

# ***TERMS AND CONDITIONS***

This document sets out the terms and conditions of providing domiciliary care services for Extra Care Sheltered Housing of Older People

**November 2008**

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# **CONTENTS**

<b>Clause</b>		<b>Pages</b>
1	Definitions	1-4
2	Interpretation	5
3	Start Date and Duration of This Agreement	5
4	Entire Agreement	5-6
5	Contacts	6
6	Review	6
7	Contracts	6-7
8	Price	7
9	Payment Arrangements	7-8
10	Price Increases	8
11	Monitoring Performance	8-9
12	Dispute Resolution	9
13	Default	9
14	Termination of the Agreement	9-10
15	Termination or Suspension of an SDO	10-11
16	Emergency Domiciliary Care Services	11
17	Statutory Obligations	11
18	Insurance	11-12
19	Variation	12
20	Ombudsman	12
21	Assignment and Sub-Contracting	12-13
22	Change of Control	13
23	Partnership and Agency	13
24	Force Majeure	13
25	Probity	13
26	Declaration of Interests	14
27	Waiver	14
28	Data Protection, Copy Right, Freedom of Information & Confidentiality	14-15
29	Transfer of Undertaking	15-16
30	Electronic Business	16-17
31	Law	17

**Appendix 1      Specification for Domiciliary Care Service**

This Agreement is between:

1. The Kent County Council of Sessions House, County Hall, Maidstone ME14 1XQ (referred to in this Agreement as 'We' or 'Us') and
2. The Service Provider whose name and address is given in Appendix 3 and who owns the domiciliary care organisation (referred to in this Agreement as 'You' or 'your').

## **TERMS AND CONDITIONS OF THE AGREEMENT**

### **1 Definitions**

When they are used in this Agreement, the terms and expressions set out below in the first column have the meanings set out in the second column:

<b>Agreement</b>	The terms and appendices of this Pre-Purchase Agreement.
<b>Approved List</b>	<p>A list of Organisations that have met our requirements for Approved Provider status.</p> <p>During the lifetime of this contract, non-Approved Providers will be able to make application to be put on the Approved List. This will happen through 'Panel' arrangements that currently exist for other types of Service provision.</p>
<b>Approved Provider</b>	A provider who has met our criteria and is then placed on our Approved List. Organisations on this list may be offered a Call Off Contract and be considered for a Block Contract.
<b>Authorised Signatory</b>	This is the owner of the Organisation or the person that (s)he authorises to act on his/her behalf.
<b>Call Off Contract</b>	See Contract Types.
<b>Care Manager</b>	The person we have deployed to arrange and review domiciliary care services for people who have been found on assessment to be owed a duty under various enactments. In this agreement Care Managers should also be taken to include Care Manager Assistants, Purchasing Officers and any other authorised representative.
<b>Care Plan</b>	A written statement produced by the Care Manager, regularly updated and agreed by all parties. It sets out the social care and support that a Service User requires in order to achieve specific outcomes and meet the particular needs of each Service User.
<b>Care Worker</b>	A member of Staff employed by You to carry out the domiciliary care service.
<b>Commissioners</b>	Members of our Staff who have responsibility for determining what Services will be purchased in order to meet assessed eligible needs.

<b>Continuing Breach</b>	A breach in contractual duty or duties on your part as a result of repeated failures to remedy non-performance or to sustain performance over a reasonable period of time.
<b>Contract Award Letter</b>	The letter from Us to You which communicates our acceptance of your offer to provide the Service. This letter will contain the detail of any contract award.
<b>Hourly Price</b>	The amount payable to the Service Provider for the Service Units delivered to a Service User, in a week, as recorded on the Service Delivery Order.
<b>Contracts Manager</b>	The person who We have authorised to administer our contracts for social care. His or her address will be given in the Contract Award Letter.
<b>Contract Types</b>	<p><b><u>Minimum Guaranteed Service (Block)</u></b></p> <p>One person on duty within each scheme 24 hours per day every day of the year. This includes an additional 2 hours allowance for handover period in each 24 hour day.</p> <p><b><u>Call off Contract</u></b></p> <p>A contract with mutually agreed terms, conditions and price but with no guarantee of purchase. With your agreement We may purchase a service against this contract at any time during the period of the contract.</p>
<b>Call Off Payment</b>	Payment will be made on an hourly rate for hours provided in excess of the Minimum Guaranteed Service.
<b>Extra Care Housing Schemes</b>	Means the schemes as set out in Appendix One to these contract conditions.
<b>Force Majeure</b>	Means acts, events, omissions, happenings, or non-happenings beyond the reasonable control of one party which prevent the performance by that party of its obligations in respect of that service. Any act, event, omission, happening, or non-happening will only be considered to be Force Majeure if it is not attributable in whole or in part to the wilful act neglect or omission of the affected party its agents, contractors, sub-contractors or employees.
<b>Housing and Facilities Management and Provider</b>	Means Housing 21 of Leitrim House, Coldharbour Lane, Aylesford, Kent, ME20 7NS or its sub-contractors.
<b>Mileage</b>	The amount spent on travelling between Service Users. This amount should take account of petrol, depreciation of the vehicle, tax and insurance. <i>(See also Travel Time.)</i>

<b>Minimum Guaranteed Service Payment</b>	Means the payment made each month for the Minimum Guaranteed Service regardless of the hours delivered.  This payment will only be made if the total of SDO hours are less than 26 hours per day.
<b>Organisation</b>	The domiciliary care organisation providing personal care for people living in their own home. Each franchise will be treated as a separate Organisation.
<b>Project Agreement</b>	Is the agreement between the County Council and the Housing and Facilities Management Provider, for the provision of Extra Care Sheltered Housing in Kent.
<b>Regulator</b>	The body which is established by statute and to whose regulatory powers You are subject. Currently, this is the National Care Standards Commission. From 1 April 2004 this will be known as The Commission for Social Care Inspection.
<b>Serious Breach</b>	A breach of your duty of care to a Service User by which he or she suffers harm and/or any malicious act by You towards Us.
<b>Service</b>	The domiciliary care that You will provide for a Service User in accordance with the provisions of the Care Standards Act 2000 and terms of this Agreement.
<b>Service Unit</b>	The measure of time by which the Service is purchased (i.e. 1 hour, 3/4 hour and 1/2 hour). The Service Unit begins on arrival at the Service User's home and ends on leaving, unless specified otherwise on the Service Delivery Order. It does not take account of Travel Time.
<b>Service Delivery Order</b>	The Service Delivery Order (SDO) initiates and tailors the Service for a Service User.
<b>Service User</b>	A person who has been found on assessment to be in need of domiciliary care services. You will have an SDO for him or her.
<b>Service User Plan</b>	The written guide produced by the provider in accordance with the regulation 5 of the Domiciliary Care Agencies Regulation 2002.
<b>Site</b>	Is any or all Extra Care Housing Schemes listed.
<b>Specification</b>	Our "Specification For Domiciliary Care Services" which is Appendix 1.
<b>Staff</b>	The employees and workers who carry out the Service for You.
<b>Start Date</b>	The date notified in the Contract Award Letter as the beginning of the contract.
<b>Transaction Data Monitoring</b>	Commonly known as TDM. An electronic financial invoicing process, which requires You to be Visa enabled. TDM matches the invoice to the order given set criteria and makes payment to the provider via the VISA platform.
<b>Travel Time</b>	This is part of the working day spent in travelling between Service Users' homes. Travel time applies to drivers, cyclists and walkers.

<b>Unit</b>	Is any of the apartments and common parts to be provided by the Housing and Facilities Management Provider on each of the sites.
<b>We</b>	The Kent County Council and any person to whom We may assign this Agreement. Unless the context otherwise requires, 'Us' and 'our' will also be taken to refer to 'We'.
<b>Working Day(s)</b>	Means Monday to Friday inclusive between the hours of 0900 and 1700, except when these days are Bank Holidays.
<b>You</b>	The legal owner of the Organisation as detailed in Appendix 3 or any person either authorised to act on your behalf or succeeding to your ownership of the Organisation.

## **2 Interpretation**

- 2.1 Unless the context makes it clear that this is not what was intended, any reference in this Agreement to:
- (a) The singular includes a reference to the plural and vice versa;
  - (b) A person includes a reference to an individual or a firm, partnership, company or corporation;
  - (c) A 'clause' or an 'Appendix' means a reference to a clause or Appendix of this Agreement;
  - (d) Any notice or communication 'in writing' means sent by post or personal delivery or fax.
- 2.2 The headings in this Agreement are for ease of reference only and do not affect its interpretation.
- 2.3 Any reference in this Agreement to any legal enactment, order, regulation or other similar instrument means that which is in force. This includes (for as long as they are in force):
- (a) Any amendments or modifications to any such enactment, order, regulation or other similar instrument, and
  - (b) Any re-enactment of any such enactment, order, regulation or other similar instrument.

## **3 Start and Duration of this Agreement**

- 3.1 This Agreement will begin on the commencement date and continue for a period of 5 years from that date.
- 3.2 We may by giving not less than six month's written notice prior to the expiry date, renew the contract for up to two years on similar or changed terms following agreement with You as to such renewals and terms.
- 3.3 We will agree with You a start date for the Service being provided at each site.
- 3.4 All residents will be allocated a tenancy or leasehold purchase via the Joint Allocations Panel. The Provider will be a member of the Panel, alongside the Landlord and a representative from the County Council's Adult Social Services Directorate.

## **4 Entire Agreement**

- 4.1 This Agreement sets out all the terms and conditions that You and We have agreed as regards the provision of the Service.
- 4.2 It supersedes any representations, documents, negotiations or understandings about the Service, whether oral or written, made, carried out or entered into before the date of this Agreement.

- 4.3 What is set out in the clauses of this Agreement and/or the requirements of an SDO will take precedence if there is any inconsistency or conflict between them and what is set out in your terms and conditions of domiciliary care services for Service Users.

## **5 Contacts**

- 5.1 For the purposes of this Agreement, the Contracts Manager will be your first point of contact for Us and the signatory to this Agreement or such other person as You notify in writing to the Contracts Manager will be our first point of contact for You.
- 5.2 For the purpose of an SDO, your first point of contact for Us will be the Care Manager who is identified on the SDO.
- 5.3 All correspondence relating to this Agreement, from You to Us or vice versa, will be sent in writing to the applicable address shown on Appendix 3 of the Agreement.
- 5.4 All correspondence relating to an SDO, from You to Us or vice versa, will be sent in writing to the applicable address shown on the SDO. Writing may be in a format as described in clause 29.1.

## **6 Review**

- 6.1 We will review this Agreement whenever there is a significant change in our statutory functions regarding the Service.
- 6.2 Otherwise, as a minimum, You and We will re-examine this Agreement within five years of the Start Date and then once during every subsequent five year period.
- 6.3 The Care Manager will review an SDO and Care Plan after one month, after three months and six monthly thereafter. This may not always take the form of a visit to the Service User's home.

## **7 Contracts**

- 7.1 For the purposes of tendering, it is expected that each Extra Care Housing Scheme will have a balance of dependency needs within the community of residents, with a third of residents in each of the high, medium and low dependency groups.
- 7.2 This contract binds You and Us to collaborate in order to use the guaranteed number of hours of Service. This includes your obligation to meet our reasonable requests for a Service. Subject to this provision We will pay You for hours which are not used where We use less than the guaranteed hours.
- 7.3 The Guaranteed Minimum Service Level will be subject to change following the annual performance review which will be carried out on a yearly basis in line with our service and quality monitoring review procedures.
- 7.4 The Service Level for each scheme may increase or decrease to reflect the number of service users receiving a care and support service and/or changes in the dependency bands of the service users.
- 7.5 Full details of this contract will be given in the Contract Award Letter that You will receive (i.e. price, hours, location, variations and reviews).



- 7.6 You must acknowledge that We have entered into a Project Agreement with the Housing and Facilities Management Provider and You must undertake not to wilfully impede the Housing and Facilities Management Provider in the performance of its obligations under the Project Agreement.
- 7.7 You will abide by the principles and practices set out in the Specification and its Addendum in relation the relationship with the Housing Facilities Management Provider across the Extra Care Housing Schemes.
- 7.8 You will participate in the Allocations Panel when new residents move into each scheme. An Allocation Panel would be established for each site. In addition to contribution to the decision making process You will ensure that the panel is kept up-to-date with the dependency profile of the residents, to enable a balanced community model to be maintained.
- 7.9 The end date of the contract will be 26<sup>th</sup> April 2014.

## **8 Price**

- 8.1 The Contract Price will remain fixed for the duration of the contract.
- 8.2 You will be paid the tendered price for each hour of support as detailed in the SDO for each service user in return for your carrying out your obligations under this Agreement.
- 8.3 The Contract Price will include Mileage and Travel Time costs.
- 8.4 You will not charge the Service User or his or her representative for any part of the Service that is deemed to be included in the Contract Price.
- 8.5 If You are requested to provide other additional Services at the request of the Service User or his or her representative, We will regard this as a private arrangement that is outside this Agreement. With the knowledge of the Service User You will notify the Care Manager prior to the commencement of any such arrangement.
- 8.6 The hourly rate and the minimum hours will remain fixed until the Review Date unless the Service Level has been adjusted under the terms of Clause 7.4. Thereafter, the Service Level will be adjusted annually in accordance with the provisions of the Clause 7.3.

## **9 Payment Arrangements**

- 9.1 We will issue you an SDO when a Service User is allocated to You.
- 9.2 You will be required to submit electronic invoices to KCC in the format provided to You in order to receive payment.
- 9.3 The electronic invoice can be submitted for any complete week or number of weeks following the end of the week. For the purpose of this variation the week will always end on a Sunday.
- 9.4 You will be required to be VISA enabled with a specific Merchant ID for TDM.
- 9.5 If We are late in making any payment of the Contract Price then We will pay You in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and the Amendment to this Act (August 2002).

9.6 Should the amount paid by TDM fall below Guaranteed Minimum Payment of 26 hours per day, reconciliation will be done monthly.

9.7 You will invoice Us at the end of each four week period for the above payment.

## **10 Price Increases**

10.1 On 1 April each year We will review the contract price taking into account and giving due consideration to the known changes in the cost of provision over the previous 12 months as authorised by our elected Members.

10.2 Other than as set out in clause 10.1, the Contract Price will not be increased unless there are exceptional circumstances and We agree. Whether or not We agree will be at our discretion.

## **11 Monitoring Performance**

11.1 You will comply with the performance monitoring arrangements that will be drawn up by Us in consultation with your representatives.

11.2 You will make available to Us, upon request, copies of any Regulator reports, including those that have not yet been released to the public.

11.3 You will keep records that ensure You can demonstrate to Us your performance of this Agreement. Your records will show resource inputs, organisational processes and outcomes related to the Service and Service Users.

11.4 We reserve the right to visit your offices at any reasonable time without giving notice.

11.5 We reserve the right to directly elicit the views of willing Service Users. We will respect their privacy where We do this.

11.6 Following discussion with You, We reserve the right to directly elicit the views of your Staff and to observe the Service provided at the point of delivery.

11.7 We reserve the right to look at your relevant accounts on a regular basis during the life of this Agreement for the purpose of validating your financial viability. We will be reasonable in exercising this right; in particular We will adapt to the Regulator's practice in this area. We will treat any information gained in accordance with the provisions for confidentiality at clause 27.5.

11.8 You will notify Us of any revision to your statement of purpose or Service Users guide within 14 days of publication.

11.9 You will when necessary, with the Service User's consent, allow the Authorised Officers and Care Manager or their deputies access to the Service User's premises for the purposes of monitoring the Contract Standard, including the carrying out of spot checks.

11.10 You will notify us if;

a) You merge with another organisation or,

b) You in any way transfer your business to another organisation or,

c) as a result of any misconduct or mismanagement on your part (alleged or actual)

a regulatory body directs an inquiry into or makes an order of any kind in relation to your affairs; or

- d) Any registration which You must maintain or accreditation which You must hold in order to provide the Service or any related service is withdrawn or cancelled or is threatened to be withdrawn or cancelled.

## **12 Dispute Resolution**

- 12.1 If there is a dispute between You and Us about the interpretation or operation of this Agreement then both of Us will make every effort to resolve the dispute when and where it arises, negotiating on the basis of good faith.
- 12.2 Having done this, either one of Us may notify the other that it wishes the dispute to be referred to a meeting of your representative (as at clause 5.1) and the Contracts Manager who will discuss the issue within 10 Working Days of receiving the notification.

### **Note:**

- (a) If the dispute is not resolved within 20 Working Days of the date of their discussion, then either one of Us may notify the other that it wishes the dispute to be referred to more senior officers on both sides to resolve;
  - (b) If they fail to resolve the dispute within 20 Working Days of its referral to them then either one of Us may notify the other that it wants to try to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure;
  - (c) If You and We do not agree on the identity of the mediator then either one of Us may ask CEDR to appoint one;
  - (d) Both of Us must pay the mediator's fee in equal shares and do what We can to ensure the mediation starts as soon as possible;
  - (e) Any agreement reached as a result of mediation will be final and binding on both of Us, but if the dispute has not been settled within 10 Working Days of the mediation starting then either of Us may instigate litigation proceedings (but not before then).
- 12.3 Using the dispute resolution procedure will neither delay nor take precedence over any use of the default or termination procedures.

## **13 Default**

- 13.1 If either of Us considers that the other is in default of its obligations under this Agreement or an SDO, then the default and a reasonable time-span within which it must be put right must be notified in writing to whichever of Us is considered to be at fault.
- 13.2 Where the default is not put right within the specified time then it may be referred to the dispute resolution procedure contained in clause 12 of this Agreement or the termination procedures contained in clauses 14 and 15 of this Agreement.

## **14 Termination of the Agreement**

- 14.1 You will notify Us without delay if You cannot meet your commitments under this Agreement for a temporary period. In this circumstance and without prejudice to the continuation of this Agreement, We may help You to ensure the continuity of the

Service.

- 14.2 This Agreement may be ended at any time by either of Us giving to the other not less than 6 months prior notice in writing to expire at any time.
- 14.3 We may terminate this Agreement without notice and recover from You the amount of any loss resulting from the termination if You:
- (a) Are in **Serious** Breach of this Agreement;
  - (b) Are in **Continuing** Breach of this Agreement;
  - (c) Are convicted of an offence under the provisions of the Care Standards Act 2000 and regulations thereto and any subsequent amendments;
  - (d) Cease to hold appropriate registration under the Care Standards Act 2000;
  - (e) Become bankrupt or are the subject of any application or arrangement under the provisions of the Insolvency Act 1986 (as amended by the Enterprise Act 2002);
  - (f) Have a winding-up order made (except for the purposes of amalgamation or reconstruction) or a resolution of a voluntary winding-up is made;
  - (g) Have a provisional liquidator, receiver or manager of your business or undertaking duly appointed;
  - (h) Have an administrative receiver as defined in the Insolvency Act 1986 (as amended by the Enterprise Act 2002) appointed;
  - (i) Are in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager or an administrative receiver, or which entitle the court to make a winding-up order;
  - (j) Take financial advantage of a Service User or inappropriately solicit money from his or her representative or Third Party;
  - (k) Offer any inappropriate inducements or exert pressure on a potential Service User or his or her representative or Third Party to encourage a choice of your Service;
  - (l) Offer, give or agree to give any gift or consideration of any kind to any of our Officers or elected Members in order to gain an advantage in the performance of this Agreement;
  - (m) Defraud us.
- 14.4 Where there has been a termination by the Housing and Facilities Management Provider of any licence granted to You to occupy premises on all or any of the Sites and in our reasonable opinion the lack of access to those premises prevents You from providing the Service to the Contract Standard, You will be entitled to any of the payments due to You on the date of such termination pursuant to clause 9.

## **15 Termination or Suspension of an SDO**

- 15.1 We will give You not less than 1 working days notice of suspension of the SDO where it

is known that the Service User will not require the Service due to a planned absence. Where such notice is not given, We will pay the agreed rate for 1 day's planned Service to the Service User or any other reasonable period that You and the Care Manager negotiate.

- 15.2 In instances where a Service User is taken to hospital We will pay the agreed rate for 1 day's planned Service in order to ensure continuity of Care Worker if the Service User is not admitted and the Service needs to be re-established.
- 15.3 If a Service User is admitted to hospital, you should retain the Service 'slot' for 2 weeks to ensure continuity of Service when the Service User is discharged. The Care Manager will contact You as soon as the expected length of hospitalisation is known so that You can re-allocate the Service.
- 15.4 In the case of a Service User's sudden death We will pay the agreed rate for 1 day's planned Service to the Service User in lieu of notice.
- 15.5 You or We may terminate a Service Delivery Order, with reasonable grounds to do so, by giving 5 Working Days written notice.

## **16 Emergency Domiciliary Care Services**

- 16.1 If You receive a request for an emergency care service from anyone other than a Care Manager, You will make every effort to contact the Care Manager before agreeing to provide the Service. The Service User will not be required to make any payment to You towards the cost.
- 16.2 If the Service User requires emergency domiciliary care and You cannot contact the Care Manager, We will pay for 1 hour or any other reasonable period that You and the Care Manager negotiate.

## **17 Statutory Obligations**

- 17.1 Both of Us will comply with all relevant current and future legislation applicable to the provision of the Service.

## **18 Insurance**

- 18.1 The onus is on You to ensure that your insurance policies are adequate to cover eventualities pertaining to your business.
- 18.2 You must maintain the following minimum insurance cover:

Public Liability Insurance: £5 million in respect of any one claim which You become legally liable to pay for illness, injury or death to a third party, or loss of or damage to his or her property;

Employers Liability Insurance: £10 million in respect of any one claim which You become legally liable to pay for illness, injury or death of an employee arising out of and in the course of his or her work;

Motor Vehicle Insurance: Third party cover with unlimited indemnity for third party injury and £5 million for third party property damage in respect of any one claim;

Adequate insurance cover to enable You to fulfil your responsibility under this Agreement in the event of material damage which causes the Service to be continued at another or multiple other locations;

Adequate professional indemnity, errors and omissions or malpractice insurance cover in respect of any one claim which You become legally liable to pay for loss or injury caused by any negligent act, error or omission occurring or committed in good faith in the conduct of your activities or duties. This includes the appropriate level of cover for the administration of medication.

18.3 You will procure and maintain the above mentioned insurance with a reputable company or companies.

18.4 You will provide to Us, on request, such information as We may reasonably require to confirm that the insurance referred to above has been effected and is adequate and in force at all times.

## **19 Variation**

19.1 We reserve the right to vary any part of this Agreement at any time as a result of an Act of Parliament or direction of Central Government or outcome of an officially authorised review or audit by or for Us provided that the variation:

(a) Fits within the scope of the Service; and

(b) Is to be effected in accordance with any officially authorised timetable that prevails or any other period that is agreed by both of Us and then notified in writing to You.

19.2 Any non-statutory variation to this Agreement will only be effective when it is in writing and consented to by both of Us.

## **20 Ombudsman**

20.1 Under the Local Government Act 1974, the Ombudsman may investigate a complaint about an action taken by You pursuant to this Agreement. You will co-operate fully with any such investigation and will reimburse to Us any payment We make to any complainant where a finding of maladministration causing injustice is made as a result of a fault on your part.

20.2 You may complain to the Ombudsman about maladministration by Us that caused injustice to You after We have been given an opportunity to consider the complaint. We will co-operate fully with any such investigation and will reimburse to You any payment You make to any complainant where the Ombudsman makes a finding of maladministration causing injustice as a result of a fault on our part.

## **21 Assignment and Sub-Contracting**

21.1 If You want to either assign your interest in this Agreement to any other person or create any security over it or any part of it then You must first obtain our written consent, which should not be unreasonably withheld. Such assignment can only be made to another Approved Provider.

21.2 With the exception of your use of agency staff to cover vacancies in managerial or supervisory positions, You may, subject to clause 21.6, sub-contract the carrying out of your Service obligations under this Agreement only with another Approved Provider.

- 21.3 You should note that our giving You our consent to sub-contract will not relieve You of your obligations under this Agreement and that You will be responsible for the acts, defaults and neglect of any sub-contractor as if they were your own acts, defaults and neglect.
- 21.4 We will pay You as though the Service was delivered by You and You will invoice us accordingly. You will make your own arrangements to pay the sub-contractor.
- 21.5 We will monitor your usage of sub-contracted Staff and will withdraw our consent if We feel the level of usage is excessive.
- 21.6 You must not use self employed persons to provide the Service.
- 21.7 We reserve the right to direct that any individual member of Staff does not provide a Service to any particular Service User.

## **22 Change of Control**

- 22.1 If You have a change of control or there is a change affecting your legal status or that of the Organisation, You will inform Us without delay.

## **23 Partnership and Agency**

- 23.1 Both of Us expressly agree that nothing in this Agreement in any way creates a legal partnership between Us.
- 23.2 You will not hold yourself to be our agent or try to bind Us to any undertaking.
- 23.3 You may, with our consent in writing beforehand, advertise yourself as an Approved Provider to Us.

## **24 Force Majeure**

- 24.1 Any failure or delay by You in performing your obligations under this Contract which results from any failure or delay by an agent, sub-contractor or supplier shall only be regarded as due to Force Majeure where that agent, sub-contractor or supplier is itself impeded in complying with an obligation to You by Force Majeure.
- 24.2 No Party shall be liable to another Party by reason of any failure or delay in performing its obligations under this Contract which is due to Force Majeure where there is no practical means available to the Party concerned to avoid such failure or delay.

## **25 Probity**

- 25.1 You will immediately inform the Contracts Manager of any conflict of interest that has arisen or is likely to arise as a result of You undertaking work for or providing the Service to a third party other than a Service User.
- 25.2 We may seek an alternative provider for some or all of the Service if We have reasonable grounds for believing that such a conflict has arisen or is likely to arise as a result of information received from You or otherwise.

## **26 Declaration of Interests**

- 26.1 You will inform the Contracts Manager in writing if You become aware that any of our Officers or elected Members has or acquires any interest in your business at any time during the life of this Agreement.

## **27 Waiver**

- 27.1 If either one of Us fails to exercise, or delays in exercising any right or remedy, to which it is entitled under this Agreement or at law then this will not constitute a waiver of such right or remedy. It does not mean the provision in question no longer applies and it affects neither the validity of this Agreement nor the right of either of Us to enforce any provision in accordance with its terms.
- 27.2 Nothing in this Contract is intended to create a legal partnership or legal relations of any kind between the parties (including but not limited to the Partnership Act 1890). No Party shall have authorisation to make representations to act in the name of, or act on behalf of, or otherwise bind that Party.

## **28 Data Protection, Copy Right, Freedom of Information and Confidentiality**

- 28.1 Both of Us must comply with the requirements of the Data Protection Act 1998 in so far as they apply to the provision of the Service and/or otherwise to this Agreement.
- 28.2 You will keep confidential any information that We supply to You in connection with this Agreement or that You obtain in the course of providing the Service. Any data that You so gain will be processed only in accordance with instructions in this Agreement and for no other purposes.
- 28.3 In respect of personal data subject to the Data Protection Act 1998, You will take appropriate technical and organisational measures against unauthorised or unlawful processing and against accidental alteration, loss or destruction of or damage to such personal data.
- 28.4 You will not disclose personal data to any third parties other than:
- (a) To Staff and sub-contractors to whom such disclosure is reasonably necessary in order to carry out the Service; or
  - (b) To the extent required under a court order.
  - (c) You will give notice in writing to Us of any disclosure of personal data that You or a sub-contractor may make under part (b) as soon as You are aware of such a requirement.
- 28.5 We will keep confidential any business information obtained from You in connection with this Agreement and We will take all reasonable steps to ensure that our employees do not divulge such information to a third party without your written consent, except as may be required by law.
- 28.6 We will give notice to You, in writing, of any disclosure of personal data that We may be required to make as soon as We are aware of such a requirement.



28.7 Us and You acknowledge that;

- a) All information and data, including personal data, obtained and used in connection with this Contract shall remain the property of the parties and shall be processed for the sole purpose of undertaking their obligations under this Contract and for no other purpose.
- b) We may share information relating to You or this contract with other purchasing, monitoring and regulatory agencies when reasonably judged by Us to be in the interests of the Service User or the provision of the Service. If We subscribes to any formal protocol for sharing information with such agencies then You will be informed in writing, and sent a copy of any such protocol. We may share information relating to You for data matching purposes, in order to contribute to the prevention and detection of fraud in accordance with the requirements of the Audit Commission.
- c) Requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and cooperate with Us to enable it to comply with these information disclosure requirements
- d) Our name shall not be used by You in the endorsement of any project or in any other way or for any purpose without our prior written consent, which will not be unreasonably withheld.

## **29 Transfer of Undertaking**

29.1 You will abide by its duties and responsibilities under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and all other relevant legislation and in particular:

- a) During the 12 months preceding the expiry of this Contract or after We have given notice to terminate this Contract or at any other time as directed by Us and within 15 working days of being so requested by Us, You will fully and accurately disclose to Us any and all information in relation to all Workers engaged in providing the Service including all relevant employees who are to transfer as a consequence of a relevant transfer as We may request, in particular but not necessarily restricted to any of the following:-
  - (i) a list of all employees employed by You.
  - (ii) Agents and independent Care Providers engaged by You.
  - (iii) The total payroll bill (i.e. total taxable pay and allowances including employers contribution to pension scheme) of those personnel.
  - (iv) The terms and conditions of employment of the relevant employees, their age, salary, date continuous employment commenced (and if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- b) You will warrant the accuracy of all the information provided to Us and authorise

Us to use any and all the information as it may consider necessary for the purpose of its business for informing any tenderer for any services which are substantially the same as the Service (or any part thereof).

- c) During the 12 months preceding the expiry of this Agreement or where notice to terminate this Contract for whatever reason has been given, You will allow Us or such other persons as may be authorised by Us to communicate with and meet the relevant employees and their Trade Union or employee representatives as We may reasonable request.
- d) During the 12 months preceding the expiry of this Contract or where notice to terminate this Contract for whatsoever reason has been served, You will not without our prior written consent unless bona fide in the ordinary course of business:
  - i) vary or purport or promise to vary the terms and conditions of employment or any employee employed in connection with the Services;
  - ii) materially increase or decrease the number of employees employed in connection with the Services; or
  - iii) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Service.

## **29.2 Indemnities**

You will (subject to our and your duty to mitigate the losses) fully indemnify Us and any new Care Providers appointed by Us against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) incurred by them as a result of or in connection with the employment or termination of employment of any employee of the Care Provider during any period prior to the date of expiry or termination of this Contract.

## **29.3 Sub-Care Providers**

In the event that You enter into any Sub-contract in connection with this Contract it shall impose obligations on its Sub-Care Providers in the same terms as those imposed on it pursuant to this Clause 7 and shall procure that the Sub-Care Provider complies with such terms. You shall indemnify Us and keep Us indemnified in full from and against all direct, indirect, or consequential liability, loss, damages, injury, claims, cost and expenses (including legal expenses) awarded against or incurred by Us as a result of or in connection with any failure on the part of the Sub-Care Provider to comply with such terms.

## **30 Electronic Business**

- 30.1 You and We will co-operate with each other in order to make the most of information and communication technology as it applies to the provision of the Service and/or otherwise to this Agreement.

30.2 Any demand, notice, or other communication required to be given under the terms of this Contract will be sufficiently served if:

- a) Served personally on the addressee; or
- b) Sent by prepaid first class recorded delivery post, by telex, electronic mail or facsimile transmission to the registered office or last known address of the intended recipient;
- c) and, if so sent will, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting, or on successful transmission, as the case may be.

### **31 Law**

31.1 This Agreement will be considered as a contract made in England and according to English Law and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

The clauses end here.

This Pre Purchase Agreement is the property of Kent County Council.

Comments or questions should be forwarded to:

**Kent County Council**  
**Social Service Directorate**  
**Service Policy and Standards (Contracting)**  
**Room 2.38, Sessions House**  
**County Hall**  
**Maidstone**  
**Kent ME14 1XQ**

**Telephone: (01622) 694902**

**Fax: (01622) 694915**

**E-mail: [sshqcontracts@kent.gov.uk](mailto:sshqcontracts@kent.gov.uk)**