

Contract Reference No:

PROVIDER AGREEMENT

AN AGREEMENT made on _____ 2008

BETWEEN: - Kent County Council & Connexions Partnership Kent & Medway Limited

THE PROVIDER

Connexions Partnership Kent & Medway Limited whose registered office is at Woodstock House,
15 Ashford Road
Maidstone
Kent
ME14 5DA

SERVICE: The provision of Connexions Services as more specifically set out in this agreement and the attached specification.

THE PARTIES AGREE THAT: -

1. The Provider shall provide the Service on the terms set out in this Agreement.
2. For the purposes of this Agreement:
 - "the Effective Date" is : 1st April 2008
 - "the Termination Date" is : 31st March 2010
 - "Provider's Representative" is : Gordon Bernard
 - "KCC's Representative" is : Joanna Wainwright

Signed for and on behalf of **KCC:-**

Signature:

Name: Joanna Wainwright

Position: Director of Commissioning
(Specialist Services)

Date:

Signed for and on behalf of **The Provider:-**

Signature:

Name: Gordon Bernard

Position: Chief Executive

Date:

CONDITIONS

1. Definitions and Interpretation

1.1 For the purposes of this Agreement, unless the context otherwise requires:

Agreement

means this agreement and all Annexes attached hereto, and all other documents incorporated by reference

Business Day

means a day other than Saturday, Sunday or a day on which a Bank Holiday falls

Authorised Officer

means the individual(s) appointed by both parties who shall act as key contacts

Confidential Information

means all written information disclosed by one party to the other in connection with this Agreement or the provision of the Service and all information (whether written or not) concerning a party's or client's operations, business, suppliers and customers;

Copyright Work

means any works (including documents and computer disks) created by the Provider or on the Provider's behalf in performance of the Provider's obligations under this Agreement;

**Connexions Partnership
Kent & Medway**

means the Partnership established to deliver the Connexions Service in Kent.

Personal Adviser

means the adviser(s) appointed in accordance with the service specification to work with young people

Connexions Access Points

means any of the locations managed or operated by the Provider for the delivery of the Service

Services

means the services required by Kent County Council from the Provider as specified herein

Special Conditions

means the supplemental conditions (if any)

“Youth Charter”

means the current Charter adopted by Kent County Council

- 1.2 The headings in this Agreement shall not affect its interpretation.
- 1.3 Unless otherwise stated references to clauses are clauses of this Agreement and paragraphs are paragraphs of the Annexes specified.
- 1.4 In this Agreement words denoting the singular shall include the plural and vice versa, and words referring to one gender shall include all genders. References to a person shall include any individual, firm, and bodies corporate and vice versa.
- 1.5 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

2. Commencement Date

- 2.1 This Agreement shall start on 1st April 2008 and shall (subject to earlier termination under the terms of this Agreement) terminate automatically without notice on the Termination Date unless extended prior to the Termination Date by agreement in writing signed by or on behalf of both Kent County Council and the Provider.

3. The Service

- 3.1 The Provider agrees to provide the Service in accordance with the terms set out in this Agreement provided that the Provider shall use all reasonable endeavours to accommodate any reasonable changes to the needs and requirements Kent County Council in connection with the delivery of Connexions Services within Kent.
- 3.2 In providing the Service, the Provider will use its best endeavours to comply with any reasonable requirements and guidelines which may be published from time to time by the Department for Children, Schools & Families and other authorised bodies provided that if there is any conflict between the terms of this Agreement and such requirements or guidelines, the terms of this Agreement will prevail.
- 3.3 The provision of the Service shall meet the Department for Children, Schools & Families' and Kent County Council's quality and continuous improvement requirements as published from time to time and shall, where applicable, be in accordance with or shall exceed any relevant European Standard Specification, and any other reasonable specific requirements and standards that may be determined from time to time by Kent County Council and notified to the Provider.
- 3.4 The Provider shall use all reasonable endeavours to ensure that all clients or other young people to whom the Service is provided or who otherwise seek advice or guidance from the Provider are referred to other appropriate agencies within the Connexions Kent area delivering services intended for young people.

- 3.5 Notwithstanding the provisions of clause 9 but subject to any applicable statutory regulations or restrictions and any contractual restrictions binding on the Provider, the Provider agrees that it will share data regarding clients and other providers which is in the possession of the Provider and which the Provider considers relevant with whomsoever Kent County Council's Representative reasonably directs and will participate in such meetings within the Kent area to assist in the effective and cohesive delivery of the Connexions Services generally in that area.
- 3.6 The Service shall be branded consistently and unequivocally as part of the Connexions services and in any event in accordance with the national branding and publicity requirements. Where the Provider provides other services which are not part of the Service or otherwise associated with Connexions services, the delivery of such services must be clearly differentiated from the Service.
- 3.7 In providing the Service and generally in performing its obligations under this Agreement the Provider will at all times where appropriate have due regard to the terms of its Young Peoples' Charter.
- 3.8 The Provider shall ensure that all personal advisers employed or otherwise retained by it in connection with the performance of this Agreement will undertake the "Understanding Connexions" course, the PA Diploma, APIR and any other training relevant to the role and as agreed by both parties.

4. Status of Provider

- 4.1 In carrying out its obligations under this Agreement the Provider agrees that it will be acting as principal and not as the agent of Kent County Council and the Provider shall not say nor do anything that may lead any other person to believe that the Provider is acting as the agent of Kent County Council.
- 4.2 Nothing in this Agreement shall render Kent County Council liable to indemnify the Provider in respect of any liability of any kind incurred by the Provider to any other person but this shall not be taken to exclude or limit any liability of Kent County Council to the Provider that may arise by virtue of either any term of this Agreement or any negligence on the part of Kent County Council, its staff or agents.

5. Payment

- 5.1 Payments to the Provider for the provision of the Service will be made in accordance with the terms of Annex 2. Without prejudice to Kent County Council's right to contest an invoice and subject to clause 13.1 the Company shall make the payments set out in this Agreement to the Provider within 30 days after receiving a

valid invoice from the Provider provided that Kent County Council has received from the Provider full and accurate information and documentation as required by Annex 2 to be submitted in respect of work undertaken by the Provider in accordance with this Agreement.

5.2 Kent County Council reserves the right to recover from the Provider any sum which was incorrectly paid to the Provider or which the Provider has incorrectly claimed from Kent County Council under the provisions of this Agreement or which was paid to the Provider while the Provider was in breach of this Agreement. Any such sum may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this or any other contract with Kent County Council. Exercise by Kent County Council of its rights under this condition shall be without prejudice to any other rights or remedies available to Kent County Council.

6. Contract Managers

6.1 This Agreement shall be managed for Kent County Council by its Representative and for the Provider by the Provider's Representative and each party shall notify the other, in writing, as soon as possible, if the identity of its Representative shall change.

6.2 The Provider's Representative shall co-operate with Kent County Council's Representative to ensure that the Service is delivered as specified in this Agreement, that the quality of the delivery of the Service is maintained at least to the minimum standards referred to in this Agreement, that required performance levels are at least met and that management and other information is provided to Kent County Council as specified in Clause 9

6.3 The Provider's performance of its obligations under this Agreement to deliver the Service will be assessed on an ongoing basis by Kent County Council and the Provider will be notified by Kent County Council's Representative of any matters coming to Kent County Council's attention regarding the Provider's performance. Failure to meet agreed targets or satisfactory performance standards may result in a reduction of fees payable to the Provider.

6.4 The Provider shall promptly comply with all reasonable requests or directions of Kent County Council's Representative in connection with the provision of the Service.

6.5 The Provider shall address any enquiries about this Agreement or its performance to Kent County Council's Representative in writing.

7. Liability and Insurance

- 7.1 The Provider shall indemnify and hold harmless Kent County Council and its employees from and against any and all liabilities, losses, damages, claims, suits and expenses, including legal expenses, of whatsoever nature and kind imposed upon, incurred by or asserted against any of them relating to or arising out of the acts or omissions of the Provider in connection with the provision of the Service or arising in connection with any breach of the terms of this Agreement by the Provider or other default by the Provider save that such indemnity shall not apply in any particular case to the extent that the negligence of the person benefiting from the indemnity has contributed to such liabilities, losses, damages, claims, suits and expenses and provided that if any Claim comes to the notice of the Kent County Council the Kent County Council shall:
- 7.1.1 give written notice of the same to the Provider as soon as possible after Kent County Council becomes aware of such Claim
 - 7.1.2 not make any admission of liability, payment, agreement or compromise or otherwise to settle the Claim with any person, body or Authority in relation to such Claim without prior consultation with and the prior agreement of the Provider
 - 7.1.3 act in accordance with the reasonable instructions of the Provider and give to the provider such assistance as it should reasonably require in respect of the conduct of any negotiations and/or proceedings relating to the Claim
- 7.2 The Provider shall take out and maintain in full force and effect at all times with a reputable insurance office, insurance reasonably satisfactory and in any event insurance which is adequate to cover the Provider against any losses and damages arising from fault or negligence on the part of the Provider or its servants in the performance of this Agreement including, but not limited to, employers' liability to the statutory minimum of £10m; public liability to provide indemnity of £5m for any one incident; and professional indemnity of £5m any one claim
- 7.3 The Provider shall ensure that its agents and sub-contractors take out and maintain in full force and effect at all times with a reputable insurance office such insurance as is specified in clause 7.2 in respect of the fault or negligence of the agent or sub-contractor provided that if any of the Provider's agents or sub-contractors fail to take out or maintain such insurance the provisions of clause 7.2 shall apply so that the Provider must additionally take out and maintain insurance in respect of the fault and negligence of such agents and

sub-contractors.

- 7.4 The Provider shall, when so requested by Kent County Council, supply such evidence of insurance as Kent County Council may from time to time require and shall give to Kent County Council not less than 30 days prior written notice of any alteration or cancellation of any insurance cover.
- 7.5 The Provider warrants that any goods supplied by it or its agents in connection with the delivery of the Service will, so far as is reasonably practicable be of satisfactory quality and fit for the purpose and will be free from defects in design, material and workmanship.
- 7.6 Without prejudice to any other remedy, if any part of the Service is not delivered or performed in accordance with this Agreement, the Company shall be entitled where appropriate to:
- 7.6.1 require the Provider promptly to re-perform or replace the relevant part of the Service without additional charge to Kent County Council; or
 - 7.6.2 assess the cost of remedying the failure (the "assessed cost") and to deduct from any sums due to the Provider the assessed cost for the period that such failure continues.

8. Assignment and Sub-Contracting

- 8.1 This Agreement is personal to the Provider and the benefit and or burden of this Agreement may not be sub-contracted, assigned or novated, in whole or in part, by the Provider without the prior written consent of Kent County Council. Consent may be given subject to any conditions which Kent County Council reasonably considers necessary.
- 8.2 Where the Provider sub-contracts the delivery of all or any part of the Service, the Provider shall remain accountable in all respects to Kent County Council for the full and proper delivery of the Service and for the acts or omissions of its sub-contractor, to the same extent as if they were acts or omissions of the Provider. For the avoidance of doubt, any limitation of any sub-contractor's liability agreed by the Provider will not prejudice Kent County Council's rights of action against the Provider.
- 8.3 The Provider shall include in its contracts with suppliers or sub-contractors engaged for the purposes of providing the Service a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier's or sub-contractor's invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).

8.4 In performing its obligations under this Contract the Provider shall ensure that the awarding of contracts to sub-contractors is based on open and fair terms.

9. Supervision and Management Information

9.1 On the written request of Kent County Council and subject to the provision of the Data Protection Act 1998 Provider shall, and shall procure that each of its sub-contractors shall, permit examinations of relevant documents and records by and provide oral or written explanations and other reasonable assistance at any reasonable time to representatives of:-

9.1.1 Kent County Council;

9.1.2 the Department for Children, Schools and Families;

9.1.3 the National Audit Office;

9.1.4 OfSTED; and

9.1.5 GOSE

9.2 The Provider shall, and shall procure that each of its sub-contractors shall, permit representatives of Kent County Council and the auditors of Kent County Council from time to time to have access to and examine any of its books, records and documents relating to the Service and its operation and compliance with legal obligations and (if Kent County Council reasonably believes that funds provided by Kent County Council have been used for purposes other than the Service) shall permit representatives of Kent County Council and the auditors of Kent County Council from time to time to have access to and examine any of its books, records and documents. The Provider shall furnish suitable oral or written explanation and shall provide all reasonable assistance concerning such matters and shall within a reasonable time provide copies of such documents as such representatives may require.

9.3 The Provider confirms that Kent County Council, its employees, servants, agents and representatives have the right to:

9.3.1 enter upon any of its premises and any of the premises of any of the Provider's sub-contractors on any business day, in order to inspect the Provider's and sub-contractors' books, records, documents, equipment, plant, machinery and premises; and

9.3.2 interview any of the Provider's and sub-contractors' employees, servants, agents and representatives directly connected with the provision of the service on any business day;

as Kent County Council may reasonably require in order to satisfy itself that the

Provider and each of such sub-contractors is fulfilling all its obligations under this Agreement and the Service and to investigate any complaints about the Service.

- 9.4 The Provider shall provide Kent County Council with reasonable management and other relevant information concerning the Service according to a previously notified timetable and otherwise promptly upon request in the form required by Kent County Council (and, if different, in the form required by the Department for Children, Schools & Families) and shall co-operate and assist in any surveys relating to the service required by Kent County Council or the Department for Children, Schools & Families from time to time. Documents and data evidencing management information returns will be retained by the Provider for a period of 3 years and made available for inspection by Kent County Council on reasonable notice. The Provider shall comply with all quality assurance requirements relating to the preparation, provision and retention of such management information notified to it by Kent County Council from time to time.
- 9.5 The Provider shall and shall procure that each of its sub-contractors shall comply with any Code of Practice issued by Her Majesty's Government from time to time on access to official information.

10. Prohibited Activities

- 10.1 The Provider shall not do or permit any act or omission which is likely to bring Kent County Council or the Service into disrepute.
- 10.2 Notwithstanding the generality of Clause 10.1, the Provider shall not use any funds paid to it by Kent County Council to support any organisation or activity which, in the opinion of Kent County Council, is likely to bring Kent County Council or the Service into disrepute. The Provider shall not enter into any agreement involving the use of such funds with any political or religious organisation if the effect of that agreement would be to promote a particular political or religious view.
- 10.3 Nothing in this Agreement shall be construed as establishing or implying any partnership, agency or joint venture between the parties nor authorising either party to commit the other party in any way whatsoever without the other party's prior written consent.

11. Criminal Records and Suitability

- 11.1 The Provider shall take all reasonable precautions (including requiring CRB checks to an enhanced level and the disclosure of convictions in accordance with the provisions of the Re-habilitation of Offenders Act 1974 (Exceptions) Order 1975) to avoid any person convicted of a criminal offence involving an offence

against the person or an offence involving sexual behaviour being employed by it or by any of its sub-contractors and/or having contact with any person under the age of 16 (or under the age of 18 if they have special needs) and to whom any part of the Service is to be provided. In addition, the Provider shall use all reasonable efforts to ensure that all of its employees, agents and representatives and those of any of its sub-contractors are reasonably suitable to be involved in the provision of the Service.

12. Confidentiality

- 12.1 Subject to the provisions of this Agreement and subject to each party complying with the requirements of the Data Protection Act 1998, each party will keep confidential all Confidential Information of the other and of clients or third parties which is disclosed to or obtained by it pursuant to or as a result of this Agreement or the provision of the Service and will not divulge the same to any third party and will allow access to the same to its own staff only on a "need to know" basis. The Provider will procure that all of its agents, employees, representatives and sub-contractors will be similarly bound by obligations of confidentiality in respect of any such Confidential Information.
- 12.2 The obligations of confidentiality under this clause shall not apply to any information or material which the recipient party can prove:-
- 12.2.1 was already lawfully known to it prior to its receipt thereof from the disclosing party;
 - 12.2.2 was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the disclosing party;
 - 12.2.3 was in the public domain at the time of receipt by the recipient party or has subsequently entered into the public domain other than by reason of the breach of the provisions of this clause or any obligation of confidence owed by the recipient party to the disclosing party.
- 12.3 The obligations of confidentiality undertaken by Kent County Council under this clause shall not apply to any information which is required to be released in order to comply with any Code of Practice issued by Her Majesty's Government from time to time on access to official information (or any guidance issued by the Department for Children, Schools & Families under or concerning any such Code).

13. Dispute Resolution

- 13.1 Any dispute or difference between the Provider and Kent County Council as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it (a "Dispute") shall be resolved pursuant to the terms of this Clause 13
- 13.2 The Provider and Kent County Council shall use their reasonable endeavours to resolve any dispute which may arise by means of prompt, bona fide discussions between the Providers's Representative and Kent County Council's Representative
- 13.3 If the Provider's Representative and Kent County Council's Representative fail to resolve the dispute through such discussions within 7 days, the dispute shall be referred without delay to the Provider's Chief Executive (or nominee) and to Kent County Council's Managing Director for Children, Families & Education (or nominee) and they shall use their reasonable endeavours to negotiate in good faith a settlement of the dispute and the discussion referred to in Clause 13.2 and the negotiation referred to in this Clause shall be a pre-condition to the referral of the dispute to a neutral adviser pursuant to Clause 13.4
- 13.4 If the parties referred to in Clause 13.3 are unable to resolve the dispute by negotiation within 14 days the parties shall seek to resolve the dispute amicably before pursuing any other remedies available to them
- 13.5 Time shall be of the essence in relation to any period referred to in this Clause
- 13.6 If the Provider believes it will be unable to perform this Agreement for any reason it shall request a meeting with Kent County Council to agree the steps to be taken

14. Intellectual Property Rights

- 14.1 Unless the parties agree otherwise the Provider shall grant to Kent County Council a royalty free, non-exclusive licence (for the full period during which copyright exists) to copy, issue and adapt any Copyright Work (or do any other acts in respect of any Copyright Work which are restricted by the Copyright Designs and Patents Act 1988) and to grant a royalty free, non-exclusive sub-licence in the same terms to the Department for Children, Schools & Families.
- 14.2 The Provider acknowledges that it has no right or interest in any intellectual property rights in any material created by or on behalf of Kent County Council or the Department for Children, Schools & Families in connection with the Service

save for such rights as may be specifically granted by Kent County Council or the Department for Children, Schools & Families as the case may be.

14.3 The Provider undertakes to Kent County Council that it will not use, copy or reproduce in any way any trade mark or logo belonging to Kent County Council or the Department for Children, Schools & Families without Kent County Council's prior written consent, such consent not to be unreasonably withheld or delayed

14.4 The Provider undertakes that it shall from time to time take all such steps and execute all such documents as Kent County Council or the Department for Children, Schools & Families may reasonably require to perfect licences referred to in clause 14.1.

15. Data Protection

15.1 In carrying out this Agreement, both parties shall comply with all relevant requirements of the Data Protection Act 1998 and shall be liable for and shall indemnify each other against any expenses, liability, loss, claims or proceedings (referred to as a Claim) arising as a result of or in connection with any breach of this clause save that such indemnity shall not apply in any particular case to the extent that the negligence of the person benefiting from the indemnity has contributed to such Claim

15.2 The Provider further undertakes to use any information or other material disclosed to it in connection with the performance of this Agreement and/or the provision of the Service solely for the purpose for which such information or other material was disclosed to it.

15.3 The Provider undertakes to comply with the terms of any Data Protection protocol from time to time adopted by Kent County Council and notified to the Provider in connection with the maintenance, preservation and sharing of data which is subject to Data Protection legislation provided that compliance does not involve additional cost to the Provider and will not conflict with the Provider's own Data Protection protocols

15.4 Without prejudice to the generality of Clause 15.1:

15.4.1 in relation to all Personal Data connected with this Agreement, both parties shall at all times comply with the requirements of the said Act, but without limitation maintain a valid and up to date notification under the Act covering data processing in connection with the service

15.4.2 the parties shall not disclose Personal Data to any person or organisation who is not party to this Agreement other than:

15.4.2.1 to respective employees, agents and representatives or sub-contractors to whom disclosure is necessary in order to fulfil their obligations under this Agreement; or

15.4.2.2 to the extent required under a court order or by virtue of legislation provided that disclosure to any party is made subject to written terms substantially the same as and no less stringent than, the terms contained in this Clause and that each party shall give written notice to the other of any disclosure it or its agent, representative or sub-contractor is required to make

15.4.3 the parties shall ensure that they have and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Data and accidental loss or destruction of, or damage to Data

16. Retention and Documents

16.1 The Provider shall retain original invoices and management information returns and all other documents necessary to verify the Services provided by it or by its sub-contractors in relation to this Agreement for the period of this Agreement and any extension or renewal thereof and for at least six years from the date of termination of this Agreement. Such invoices and documents shall be made available to Kent County Council for audit purposes.

17. Termination and Suspension

17.1 Notwithstanding any other provisions of this Agreement but subject to the provisions of Clause 17.3, if the Provider fails to comply in any material way with this Agreement or any part of it, Kent County Council reserves the right to take any or all of the following steps:

17.1.1 advise the Provider in writing of the failure requiring it immediately to rectify the failure or to advise Kent County Council of the remedial action that it will take;

17.1.2 call a meeting with the Provider to discuss the failure and agree the rectification steps the Provider is to take and the time period for such steps;

17.1.3 give a second written notice of failure to the Provider confirming that if a third warning is given the Provider shall be liable to have this Agreement terminated by Kent County Council in accordance with clause 17;

17.1.4 suspend payment of any claims made by the Provider under this Agreement pending the rectification by the Provider;

17.1.5 give the Provider a third written notice of failure and that this Agreement is to be terminated with effect from the date contained in the notice

and otherwise in accordance with the provisions of clause 17;

and the Provider shall co-operate with Kent County Council in respect of any meeting called under condition 17.1.1.

- 17.2 Either party may terminate this Agreement with immediate effect in the event of a persistent or serious breach of its terms by the other party
- 17.3 Prior to the Termination Date this Agreement may be terminated by either of the parties giving to the other at any time not less than 60 days' notice in writing.
- 17.4 This Agreement may be terminated immediately on written notice to the Provider by Kent County Council if Kent County Council reasonably believes that the Provider or any of its directors or officers has been involved in any fraudulent activities or misapplication of funds (involving the Service) or where the current arrangements from time to time between the Department for Children, Schools & Families and Kent County Council for the provision of Connexions Services is terminated.
- 17.5 Either party shall be entitled to terminate this Agreement immediately by notice in writing to the other:-
- 17.5.1 if the other party, being a company shall pass a resolution for winding up (other than for the purposes of a bona fide reconstruction or amalgamation) or a court shall make a winding up order in respect of the other party or the other party shall have a receiver, administrative receiver, manager or administrator appointed of all or any part of its undertaking or assets;
- 17.5.2 if the other party, being a partnership, shall be dissolved or, being an individual, shall have a bankruptcy petition presented or shall die;
- 17.5.3 if the other party shall cease or threaten to cease to carry on its business or be unable to pay its debts or become insolvent (within the meaning of the Insolvency Act 1986) or make or propose to make an arrangement or composition with its creditors.
- 17.6 Following service of a notice to terminate this Agreement the Provider shall comply with all reasonable requirements of Kent County Council and the Department for Children, Schools & Families in connection with this Agreement and the Service. This condition shall survive termination of this Agreement until complied with in full.
- 17.7 Upon termination Kent County Council and the Provider shall endeavour to agree the amount due to the Provider to the date of termination and shall pay such sum

(less any proper deductions) upon Kent County Council being satisfied that its requirements and those of the Department for Children, Schools & Families have been complied with. Failure to reach agreement on the amount due will result in a pro rata settlement based on the number of days the Service has been fully provided.

17.8 If either party is in breach of this agreement and such breach is capable of remedy, the other party may serve a written notice on the party in breach specifying the breach, how the breach complained of shall be remedied and specifying a reasonable period of time for the party in breach to effect such remedy. If the party in breach fails to comply with such notice within that time the other may terminate this Agreement by written notice with immediate effect

18. Notices

18.1 Any notices to be served under this Agreement shall be in writing to the other party's Representative, at the address of the other party as stated in this Agreement.

18.2 Any such notice shall be deemed to be served, if delivered personally, at the time of delivery or, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after transmission provided that the sender obtains a valid transmission report indicating the proper transmission of the whole of the relevant message.

19 Force Majeure

19.1 Neither party shall be liable to the other if it is unable to perform any of its obligations in whole or in part due to causes beyond its reasonable control. If such force majeure occurs, the party affected shall notify the other party in writing as soon as is practicable. If the Provider is so affected, it shall, subject to the force majeure, provide such assistance as it is able to; to facilitate the implementation of such contingency plans as Kent County Council may propose to ensure the continuity of the provision of the Service to the relevant persons for whom it is intended.

20. Transfer of Responsibility on Expiry or Termination

20.1 The parties acknowledge that on termination or expiry of this Agreement for any reason, the continuity of the Service is of paramount importance. The Provider shall do its utmost to minimise disruption caused to the persons for whom the Service is intended and to assist the implementation of any contingency plan proposed by Kent County Council to deal with the effects of such termination or

expiry in so far as it is both reasonable and practicable for the Provider to do so.

- 20.2 The Provider shall, at no cost to Kent County Council, promptly provide such assistance and comply with such timetable as Kent County Council may reasonably require for the purpose of ensuring an orderly transfer of responsibility for delivery of the Service (or its equivalent) upon the expiry or other termination of this Agreement. The Provider shall use all reasonable endeavours to ensure that its employees and its sub-contractors directly engaged in delivery of the service are under a similar obligation. Kent County Council shall be entitled to require the service of such assistance both prior to and after the expiry or other termination of this Agreement.
- 20.3 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Provider or its sub-contractors, which relate to performance, monitoring, management and reporting of the Service, including the documents and data, if any, referred to in the Annexes to this Agreement subject always to the provisions of the Data Protection Act 1998.
- 20.4 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of Kent County Council to ensure an orderly transfer of responsibility for the provision of the Service.

21. Corruption

- 21.1 The Provider shall not offer to give, or agree to give, to any member, employee or representative of Kent County Council any gift or consideration of any kind as an inducement or reward for doing or for having done or refraining from doing, any act in relation to the obtaining or execution of this or any other contract with Kent County Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.
- 21.2 The Provider's attention is drawn to the Prevention of Corruption Acts 1889 to 1916. Any offence by the Provider or its employees or by anyone acting on its behalf under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any contract with Kent County Council shall entitle Kent County Council to terminate this Agreement and recover from the Provider the amount of any loss resulting from such termination and/or to recover from the Provider the amount or value of any gift, consideration or commission.
- 21.3 The Provider shall use all reasonable endeavours to safeguard Kent County Council's funding of the Service against fraud generally and, in particular, fraud on the part of the Provider's directors, employees or sub-contractors.

21.4 The Provider shall notify Kent County Council immediately of any instance of suspected fraud or financial irregularity in connection with the performance of this Agreement or the delivery of the Service.

22. General

22.1 Nothing in this Agreement shall be deemed to constitute or create a partnership (as defined in the Partnership Act 1890) between the parties of this Agreement.

22.2 Nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

22.3 The Provider shall ensure that at all relevant times it and its agents and sub-contractors shall have an appropriate health and safety policy in place and a named person who is responsible for health and safety matters.

22.4 The Provider shall ensure that at all relevant times it and its agents and sub-contractors shall have in place policies and procedures to safeguard and promote equal opportunities as required or identified by the Kent County Council from time to time and to ensure compliance with the Human Rights Act 1998 in connection with the delivery of the Service.

22.5 No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto.

22.6 This Agreement shall be governed by and construed in accordance with English Law and each party agrees to submit to the exclusive jurisdiction of the English Courts.

22.7 It is hereby agreed and declared that nothing contained or implied in the Agreement shall prejudice or affect the rights of the Provider to exercise its normal functions other than in relation to the delivery of the service as detailed in this Agreement

22.8 This Agreement and any documents referred to in it contain the entire agreement between the parties in relation to matters of this Agreement and supercede any previous agreement between the parties.

The Service

The Provider will work with Kent County Council to achieve the targets as set out in the Service Specification

The provider shall maintain a Health & Safety Policy that meets the requirements of the relevant Act(s) and nominate a person who is responsible for its implementation at all locations

The Provider shall ensure that a policy for Equal Opportunities is maintained in accordance with the relevant Act(s) and comply with the requirements of the Human Rights Act as is current

The Provider agrees to use reasonable endeavours to recruit, employ and train suitable persons, at a level as agreed with Kent County Council and who meet the Person Specification, who have job related skills and are able to carry out the tasks associated with the delivery of the service and as detailed in this Agreement and its Annexes

The Provider will ensure that all employees are wearing an agreed form of identification at all times.

The Provider shall be responsible for the employment and conditions of service of its employees and shall at all times be fully responsible for the payment of salaries, taxes, national insurance or levies of any kind in relation to employment

The provider accepts that the recruitment procedures will involve young people, provided those young people are appropriately trained in advance

The Provider will locate the Personal Advisers and other employees in locations as agreed and will inform Kent County Council as soon as possible of any changes in personnel or request for changes of location

Financial Provisions

The total sum for this contract – *subject to final settlement from Government* (this is the pre damping figure) is £11, 634, 635 (not less than 5% and not more than 7% of which must be allocated to the Community Chest).

1. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds may not be altered except with the prior written consent of Kent County Council (only include if we have a breakdown for staffing, premises, community chest and other)
2. The Provider shall maintain full and accurate accounts for the Service. Such accounts shall be provided to Kent County Council as required and must be retained for at least 3 years after the end of the financial year in which the last payment was made under this Agreement
3. Where funds received from Kent County Council have been used to purchase capital assets, such assets shall not be written off, disposed of or put to a different purpose than that for which funding was given, without the prior agreement of Kent County Council, such agreement not to be unreasonably withheld or delayed
4. All proceeds from the disposal of assets acquired with funds from the Company are returned to Kent County Council unless otherwise agreed.
5. An amount equal to one twelfth of the final contract value will be paid to the Provider by the 7th April. Subsequently, invoices shall be prepared by the Provider monthly in arrears and shall be detailed against the expenditure headings. The initial April payment will be deducted from the final payment due in the financial year. The Provider or his or her nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Provider on the Service in accordance with the Agreement and that the invoice does not include any costs being claimed from any other body or individual or from the Kent County Council within the terms of another Agreement.
6. Invoices shall be sent, within 5 days of the end of relevant month to XXXX Kent County Council aims to pay all duly completed invoices in accordance with the Agreement or within 30 days of receipt. If any problems arise, contact Kent County Council's Representative. Kent County Council aims to reply to complaints within 10 working days. Kent County Council shall not be responsible for any delay in payment caused by incomplete or illegible invoices.
7. The Provider shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in Kent County Council's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Company shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in Kent County Council's reasonable opinion after consultation with the Provider, would reasonably have been required for that purpose.
8. If this Agreement is terminated by Kent County Council due to the Providers insolvency or default at any time before completion of the Service, Kent County Council shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Provider before the date of termination.
9. Kent County Council shall not be obliged to pay the invoice until the Provider has carried out all the elements of the Service specified as in the Specification.

- 10 It shall be the responsibility of the Provider to ensure that the invoice covers all outstanding expenditure for which reimbursement may be claimed. On payment of the invoice by Kent County Council all amounts due to be reimbursed under this Agreement shall be deemed to have been paid and Kent County Council shall have no further liability to make reimbursement of any kind.
- 11 On completion of the Service or on termination of this Agreement, the Provider shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service. Any up front payments outstanding at the point of termination of the contract will be deducted from the final invoice.

ANNEX 3 (To be rewritten)

Special Conditions

1. Quality Assurance

To rewrite to include monitoring and evaluation of contract