the approval of the Customer is sought. All applicants for placement at any of the Customers must be informed in writing that undeclared criminal convictions which subsequently become known may result in the Customer instructing the Supplier that the Temporary Agency Worker may be removed from the delivery of services. If a Temporary Agency Worker is convicted of an offence whilst on Assignment, the Supplier shall notify the Customer immediately and seek to reach agreement on the appropriate course of action. Generally speaking this shall not include motoring offences though for certain posts motoring offences may need to be reviewed. Customers shall agree with the Supplier which posts motoring offences must be reviewed.
- 12.4.51 The Supplier should ensure that Agencies provide current and suitable references for Candidates put forward for an Assignment
- 12.4.52 The Supplier shall support Customers in addressing the requirements of the Temporary Agency Worker Directive and provide a cost effective, legal method of managing this transition. The Supplier shall suggest means of finding economic and innovative solutions to managing resource which uses the legislation to the Customer's advantage.
- 12.4.53 In the unlikely event that a waiver to any of the above vetting and compliance issues is sought by the Hiring Manager, the Supplier shall not agree to such a waiver without the express consent of the Customer's Contract Manager. Such a waiver should be treated as temporary and only until such a point where any waived items/checks are completed as agreed between the Supplier and the Customer's Contract Manager.

## **12.5 SERVICE DELIVERY**

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

the required level an update report shall be submitted to the Customer's nominated Contract Manager on a weekly / fortnightly basis.

## **12.6 SUPPLIER PERSONNEL & CONTRACT MANAGEMENT**

- 12.6.1 The Supplier shall ensure that only suitably experienced and qualified staff shall be used to provide the Services.
- 12.6.2 The Supplier shall demonstrate how they manage business continuity and ensure effective recruitment and retention of staff.
- 12.6.3 The Supplier shall nominate an Account Manager to the Contract who is the primary and single point of contact for the Customer's Contract Manager.
- 12.6.4 The Supplier will ensure that there is a suitable structure and level of resource in place to deliver the Services which will be fronted by the nominated Account Manager.
- 12.6.5 Once operational, significant changes or reductions in the assigned personnel will not be made without prior written consent of the Contract Manager; such consent will not be refused unreasonably.
- 12.6.6 The Supplier shall be proactive when managing the Contract including but not limited to:

- dealing with and resolving complaints
- rectifying slippages in performance or service standards
- identifying and presenting opportunities to secure additional savings
- building and working with Agencies to maintain a wide and diverse Candidate pool.

The Supplier shall also be proactive in raising with the Contract Manager any opportunities and / or issues (potential or actual) that are affecting or may affect the above.

- 12.6.7 The Supplier shall participate in regular face to face contract review meetings with the Contract Manager at the Customer's premises. Attendance at such reviews shall be by suitably senior personnel. Initially during and immediately after Implementation this shall be at least monthly (or more frequently if required) and thereafter **quarterly** or **six (6) monthly**, to be agreed with the Contract Manager.
- 12.6.8 Attendance at regular review meetings is essential and shall be at no cost to the Customer.
- 12.6.9 The Customer reserves the right to request additional meetings where necessary to address any matters arising in between the review meetings. Such requests shall not be made unreasonably and again will be at no cost to the Customer.
- 12.6.10 The Supplier shall manage the supply chain in a systematic manner which can enable them to organise and regularly provide feedback to the Agency in respect of:
- the Agency's performance – feedback in terms of the standard of service they are supplying.
  - the Temporary Agency Worker – why their Applicant was accepted / rejected, general feedback in terms of the Temporary Agency Worker's ability, suitability for the post and conduct.
- 12.6.11 The Supplier shall provide evidence that they are actively seeking feedback from Agencies on their performance and that of the Customer to maintain and improve Service standards. Such feedback shall be shared with the Contract Manager at regular review meetings.

## **12.7 PAY RATES TO TEMPORARY AGENCY WORKERS**

- 12.7.1 The rates of pay received by the Temporary Agency Worker shall be determined by the Customer's Contract Manager in agreement with the Supplier. The Supplier shall provide details of how they will provide regular advice and information to the Customer of pay rates and conditions in the local and sub-regional market. Any such agreement shall take into account the provisions of the Temporary Agency Worker Directive and any other such relevant legislation which comes into effect.
- 12.7.2 The Supplier shall use their knowledge and expertise to work with the Customer to identify appropriate pay rates for roles.
- 12.7.3 For PAYE Temporary Agency Workers the Supplier shall ideally charge actual NI on the earnings of the Temporary Agency Worker as well as WTD which will equate to the total wage costs
- 12.7.4 For Limited Company Workers their total wage costs shall be equal to their pay rate as tax and statutory costs shall be paid through their company.
- 12.7.5 Payments shall be in line with Working Time Regulations. This payment and employer's NI charged shall be itemised separately on invoices and available as part of all management information.

## **12.8 FEES AND SAVINGS**

- 12.8.1 The Supplier Fee to be charged by the Supplier during each year of the Agreement shall be agreed at the outset and capped for the duration of the Agreement.
- 12.8.2 The Supplier Fee shall provide excellent value for money, and be transparent to all parties; including the Agencies and the Customers. The Supplier must recognise the potential for fees to be benchmarked following any re-opening of competition and in particular those competitions utilising reverse e-auction technology. Supplier shall avoid multiple pricing policies and must use their best endeavours to provide managed services at a consistent best value rate across the Framework provision.
- 12.8.3 The Service must deliver Savings for the Customer and any Savings generated must be objectively measured and demonstrable, to assist Customers to reach their Savings targets.
- 12.8.4 Taking geography into account, the Supplier shall advise the Customer of the most competitive Agency Fees that they have achieved with Agencies across all Customers and shall endeavour to secure similar or comparable rates for that Customer where appropriate. The Agency Fee charged shall be available as part of all Management Information.

## **12.9 INVOICING AND PAYMENT REQUIREMENTS – SUPPLIER**

- 12.9.1 The Solihull MBC and Coventry CC shall require a single consolidated invoice. Invoices shall be submitted in arrears on a weekly basis. The Supplier must ensure that invoices are raised without delay, enabling Agencies to be paid promptly.
- The supplier will be required to work with Warwickshire CC to introduce electronic invoicing in a format to be agreed. In the first instance, WCC will require one invoice per order (which will equate to a single candidate).
- 12.9.2 Payments will be made by BACS.
- 12.9.3 Invoices shall be supported by detailed electronic information in a format as agreed with the Customer to enable internal charging to relevant budget holders. This is likely to include:-
- Order reference number
  - Job title
  - Hours worked; regular hours, overtime hours (including night shifts), double time hours and total hours



- Unique work record per individual not per assignment
- Total hourly / daily rate
- Hourly / daily pay rate to Temporary Agency Worker
- National Insurance contributions
- Working Time Regulations
- Value Added Tax
- Agency Commission (Agency Fee)
- Supplier Commission (Booking fee)
- Department and/ or Section
- Cost Centre Code and if required Hiring Manager
- Name of individual that the Temporary Agency Worker reports to
- Date timesheet submitted and approved
- Name of Hiring Manager timesheet approved by

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

- 12.9.4 In support of the invoice the Supplier shall provide each Agency with a timesheet (electronic where required by the Customer) that must be used by all Temporary Agency Workers. Timesheets must indicate that all breaks are unpaid and must not be added to hours worked.
- 12.9.5 Completed timesheets shall be submitted electronically (either by the Temporary Agency Worker or the Supplier) to the Hiring Manager for authorisation. The Supplier shall provide the Contract Manager with an exception report of unauthorised timesheets, accessible with real-time information, but at a minimum on a weekly basis.
- 12.9.6 Where the Customer has implemented an internal policy restricting the number of hours a Temporary Agency Worker can work, the Supplier shall ensure that this restriction is reflected in the invoicing and payment to Agencies. Allowance for time off in lieu may also be required by some Customers.
- 12.9.7 The Supplier shall only process timesheets that have been authorised by the appropriate Hiring Manager. In the event that a Hiring Manager refuses to certify a timesheet the Supplier shall be notified within **two (2) Working Days** and resolve with the Hiring Manager in the first instance. If further resolution is required the incident should be referred to the Contract Manager.
- 12.9.8 The Customer will advise the Supplier if auto-approval of timesheets is required for their Contract prior to commencement of the Contract. As a rule, the default position will be that timesheets are not approved automatically.
- 12.9.9 Should there be a dispute regarding hours worked, the hourly rate, statutory contributions or the commission claimed by the Supplier in respect of an Temporary Agency Worker, the Customer reserves the right to withhold payment of the sum in dispute until such time as the matter can be resolved. The Supplier will ensure that the consolidated invoice does not include such amounts so as not to delay payment of the remaining authorised sums.
- 12.9.10 The Customer may have or at some point in the future wish to explore the feasibility of integrating the Purchase-To-Pay processes associated with engaging Temporary Agency Workers with the e-

Procurement solution that they plan to implement during the lifetime of the Agreement. Should this be the case, the Supplier shall work with the Customer to agree, test and implement a solution.

- 12.9.11 The Supplier shall be required to ensure fair and agreed payment terms are in place for all (Tiered) Agencies i.e. terms that do not allow payment to Agencies to be **delayed beyond ten (10) Working Days** after the Supplier has been paid and that in total, in any event, payment takes **no longer than thirty (30) days** from submission of an undisputed invoice.
- 12.9.12 Where the Customer has agreed shorter payment terms in order to meet policy obligations or to support their suppliers, the benefit of this must also be reflected through the supply chain to the Tiered Agencies.
- 12.9.13 The Supplier shall be required to ensure agreed payment terms are in place for all Temporary Agency Workers i.e. **no more than fourteen (14) days** from submission of a timesheet.
- 12.9.14 The cost model proposed by the Supplier shall be required to be financially transparent, particularly in relation to:
- Pay rate
  - National insurance
  - WTD
  - National insurance on holiday pay
  - Agency fee
  - Total amount paid to the Agency
  - Supplier transaction charge
  - Total charge to the Customer
  - Temporary Agency Worker's status in terms of whether they are PAYE or a Ltd Company also needs to be stated.

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

## **12.10 REGENERATION AND SUSTAINABILITY**

- 12.10.1 The Supplier shall be required to put in place procedures and processes which provide encouragement and opportunities for Small Medium Enterprises (SME) and minority groups; to include but not be limited to Black and Minority Ethnic owned (BME), women-owned, disability-owned and third sector organisations to trade in line with government and local policies. The Supplier shall, in particular, encourage local SMEs and local minority groups to engage with them to deliver Services to the Customer. Data on the numbers of such organisations (either as a percentage in terms of number of suppliers or as a percentage of spend) in the supply chain and the amount of business transacted shall be provided by the Supplier to the Contract Manager.
- 12.10.2 The Supplier shall aim to support local people, their communities, job centres and organisations. As such a mechanism shall be provided to support effective promotion of employment opportunities for local residents and raise understanding of routes to apply for Temporary Agency Worker roles. The Supplier shall work closely with the Customer to target and actively encourage registration from hard to reach groups such as lone parents, older candidates, women returnees, disabled minority groups (where appropriate) and those from socially disadvantaged areas. The Supplier shall ensure that they will actively promote the means by which individuals can register for suitable vacancies. The Supplier shall provide evidence of the process to the Customer on request. Where required, the Supplier shall run periodic sessions, either at their premises or other locations throughout the borough to explain the registration process and to encourage participation from all sections of the

community. The Supplier in conjunction with the Customer may also need to consider programmes to increase the capabilities of local Temporary Agency Workers.

- 12.10.3 The Supplier must evidence a transparent process to demonstrate that Assignments are offered in a fair manner to all Agencies including but not limited to local SME and local minority groups.
- 12.10.4 The Supplier shall ensure that they consider, promote and demonstrate equality and diversity within their own organisation and that they proactively work with Agencies to ensure that they take similar steps with regards to their own organisations and when recruiting and supplying candidates for the Customer.
- 12.10.5 The Customer may require the Supplier to target specific groups for Agency Assignments.

## **12.11 MANAGEMENT INFORMATION**

- 12.11.1 The Supplier must be able to provide configurable and comprehensive real time management information from implementation and on an ongoing basis relative to all activity under this Agreement at no additional cost to the Customer
- 12.11.2 The Supplier shall provide, at no additional cost to the Customer, management reports in a suitable electronic format on a monthly basis. The type and level of detail of the reports shall be decided at the implementation of the Agreement so that they are tailored to only provide the information that each individual Customer specified is relevant to them. This does not preclude changes being made during the life of the Agreement should the Customer require it. This information shall be provided in a clear format which is both easy to understand and easy to interpret. Tenderers are required to provide details of the suite of reports and data that they are able to provide, and its typical use by the Customer.
- 12.11.3 The System proposed by the Supplier shall offer a flexible management information tool that can be tailored to only provide the information that the Customer specifies is relevant. The Supplier shall be able to offer as a minimum a suite of pre-defined reports, which can be tailored to the Customer, but it is also desirable that the Customer can run their own reports where the system allows.
- 12.11.4 Reports and data shall be presented in a format which can be exported into MS Office Applications or other similar packages used by the Customer that can be used to manipulate data.
- 12.11.5 The Customer shall be able to specify the Management Information reports it requires which may include but are not limited to the following:
  - 12.11.5.1 Active assignments (current headcount report)
  - 12.11.5.2 Detailed order status report – showing individual order information
  - 12.11.5.3 Usage by department – scheduled end dates for each order, sorted by Customer department and position
  - 12.11.5.4 Comparison of old and new Agency Fees/Margins (in pence)
    - By Customer department
    - By job discipline
  - 12.11.5.5 Temporary Agency Worker assignments undertaken by Customer Residents
  - 12.11.5.6 Temporary Agency Worker assignments (numbers and value) filled by Agencies supplying from an address within the Customer's region, including size of company (number of employees)
  - 12.11.5.7 Performance monitoring report: time taken to fill each booking (from initial order and from Cost Centre Manager authorisation) compared against agreed service levels:

- By Customer department
- By job discipline

12.11.5.8 Full details of any posts that could not be filled.

12.11.5.9 Summary of comments/complaints with corrective action taken

12.11.5.10 Agency usage – Agencies ranked in terms of number of Assignments

12.11.5.11 Ethnic profile – The ethnic profile of interim workers assigned to the Customer where applicable / appropriate

12.11.5.12 Disability profile – Volumes of disabled and non-disabled interim workers assigned to the Customer

12.11.5.13 Gender profile – Volumes of male and female Temporary Agency Workers assigned to the Customer

12.11.5.14 Age profile – The age profile of Temporary Agency Workers assigned to the Customer

12.11.5.15 Temporary Agency Workers – a list of Temporary Agency Workers who have been assigned to a specific order, showing:

- Name of worker
- Geographical profile
- Religion
- Sexual orientation
- Order reference number
- Job discipline
- Job title
- Council Department
- Cost Centre Manager
- Start date of assignment
- Anticipated end date of assignment

12.11.5.16 Assignment duration report – by Temporary Agency Worker

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

12.11.6 The Supplier shall undertake to create the reports (where the necessary data is held) for the Customer within a reasonable timescale (ideally within forty eight (48) hours) and at no additional cost to the Customer. Such reports are essential to enable the Customer to be able to respond to enquiries, or requests made of the Customer under the Freedom of Information Act. Should this functionality not be available the Customer shall have the ability to build and run their own reports from within the system operated by the Supplier.

12.11.7 The Customer shall wish to use the reporting facilities available to enable it to better understand its use of Temporary Agency Workers and any trends and to feed into any workforce or demand management planning as needed.

12.11.8 In addition, the Supplier shall comply with the following:

- 12.11.8.1 The Supplier agrees to provide ESPO with information relating to the services procured and any payments made under the Contract.
- 12.11.8.2 The Supplier shall supply the Management Information to ESPO and in the form set out at during the framework Contract Period.
- 12.11.8.3 ESPO may be required to share the data with the Efficiency Reform Group (ERG) and/or other Pro5 Professional Buying Organisations. Sharing of such data will be on a strictly confidential basis.
- 12.11.8.4 Upon receipt of the Management Information supplied by the Supplier in accordance with **12.11.8.2** above or receipt of information provided by ESPO to ERG or Pro5 under **12.11.8.3**, the Customer and the Supplier hereby consent to ERG and Pro5:
  - a) storing and analysing the Management Information and producing statistics; and
  - b) sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Customer.
- 12.11.8.5 In the event that ERG or Pro5 share the Management Information or information provided under clause **12.11** in accordance with **12.11.8.4(b)**, any Contracting Customer receiving the Management Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body who is not a Contracting Customer (unless required by law).
- 12.11.8.6 ESPO may, but not unreasonably, make changes to the Management Information which the Supplier is required to supply and shall give the Supplier at least **one (1) month's** written notice of any changes.

## **12.12 SYSTEM REQUIREMENTS**

- 12.12.1 The appearance and operation of the System shall be similar to those in general widespread and common use for other functions to enable Hiring Managers to be able to use the System easily from Implementation.
- 12.12.2 The System must be able to accommodate various account coding from the Customer's financial management system e.g. Oracle, SAP, Agresso.
- 12.12.3 The System shall not use any jargon or technical terminology and will use language easily recognisable by the Customer's officers. Where use of jargon or technical terminology is unavoidable the Supplier shall include easily accessible and clearly identifiable help functions and/or user manuals to enable users to use the System effectively with minimum support.
- 12.12.4 The System shall be supported by online / interactive documentation, manuals and FAQs which may be delivered in the form of tutorials.
- 12.12.5 The structure of any System or processes implemented by the Supplier in order to deliver the Services must be flexible, Customer-driven and easy to adopt in a public sector environment.
- 12.12.6 The Supplier must give a minimum of **three (3) months** notice to any Customer where changes to the System or platform are proposed.
- 12.12.7 The Supplier shall ensure that a log of System issues, including but not limited to failures and system bugs, is established and maintained and is supported by a proposed programme for resolution which recognises the need for business continuity, timescales for rectification and escalation to appropriate levels within the Supplier's organisation.
- 12.12.8 The Supplier must be able to provide by the date of Agreement award / Implementation the following data transfer:

- 12.12.8.1 Online ordering and candidate selection
- 12.12.8.2 Online electronic time sheeting
- 12.12.8.3 Online electronic invoicing and or/payment systems
- 12.12.8.4 Comprehensive and real-time management reporting
- 12.12.8.5 Integration of any or all of the above; with each other, and ability to integrate with Customer legacy systems
- 12.12.9 The Supplier shall offer full training for Customers (and any Agencies used as part of the supply chain) free of charge at the Customer's premises and at suitable premises for the Agencies (where required). The Supplier must offer training via a variety of methods and shall be aware that on-going training may be required for additional and/or new users of the System, as new Hiring Managers join the Customer or new Agencies commence supply of the Services; in-system or on-line training shall be required.
- 12.12.10 The Supplier's solution shall provide 24-hour system support for functional and/or technical problems to help and support service users as required for example a help desk. If the proposed solution is via telephone, this 24-hour system shall not be premium rate and preferably calls shall be charged at local rate or lower. This shall include online support outside of typical working hours and some means of logging emergency or major Systems issues may be required.
- 12.12.11 The Supplier must confirm that the proposed solution shall be compliant with the requirements of the Data Protection Act in accordance with (but not limited to) the following criteria:
  - 12.12.11.1 Ensure integrity of data
  - 12.12.11.2 Have adequate privacy enhancement techniques
  - 12.12.11.3 Allow archive and deletion of data
  - 12.12.11.4 Rejection of duplicate records with meaningful error messages at the point of data entry
- 12.12.12 User Access and Data
  - 12.12.12.1 The Hiring Manager must be able to specify all relevant information for an Assignment including; start/end date, location, job type, reason for use, skill requirements and other parameters and the System shall support definition of standardised job groups, job descriptions and skill sets. The Customer shall define which fields will be mandatory for their organisation; however the Supplier shall ensure that there are appropriate mandatory fields within the System to capture the data.
  - 12.12.12.2 The System shall support the entry and display of all relevant Contract data for the Temporary Agency Workers requisitioning process e.g. pricing conditions, delivery conditions, payment terms, etc.
  - 12.12.12.3 Users must be able to track the status of an order from order creation via approval to invoice receipt and payment. The Contract Manager shall be able to see an overview or 'dashboard' containing details of any open requests.
  - 12.12.12.4 All data must be maintained centrally or locally, dependent upon access rights granted. The Customer maintains ownership of this data and shall have access to download data in its entirety at any time during the duration of the Agreement as well as on expiration of the Agreement period.
  - 12.12.12.5 The Hiring Manager shall be notified via email when a Temporary Agency Worker's assignment (of longer than **four (4) weeks**) is approaching expiry. The Hiring Manager along with the Contract Manager shall be notified via email when an individual Temporary Agency Worker has been on an assignment approaching **eight (8) weeks**

(or to a timescale as agreed by the Customer at Implementation) in order that the Customer can review and decide the future of the Assignment prior to the Temporary Agency Worker having been on Assignment for more than **twelve (12) weeks**.

12.12.12.6 The System shall include processes for the approvals of requests for Candidates, extensions to Assignments and approval of timesheets. The Customer must be able to define parameters for the system, including but not limited to; maximum assignment durations, blocking of certain categories of worker, requirements for post numbers/ authorisation for workers and any other data which is not required by the Customer.

12.12.12.7 The System shall enable Hiring Managers to re-assign approval rights when there is a period of absence. Should this be unplanned, there shall be a defined process to enable the Contract Manager or Supplier to re-assign rights as necessary.

12.12.13 The System proposed by the Supplier shall allow for straightforward management of timesheets for the Customer, Agency and Temporary Agency Worker that does not cause unnecessary complexity for any of the parties.

12.12.14 The System proposed by the Supplier must provide Management Information that enables sharing of data and experiences of the Customers that are using the Supplier's System via the framework in order that Customers can use this information in benchmarking activities. Any Management Information should be easily exported into a commonly used spreadsheet format.

## **12.13 IMPLEMENTATION**

12.13.1 It is possible that where a Customer does not currently operate a Managed Service for the provision of Temporary Agency Workers that a discovery piece of work will need to be undertaken for each Customer in respect of future, current and historic Temporary Agency Worker usage trends. Any Customer using the Supplier nonetheless reserves the right to request this piece of work, even where a Managed Service is already in operation, although this is less likely. No charge will be made for such piece of work to be completed by the Supplier.

12.13.2 The Supplier shall provide to the Contract Manager details of its:

12.13.2.1 Strategy for obtaining / defining baseline information against which service improvements and financial savings (direct and indirect) can be measured. This baseline should be 2009-10 or the most current year prior to entering into this Agreement, and the evidence should be shared with the Customer.

12.13.2.2 Strategy for dealing with current Agencies

12.13.2.3 Strategy for dealing with current Temporary Agency Workers

12.13.2.4 Strategy for communication before and during the implementation

12.13.2.5 Proposals for Implementation for each Customer, as relevant, either by Department, Temporary Agency Worker category, or the organisation as a whole.

12.13.2.6 The Supplier shall be required to facilitate the adoption of existing supply chain of Agencies and existing Temporary Agency Workers where requested by the Contract Manager.

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

12.13.4 The Supplier shall provide detailed timescales for the Implementation of the Services from Agreement award to the Customer specified go live date.

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

### **Added value and optional extra services**

Customers may require additional services and over and above those described in the CORE requirements (items **12.1-12.13** within this Service Specification)

#### **12.14 ADDED VALUE SERVICES**

#### **12.15 OPTIONAL EXTRA SERVICES**



**SCHEDULE 3 to the CUSTOMER AGREEMENT**

**Pricing Schedule**

## Invoicing

Solihull Council's terms of payment are 28 days after the day on which the Council receives the invoice.

Coventry and Warwickshire Councils terms of payment are 30 days after the day on which the Council receives the invoice.

It is required by Solihull MBC, Warwickshire CC and Coventry CC that official Purchase Orders are issued to suppliers / vendors and contractors before any goods or services are supplied and therefore any invoices that are presented for payment without quoting an official Purchase Order number will be returned. Suppliers will be required to reject any orders from Council staff unless a valid Purchase Order reference is supplied at the point of order placement.

The Contractor shall be paid by BACS on submission of weekly consolidated electronic invoices.. Invoices must be submitted no later than one week from the last day of the month. Invoices will usually be processed for payment within 28 days for Solihull MBC or 30 days for Warwickshire CC and Coventry CC from receipt. The Contractor must submit to each authority a single consolidated invoice each month, with an attached schedule showing how the total figure has been calculated and giving details of all the orders placed.

The supplier will be required to work with Warwickshire CC to introduce electronic invoicing in a format to be agreed. In the first instance, WCC will require one invoice per order (which will equate to a single candidate).

Pertemps tender response:

## Rebates

### SCHEDULE 4 to the CUSTOMER AGREEMENT

#### Local Arrangements

#### Pertemps have:

1. Included the following definition into the secondary supplier agreement :

“Temporary Worker” means an individual who is working engaged under a contract with the Agency directly (subject to PAYE & NI) or through an Umbrella Company or an individual providing services under contracts through a limited company supplied by the Agency to the Client via the MV for the purpose of an Assignment. For the avoidance of doubt these Temporary Workers are not employees of neither the MV nor the Client

2. Pertemps have also added in the following clause under TUPE

In the event that the Agency has existing Temporary Workers wishing to register with or join (whether on a permanent or temporary basis) either the Client and / or any new supplier to or contractor of the Client at any time (and notwithstanding the terms of any contract with the Temporary Worker to the contrary), then the Agency undertakes that they shall not attempt to fetter, limit or otherwise restrict the Temporary Workers freedom of choice of employment by injunction, decree, enforcement of restriction, covenant order or otherwise and that no penalty, fine, introduction fee, commission levy, deduction, withholding charge, placement fee or other charge or payment of whatever nature will be made to or on the Client and / or any new supplier to or contractor of the Client and / or its former Temporary Worker or otherwise howsoever.

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

### **Implementation Plan**

Further detail in Item Q3.4 – Implementation Plan of the tender submission.

#### **Phase 1, Planning**

Agree the final objectives and tasks of the implementation and the timescales involved.

The role of the joint project team is to:

- Allocate responsibilities for key tasks and information channelling.
- Agree administrative processes and procedures.
- Agree timesheet and invoicing requirements.
- Establish management information requirements.
- Establish order, authorisation processes etc.
- Set standards for quality and assessment measurements.
- Agree methods of communicating the contract to user managers.
- Agree methods of communicating the changes to existing temporaries.
- Agree user training schedules
- Communicate the decision to the existing supply chain

#### **Phase 2, Consultation**

This involves consulting with all parties on a group and individual basis, particularly the existing suppliers and long-term temporaries. This prevents the spread of rumour or speculation that could have an adverse effect on morale and work standards. Hiring managers are invited to meet with the Pertemps team on a one-to-one basis, or by holding presentations/workshops, as appropriate to their needs. This gives us the opportunity to further assess individual user requirements, their current suppliers and start the business engagement process.

#### **Phase 3, Implementation**

It is our primary objective to complete the implementation of the contract within the specified timescale and to agreed standards of quality.

Transition forms an integral part of implementation and key elements include:

- Open communication channels across all stakeholders
- Regular updates
- Briefing sessions
- Integration workshops.

#### **Control and management of risk:**

During due diligence and throughout contract implementation all identified or perceived risks are added to a contract risk register. This is made available to council project team members at all times and discussed at regular review meetings. Red or green flags are attached to each risk in terms of impact upon service should it occur. Contract team members are assigned to each risk with a target date for resolution. Implementation team members will be accessible at all times to deal with any authority queries.

Description of risk	Description of mitigating action
Technology downtime / reach across sites and supply chain	<ul style="list-style-type: none"> <li>• Ensure back up manual systems reflect technology based processes</li> <li>• Back up procedures and disaster recovery in place.</li> </ul>
Loss of temporary workers through implementation	<ul style="list-style-type: none"> <li>• Strategy will include consistent and supportive communications to current suppliers, workers and line managers throughout the process.</li> </ul>
Lack of buy in from user managers	<ul style="list-style-type: none"> <li>• 1-2-1 meetings to mitigate by understanding their concerns and objectives</li> <li>• Demonstrate how the new process will be more efficient, allowing them to focus on their core activity</li> <li>• Senior level sponsor / mandate from within</li> </ul>
Business continuity through implementation	<ul style="list-style-type: none"> <li>• Engage with and expand supply chain to ensure order fulfilment is maintained during transition.</li> <li>• Communication across all parties at all times with compelling reasons for the change.</li> </ul>
Length of time taken to implement contract – impact on efficiency and savings	<ul style="list-style-type: none"> <li>• Council senior level sponsorship and engagement</li> <li>• All parties work to clear timelines of plan to ensure cost savings and process efficiencies are realised early in the contracts life.</li> <li>• Maintain open communications and have regular meetings with key sponsors in order to highlight and resolve potential issues</li> <li>• Work closely with client project team to drive implementation and compliance.</li> </ul>
Lack of communication and knowledge of the contract and its award.	<ul style="list-style-type: none"> <li>• Appoint key sponsors from council project teams and Pertemps to control communication strategy</li> <li>• Communication channels open to all including user managers, flexible workers and current supply base.</li> </ul>
Supply chain insurances not in place	<ul style="list-style-type: none"> <li>• Ensure suppliers can match insurance requirements.</li> <li>• Review key suppliers insurance policy with client.</li> </ul>
Failure to fulfil orders	<ul style="list-style-type: none"> <li>• Alert the hiring managers on market trends</li> <li>• Review and renew attraction strategies with the supply chain</li> <li>• Consider extending the number of suppliers</li> <li>• Keep suppliers in the loop over any change in needs/brief.</li> </ul>

#### **Solihull, Coventry and Warwickshire project team involvement:**

It is imperative that council project team members are available throughout to support Pertemps to ensure milestones and targets are achieved. This support is normally provided from within HR, Procurement, IT, Finance and the wider user community in order to:

- Access key contract sponsors throughout the implementation period.
- Facilitate meetings for Pertemps with key departments including Finance, Legal, HR and IT.
- Facilitate meetings with hiring managers in order that Pertemps can develop a sound understanding of individual departmental requirements. This could be in the form of seminars that would be organised and delivered by Pertemps.
- Communicate contract award to all incumbent temporary personnel and existing suppliers.
- Provide ongoing involvement in joint implementation and review meetings.

#### **TUPE**

We have a tried and tested process that involves face-to-face consultation with all existing suppliers, the temporary workforce and hiring managers. Transition forms an integral part of implementation and key elements include; open communication channels across all stakeholders, regular updates, briefing sessions and integration workshops. All transition programmes are supported by a dedicated team and led by a Pertemps Board sponsor.

A detailed spreadsheet showing the entire temporary and interim workforce is built up during due diligence showing assignment start and end dates, buy out clauses and comments on any specific terms in place with the existing suppliers that could have an impact on service or cost implications. We obtain signed agreements from any outgoing agencies that all workers have been appropriately vetted in line with current legislation and references obtained. All potential risks including any TUPE liabilities are added to a contract risk register and discussed during implementation review meetings. Transition

programmes will vary from council to council depending on whether the client is a 1st or 2nd generation Managed Service contract user.

In the last four years Pertemps has successfully implemented a number of new contracts involving the transfer of some 6,000+ workers in compliance with the principles of the TUPE regulations. These transitions have included agency personnel working within the public sector on both terms of engagement and contracts of employment. We have also transferred incumbent agency contract delivery team members and client permanent staff.

Pertemps:

- Transferred 500+ workers from Reed across 40+ UK sites, on a public sector contract.
- Implemented a contract across the London Boroughs of Hammersmith & Fulham and Harrow (outlined below) involving the transfer of 1,200+ workers and 100+ suppliers to the new contract. This contract went live on 3<sup>rd</sup> October 2011 after a relatively short implementation period of 8 weeks.
- Completed the implementation of the Buckinghamshire County Council contract that involved the 300+ workers and 15+ suppliers moving to the new contract from a contract with Hays. This contract went live April 2012 after a 3-month implementation period, in line with the client's requirement.
- Are currently transferring over 200 workers from Reed, including contract delivery team members, on the recently awarded Thames Water contract whilst implementing a full RPO service for all permanent recruitment and internal redeployment.

**The following case study demonstrates our ability to transition large-scale Managed Service contracts effectively, whilst maintaining service levels and delivering savings:**

Hammersmith and Fulham Council led a collaborative procurement process with Harrow Borough Council, to let a Framework Agreement for the provision of professional, technical, general and administrative agency workers inclusive of social care.

Hammersmith & Fulham spends approximately £17m per annum through the use of c700 Contingent Workers, excluding schools. The Council at the point of award was using 100 plus suppliers managed by a single Managed Service supplier, Adecco/Hyphen.

The London Borough of Harrow spends £12.5 million per annum, through the use of c500 Contingent Workers, excluding schools and operated a range of managed and neutral vendor services through two Managed Service providers Matrix (technical, specialist, social care) and Pertemps (admin & clerical).

As part of the contract award criteria Pertemps had to demonstrate a proven track record of successful implementation within similar sized organisations (public or private sectors) and the capacity and capability to deliver the implementation across both councils within 3 months. That said due to delays in the process and award, this turned out to be **eight and a half weeks**.

The key objective was to implement an integrated solution with single provider, Pertemps. In particular:

- Provide a solution for the purpose of attracting, sourcing, selecting and supplying candidates with the aim of reducing the cost of contingent worker engagement
- Ensure the availability of competent, high calibre, contingent workers through the engagement of a diverse supply chain, in line with the Customers' specifications and job categories
- Ensure compliance with all relevant legislation associated with the acquisition and engagement of workers
- Provide the Customers with regular, comprehensive and accurate management information
- Promote a positive working partnership between the Customers, contingent workers and Panel Suppliers
- Deliver process efficiencies via improved service delivery standards including KPIs established to monitor performance for both Pertemps and for the service provided by any sub-contract Panel Vendor suppliers
- Strengthen the Customers' position as a preferred choice in markets where specialist worker resources are scarce
- Encourage candidates from the local community, with particular regard for long term unemployed and other underrepresented areas of the workforce.

All transition programmes are supported by a dedicated team and led by a Pertemps Board sponsor. A typical project team has 3-5 FTEs supported by HR, Legal, Finance and Health & Safety with a client steering group comprising Procurement, HR and business stakeholders. The implementation team will be based at our head office in Meriden, accessible for each authority by telephone and email but able to visit sites at any time for regular meetings and updates with the councils' teams.

In all these transfers, Pertemps have found that the benefits we offer have exceeded those of the out-going supplier, resulting in no additional costs. There have been isolated situations, managed on a case-by-case basis where a potential redundancy liability has existed.

Those involved in the transition of the contract to Pertemps would include:

██████████ – Operations Director and Pertemps Board Director. ██████████ is Account Director and Board Sponsor for several of Pertemps' Public Sector contracts including; London Borough of Hammersmith & Fulham, Harrow Borough Council, Transport for London and Scottish Government. Michelle has over 20 years experience in the industry and is a Fellow Member of the REC.

During [REDACTED] time with Pertemps, [REDACTED] has implemented and account managed numerous contracts (public and private sector) and been responsible for establishing the Pertemps RPO (Recruitment Process Outsourcing) centre based in Reading. This RPO centre can deliver an end-to-end recruitment solution or any part of the recruitment process on behalf of Pertemps clients and supports all managed service contracts.

██████████ would lead the account management team during the critical implementation phase of the contract and would continue to support the team in the day-to-day operation of the contract as well as taking on responsibility for strategic development and best practice reviews.

██████████ – Head of Public Sector Business. ██████████ over 25 years experience in the recruitment industry. For the last 10 he has focussed on winning, implementing and delivering solutions across the Public Sector. He has been responsible for City, County, Borough, Scottish and Central Government contracts.

█████ would support █████, the account management and contract delivery team during the implementation phase of the contract and provide input in terms of the future strategic direction of the account. He would also provide input in terms of sharing best practice from across other Pertemps contracts both in the public and private sectors.

Members of our **Implementation and Account Management teams** (CVs provided) with experience implementing Local Authority Managed Service contracts at Buckinghamshire, Hammersmith & Fulham, Harrow, Plymouth and Swindon will be deployed to implement and deliver the contract across Solihull, Coventry and Warwickshire.

### Systems and process training:

System and process training would be a work stream within the contract implementation plan. During implementation members of the contract delivery team and our training department would meet with internal and external stakeholders or individual users to demonstrate the systems and processes in full. User guides and help functions are available across all our systems.

Pertemps provide all delivery team members, head office support, including the 24/7 RPO team members, with a customised, version controlled, Operational Guide. This guide, agreed with and made available to all users across the councils will ensure that everyone understands and operates according to specific requirements of the contract.

We would also gather information from each hiring manager in terms of their requirements, location, invoicing processes etc, allowing us to populate the system with drop down menus, individual catalogues and as much relevant information as possible prior to the system going live. This will further facilitate the ease of use of the system and limit the amount of information to be input each time an order is made, particularly for repeat or volume orders.

Although PAWS is a very intuitive web based systems we would provide face-to-face training, conference calls, online documentation, help facilities and demo-sites that would allow user managers, flexible workers and the extended supply chain to experiment and familiarise themselves with the site during implementation and before using it in full.

Pertemps also use Camtasia Studio software for on-line tutorials and demonstrations of all aspects of our systems. These are used to train, not only our contract delivery teams, but users managers and subcontractors.

If a user of the system experiences any problems they are able to speak with one of the contract delivery team members or our systems development team at head office who will help them navigate around the screens and systems.

### Managed Service Communications Plan:

An Executive Paper will be produced covering:

- Reasons for change of Managed Service supplier (key difference in technical submission / reasons for choice)
- Scope and size of new contract

- Commercial benefit
- Communications strategy
- What do managers need to do?
- What is happening with temps?

Channel / route	Messages to include					
	Exit of existing Managed Service suppliers (timeframes)	Introduction to your new contacts in the 'Delivery Team'	What do you need to do as a manager	What do you need to do as a temp	How to access PAWS / how to guides	Overview
Managers Heads Up						Temps – how they will transfer, timeframes and roadshows.
Ebrief						
Temp Roadshows hand-out						
PAs						Managers and temps actions. How things will transfer and timeframes. Email to PAs and calendar invite.
HR Learn and Lunch						Managers and temps actions. How things will transfer and timeframes
Managers low key E-communication						Introduction to team, system overview, points of contact, direction to portal
Managers 121 meetings re temps transfer						121 basis
Drop in sessions across sites						Meet the team and ask any questions about temp or perm recruitment
Meet temps for completion of registration forms						121 with temps at key sites
Senior stakeholder engagement commences						Michelle White – 121 meetings and Executive paper
Case study for first 3 months						Showcase what has happened and what has changed
FAQs Temps						Key questions and responses built up and published
FAQs Managers						Key questions and responses built up and published

## **SCHEDULE 6 to the CUSTOMER AGREEMENT**

### **EXAMPLE SERVICE LEVEL AGREEMENT**

Between

Solihull Metropolitan Borough Council / Coventry City Council / Warwickshire County Council (the Customer)

and

Pertemps Recruitment Partnership Ltd (the Supplier)

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

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

#### **1. Services covered**

- 1.1. This Service Level Agreement sets out the agreed Service Levels to be provided by the Supplier to the Customer under the Contract entered into between the Customer and the Supplier under ESPO Framework **reference number 653F/11**.
- 1.2. The managed service for temporary agency resources includes but is not limited to provision of suitably experienced and qualified Temporary Agency Workers in a timely manner to fulfil Assignments as required by the Customer, provision of all supporting management information as well as all related services, including but not limited to implementation and training.
- 1.3. This Service Level Agreement (SLA) covers the core level of service applicable to all Services provided as defined in the Specification (see **Section 12** of the Invitation to Tender document)

#### **2. Duration**

- 2.1. This Service Level Agreement (SLA) will be valid for as long as there are Services still in use by the Customer which have been supplied in accordance with the Contract let under the ESPO Framework reference 653F/11

#### **3. Services required**

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

#### **4. Ordering of Temporary Agency Workers**

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



- 4.2.1. the Hiring Manager can request an Temporary Agency Worker via a variety of channels
- 4.2.2. all Assignments are filled quickly with a suitably qualified and experienced Temporary Agency Worker within the following set timeframes

[below table included as an example – subject to hiring manager approval to hire]

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

- 4.2.3. If the Hiring Manager wants to see CVs and conduct interviews, the Hiring Manager shall stipulate this in requesting the Temporary Agency Worker and shall indicate the timescale within which the Supplier shall supply CVs. Any specific format or technique required for any such interview will be confirmed to the Managed Service Provider by the Customer.
- 4.2.4. All detail regarding the Assignment is shared with all tiered Agencies to enable the Agencies to promptly respond to the Assignment request.

## 5. Provision of Temporary Agency Workers

- 5.1. Fulfilment of a request shall be defined as the supply of a suitable Temporary Agency Worker, accepted by the Hiring Manager within the timeframe as set out in at **4.2.2** above.
- 5.2. The Supplier shall meet the following service levels

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

- 5.3. The Customer shall require an exception report detailing the action being taken by the Supplier to remedy the situation and the associated timescale for the remedy, in the event that;
  - 5.3.1. the Supplier falls below the above stated levels for more than two consecutive months,
  - 5.3.2. the Supplier falls below 90% for standard assignments in any one month
  - 5.3.3. the Supplier falls below 98% for hard to fill assignments in any one month

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

- 6.1. the Supplier shall ensure that appropriately qualified and experienced Temporary Agency Workers are supplied that are appropriate for the Assignment concerned
- 6.2. in the event that an Temporary Agency Worker shall not arrive on time to commence an Assignment the Supplier shall ensure that the Hiring Manager is notified **without delay**.
- 6.3. in accordance with the specification the Supplier shall make no charge to the Customer in the event that;

- 6.3.1. the Temporary Agency Worker fails to attend at the Assignment at the reporting time
- 6.3.2. the Temporary Agency Worker fails to attend or rejects the Assignment
- 6.3.3. the Temporary Agency Worker is rejected within the trial period (where such a trial period is agreed)
- 6.3.4. the Temporary Agency Worker is rejected within the first three hours
- 6.3.5. the Temporary Agency Worker is found not to have the defined requirements for the role
- 6.3.6. the Temporary Agency Worker is found not to have the correct and valid credentials to allow them to legally work in the UK
- 6.3.7. the Temporary Agency Worker is defined as being unfit for work or not being capable of carrying out the majority, or most of the specified tasks required safely and to the necessary standard.
- 6.4. The Customer shall notify the Supplier of the requirement for any change or cancellation of the assignment **at least 90 minutes** prior to the agreed Assignment start time.
- 6.5. If the Customer fails to comply with the requirement of 6.4 above they shall pay 25% of the cost of the first day or where the Assignment is less than one day, 25% of the Assignment charge, unless the Temporary Agency Worker can be placed elsewhere.

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

### **7.1. Account Management**

- 7.1.1. The Customer's Contract Managers are;  
Jayne Loach, Solihull MBC, 0121 704 6376, jloach@solihull.gov.uk;  
[REDACTED] Coventry CC, [REDACTED]@coventry.gov.uk  
[REDACTED] Warwickshire CC, [REDACTED]  
[REDACTED]@warwickshire.gov.uk  
who can be contacted for further Information or any issues or to give feedback.
- 7.1.2. The Contract Manager shall be available for queries during Normal Working Hours [08:30 to 17:30]
- 7.1.3. The Supplier has nominated an Account Manager for the Customer. Any contact the Customer makes with the Supplier, should, in the first instance be made through [REDACTED], National Account Manager by contacting [REDACTED]@pertemps.co.uk.
- 7.1.4. the Account Manager shall be available for queries during Normal Working Hours [08:30 to 17:30]

### **7.2. Service Helpdesk [if applicable]**

#### **7.2.1. Role**

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

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

- 7.2.2.1. the period for which the helpdesk service is available is 24 hours a day, 7 days a week, including all United Kingdom Public Holidays.

7.2.2.2. the working hours, upon which response and resolution times are calculated will be [08:30 and 17:30 Monday to Friday], excluding all United Kingdom Public Holidays.

7.2.3. Contacting the service helpdesk and call logging

7.2.3.1. enquiry/enquiries may be placed by email or telephone. In either case the processing of the call will only take place between the hours of [08:30 and 17:30 Monday to Friday], excluding all United Kingdom public holidays.

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

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

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

7.2.3.4. the service desk can be contacted

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

7.3. Out of Hours Service [if applicable]

7.3.1. Role

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

7.3.2. Hours of cover

7.3.2.1. the period for which the helpdesk service is available is between the hours of [17:30 and 08:30 Monday to Sunday], including all United Kingdom Public Holidays.

7.3.2.2. the working hours, upon which response and resolution times are calculated will be [17:30 and 08:30 Monday to Sunday], including all United Kingdom Public Holidays.

7.3.3. Contacting the service helpdesk and call logging

7.3.3.1. calls may be placed by email or telephone. In either case the processing of the call will only take place between the hours of [17:30 and 08:30 Monday to Sunday], excluding all United Kingdom public holidays.

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

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

7.3.3.3. the service desk can be contacted

- by telephone [*telephone number to be inserted*]

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

- 

Contact	Response Times [complete figures below]	Resolution Times [complete figures below]
Customer enquiries by telephone	% of calls answered within 4 rings % of calls answered within 7 rings % of calls answered within 10 rings	% of enquiries answered within 24 hours % of enquiries answered within 48 hours % of enquiries answered within 5 days
Customer enquiries by email	% of emails answered within 30 minutes % of emails answered within 1 hour % of emails answered within 2 hours	% of enquiries answered within 24 hours % of enquiries answered within 48 hours % of enquiries answered within 5 days

## 8. Web Services

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

Uptime	Level
Average level	98%
Minimum level	96%

## 9. Monitoring and Review

- 9.1. The Customer requires regular contact from their Account Manager with additional attendance by the Account Manager at ad-hoc internal review meetings. Initially for the first six months, monthly meetings should be diarised, with quarterly meetings thereafter. The Customer and the Supplier may agree to move this to less frequently, if this proves appropriate for the circumstances.
- 9.2. ESPO established the framework on behalf of the Customer, and ESPO will also conduct quarterly review meetings with the Supplier addressing any strategic issues arising across all Customers. If the Customer need to raise any issues with ESPO, please advise the Customer's Contract manager who will make contact with ESPO accordingly (**see 7.1.1**)
- 9.3. Management Information
- 9.3.1. The Supplier shall provide to the Customer on a quarterly basis management information which should provide the detail as included in **Schedule 7 of the Customer Agreement** at no cost to the Customer
- 9.3.2. notwithstanding 9.3.1 above the Customer shall be able to run Management Information reports themselves from the system on an 'as-required' basis

## 10. Complaints and Resolution

- 10.1. In the event of any issues, the Customer's Contract Manager shall in the first instance contact the Supplier's Account Manager for resolution.

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

## SCHEDULE 7 to the CUSTOMER AGREEMENT

### MONITORING AND MANAGEMENT INFORMATION

In addition to the Data Definition (see Appendix 5 of this Invitation to Tender) which defines the standard of the invoice line detail, 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 Framework) 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, if the system can offer this functionality.

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)
<b>Financial</b>	
Spend via contract by council	Summary list of spend per council
Spend via by directorate and service	Summary list of spend per directorate and service
Savings to date	Summary of savings to date per council – to ensure no additional inaccurate savings are being accrued, savings are in addition to the spend figure
MSP fee	Summary list of fees per council
ESPO fee	Summary list of fees per council
Agency commissions	Max, min and average fee in pence per specialism and role
Average savings expressed in pence	Average savings % per specialism
Average assignment cost YTD	Average assignment cost overall, per specialism
Average Hourly rate	Average hourly rate overall and per specialism
Bill rate in compliance with rate card	Where a rate card in is place, summary of assignment rates above rate card
<b>Process / Operations</b>	
Total hours billed	Summary of hours billed, per specialism, per role and per directorate
Average assignment length	Average assignment length per specialism (Hours / Days / Weeks)
No. Temps on assignment at end date of period	Summary of number of live assignments, per specialism

Total no. assignments filled	Summary of number of assignments filled in given period, per specialism
% requests for which candidates were submitted for roles	% of assignment requests where CVs were put forward for a role
Fill rates	% of requested assignments which have been filled in given period, per specialism
Time to fill	Average length of time taken to fill an assignment, overall and per specialism
% requests for which candidates were submitted for roles	% of assignment requests where CVs were put forward for a role
Systems downtime (including ordering telephone line)	% planned downtime % unplanned downtime
System issues raised	% of system issues which are resolved with agreed SLAs % of responses within agreed SLAs regarding considerations of future system developments
Time to resolve system issues	Average length of time taken to resolve systems issues in given period
Erroneous free invoicing	% of MSP invoices of invoice lines containing an error
Timesheets on time	% of timesheets which are authorised on time, broken down by business area
Initial response times to request for candidate	% of responses after initial request which are within agreed SLA
Average assignment length	Average assignment length per specialism (Hours / Days / Weeks)
<b>Customer and Quality ( * denotes measures which will be assessed using feedback from customer satisfaction survey, see below example)</b>	
Service satisfaction*	% of customer satisfaction as per survey feedback
Complaints made	Summary of number of complaints received from users
Complaints resolved	% of complaints from Customers resolved in accordance with the agreed complaints procedure
Quality of temps, including compliance to job spec*	% of customer satisfaction as per survey feedback
CVs matching request*	% of customer satisfaction as per survey feedback
Turn up for interview	% of candidates which arrive for scheduled interviews
Turn up on time	% of candidates which arrive on time as per order

% interviewed for role	% of CVs which are put forward and are interviewed
% offered after interview	% of assignments offered after interview
% acceptance of role	% of assignments which are accepted once offered
Assignment extensions	Number of assignments extensions
Assignment early terminations	Number of assignments which have been terminated early
Assignment cancellations	Number of assignments which are withdrawn / cancelled prior to the start
% of assignments completed	% of assignments which are completed (not including assignments which are terminated by the customer) as per original specified assignment length
<b>Contract &amp; Supply Chain Management</b>	
% supply from own candidate pool	Overall % supply from own candidate pool vs supply chain
% SMEs in supply chain	% of spend that is going through SMEs % of tiered suppliers which are SMEs
No. of agency audits conducted	Number of agencies audits in period
Agencies passing audit	% agencies which have passed an audit
Average time to pay supply chain	Number of days to pay each supplier in supply chain
Supplier complaints	Summary of number of complaints received from supply chain
<b>Added Value</b>	
Assignments > 13 weeks	Summary of number of assignments which are longer than 13 weeks
Average hours per temp	Summary of average number of hours worked per temp
Diversity	<i>To be defined as necessary at a local level</i>
Locality	<i>To be defined as necessary at a local level</i>



## 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?	<input type="checkbox"/>	Better than expected	<input type="checkbox"/>	As expected	<input type="checkbox"/>	Worse than expected
receive as many CVs as requested/ expected?	<input type="checkbox"/>	Better than expected	<input type="checkbox"/>	As expected	<input type="checkbox"/>	Worse than expected
find the CVs matched your specified requirements?	<input type="checkbox"/>	Better than expected	<input type="checkbox"/>	As expected	<input type="checkbox"/>	Worse than expected
Did all candidates offered an interview turn up?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
If not – were you notified ahead of time?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
Did you appoint?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
Did the candidate:						
arrive on time?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
If not – were you notified ahead of time?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
dress appropriately?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
Perform the required tasks to the required standard?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
Promptly submit accurate timesheets?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No		
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

## **SCHEDULE 8 to the CUSTOMER AGREEMENT**

### **ACTION ON EXPIRY OR TERMINATION**

#### **1. TRANSFER OF RESPONSIBILITY**

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

#### **2. TRANSFER OF UNDERTAKINGS**

- 2.1 Where, in the opinion of the Supplier and/or the Authorised Representative, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are likely to apply on the termination or expiration of the Agreement, the information to be provided by the Supplier under paragraph 1.5 shall include, as applicable, accurate information relating to the Staff or Agency Workers who would be transferred under the same terms of employment under those Regulations, including in particular:-
- 2.2 the number of Staff or Agency Workers who would be transferred, but with no obligation on the Supplier to specify their names;

- 2.3 in respect of each of those members of Staff or Agency Workers their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- 2.4 the general terms and conditions applicable to those members of Staff or Agency Workers, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.
- 2.5 The Supplier agrees that if upon termination of this Framework Agreement, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are applicable, the Supplier shall in good faith co-operate with the Customer in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties
- 2.6 The Supplier shall comply with the requirements of those Regulations in respect any personnel who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Supplier.
- 2.7 The Supplier shall indemnify the Customer in full and upon demand against any claim made against the Customer at any time by any person currently or previously employed by the Customer or by the Supplier for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Customer) resulting from any act or omission of the Supplier on or after the date of this Agreement, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Customer
-