

2. FRAMEWORK AGREEMENT

1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

- 1.4 References to conditions and schedules are, unless otherwise provided, references to the conditions of and schedules to this Agreement.
- 1.5 If there is any conflict between the conditions and the schedules and/or any annexes to the schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.5.1 the conditions
 - 1.5.2 **schedules 1** (Services Description and/or Specification);
 - 1.5.3 any other schedules and their annexes (except for Supplier's Tender Response);
 - 1.5.4 **schedule 2** (Supplier's Tender Response); and
 - 1.5.5 any other document referred to or attached to this Agreement.
- 1.6 Save in respect of the Charges, if an amount or sum is expressed to be subject to indexation at a point in time, it shall be adjusted by reference to the percentage change in the Consumer Prices Index (all items excluding mortgages) over the most recent twelve (12) months for which published data is available at that point in time.
- 1.7 In this Agreement, except where the context otherwise requires, the following expressions shall have the following meanings:

Agreement	means this agreement entered into between ESPO and the Supplier embodying the Conditions of Tender, these Conditions and the Specification. It shall in addition include all provisions, explicit and implied, contained within the Tender submitted by the Supplier, except where such provisions are inconsistent with anything contained within these Conditions, the Specification and the Schedules attached hereto, in which instance the latter will prevail.
Authorised Officer	means any person as defined in Condition 6
Access Agreement	means the subsequent agreement between Customer and ESPO for Customer(s) to use the Services a template of which is annexed hereto as Schedule 4
Agency(ies)	means the Supplier and/or those agencies with whom the Supplier will contract to supply Temporary Agency Workers to the Customer(s).
Assignment	means the period of time that a Temporary Agency Worker is placed with the Customer.
Booking Fee	means the hourly charge applied to Temporary Agency Worker rates by the Supplier for delivering the Services
Charges	means the charges set out in the Pricing Schedule, Schedule 3
Commencement Date	means 1 April 2011
Complaints Procedure	means the complaints procedure adopted by ESPO or the Customer(s).
Contracting Authority	means an Authority within the meaning of Regulation 3 of the Public Contracts Regulations 2006
Conditions	means these conditions of contract including the Schedules and Appendices referred to therein

Contract Period	means the period as defined in Condition 2
Contract Standard	means the standard which complies with the relevant provisions of the Contract including the Specification or where and to the extent that no criteria are stated in the Contract then with the reasonable requirements of the Authorised Officer as agreed by the Supplier
Customer(s)	means a Local Authority, School, College, or other Public Sector body, such as the Police, Fire and Rescue Service or Registered Charity that is eligible to access the Services and has elected to do so
ERG	means the Efficiency Reform Group. The Office of Government Commerce is now part of the ERG and sits within the Government's Cabinet Office
ESPO Contract Manager	means the representative of ESPO and/or Pro5 referred to in Condition 5 and Supplier's Contract Manager means the representative of the Supplier appointed pursuant to Condition 12
Framework Agreement	means this Agreement for the provision of Managed Services for Temporary Agency Workers.
Implementation Plan	means the Implementation Plan agreed by the Customer and which forms part of the Customer Agreement
Income to the Customer	means any money due from another person other than a party to this Agreement including but without prejudice to the generality of the foregoing any costs or other sums ordered by any court or competent tribunal to be paid
Location	means any place where the Service or any part thereof is to be performed by the Supplier.
Lots	means the various lots contained within the Invitation to Tender which constitute all or part of the Services and which will determine which Supplier or Suppliers will be awarded supplier status under the Framework Agreement
Management Information	means files, usage records, charging information, and such other management information as the Supplier is obliged to retain in accordance with Condition 14.6 for the information of ESPO or the Customer(s) and the Monitoring and Management Information as per Schedule 5 to this agreement
Normal Hours	means from 8.30am until 5.30pm excluding Bank Holidays/Public Holidays
Pricing Schedule	means the prices and rates detailed in Schedule 3 the Pricing Schedule .
Resource Pool Management	means the provision of the Services via the Suppliers own register of Temporary Agency Workers as first tier and thereafter via Temporary Agency Worker agencies as second tier suppliers but managed by the Supplier
Services	means the Services which have been described in the various Lots and which constitute the provision of a temporary staffing solution on a managed service basis in accordance with this Agreement and includes any modification thereto made under these Conditions.
Service Level Agreement	means the Service Level Agreement agreed as part of the Customer Agreement (Schedule 6 of the Customer Agreement)

Specification	means the description of the Service detailed in Schedule 1 attached hereto
Supply Chain Management	means the provision of the Services otherwise than via the Suppliers own register of Temporary Agency Workers
Temporary Agency Worker	means an individual placed with the Customer by an Agency to fulfil an Assignment
Tender	means the tender submitted by the Supplier attached hereto as Schedule 2
Tender Conditions	means the Instructions to Tenderers and Conditions of Tender
Term	means the period of three (3) years from the Commencement Date and shall include any option to extend that may be exercised by ESPO as referred to in the Notice
User Guide	means the user guide produced by ESPO to assist Customers to call-off their requirements for the Services in compliance with Regulation 19 of the Contract Regulations 2006. full details of which are available via the following website www.espodealingdirect.org
Written Notice	means a notice received and agreed by the Supplier stipulating the details and circumstances of any material breach of contract by the Supplier and the reasonable timescales within which the breach should be remedied

- 1.8 Reference to any employees of the Supplier shall not be deemed to include the Supplier's agents and sub-Suppliers unless expressly stated.
- 1.9 'Time' shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.
- 1.10 The condition headings within these conditions shall not be construed as part of these conditions.
- 1.11 A reference to any Act of Parliament, or to any Order, Regulations, Statutory Instrument, or the like, shall be deemed to include a reference to any amendment or re-enactment of the same.

2. SCOPE AND TERM

- 2.1 This Agreement
- 2.1.1 Constitutes a Framework Agreement in accordance with the provisions of Regulation 19 of the Public Contract Regulations 2006 (and any subsequent amendment or re-enactment thereof).
 - 2.1.2 Sets out the terms upon which the Supplier will provide all or part of the Services as may be ordered from time to time by the Customers
 - 2.1.3 Governs the overall relationship of the Parties with respect to the provision of the Services in accordance with the Specification and any order placed by the Customer with the Supplier.
 - 2.1.4 Shall commence on the Commencement Date and shall continue in full force for the Term unless terminated in accordance with the provisions of this Agreement.
- 2.2 ESPO may at its discretion and by written agreement with the Supplier extend the Contract Period for a period or periods totalling up to a maximum of twelve (12) months as stated in the Notice.
- 2.3 For the avoidance of doubt ESPO has accepted the Supplier's Tender in respect of those parts of the Services as are specified in **Schedule 1**. The Supplier acknowledges and agrees that it shall only be entitled to provide those parts of the Services to the Customer as are specified in **Schedule 1**.

3. DUE DILIGENCE

- 3.1 The Supplier acknowledges that it:
- 3.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by ESPO:
 - 3.1.2 has raised all relevant due diligence questions with ESPO before the commencement of this Agreement; and
 - 3.1.3 has entered into this Agreement in reliance on its own due diligence alone.
- 3.2 The Supplier further acknowledges that this Agreement is a Framework Agreement and that any call-off contract entered into pursuant to this Agreement shall be subject to a separate Customer Agreement upon such terms as may be agreed with Customers but which shall nevertheless incorporate all the terms contained in the Customer Agreement template attached hereto as **Appendix 1**
- 3.3 The Supplier is deemed to have satisfied itself before submitting its Tender as to the accuracy and sufficiency of the pricing structure offered by the Supplier in its Tender which shall (except as stated in this Agreement) cover all the Supplier's obligations under this Agreement and is deemed to have obtained for itself all necessary information which might influence the Supplier's Tender.

4 OPERATION OF THE AGREEMENT

- 4.1 The Supplier acknowledges that Customers will be encouraged to access the Services in accordance with the User Guide. CustomerJ? will therefore either:-
- 4.1.1 Enter into an Customer Agreement with their chosen Supplier on the Framework Agreement which shall constitute a call-off contract at the prices and rates quoted in the Supplier's Tender and subject to the terms of this Agreement and an Customer Agreement or
 - 4.1.2 In circumstances where Customers are unable to determine their preferred and/or best value for money solution, by re-opening competition across all Suppliers within the Framework Agreement able to provide the Customer's preferred Services in accordance with Regulation 19 of the Public Contracts Regulations 2006 (and any subsequent amendment or re-enactment thereof) and subject also to the terms of this Agreement and an Customer Agreement.
- 4.2 ESPO will use its reasonable endeavours to inform Customers of the User Guide although no guarantee is hereby expressed or implied that Customers will comply with the User Guide either properly or at all.
- 4.3 The Supplier will be responsible for providing all Temporary Agency Workers as ordered from time to time from the Supplier by the Customer. This will include administrative and clerical, operational, social care, and professional including teaching and education ancillary staff and technical categories of Agency staff.
- 4.4 The Supplier shall in the provision of the Services ensure that where the Supplier is acting solely as a supply chain manager it shall not supply Temporary Agency Workers from its own register of Workers. The Supplier shall be permitted to utilise associated or subsidiary companies as a source of supply for the Services subject to the following additional conditions:
- 4.4.1 In sending requests for Temporary Agency Workers associated or subsidiary companies do not receive more favourable treatment or terms than other agencies in the Supplier's supply chain and
 - 4.4.2 Any quotations thus received by the Supplier are treated equally and without any discrimination.
 - 4.4.3 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:-

[to be deleted and/or amended as applicable]

4.5 Option 1 (Supplier Category Lead). or

- 4.5.1 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 [named category or categories] and no other(s).*
- 4.5.2 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 it's management and control.*
- 4.5.3 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 4.5.1** and shall not therefore be permitted to provide the Services beyond the scope of the category or categories referred to therein.*
- 4.5.4 All quotations requested from Agencies (save as may be provided for otherwise in this Condition) shall be treated equally and without discrimination by the Supplier.*

4.5 Option 2 (Volume 'Cap'). or

- 4.5.1 The Supplier shall be required to ensure the provision of the Services via it's own register of Temporary Agency Workers but not exceeding [sixty per centum 60%]] (the Volume Cap) of the Temporary Agency Worker Assignments requested in any rolling four week period. This is to ensure that when averaged out at any point during the Contract Period there is opportunity for other Agencies within the supply chain to provide the Services*
- 4.5.2 The Supplier shall therefore invite all contracted Agencies within its supply chain to provide quotations for all assignments in excess of the Volume Cap and to produce evidence thereof if reasonably requested by ESPO so to do.*
- 4.5.3 The Volume Cap shall apply to the Supplier's opportunity to provide the Services under this Agreement whether the Services are provided direct by the Supplier or via an associate or subsidiary company.*
- 4.5.4 All quotations requested from Agencies (save as may be provided for otherwise in this Condition) shall be treated equally and without discrimination by the Supplier.*

4.5 Option 3 (Time Limited Supply Option)

- 4.5.1 The Supplier shall be required to ensure the provision of the Services via it's own register of Temporary Works in accordance with the requirements of the Service Level Agreement (attached hereto as **Schedule 6 to the Customer Agreement**).*
- 4.5.2 The Supplier shall only be permitted to provide the Services via its own register of Temporary Agency Workers where the requirements of the Customer can be confirmed in writing within [4 hours] of the Customer's request.*
- 4.5.3 In all circumstances where the Supplier cannot satisfy the [four] hour limit for use of its own register of Temporary Agency Workers then the Supplier shall invite all contracted Agencies within its supply chain to provide quotations for such Assignments, and to produce evidence thereof if reasonably requested by ESPO so to do.*
- 4.5.4 The time limit shall apply to the Supplier's opportunity to provide the Services under this Agreement whether the Services are provided direct by the Supplier or via an associate or subsidiary company. For the avoidance of doubt an associate or subsidiary company shall be treated as part of the Supplier's own register of Temporary Agency Workers for these purposes.*
- 4.5.5 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.*

- 4.6 The Supplier shall use reasonable endeavours to satisfy or honour any reasonable preference expressed by the Customer for its preferred Agency or individual Temporary Agency Worker(s).
- 4.7 The Supplier shall ensure that any Agency engaged to provide the Services does so subject to conditions no less onerous than those contained in this Agreement
- 4.8 The Supplier shall use reasonable endeavours to source Temporary Agency Workers most local to the Customer (if the Customer so desires) and in any geographical area (or category) of high unemployment to provide job opportunities in the provision of the Services.
- 4.9 From time to time the ESPO Contract Manager may request evidence in writing in the form of Monitoring and Management Information demonstrating compliance with this **Condition 4** in relation to the operation of this Agreement
- 4.10 Customers wishing to use the Services of the Supplier under the terms of this Agreement will be required to complete an Access Agreement with ESPO a copy of which is attached hereto as **Schedule 4**.
- 4.11 The Customer Agreement will record any local arrangements which constitute minor variations to this Agreement, such variations to be agreed by the parties (**Schedule 4** to the **Customer Agreement**).
- 4.12 The Customer will be responsible for managing its own local implementation and performance issues.
- 4.13 ESPO [and Pro5] will assume the overall responsibility for managing this Agreement and as such shall have access to all Monitoring and Management Information (as per **Schedule 5** to this **Framework Agreement**) relating to Services delivered to the Customer.

.5 ESPO CONTRACT MANAGER

- 5.1 The ESPO Contract Manager shall be a nominated representative of ESPO full details of whom shall be provided to the Supplier in writing prior to the Commencement Date and who will act in the name of ESPO for the purposes of this Agreement
- 5.2 ESPO shall forthwith give notice in writing to the Supplier of and change in the appointment of the ESPO Contract Manager, or if any person ceases to be the ESPO Contract Manager

6 AUTHORISED OFFICER

- 6.1 The Authorised Officer shall be the person named by ESPO (and/or Pro5) or the Customer from time to time to act in either the name of ESPO or the Customer for the purposes of instructing the Supplier with regard to specific matters being dealt with under the terms of this Agreement
- 6.2 The ESPO Contract Manager shall forthwith give notice in writing to the Supplier of the replacement of its Authorised Officer, or if any person ceases to be the Authorised Officer. The Customer will be responsible for notifying the Supplier of any changes to its own Authorised Officer(s).
- 6.3 In the event of the Supplier receiving conflicting instructions from two or more Authorised Officers, the Supplier shall seek a determination from the ESPO Contract Manager as to the instructions to be actioned on behalf of ESPO or the Customer.

7 IMPLEMENTATION PLAN

- 7.1 The Supplier shall provide the Services in accordance with any Implementation Plan that may be agreed with the Customer.
- 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.

- 7.3 All changes to the Implementation Plan shall be evidenced by prior agreement of the Customer in writing and signed by the Customer and Supplier.

8 SUPPLIERS OBLIGATIONS TO PROVIDE THE SERVICE

- 8.1 The Supplier shall provide ESPO and/ or the Customer(s) with the Services and shall exercise all reasonable skill, care and diligence in the performance and discharge of the Services to the Contract Standard.
- 8.2 The Supplier shall perform the Services in a conscientious and timely manner in accordance with the Contract Standard as described in the Agreement or as reasonably required by the Authorised Officer.
- 8.3 The Supplier shall notify ESPO's Contract Manager immediately of any circumstances relating to the Supplier and/or ESPO and/ or the Customer concerning the Services of which the Supplier is aware or anticipates which may justify ESPO and/ or the Customer taking action to protect its interests (including its reputation and standing).
- 8.4 The Supplier shall 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 months thereafter allow any nominated representative of the ESPO (including the Contract Manager, the chief financial officer and the internal and external auditors of ESPO or the Customer) reasonable access and co-operation with regard to such records.
- 8.5 For the avoidance of doubt, ESPO and the Customer will own all intellectual property rights in respect of any data relating to this Agreement and any Customer Agreement with the exception of Supplier methodologies and unless provided for under **Condition 25** personal data relating to Temporary Agency Workers.

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 a Customer Agreement.

10 DEFAULT IN PERFORMANCE OF THE SERVICE

- 10.1 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.
- 10.2 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 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 28** hereof.
- 10.3 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.
- 10.4 Any dispute as to the reasonableness of any debt owed to ESPO and/or the Customer under **Condition 10.3** may be referred for determination in accordance with **Condition 30**.
- 10.5 The rights of ESPO and/ or the Customer under any of the **Conditions 10.1 to 10.4** shall be without prejudice to its rights under any other provision of this Agreement.

11 ESPO'S OBLIGATIONS TO THE SUPPLIER

11.1 ESPO shall:

- 11.1.1 Co-operate with the Supplier and provide information known by or available to ESPO, which may aid the Supplier in providing the Services required under this Agreement.
- 11.1.2 Comply with procedures for the provision of the Services as set out in this Agreement.
- 11.1.3 The Supplier acknowledges that ESPO can provide no guarantee of the scale *value volume* or timing of Customers demand requirements for the Services under this Agreement during the Contract Period. ESPO will however use its reasonable endeavours to provide the Supplier with any relevant market intelligence of the demand requirement and demand management of which it may become aware and which is relevant to and could improve the overall quality of the Services provided by the Supplier throughout this Agreement.

12 COMMUNICATION

12.1 The Supplier shall maintain a communication system with ESPO and the Customer, which is acceptable to the ESPO Contract Manager during Normal Hours throughout the Contract Period

12.2 The Supplier shall ensure that the Authorised Officer shall be kept informed as follows:

- 12.2.1 Of the names and status of any employee of the Supplier responsible for the day-to-day conduct of any matter and the person responsible for the overall performance of this Agreement;
- 12.2.2 Whom to approach in the event of any problems with the Services provided;
- 12.2.3 Of all appropriate information as to the issues raised and the progress of any matter undertaken in the performance of the Services.

13 SUPPLIER'S PERSONNEL AND CONTROL AND SUPERVISION OF THE SUPPLIER'S PERSONNEL

13.1 The Supplier shall ensure that only suitably experienced and qualified employees shall be used to service the obligations under this Agreement. Significant changes in the personnel assigned to the contract once operational will not be made without the prior written consent of the ESPO Contract Manager; such consent will not be unreasonably refused or delayed.

13.2 The Supplier shall employ sufficient staff to ensure that the Services are provided and supervised at all times and in all respects to the Contract Standard.

13.3 The Supplier shall ensure that all employees and other persons working on the contract are at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the Services and in particular but without limitation to ensure adequate discharge of the Supplier's obligation in relation to:

- 13.3.1 The task or tasks such a person has to perform;
- 13.3.2 All relevant provisions of this Agreement;
- 13.3.3 All relevant policies, rules, standing orders, financial management procedures and regulations, procedures and standards of ESPO and/ or the Customer.

13.4 The Supplier shall ensure that its employees:

- 13.4.1 perform their duties in a competent, orderly and efficient manner and as quietly as may reasonably be practicable having regard to the nature of the duties being performed by them; and
- 13.4.2 while on the Customer's premises or otherwise in the course of their provision of services do not engage in behaviour or activities, which are contrary to ESPO or the Customer's interests.
- 13.4.3 do not accept or solicit any gratuity, tip or other benefit or reward.

- 13.5 The Supplier shall appoint a Supplier's Contract Manager empowered to act on behalf of the Supplier for all purposes in connection with the contract. Any notice, information, instruction or other communication given or made to the Supplier's Contract Manager shall be deemed as being given or made to the Supplier.
- 13.6 The Supplier shall forthwith give notice in writing to the ESPO Contract Manager and Authorised Officer of the identity, address and telephone numbers of any person identified as their Supplier's Contract Manager and of any subsequent/alternative appointment.
- 13.7 The Supplier shall forthwith give notice in writing to the ESPO Contract Manager and Authorised Officer of the identity, contact address and telephone numbers of any person authorised to act for any period as deputy for the Supplier's Contract Manager and when such deputy ceases to act as such.
- 13.8 The Supplier's Contract Manager shall inform the ESPO Contract Manager promptly of, and confirm in writing, any instances of activity or omission on the part of ESPO and/ or the Customer which prevents or hinders or which may prevent or hinder the Supplier in the provision of the Services. The provision of information under this Condition shall not in any way release or excuse the Supplier from any of its obligations under this Agreement.
- 13.9 The Supplier shall provide the Authorised Officer and keep up to date a list of all those who are employed to provide the Services, together with their contact details and information as to their designations within the Supplier's organisation.

14 PERFORMANCE REVIEW AND MANAGEMENT INFORMATION

- 14.1 Customers will be responsible for the local management of performance issues relating to the Services provided to them under their Customer Agreement. The Supplier shall ensure that the Supplier's Contract Manager is available to meet with the Customer's Authorised Officer if so required and at no additional cost to enable the monitoring and review of the performance of the Service in accordance with the Specification and Service Level Agreement at all reasonable times.
- 14.2 Customers and the Supplier may escalate to the ESPO Contract Manager any issues that frustrate the local arrangements in accordance with **Condition 30.1**
- 14.3 The Supplier shall ensure that their Contract Manager is available to meet with the ESPO Contract Manager if so required and at no additional cost to enable the overall management of the contract in accordance with the Specification and Service Level Agreement.
- 14.4 The Supplier shall comply with any reasonable requests made by the ESPO Contract Manager for improvements in methods of service delivery subject to agreement on any additional cost.
- 14.5 The Supplier's Contract Manager shall bring to performance review meetings such Management Information as may be reasonably requested by the Customers and ESPO in accordance with the Specification.
- 14.6 Monitoring and Management Information:
- 14.6.1 The Supplier shall comply with the monitoring arrangements set out in the Monitoring and Management Information Schedule including, but not limited to, providing such data and information as the Supplier may be required to produce under this Agreement at no cost to the Customer.
- 14.6.2 Where requested by ESPO the Supplier shall supply the Management Information to ESPO in the form set out in **Schedule 5** hereto and/or as may be reasonably required under a Customer Agreement during the Contract Period.
- 14.6.3 The Supplier agrees that ESPO may provide ERG with information relating to the Services procured and any payment made under this Agreement.
- 14.6.4 Upon receipt of the Management Information supplied by the Supplier in response to a request under **14.6.2** above or receipt of information provided by ESPO to ERG under **14.6.3** ESPO and the Supplier hereby consent to ERG:
- 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 Authority or Customer.
- 14.6.5 In the event that ERG shares the Management Information or information provided under **condition 14.6.3** in accordance with **condition 14;6.4(b)**, any Contracting Authority 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 Authority (unless required by law).
- 14.6.6 ESPO may make changes to the Management Information which the Supplier is required to supply but shall give the Supplier at least one (1) month's written notice of any such changes.

15 TEMPORARY AGENCY WORKERS

- 15.1 In providing the Services the Supplier shall take appropriate steps to ensure that Agencies are aware they must supply only persons who are appropriately qualified, experienced and trained in the appropriate accountabilities.
- 15.2 The Authorised Officer, acting fairly and reasonably, shall be entitled on request, which, if given orally shall be subsequently confirmed in writing, to require the Supplier, at no cost to the Customer to facilitate the removal of any Temporary Agency Worker provided by an Agency from the provision of the Services and, if required, provide a replacement, where a replacement is available. Such removal shall only be required after the Agency has been given an opportunity to make representations to the Supplier. If a Temporary Agency Worker is rejected within the first four hours there will be no charge to the Customer.
- 15.3 The Supplier shall take all reasonable steps to ensure that when on Customer's premises, Temporary Agency Workers carry identification (including photographic identification), as and when specified by the Customer, and produce this identification when requested to do so by any member of the Customer's staff or by any service user.
- 15.4 The Supplier shall take all reasonable steps to ensure that Temporary Agency Workers are aware they must:
 - 15.4.1 perform their duties in a competent, orderly and efficient manner and as quietly as may reasonably be practicable having regard to the nature of the duties being performed by them; and
 - 15.4.2 adhere to the Customer's policies and procedures as communicated to the Supplier by the Authorised Officer,
 - 15.4.3 not smoke on Customer's premises other than in designated areas,
 - 15.4.4 be properly attired in any necessary protective clothing and presentable,
 - 15.4.5 while on the Customer's premises or otherwise in the course of their Assignment not engage in behaviour or activities, which are contrary to the Customers or ESPO's interests,
 - 15.4.6 do not accept or solicit any gratuity, tip, or other benefit or reward.
- 15.5 The Supplier recognises that performance of the contract may require Temporary Agency Workers to work on duties involving access to children, vulnerable adults, or other members of the public, towards whom the Customer may owe a special duty of care, or have access to information of a sensitive or confidential nature. In such instances, the Supplier will be responsible for ensuring by specifying the requirement in the contract with Agencies, and undertaking regular audits to determine compliance, that the Agency carries out the necessary recruitment vetting checks as specified by the Customer. The Supplier shall ensure by specifying the requirement in the contract with Agencies that Temporary Agency Workers have given their written permission for such a check to be made and that they are aware that any spent convictions will be disclosed on such a check.
- 15.6 Any person whom the Authorised Officer (acting reasonably) deems to be unsuitable, either as a result of the check, or by virtue of a lack of co-operation in facilitating the check, shall immediately be removed and replaced. The Authorised Officer shall not exercise the right contained within this sub-condition arbitrarily, vexatiously, or capriciously.

- 15.7 Save to the extent that any removal in accordance with **15.2 or 15.6** is unlawful or unreasonable, neither ESPO nor any Customer shall in any circumstances be liable either to the Supplier or to the Temporary Agency Worker in respect of any liability, loss or damage occasioned by such removal and the Supplier shall fully indemnify ESPO and/or the Supplier against any such claim made.

16 ADVERTISING AND MEDIA RELATIONS

- 16.1 The Supplier shall not advertise the fact that it is or could be providing the Service to ESPO or a Customer under this Agreement other than with the prior written permission of ESPO or the Customer.

17 COPYRIGHT

- 1.1 All copyright created solely as a consequence of the provision of the Services carried out under this Agreement by the Supplier shall vest in ESPO and the Customer.

18 INDEMNITY AND INSURANCE

- 18.1 The Supplier shall indemnify and keep indemnified ESPO and the Customer against all losses, damages, costs, charges and expenses at any time incurred or suffered by ESPO and the Customer and arising directly from any breach by the Supplier of this Agreement, or any of its obligations to ESPO and 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 ESPO and the Customers shall be reduced proportionately to the extent that an act or omission of ESPO and/ or Customers, their 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):

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

18.1.2 Employer's Liability insurance of not less than ten million pounds

18.1.3 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 twelve (12) month period of insurance, such insurance to be effected with a reputable insurance company and evidenced immediately upon any reasonable demand by the ESPO Contract Manager if reasonably requested to do so.

- 18.2 Temporary Agency Workers engaged via this Agreement by Suppliers will be insured under the Supplier's own Employer's Liability and Public Liability insurance policies whilst under its direction and control.
- 18.3 Temporary Agency Workers engaged via this Agreement will be insured under the Customer's own Employer's Liability and Public Liability insurance policies whilst under its discretion and control, except where the individual Temporary Agency Worker holds his or her own Public Liability insurance.
- 18.4 The Supplier shall procure and produce upon demand an indemnity from each Agency whereby the Agency must indemnify ESPO and 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 ESPO or the Customer in connection with any temporary placement under the terms of this Agreement, save to the extent that the cost, liability, expense or demand is caused by the ESPO or the Customer, including without limitation any such matter relating to
- 18.4.1 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;
- 18.4.2 The Supplier's failures to pay the Agency and/ or the Agency's failure to pay any Temporary Agency Worker any sums properly due;

- 18.4.3 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;
- 18.4.4 Any circumstance where the Agency is deemed to be the employer of any Temporary Agency Worker engaged by ESPO or the Customer under this Agreement. The Supplier will use its best endeavours to alert ESPO and 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.
- 18.5 Save to the extent that the claim, cost or proceeding is caused by ESPO or the Customer, the Supplier shall indemnify ESPO and the Customer against any claim, cost or proceeding arising directly as a result of:
- 18.5.1 The Supplier's failure to pay the Agency;
- 18.5.2 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;
- 18.5.3 Any circumstance where the Supplier is deemed to be the employer of any Temporary Agency Worker engaged by ESPO or the Customer under this Agreement.
- 18.6 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.
- 18.7 The Supplier shall ensure that Agencies are bound by the requirements of this **Condition 18**. In instances where Customers agree variations in the levels of insurances held by Agencies this will be recorded in the Customer Agreement.
- 18.8 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.
- 18.9 Notwithstanding **Condition 18.6** 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 18.1** where a claim falls within the Supplier's insurance policy, or where a claim is not required to be covered by an insurance policy, £1 million (one million pounds).
- 18.10 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Contract 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.
- 18.11 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.

19 USE OF THE CUSTOMER'S PREMISES AND FACILITIES

- 19.1 The Supplier shall not, without the express written permission of the Authorised Officer, use any premises of the Customer for its own use or on behalf of any person other than the Customer for any work other than provided for in this Agreement.

20 PRICE, PAYMENTS AND STATUTORY CALCULATIONS

- 20.1 The charges made for all work carried out under the Contract shall be in accordance with those set out in the Pricing Schedule.
- 20.2 No additional payment will be made to the Supplier or the Agency(ies) other than those provided for in the Supplier's Tender, in particular no commission, introduction or other fee will be payable. For the avoidance of doubt all non-temporary employment positions with Customers that are filled via an advertised competitive recruitment exercise will not attract any fees in the event that a Temporary Agency Worker is retained permanently following an Assignment. However where a Temporary Agency Worker is engaged outside of such a process the Customers shall be liable to pay a fee

where the Temporary Agency Worker has completed less than fourteen (14) continuous weeks on Assignment. The Supplier must ensure that a Customer has the right to continuously engage any Temporary Agency Worker who transfers from one Agency to another without being liable to pay any fee to any Agency by way of a referral fee.

- 20.3 The Supplier will ensure via the undertaking of regular audits that the National Minimum Wage is applied and that pay rates are kept in line with any locally agreed protocols as specified by the Customer in the Customer Agreement.
- 20.4 The Supplier will ensure by specifying the requirement in the contract with Agencies, and undertaking regular audits to determine compliance, that National Insurance (N.I.) and Working Time Regulations (W.T.R) are applied correctly, in line with Government and EU direction, by all Agencies.
- 20.5 The Supplier will be entitled to increase the statutory contributions charged to the Customer to take into account any statutory changes including but not limited to changes to the Working Time Directive and or National Insurance contributions provided that it shall make ESPO aware of such increases in advance of any amendment by written notice of at least sixty (60) days prior to any implementation with the exception of any statutory changes which by operation of law must take earlier effect in which case written notice shall be provided to ESPO as soon as reasonably practicable thereafter.
- 20.6 If Pounds Sterling is replaced as the lawful currency of the United Kingdom by another currency (the New Currency) all payments shall be made in the New Currency in accordance with the practice adopted by agreement between the Supplier and ESPO to implement any legally applicable measures to introduce the New Currency, including (without limitation) measures relating to the conversion of Pounds Sterling to the New Currency.
- 20.7 The Supplier will submit invoices to the Customer in accordance with the Specification and unless otherwise agreed, weekly in arrears.
- 20.8 The Customer will pay invoices for Services provided in accordance with a Customer Agreement within 14 days of the receipt of a properly submitted and correct invoice. Payments are subject to any additions or deductions made in accordance with these Conditions or as agreed with the Authorised Officer.

21 VALUE ADDED TAX

- 21.1 In addition to the sum specified in **Condition 20**, the Customer shall pay to the Supplier such Value Added Tax as may properly be chargeable by the Supplier in connection with the provision of the Service, provided that the Supplier has issued a valid tax invoice in respect thereof.

22 PRICE REVIEW

- 22.1 The prices and costs detailed in the Pricing Schedule shall be capped for the duration (f) this Agreement, including any subsequent periods of extension in accordance with **Condition 2.2**.
- 22.2 For the avoidance of doubt any reduction in the prices and costs shall be passed through to the Customer at the earliest practicable opportunity consistent with the Suppliers Obligations under condition 8.20 of the Specification (**Section 12**)
- 22.3 The Supplier may only apply to increase the prices charged under this Agreement in exceptional circumstances. Any request by the Supplier to review prices shall be submitted in writing to the Director of ESPO at least sixty (60) days in advance of the requested effective date.
- 22.4 The Director of ESPO shall consider an application made in accordance with **Condition 22.2** and revert to the Supplier within thirty (30) days of receiving it. If the Director of ESPO agrees the price increase, it shall take effect from a date to be agreed between the parties. If the Director of ESPO does not agree the price increase or the parties cannot agree a date for the price increase to take effect and further negotiation between the parties fails, then the matter shall be referred for determination in accordance with **Condition 30**.
- 22.5 No increased prices shall be charged to the Customer unless and until the specific written approval of ESPO is received by the Supplier.

23 RETROSPECTIVE REBATE

- 23.1 Under this Agreement the Supplier will be required to pay to ESPO a retrospective rebate of £0.02 (two pence) per hour (reviewable quarterly from the Commencement Date), per booking for all Temporary Agency Workers ordered. Such payment will be made in arrears at quarterly intervals following the commencement of this Agreement, and will be based upon the overall actual value of business conducted against this Agreement during the preceding period.
- 23.2 Any additional rebate that may be required by any Customer will be agreed separately with the Supplier and included in the rates charged to the Customer. Any such additional rebate shall be without prejudice to the £0.02 (two pence) per hour payable to ESPO.
- 23.3 Appropriate evidence of the value of business conducted against the contract may be requested and must be supplied promptly. Rebate payments will be plus VAT at the prevailing rate and must be accompanied by the following information
- 23.3.1 Contract title and number **653F/11**
 - 23.3.2 Period Covered by the rebate payment
 - 23.3.3 Value of business on which the rebate is calculated
- 23.4 In the event that ESPO is able to reduce the level of the retrospective rebate collected against this contract, and subject to the agreement of the Director of ESPO the benefit of any such reduction shall be passed on to Customers in the form of a reduction of the same amount being applied to the Booking Fee charged by the Supplier.

24 CONFIDENTIALITY

- 24.1 Save as provided in **Condition 24.4** the Supplier and ESPO and the Customers shall treat in confidence all information and data disclosed to them, or coming to their attention concerning the business and practices of the other, and/or any other confidential matter and will not disclose the same to any third party other than to employees who require access in order to perform their duties in connection with this Contract and who have agreed to treat such data and information as confidential.
- 24.2 The Supplier shall keep confidential all information of ESPO and the Customers designated as confidential obtained under or in connection with the Contract and shall not divulge the same to any third party without the written consent of ESPO or the Customer.
- 24.3 Each party shall indemnify and keep indemnified the other party from and against all actions claims demands proceedings damages costs and charges and expenses whatsoever in respect of any breach by that party of this **Condition 24**.
- 24.4 The provisions of this Condition shall not apply to:
- 24.4.1 Any information in the public domain otherwise than by breach of Contract;
 - 24.4.2 Information obtained from a third party who is free to divulge the same;
 - 24.4.3 Information which either Party is obliged by law to divulge, provided that either Party shall not deliberately place themselves in a position where they are so obliged if this is reasonably avoidable.
- 24.5 The Supplier shall ensure that Agencies are bound by the requirements of this **Condition 24**.
- 24.6 The provisions of this **Condition 24** shall continue in perpetuity.
- 24.7 Nothing in this Agreement shall prevent ESPO from disclosing the Suppliers Confidential Information (including the Monitoring and Management Information obtained under **Condition 14.6**)
- 24.7.1 to the Crown or any other Contracting Authority. The Crown and any Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to the Crown or other Contracting Authorities on the basis that the information is

confidential and is not to be disclosed to a third party which is not part of the Crown or any Contracting Authority;

24.7.1.1.1 to any consultant, contractor or other person engaged by ESPO or any person conducting an Office of Government Commerce gateway review;

24.7.1.1.2 for the purpose of the examination and certification of ESPO's accounts; or

24.7.1.1.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which ESPO or any Contracting Authority has used its resources.

25 DATA PROTECTION AND FREEDOM OF INFORMATION .

25.1 Where the Supplier has access to personal information about people, it shall ensure that in providing the service the provisions of the Data Protection Act 1998 (as amended or supplemented from time to time) are observed as well as the Customers data protection requirements as notified to the Supplier.

25.2 The Supplier must ensure that Agencies obtain the necessary consents from Temporary Agency Workers to enable personal data forming a personnel file to be shared with both the Customer and the Supplier. Such data may include but not be limited to the following information:

- 25.2.1.1 Name of Temporary Agency Worker
- 25.2.1.2 Date of Birth
- 25.2.1.3 Address
- 25.2.1.4 Post! Role
- 25.2.1.5 Pay Rate/ Hour
- 25.2.1.6 Agency
- 25.2.1.7 Gender
- 25.2.1.8 Ethnicity
- 25.2.1.9 Disability
- 25.2.1.10 Date Inducted/ Assignment Commenced
- 25.2.1.11 Training Records/ History
- 25.2.1.12 Eligibility to Work in the UK
- 25.2.1.13 National Insurance Number
- 25.2.1.14 Driving Licence Checked
- 25.2.1.15 CRB Checked and Date
- 25.2.1.16 References Checked
- 25.2.1.17 Qualifications/ Certificates Checked
- 25.2.1.18 Attendance Records
- 25.2.1.19 Employment History

25.3 If the Customer has any requirements relating to the release of data to law enforcement agencies including but not limited to the National Fraud Register these should be recorded on the Customer Agreement and suitable provision made in the contract between the Supplier and the Agency, and the subsequent agreement between the Agency and the Temporary Agency Worker.

25.4 The provisions of the Freedom of Information Act 2000 may require ESPO and the Customer to disclose information held by them in connection with this Agreement to anyone who makes a request for that information. If there is any information that the Supplier considers to be commercially sensitive or wishes to remain confidential then it should make this clear at the time of supplying the information and specify the information in question stating why it is considered to be sensitive or confidential. In responding to a request for the specified information the ESPO Contract Manager will consult the Supplier and take into account the Supplier's wishes in so far as those wishes are consistent with ESPO or the Customer's duties under the Freedom of Information Act 2000.

25.5 The Supplier shall comply at all times with the requirements of any scheme published by the Customer under the Freedom of Information Act 2000.

- 25.6 For the avoidance of doubt, the Supplier acknowledges that the information considered to be commercially sensitive as referenced in **Condition 25.4** includes:
- 25.6.1.1 Pay rates
 - 25.6.1.2 Fees
 - 25.6.1.3 Operating policies and procedures
 - 25.6.1.4 Any details referring to the Supplier's team or it's internal management structure
 - 25.6.1.5 Any reference to other clients of the Supplier
 - 25.6.1.6 The Agencies or Temporary Agency Workers dedicated to the Services
 - 25.6.1.7 Any details relating to any system upon which the Supplier may have secured a patent or registered Trademark.

26 EQUALITY IN EMPLOYMENT

- 26.1 The Supplier, and any sub-contractor employed by the Supplier, shall adopt a policy to comply with the employer's statutory obligations under UK Equality Legislation and will not discriminate against any person because of his or her colour, race, nationality, national or ethnic origin or other equalities requirements in decisions to recruit, train, promote discipline or dismiss employees.
- 26.2 The Supplier and any sub-contractor employed by the Supplier shall observe as far as possible, and at least in accordance with the Customer's published criteria, the Commission for Racial Equality's race relations Code of Practice in employment as approved by Parliament and issued in 1984.
- 26.3 In the event of a finding of unlawful discrimination being made against the Supplier or any sub-contractor employed by the Supplier during the Contract Period by any court or employment tribunal or an adverse finding in any formal investigation by the Commission for Racial Equality over the same period, the Supplier shall (1) inform ESPO of this finding and (2) take appropriate steps to prevent repetition of the unlawful discrimination.
- 26.4 The Supplier shall, on request, provide ESPO and/ or the Customer with details of any steps taken under the **Condition 26.3**.
- 26.5 The Supplier shall provide such information as ESPO and/ or the Customer may reasonably request for the purpose of assessing the Suppliers compliance with the above four conditions, including, if requested, examples of any instructions, recruitment advertisements or other literature, and details of monitoring applicants and employees.

27 PUBLIC INTEREST DISCLOSURE ACT 1998

- 27.1 The Supplier shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Supplier) and shall establish and where necessary update from time to time a procedure for its personnel encouraging personnel to report to the Supplier any incidents of malpractice within the Supplier or Customer. In this context malpractice shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.
- 27.2 ESPO and the Customers are committed to the highest possible standards or openness, probity and accountability when conducting its affairs. Accordingly, the Supplier shall comply with any whistleblowing policy in place with either ESPO or the Customer. The Supplier shall notify the Authorised Officer of the Customer in writing if any personnel invoke the whistle-blowing malpractice procedure pursuant to **condition 27.1** above and shall provide details of the alleged malpractice. Without prejudice to any other rights and remedies which the Customer may have under this Agreement, the Supplier shall comply with the Customer's reasonable requirements in dealing with the alleged malpractice, where such malpractice affects the Customer.

28 TERMINATION

- 28.1 ESPO may terminate this Agreement and recover all its losses if the Supplier, its employees or anyone acting on the Supplier's behalf do any of the following things:
- 28.1.1 Offer, give or agree to give to anyone any inducement or reward in respect of this or any other ESPO or Customer contract (even if the Supplier is not aware of such action);
 - 28.1.2 Commit an offence under the Prevention of Corruption Act 1889 to 1916, under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010; or
 - 28.1.3 Commit any fraud in connection with this or any other ESPO or Customer contract whether alone or in conjunction with ESPO or Customer members or employees.
- 28.2 In the following circumstances, ESPO may, but not unreasonably, without prejudice to any accrued rights or remedies under this Agreement, terminate this Agreement by notice in writing with immediate effect:
- 28.2.1 If the Supplier commits a material breach of its obligations under this Agreement and fails within the time stipulated in a Written Notice to remedy the same;
 - 28.2.2 The Supplier (being a company) passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation provided that the resulting body is at least as financially sound and technically competent to undertake the obligations of the Supplier under this Agreement or is struck off the register of companies;
 - 28.2.3 (being an individual) dies or is incapacitated;
 - 28.2.4 (being a partnership or other unincorporated organisation) is dissolved
 - 28.2.5 (being an individual or a partnership or other unincorporated organisation) suspends payment of its debts or ceases or threatens to cease to carry on its business or substantially the whole of its business or becomes or is declared insolvent or convenes a meeting or proposes to make any arrangement or composition with its creditors
 - 28.2.6 has or have appointed over its assets or affairs any liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer or suffers any distress or execution to be levied on its assets or the interest of the Supplier under this Agreement is taken in execution
 - 28.2.7 if ESPO discovers that the Supplier has been guilty of a misrepresentation which is material, in the Supplier's dealings with ESPO or the Customer
 - 28.2.8 If the business presently conducted by the Supplier comes under the ownership or control materially different from the ownership or control in being at the date of this Agreement and ESPO believe, acting reasonably, that this will materially affect the delivery of the Services.
 - 28.2.9 If there is a change in the composition or staffing of the Supplier which in the reasonable opinion of ESPO seriously affects the ability of the Supplier to discharge its obligations under this Agreement to the Contract Standard save that maternity or paternity leave taken by employees under statutory or contractual entitlement shall be disregarded for the purposes of this Condition;
- 28.3 ESPO has relied on the information provided by the Supplier contained in the Tender and any presentation made to ESPO prior to its acceptance and ESPO entering into this Agreement and any material misrepresentation contained therein shall entitle ESPO to terminate this Agreement immediately.
- 28.4 If this Agreement is terminated as provided in the above Conditions and is not reinstated, ESPO and/or the Customer:
- 28.4.1 shall cease to be under any obligation to make further payment until costs, loss and/or damage resulting from or arising out of the termination of the Supplier's employment shall have been calculated and provided such calculation shows a sum or sums due to the Supplier;

- 28.4.2 may exercise the step in rights provided for in **Condition 41** and/ or may employ and pay other persons to provide and complete the provision of the Service or any part of it and the Supplier shall co-operate within reason with such persons to enable them to do so;
- 28.4.3 may retain any sum due to the Supplier howsoever arising from ESPO or the Customer to set off against any sum due to ESPO and/ or Customer from the Supplier under the terms of this Agreement or otherwise. Sums due to the ESPO and/ or the Customer shall include reasonable and demonstrable costs to ESPO of time spent by officers in terminating this Agreement and in making alternative arrangements for provision of the Service.

28.5 The rights of ESPO and/ or the Customer under this Condition are in addition to and without prejudice to any other rights ESPO and/ or the Customer may have to claim for any loss or damage suffered by ESPO or the Customer on account of the direct negligent acts or omissions of the Supplier.

28.6 Either party may terminate this Agreement by notice in writing in whole or in part with immediate effect if either party has breached this Agreement and such breach is irremediable or the one party has given the other at least thirty (30) calendar days' notice to remedy the breach and that party has failed to do so.

29 **FORCE MAJEURE**

29.1 Under this Agreement the term force majeure means an event beyond the reasonable control of a party which prevents that party from complying with its obligations under this Agreement, including but not limited to, act of God, war, hostilities, rebellion, revolution, insurrection or military or usurped power or civil war, pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, contamination by radioactivity from any nuclear fuel or from any nuclear waste, riot, commotion, strikes, go-slows, lock outs or disorder.

29.2 Neither the Supplier nor ESPO or the Customer shall be considered to be in breach of its obligations under this Agreement to the extent that the performance of its obligations is prevented by a force majeure event.

29.3 If the effect of a force majeure event continues for more than ninety (90) days then either party may give notice to the other to terminate this Agreement in whole or in part forthwith provided that the termination applies only to such part of this Agreement as is affected by force majeure. In such circumstances neither party shall have a further liability to the other save for any outstanding liabilities arising prior to the force majeure event.

30 **DISPUTE RESOLUTION PROCEDURE**

30:1 Framework Agreement Dispute Resolution:

30.1.1 If any dispute or difference of any kind whatsoever shall arise between ESPO and the Supplier in connection with or arising out of this Agreement or the carrying out of the Services, including any dispute as to any decision, opinion, instruction, direction, certificate or valuation given by the under this Agreement (whether before or after the termination, abandonment or breach of this Agreement) it shall be referred in the first instance to ESPO's Contract Manager who shall endeavour to resolve the conflict.

30.1.2 ESPO's Contract Manager's decision in any such matter shall be provided in writing to the Supplier

30.1.3 If ESPO's Contract Manager or the Supplier does not consider the matter resolved then the Managing Director or Senior Partner (as appropriate) of the Supplier shall meet with the Director of ESPO to resolve the dispute amicably and expeditiously if at all possible.

30.1.4 If the parties remain unable to resolve the dispute within 45 days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.

30.1.5 In the event that either Party remains unwilling to accept the decision of the mediator then either Party may seek redress via the Courts.

31 HEALTH AND SAFETY

- 31.1 The Service provided by the Supplier under this Agreement shall comply with the provisions of the Health & Safety at Work Act 1974, the Management of Health & Safety at Work Regulations 1999 and the Provision and Use of Work Equipment Regulations 1998. All other health and safety assessments required by specific regulation and codes of practice relating to 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.
- 31.2 The Supplier 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.
- 31.3 The Supplier shall request that any Agencies used are bound by the requirements of this **Condition 31**.
- 31.4 In respect of each Assignment, the Customer shall provide the Supplier full details of:
- 31.4.1 the intended duties of the Temporary Agency Worker;
 - 31.4.2 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;
 - 31.4.3 any risks to health and safety known to the Customer and any steps that may have been taken to prevent or control such risks;
 - 31.4.4 any specific health and safety information which the Customer wishes to be passed on to the Temporary Agency Worker.
- 31.5 ESPO 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. ESPO shall request that 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.

32 ASSIGNMENT AND SUB-CONTRACTING

- 32.1 Save that ESPO acknowledges that the Supplier may sub-contract with Agencies the Supplier shall not assign this Agreement or any part thereof or the benefit or advantage of this Agreement or any part thereof without the prior written consent of ESPO. Such consent shall not be unreasonably delayed or refused.
- 32.2 Any consent so granted by ESPO shall not relieve the Supplier from any liability or obligation under this Agreement.
- 32.3 The Supplier shall not create any security over the benefit or advantage of this Agreement, or any part thereof, without the previous written consent of ESPO.
- 32.4 Without prejudice to the provisions of **Condition 32.1** the Supplier shall ensure compliance with the Contract Standard by Agencies.

- 32.5 For the avoidance of doubt ESPO shall have the right to assign all or part of this Agreement subject only to providing the Supplier with not less than fourteen (14) days prior written notice.

33 OBSERVANCE OF STATUTORY REQUIREMENTS

- 33.1 The Supplier shall comply with all statutory and all other provisions to be observed and performed in connection with the Service provided under this Agreement including without limitation the EU Agency Worker Directive, The Agency Workers Regulations 2010 (at least from the first day of October 2011) and the Conduct of Employment Agencies and Employment Business Regulations 2003 and shall indemnify ESPO and the Customer accordingly.
- 33.2 The Supplier shall ensure by specifying the requirement in the contract with Agencies, and undertaking regular audits to determine compliance, that all relevant requirements, permits and qualifications relating to the engagement of persons from abroad which may apply to any Temporary Agency Worker supplied have been met, obtained, complied with, or any gaps escalated to the Customer as the case may be.

34 GRATUITIES

- 34.1 The Supplier shall not, whether by itself or by any person employed by it to perform the Service, solicit or accept any gratuity or any other form of reward for any part of the Service other than as may be provided for in the Pricing Schedule.

35 RECOVERY OF SUMS DUE

- 35.1 Whenever under this Agreement any sum of money shall be recoverable from or payable to either party hereunder to the other, the same may be deducted from any sum then due, or which at any time thereafter may become due to the other party under this or any other Agreement provided that the parties have agreed the sum due in advance.
- 35.2 In the event of any failure by either party to pay to the other any sum due under this Agreement within seven (7) days after a written demand for payment thereof having properly been made such party shall further pay to the other interest on any such sum at the rate of four (4) percentage points above the base lending rate from time to time of HSBC Bank plc. Such interest shall run from day to day and shall accrue before and after any judgement and shall be compounded monthly on the amount overdue until payment thereof.

36 LEGAL COSTS OF THE CONTRACT

- 36.1 Each party shall bear and be responsible for its own legal and other fees and costs associated with the preparation of the Agreement.

37 NOTICES

- 37.1 Any notice about this Agreement may be sent by hand or by ordinary, registered or recorded delivery post or transmitted by facsimile transmission or other means of telecommunication resulting in the receipt of written communication in permanent form and if so sent or transmitted to the address of the party shown in the Tender, or to such other address as the party has notified the other, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

38 WAIVER

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

39 NOAGENCY

- 39.1 For the purposes of this Agreement the Supplier is deemed to be an independent contractor and not an agent of ESPO and/ or Customer.
- 39.2 The Supplier and Temporary Agency Workers shall under no circumstances hold themselves out as being authorised to enter into contract on behalf of ESPO and/ or Customer or in any other way to bind ESPO and/ or Customer to the performance variation release or discharge of any obligation.
- 39.3 Nothing contained in this Agreement shall be considered to constitute or create a partnership (as defined in the Partnership Act 1890) between the parties.
- 39.4 The Supplier is not and shall in no circumstances hold itself out as being the agent of ESPO and/ or Customer.
- 39.5 The Supplier has not and shall in no circumstances hold itself out as having the power to make, vary, discharge or waive any byelaw or regulation of any kind.
- 39.6 The employees of the Supplier are not and shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of ESPO or the Customer for any purposes whatsoever.

40 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 40.1 With the exception of the Customers who shall have rights under this Agreement conferred by their Customer Agreement neither party intends to confer any right or benefit upon any other Third Party and for the avoidance of doubt the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement except in the specific instance referred to herein.

41 RIGHT OF STEP IN

- 41.1 In the event that the Supplier shall for any reason cease to be in a position to provide the Services, then the benefit (but not the burden) of the agreements between the Supplier and the Agencies shall revert to the Customer so that the Customer may at their option continue to avail themselves of unchanged terms from the Agency. The contract which the Supplier enters into with the Agencies shall include suitable provisions in this regard.

42 PURCHASE OUTSIDE THE CONTRACT

- 42.1 ESPO and/ or Customer shall have the right to employ a person other than the Supplier to provide services of the same type as is contemplated by this Agreement if it shall in its absolute discretion think fit to do so.

43 VALUE FOR MONEY

- 43.1 Throughout the Contract Period the parties shall, acting reasonably, work together to ensure that this Agreement and the Suppliers performance of the Service represents value for money and best value generally and provides continuous improvement for the benefit of the Customer having regard at all times to the basis on Which the Tender was submitted to ESPO and taking account of then current Government guidance and principles.

44 END OF CONTRACT PROCEDURES

- 44.1 At the end of this Agreement (howsoever arising) the Supplier shall at his own expense provide all reasonable assistance and information including without limitation all relevant data in respect of the services to include transfer via electronic media to ESPO and or the Customer and any new Supplier appointed by ESPO and or the Customer to continue or take over the performance of the obligations under this Agreement in order to ensure an effective handover of all Services then in progress. Such assistance and information shall be at no cost to the Customer or ESPO.

45 TUPE

- 45.1 . 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 45**.

46 ENTIRE AGREEMENT

- 46.1 This Agreement constitutes the entire agreement between the Parties in relation to the subject matter hereof and shall be construed in accordance with the laws of England and subject to the exclusive jurisdiction of the English courts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first above written
SIGNED for and on behalf of

1 the Customer

By:
Name:
Title:
Date:

SIGNED for and on behalf of

1 the Supplier

By:
Name:
Title:
Date:

SCHEDULE 1 to the FRAMEWORK AGREEMENT
SERVICES DESCRIPTION AND SPECIFICATION

SCHEDULE 2Jo the FRAMEWORK AGREEMENT
TENDERERS RESPONSE {TENDER}

SCHEDULE 3 to the FRAMEWORK AGREEMENT
PRICING SCHEDULE

SCHEDULE 4 to the FRAMEWORK AGREEMENT
ACCESS AGREEMENT

ESPO/Pro5 Framework Agreement 653F/11
Managed Services Temporary Agency Resources (MSTAR)

TO BE COMPLETED BY THE CUSTOMER

Before conducting any activity under this ESPO framework, please complete this form and return it (by post, fax or email) to ESPO.

AGREEMENT: I confirm that the organisation detailed below intends to participate in the above-mentioned ESPO framework agreement, and that in doing so will act in accordance with the guidance and instructions set out in the relevant ESPO User Guide, and in accordance with the Public Contracts Regulations 2006 AND Public Contracts (amendments) Regulations 2009.

Signature:	
Date:	
Name of person signing this form:	
Position:	
Name of Customer (organisation):	
Address:	
Telephone:	
E-mail:	
Lot No(s) of Interest:	

To return this form, please post it to ESPO (Strategic Procurement & Commissioning)
Barnsdale Way
Grove Park
Enderby
Leicester LE191ES

Alternatively, please fax to 0116 294 4398 or email to k.shaw@espo.org

ESPO ACKNOWLEDGMENT (To be completed by ESPO)

Name:		Position:	
Signature:		Date:	
Service:		Provider:	

SCHEDULE 5 to the FRAMEWORK 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 aggregated across all Customers and submitted to ESPO on a quarterly basis (every three months from the commencement of the Framework). Data should be from the period in question unless stated otherwise. In addition, individual Customers may request this data for their monthly spend, broken down by specialism, job role and business area. Customers will also require additional information as specified in the Customer Agreement.

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

Data required by ESPO	
Measure	Summary data to be provided (beyond that listed in the Data Definition)
No. customers under this contract	Summary list of councils supplied
Spend via contract by council	Summary list of spend per council
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 fees	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
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 by Customer	Summary of number of live assignments, per specialism
Total no. assignments filled per Customer	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 per Customer, across all Customers	% of requested assignments which have been filled in <i>given</i> period, per specialism
Time to fill	<i>Average</i> 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	<i>Average</i> length of time taken to resolve systems issues in given period
Erroneous free invoicing	% of MSP invoices of invoice lines containing an error
<i>Average</i> assignment length	<i>Average</i> assignment length per specialism (Hours / Days / Weeks)
pustornet an Qua_lity(* denotemeasures hich win be assessed using feedbackJr<?m..... > > custo,l'Jler sat1sfact1on survey, see belqlll' example)	
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
% interviewed for role	% of CVs which are put forward and are interviewed
% acceptance of role	% of assignments which are accepted once offered
% of assignments completed	% of assignments which are completed (not including assignments which are terminated by the customer) as per original specified assignment length
Contnict&Supply-chahIM.a agelllet.	
% supply from own resource pool	Overall % supply from own resource 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

Example of Customer Satisfaction Survey

Sample customer satisfaction survey to be used to support data provision

To be completed by recruiting/hiring managers for each assignment

To what extent did you:

receive submitted CVs to your specified timescale?



Better than expected



As expected



Worse than expected

receive as many CVs as needed/



Better than expected

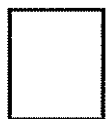


As expected



Worse than expected

find the CVs matched your specified requirements?



Better than expected

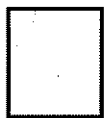


As expected

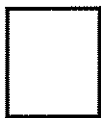


Worse than expected

Did all candidates offered an interview turn up?

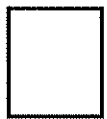


Yes

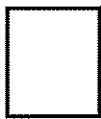


No

If not- were you notified ahead of time?



Yes



No

Did you appoint?



Yes



No

Did the candidate:

arrive on time?

☐ Yes

☐ No

If not- were you notified ahead of time?

☐ Yes

☐ No

dress appropriately?



Yes

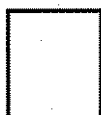


No

Perform the required tasks to the required standard?



Yes



No

Promptly submit
accurate timesheets?

☐

Yes

☐

No

Behave
appropriately?

☐

Yes

☐

No

Comments:

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