

Independent Mental Capacity Advocacy (IMCA) and Relevant Person's Representative (RPR) Service

Terms and Conditions

This document sets out the terms and conditions for providing the Independent Mental Capacity Advocacy Service and the Relevant Person's Representative Service purchased by Kent County Council and Medway Council

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BETWEEN

- (1) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, County Road, Maidstone ME14 1XQ (referred to in this Contract as 'We' or 'us' and consequently, items and issues owned by us as 'our' or 'ours') and
- (2) **THE SERVICE PROVIDER** whose name and address and Company or Firm details is given on the Tender (referred to in this Contract as 'You' or 'your' and issues owned by You or relating to You directly are described as 'yours')

TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS

When they are used in this Contract the terms and expressions set out below in the first column have the meanings set out in the second column except where the context otherwise requires:

Authorised Person	A person who is 'required or enabled to instruct an IMCA' within the scope of MCA 2005, including staff in the local authority or NHS.
Authorised Signatory	This is the person or persons named as authorised by You accept in relation to the Contract the Principal or owner of the organisation (if he/she be a sole trader) or two Partners if a Firm or two Directors if the organisation is a Company shall be deemed to be the Authorised Signatories.
Clause	Means a Clause of this Contract.
Code of Practice	Mental Capacity Act Code of Practice and Deprivation of Liberty Safeguards Code of Practice
Commissioner	Member of our staff who has responsibility for determining what Services will be purchased in order to meet assessed eligible needs
Commissioning Manager	The person authorised by us to deal with the day to day delivery of the Service or any part of it as notified by us from time to time.
Contract	Means the agreement entered into between You and us embodying these Clauses, the Specification and supporting documentation (if any), your Tender and our acceptance thereof, the duly executed acceptance letter, non-collusion certificate, Form of Tender and any other documentation (if any).
Contract Period	Means the period set out in Clause 7.
Contract Price	The price for the provision of the Services as set out in the invitation to Tender documentation by Us.

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Continuing Breach	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.
Intellectual Property	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.
Must and Will	Means that the activity referred to is mandatory.
Party	Means a party to this Contract.
Provider's Manager	The person authorised by You to deal with the day to day delivery of the Service or any part or it as notified to us from time to time
Regulated Activity	In relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Regulated Activity Provider:	Shall have the same meaning as set out in Section 6 of the Safeguarding Vulnerable Groups Act 2006.
Serious Breach	A breach of your duty of care to a Service User by which he or she suffers harm, whether by negligence and/or any malicious act by You or your Staff towards us.
Service	The IMCA Service as described in the Specification or such part of it.
Service Provider	The organisation, individual involved in the delivery of services under this Contract.
Service User (in relation to the IMCA service)	An Unbefriended person, from the age of 16 years, who lacks capacity in relation to a specific decision,

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which needs to be made in respect of the Mental Capacity Act 2005, and is assessed as needing the service.

Should	Means that the activity is not mandatory but We prefer that it take place. Any exception to this will be stated in the Order that has precedence over other general guidance.
Specification	Appendix 1 of this agreement
Staff	The employees, agency staff and workers including Support Workers employed or retained by You and who carry out the Service or such part of it as is specified in any Order that may be issued hereunder.
Statutory	As required by Statute, in this case the Mental Capacity Act 2005
Tender	Means your tender for the provisions of the Services.
We	The Kent County Council (also, "the Council") and any person to whom we may assign this Contract. Unless the context otherwise requires, 'us' will also be taken to refer to 'we'.
Working Day	Monday to Friday, between the hours of 09:00 and 17:00 excluding any public holidays in England and Wales.
Written	Means communication via letter, Fax or email. The method used should be the most appropriate for the circumstances.
Written Consent	This Means communication via letter, Fax or email giving consent to a specific action. The method used should be the most appropriate for the circumstances.
You	The legal owner of the Organisation or any person either authorised to act on your behalf or succeeding to your ownership of the organisation.

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2. INTERPRETATION

- 2.1 Unless the context makes it clear that this is not what was intended, any reference in this Contract to:
- 2.1.1 the singular includes a reference to the plural and vice versa;
 - 2.1.2 a person includes a reference to an individual or a firm, partnership, company or corporation;
 - 2.1.3 a 'Clause' or an 'Appendix' means a reference to a Clause or Appendix of this Contract; and
 - 2.1.4 any notice or communication 'in writing' means sent by post or personal delivery, fax or electronic mail.
- 2.2 The headings in the Contract are for ease of reference only and do not affect its interpretation.
- 2.3 Any reference in the Contract 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):
- 2.3.1 any amendments or modifications to any such enactment, order, regulation or other similar instrument; and
 - 2.3.2 any re-enactment of any such enactment, order, regulation or other similar instrument.

3. SERVICES

- 3.1 In delivering the Services, You shall operate at all times in accordance with any and all of our published objectives, our policies, the legislation and in accordance with the Specification including but not limited to any registration required within.
- 3.2 If You receive notification from us that We reasonably believe that any part of the Service does not meet the requirements of the Contract or differs in any way from those requirements, You shall remedy any such shortfall in the Service requirements promptly.
- 3.3 You shall ensure that all Staff supplying the Service shall do so with all due skill, care and diligence by maintaining the highest standards, courtesy and consideration and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 3.4 You shall procure that there are set up and maintained by You, personnel policies and procedures covering all relevant matters (including but not limited to discipline, grievance, equal opportunity and health and safety). You shall procure that the terms and implementation of such policies and procedures comply with legislation and that they are published in written form and that copies of them (and any revisions and amendments to them) are provided to us upon request.
- 3.5 You shall be responsible for the probity and conduct of your Staff. You shall report any probity or conduct issues to us. Failure to report such events may be considered breach of contract and may result in termination.

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3.6 You shall ensure that You have an office in the locality that you are awarded for the duration of the Contract Period and in any event by no later than the 1st April 2013

4. STAFF

4.1 If, owing to the nature of the Service, your Staff are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, then You shall ensure that all Staff engaged in the provision of the Service shall provide information, in accordance with that Act and Order, about convictions which would otherwise be spent under the provisions of that Act.

4.2 You shall disclose to us the names and addresses and sufficient information including, as appropriate, all convictions of Staff engaged in the provisions of the Service to enable us to make or to require You to make the proper checks of such Staff.

4.3 Following:

4.3.1 receipt of the information referred to in Clause 4.2; or

4.3.2 in the event that a member of Staff has acted in a way which could in the our view, be interpreted as gross misconduct; or

4.3.3 In the event that a member of Staff is deemed to be incapable of efficiently performing his/her duties,

We may, by Written notice to You, refuse to allow for that member of Staff to provide Services to any person if Services provided by that member of Staff would, in our reasonable opinion, be undesirable.

4.4 You shall at the time of recruitment of your Staff and throughout the Contract Period and in a timely manner, and in any event every three (3) years, carry out or arrange to have carried out on your behalf the most extensive checks available to You through the Criminal Record Bureau in respect of Staff to be engaged on the Contract and shall on the commencement date and on or before each anniversary of the Contract, or at any time as directed by us, disclose to us evidence that all required checks have been undertaken and/or all information disclosed by such checks. We will require any Staff revealed not to have been checked or not to have received clearance to perform the Service to be removed from the provision of the Service or a specified part thereof.

4.5 You shall not permit any member of Staff who has not been checked in accordance with Clause 4.4, or whose check has disclosed information that would deem such checked member of Staff unsuitable to perform the Service or any part of the Service, to be engaged in the provision of the Service or the specified part to the Service.

4.6 You may, in exceptional circumstances permit a member of Staff ("New Staff"), who has not been checked in accordance with Clause 4.4 to be engaged in the provision of the Service or the specified part to the Service subject to:

4.6.1 the Service User being eighteen (18) years or older; and

4.6.2 You having made an application to the CRB for the New Staff and awaiting the return of the result; and

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- 4.6.3 that New Staff being supervised by an appropriate qualified and experienced member of Staff; and
- 4.6.4 the supervisor is on duty at the same time as the New Staff, or is available to be consulted; and
- 4.7 In complying with your obligations under Clauses 4.4 and 4.5, You shall have due regard to your obligations under the Data Protection Act 1998 and You and We confirm that You and We will act in accordance with your and our obligations as to data protection as contained in Clause 33.
- 4.8 If You fail to comply with Clause 4.2 and do not provide us with the information within two (2) months of it being available to You then We may terminate the Contract provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to us.
- 4.9 Our decision as to whether any member of Staff shall not be providing any of the Services and whether You have failed to comply with Clause 4.2 shall be final and conclusive.
- 4.10 We shall in no circumstances be liable neither to You nor to the member of Staff in respect of any liability loss or damage occasioned by such withdrawal, suspension or removal referred to within Clause 4.4 and You shall fully indemnify us against any claim made by such member of Staff.
- 4.11 You shall replace promptly any Staff who are assigned to this Contract and who ceases to be in your employment or under your control for whatever reasons and such replacements shall have the equivalent skill levels and shall in every way be suitable for the performance of the Service.
- 4.12 You shall ensure that any Staff works strictly in accordance with the EC Working Time Directive (no. 2003/88), the Working Time Regulations 1998 and all and any subsequent Directives, Regulations, Statutes or Acts pertaining to working time.
- 4.13 You shall fully indemnify us for any costs, expenses and any additional liabilities resulting from or connected with any claim made by a member of Staff against us which arises from or is connected with any act or default on your part or any breach of your contractual or statutory obligations to such member of Staff.
- 4.14 You shall provide a means of identification for your Staff in accordance with the Specification and as approved by us and for this identification to be worn visibly at all times whilst providing Services under this Contract.

5. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 5.1 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 5.2 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:
 - 5.2.1 subject to a valid enhanced disclosure check undertaken through the Criminal Records Bureau including a check against the adults' barred list or the children's barred list, as appropriate; and

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- 5.2.2 the Service Provider shall monitor the level and validity of the checks under this clause 5.2 for each member of staff.
- 5.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 5.4 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 5 have been met.
- 5.5 The Service Provider shall refer information about any person carrying out the Services to the ISA where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Service Users.
- 5.6 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

6. SCOPE OF THE CONTRACT

- 6.1 We expect that you provide the service that meets the requirements as detailed in the specification.

7. START, DURATION AND GEOGRAPHICAL COVERAGE OF THIS CONTRACT

- 7.1 The Contract shall run for an initial period of 3 years from and including 1st April 2013 and to and including the 31st March 2016 (unless terminated beforehand in accordance with the provisions of this Contract).
- 7.2 This Contract may be extended by agreement of both parties for a further period of no longer than 2 years, in 1 year periods by giving written notice of extension to You at least 3 months before the end date.

8. ENTIRE CONTRACT

- 8.1 This Contract and the provisions contained or referred to in it (or imported into it from the Tender documents by express reference there) sets out all the terms and conditions that You and We have agreed as regards the provision of the Service or any part of it.
- 8.2 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 Contract.
- 8.3 What is set out in the Clauses of this Contract will take precedence if there is any inconsistency or conflict between them and what is set out in your terms and conditions with Service User.

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- 8.4 You shall be deemed to have made all enquiries necessary and to have satisfied yourself before submitting the Tender as to: the correctness and sufficiency of the Contract Price stated by Us, the contents and meaning of these Clauses and of the other documents forming part of the Contract.

9. CONTACTS

- 9.1 For the purposes of the Contract, our Commissioning Manager will be your first point of contact for You or such other person as We notify in writing to the Provider's Manager.
- 9.2 All correspondence relating to the Contract, from You to us or vice versa, will be sent in writing to the applicable address shown in Your Tender for this Contract.
- 9.3 You shall, on or before the 1st April 2013, give us, in writing, the address and telephone number of your principal place of business. You shall provide our Commissioning Manager (and update when necessary) telephone numbers on which your Provider's Manager (or a duly approved deputy) can be contacted during normal working hours (and at least between 0800 and 1800 hours). You shall register and regularly update your contact details on our online service directory as required in the Specification.

10. REVIEW

- 10.1 We will review your performance of the Contract whenever there is a significant change in our statutory functions regarding the Service and/or whenever there is a significant change in our policy in relation to the Service or issues relating to the cost of providing the Service or any part of it.

11. PRICE

- 11.1 We will pay You the price for IMCA as set out in the tender which shall be your tendered price for this service in return for You fully and properly carrying out your obligations under the Contract.
- 11.2 We will pay You the price for RPR (at 66% Of the tendered price of IMCA) as set out in the Tender which shall be your tendered price for this service in return for You fully and properly carrying out your obligation under the Contract
- 11.3 You will not charge the Service User or their representative(s) for any part of the Service that is deemed to be included in the Contract Price.

12. PAYMENT ARRANGEMENTS

- 12.1 You must submit invoices for all Services, separately for Kent and Medway, where appropriate. Invoices will be accepted from the 1st day of every calendar month for the previous months payment (e.g. You will invoice us for the period 1st April 2013 – 30th April 2013 on the 1st May 2013), at the address notified to you by us. The invoice must be addressed to us, in the format confirmed by us, and include the following details:
- your name and address
 - the Contract number;

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- A purchase order number
 - The monthly period to which the invoice relates;
 - VAT registration number (if applicable)
 - The total invoice price net or VAT
 - VAT
 - A description of the service provided, broken down by the number of face to face hours provided for IMCA and RPR service
- 12.2 If You are registered for VAT, You will include information about this on your invoice in accordance with the provisions of the VAT Regulations. We will pay to You such VAT as may be properly chargeable by You in connection with the provisions of the Service. You shall issue us with a tax invoice in respect thereof.
- 12.3 We shall endeavour to pay the charges which have become payable within 30 days of receipt of an undisputed invoice from You, which will invoice clearly identifies the service to which the charges relates. We shall pay such an amount as approved or confirmed by way of BACS (Bank Automated Clearing Service).
- 12.4 If We are late in making any payment of the Contract Price due to You then We will pay You interest from the due date to the date of actual payment at three (3) percent above the base rate per annum of National Westminster Bank plc. For the avoidance of doubt, interest on the unpaid amount shall accrue daily.
- 12.5 The charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by Us following delivery of a valid VAT invoice. You shall indemnify Us against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on Us at any time in respect of Your failure to account for, or to pay, any VAT relating to payments made to You under this agreement.
- 12.6 Where You enter into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by You to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 12.7 We may retain or set off any sums owed to it by You which have fallen due and payable against any sums due to You under this agreement or any other agreement pursuant to which You or any Associated Company of Yours provides goods or services to the Us.
- 13. PRICE INCREASES**
- 13.1 We may, for implementation on 1st April 2014 and any subsequent twelve (12) months period, consider your tendered price taking into consideration known changes in the costs of the Services over the previous twelve (12) months, our budget and the economic situation. Irrespectively of any increase in costs We shall not be required to increase the tendered price if We have not received at least a corresponding increase in the budget available to us for the Services and authorisation by our elected Members in relation to any increase to the tendered price.

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14. MONITORING PERFORMANCE RECORDS AND AUDIT ACCESS

- 14.1 You will comply with the reasonable performance monitoring arrangements that We deem necessary for the performance of this Contract and any Orders.
- 14.2 You shall keep and maintain until six (6) years after the end of the Contract Period (or as long as period as may be agreed between the Parties) full and accurate records and accounts of the operation of the Contract including the Services provided under it.
- 14.3 You shall keep the records and accounts referred to in Clause 14.2 in accordance with good accountancy practice.
- 14.4 You will make available to us, upon request, copies of any reports (e.g. Environmental Health Officer, Charity Commission) and must on request of us and/or the Auditor afford such access to such records and accounts as may be required by us from time to time.
- 14.5 We reserve the right to directly elicit the views of willing Service Users. We will respect their privacy where We do this.
- 14.6 We reserve the right to visit your premises from time to time without giving notice.
- 14.7 Following discussion with You, We reserve the right to directly elicit the views of Staff and to observe the Service provided at the point of delivery.
- 14.8 We reserve the right to look at your relevant financial accounts on a regular basis during the life of this Contract for the purpose of validating your financial viability. We will be reasonable in exercising this right. We will treat any information gained in accordance with the provisions for confidentiality at Clause 28.
- 14.9 The Parties agree that they shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 14, unless the audit reveals a material default by You in which case You shall reimburse us for our reasonable costs incurred in relation to the audit.

15. PROCESSES AND SYSTEMS OR ELECTRONIC BUSINESS

- 15.1 You will be required to provide a secure email address in order to receive referrals and other relevant confidential information regarding Service Users. You will also be required to meet the performance monitoring requirements detailed in the specification in relation to process and systems.
- 15.2 Or Both Parties 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 Contract.

16. PARTNERSHIP AND AGENCY

- 16.1 Both of us expressly agree that nothing in this Contract in any way creates a legal partnership between us.
- 16.2 The Supplier acknowledges and agrees that it is not and shall in no circumstances hold itself out as being the servant or agent of the Council for any purpose and this Contract does not create the relationship of Principal and Agent between the Parties.

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16.3 The Supplier is not and shall in no circumstances hold itself out as being authorised to enter into any Contract on behalf of the Kent County Council or in any other way to bind the Kent County Council to the performance, variation, release or discharge of any obligation.

16.4 The Supplier's Staff or agency personnel are not and shall not hold themselves out as being, nor shall they be held out by the Supplier as being, servants or agents of the Kent County Council for any purposes

17. DISPUTE RESOLUTION

17.1 If there is a dispute between You and us about the interpretation or operation of the Contract then both of us will take all steps necessary to resolve the dispute when and where it arises, negotiating on the basis of good faith.

17.2 Having done this, either one of us may notify the other that it wishes the dispute to be referred to a meeting of your Provider's Manager and our Commissioning Manager who will discuss the issue within ten (10) Working Days of receiving the notification.

17.3 If the dispute is not resolved within twenty (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 officer and, in your case, a senior member of Staff to resolve.

17.4 If they fail to resolve the dispute within twenty (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.

17.5 If both Parties do not agree on the identity of the mediator then either one of us may ask CEDR to appoint a mediator.

17.6 Both of us must pay the mediator's fee in equal shares and do what each Party can to ensure the mediation starts as soon as possible.

17.7 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 ten (10) Working Days of the mediation starting then either of us may instigate litigation proceedings (but not before then).

17.8 Using the dispute resolution procedure will neither delay nor take precedence over any use of the default or termination procedures contained in this Contract.

18. DEFAULT

18.1 If either You or We consider that the other is in default of its obligations under this Contract then the default, and a reasonable time-span within which it Must be put right, Must be notified in writing to whichever of You and us is considered to be at fault.

18.2 Where the default is not put right within the specified time then it may be referred to in the dispute resolution procedure contained in Clause 17 of this Contract or the termination procedures contained in Clause 21 of this Contract.

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19. COMPLAINTS HANDLING PROCEDURE

- 19.1 In order to comply with the Specification You shall ensure that you have a complaints handling procedure in place.

20. CORRUPTION, GIFTS AND PAYMENTS OF COMMISSION

- 20.1 You shall not do, and warrant that in entering into this Contract You have not done, any of the following:

20.1.1 offered, given or agreed to give to any employee, Officer or Member of any public body any gift or consideration of any kind as an inducement or reward for:

(a) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with any public body; or

(b) showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with any public body.

20.1.2 entered into this Contract or into any other contract with any public body in connection with which commission has been paid or has been agreed to be paid by You or on your behalf or to your knowledge, unless particulars of any such agreements for the payments have been disclosed to us in writing; or

20.1.3 defrauded or attempted to defraud or conspire to defraud any public body.

- 20.2 If You, or any of your directors, Staff, agents or sub-providers (or anyone acting on your behalf) ("Your Team") does any of the acts referred to in Clause 20.1 or commits any offence under the Bribery Act 2010 in relation to this Contract or any other contract with any public body with or without your knowledge, We shall be entitled to:

20.2.1 terminate the Contract and recover from You the amount of any loss resulting from the termination;

20.2.2 recover from You the amount or value of any such gift, consideration or commission; and

20.2.3 recover from You any loss sustained by us in consequence of any breach of this Clause 20, whether or not this Contract has been terminated.

- 20.3 If any member of Your Team does any of the acts referred to in Clause 20.1 or commits any offence under the Bribery Act 2010 in relation to this Contract or any other contract with any public body with or without your knowledge and such act or offence shall not have been carried out by a director, Staff or agent to the member of Your Team in question acting independently from such member of Your Team, We shall be entitled to:

20.3.1 terminate the Contract and recover from You the amount of any loss resulting from the termination (unless You shall have twenty (20) Working Days notice from us requiring You to terminate your

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contractual arrangements with the member of Your Team in question and as soon as reasonably practicable shall have engaged or appointed a replacement of such member of Your Team);

20.3.2 recover from You the amount or value of any such gift, consideration or commission; and

20.3.3 recover from You any other loss sustained in consequence of any breach of this Clause 20.

21. TERMINATION OF THE CONTRACT

21.1 You will notify us without delay if You cannot meet your commitments under this Contract for a temporary period. In this circumstance and without prejudice to the continuation of this Contract, We may assist You to ensure the continuity of the Service.

21.2 The Kent County Council may terminate this agreement without incurring any liability at any time by giving 3 months' written notice to the Service Provider.

21.3 If You have offered, or given or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of the Contract or any other contract with us, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract or any other contract with us, or acting on your behalf (whether with or without your knowledge), or if in relation to the Contract, or any other contract with us, You or any person employed by You, or acting on your behalf, shall have committed any offence under the Prevention of Corruptions Act 1889 to 1916 and/or Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, We shall be entitled to terminate the Contract and, without prejudice to Clause 21.5, to recover from You the amount of any loss resulting from such termination.

21.4 If You:

21.4.1 commit a Serious Breach of the Contract; or

21.4.2 commit a Continuing Breach of the Contract;

21.4.3 do not have an office in Kent by 1st April 2013;

21.4.4 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); have a winding-up order made (except for the purposes of amalgamation or reconstruction) or a resolution of a voluntary winding-up is made;

21.4.5 have a provisional liquidator, receiver or manager of your business or undertaking duly appointed;

21.4.6 have an administrative receiver as defined in the Insolvency Act 1986 (as amended by the Enterprise Act 2002) appointed;

21.4.7 are in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager or an

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administrative receiver, or which entitle the court to make a winding-up order;

21.4.8 take financial advantage of a Service User or inappropriately solicit money from his or her representative;

21.4.9 defraud us;

21.4.10 have failed to comply with all Safeguarding requirements pursuant to the provisions of this Contract and the Safeguarding Vulnerable Groups Act 2006;

21.4.11 have failed in your obligations regarding CRB checks;

we may, without prejudice to any accrued rights or remedies under the Contract, terminate this Contract and any other contract between us and You by notice in writing having immediate effect.

21.5 If the Contract is terminated as provided in Clause 21.4 and is not reinstated, We shall:

21.5.1 make any payments due to You on the date of such termination but not for compensation for the early ending of the Contract;

21.5.2 be entitled to employ and pay other persons to provide and complete the provision of the Service or any part thereof.

22. STATUTORY OBLIGATIONS

Both of us will comply with all relevant current and future legislation applicable to the provision of the Service including but not limited to the following:

22.1 the Health and Safety at Work etc. Act 1972;

22.2 the Computer Misuse Act 1990;

22.3 the Data Protection Act 1998;

22.4 the FOIA 2000;

22.5 the Human Rights Act 1998,

22.6 Mental Capacity Act 2005

22.7 Deprivation of Liberty Safeguards 2008

and any amendments or re-enactments, any subsidiary legislation, regulations or any future acts of a similar nature during the Contract Period and shall indemnify us against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by You of this Clause 22.

23. INSURANCE

23.1 The onus is on You to ensure that your insurance policies are adequate to cover eventualities pertaining to your business and the performance of this Contract.

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- 23.2 You must indemnify and keep indemnified us against the injury to, or death of, any person, and loss of, or damage to, any property including property belonging to us except and to the extent that it may arise out of the act, default or negligence of us, our employees or agents not being You or employed by You and except as aforesaid against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof, or in relation thereto.
- 23.3 Without thereby limiting your responsibilities under this Clause 23, You shall insure, with an insurance company approved by us, against the injury to, or death of, any person, the loss of, or damage to, any property arising out of or in consequence of your obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.
- 23.4 You must maintain the following minimum insurance cover:
- 23.4.1 Public Liability Insurance: ten million pounds (£10 million) (for the provisions of Services to Service Users under the age of 18 years) and five million pounds (£5 million) (for the provisions of Services to any other Service Users) in respect of anyone 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;
 - 23.4.2 Employers Liability Insurance: ten million pounds (£10 million) in respect of anyone 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;
 - 23.4.3 Personal Indemnity Insurance one million (£1 million) 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.
 - 23.4.4 You must ensure that You maintain appropriate third party motor insurance, as a minimum for any vehicle used as a part of the Service including any transport to and from activities.
 - 23.4.5 Business Interruption: Adequate insurance cover to enable You to fulfil your responsibility under this Contract in the event of material damage which causes the Service to be continued at another or multiple other locations.
- 23.5 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.

24. NOTICES

Any demand, notice or other communication required to be given under the Contract shall be sufficiently served if served personally on the addressee, or if sent in writing to the registered office or last known address of the Party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting or on successful transmission, as the case may be.

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25. VARIATION

- 25.1 We reserve the right to vary any part of this Contract 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:
- 25.1.1 fits within the scope of the Service; and
 - 25.1.2 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.
- 25.2 Any non-statutory variation to this Contract will only be effective when it is in writing and consented to by both You and us.

26. OMBUDSMAN

- 26.1 Under the Local Government Act 1974, the Ombudsman may investigate a complaint about an action taken by You pursuant to this Contract. 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.
- 26.2 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.

27. ASSIGNMENT AND SUB-CONTRACTING

- 27.1 If You want to either assign your interest in this Contract 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.
- 27.2 With the exception of your use of agency staff to cover vacancies in managerial or supervisory positions, You may not sub-contract the carrying out of your Service obligations under this Contract without first obtaining our Written consent.
- 27.3 Where this Contract has been assigned to you as the lead provider in any partnership or consortium arrangement You are fully accountable for the delivery of the Service and You Must
- 27.4 Ensure that all Parties agree to and fully abide by the Clauses within these Terms and Conditions.
- 27.5 Provide us with legal documentation evidencing the terms of your partnership or consortium arrangement prior to the commencement of the Contract or where applicable new working arrangements. We may, by Written notice to You, refuse to allow for that Party/group/organisation to provide the specified Services if Services provided by that Party/group/organisation would, in our reasonable opinion, be undesirable.
- 27.6 We reserve the right to direct that any Party/Group/Organisation does not provide a Service to any particular Service User.

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28. CHANGE OF CONTROL

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.

29. HUMAN RIGHTS ACT 1998

29.1 You shall (and shall use your reasonable endeavours to procure that Staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract and any Orders as if You were a public body (as defined in the Human Rights Act 1998).

29.2 You shall undertake, or refrain from undertaking, such acts as We request so as to enable us to comply with our obligations under the Human Rights Act 1998.

30. DECLARATION OF INTERESTS

You will inform the Commissioning 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 Contract.

31. SECURITY

31.1 You shall co-operate with any investigations relating to security which is carried out by or on behalf of us. You shall:

31.1.1 make any employees identified by us available to be interviewed by us for the purposes of the investigation; and

31.1.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind that may reasonably be required by us for the purposes of the investigation. We shall have the right to retain any such material for use in connection with the investigation and shall supply You with a copy of any material retained.

32. WAIVER

If either one of us fails to exercise, or delays in exercising any right or remedy, to which it is entitled under this Contract 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 Contract nor the right of either of us to enforce any provision in accordance with its terms.

33. DATA PROTECTION AND CONFIDENTIALITY

33.1 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 Contract.

33.2 You will keep confidential any information that We supply to You in connection with this Contract that You obtain in the course of providing the Service. Any data

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that You so gain will be processed only in accordance with instructions in this Contract and for no other purposes.

33.3 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.

33.4 You will not disclose personal data to any third parties other than:

33.4.1 to Staff and sub-contractors to whom such disclosure is reasonably necessary in order to carry out the Service; or

33.4.2 to the extent required under a court order.

You will give notice in writing to us of any disclosure of personal data that You may make under part (b) as soon as You are aware of such a requirement.

33.5 We will keep confidential any business information obtained from You in connection with this Contract and We will take all reasonable steps to ensure that our employees do not divulge such information to a third party without your express Written consent, except as may be required by law.

33.6 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.

34. ELECTRONIC BUSINESS

Both Parties 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 Contract.

35. FREEDOM OF INFORMATION

35.1 You acknowledge that We are subject to the requirements of the Code of Practice on Access to Government Information, the Freedom of Information Act (FOIA) and the Environmental Information Regulations and Must assist and cooperate with us (at your expense) to enable us to comply with these information disclosure requirements.

35.2 You must ensure that You:

35.2.1 transfer any request for information to us as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;

35.2.2 provide us with a copy of all information in your possession or power in the form that We require within five (5) Working Days (or such other period as We may specify); and

35.2.3 provide all necessary assistance, as reasonably requested by us, to enable us to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.

35.3 We are responsible for determining at our absolute discretion whether the information is:

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- 35.3.1 exempt from disclosure under the Code of Practice on Access to Government Information the FOIA and the Environmental Information Regulations;
- 35.3.2 to be disclosed in response to a request for information and in no event will You respond directly to a request for information unless expressly authorised to do so by us.
- 35.4 In no event may You respond directly to a request for information unless expressly authorised to do so by us.
- 35.5 You acknowledge that We may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information:
 - 35.5.1 without consulting You; or
 - 35.5.2 following consultation with You and having taken your views into account.
- 35.6 You Must ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit us to inspect such records as requested from time to time.
- 35.7 You acknowledge that any lists or schedules that You provide outlining Confidential Information are of indicative value only and that We may nevertheless be obliged to disclose Confidential Information in accordance with Clause 35.
- 36. FORCE MAJEURE**
- 36.1 Neither Party shall be liable to the other for any delay in performing, or failure to perform, its obligations under the Contract and/or Order (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, You and We shall use all reasonable endeavours to continue to perform the obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either You or us from performing material obligations under the Contract for a period in excess of one (1) month, either You or We may terminate the Contract and any Order with immediate effect by giving notice in writing.
- 36.2 Any failure or delay by You in performing your obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to You.
- 36.3 If either We or You become aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay of your or our part as described in Clause 36.1 either You or We shall immediately notify the other of the period during which it is estimated that such failure or delay shall continue.
- 36.4 For the avoidance of doubt, You shall not be entitled to any compensation or payment from us which has arisen as a result of a Force Majeure event.

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37. RECOVERY OF SUMS DUE TO US

Whenever under the Contract and/or any Order any sum of money shall be recoverable from or payable by You to us, the same may be deducted from any sum then due or which at any time thereafter may become due to You under this Contract and/or any Order or any other contract with us.

38. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right of a third party which exists or is available apart from such Act.

39. LAW

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

40. BUSINESS CONTINUITY

Under the Emergency Planning Act 2006 all Public Bodies must have Business Continuity plans in place. You will need to have an appropriate Business Continuity plan in place. You agree to provide us, upon request, with a copy of your Business Continuity Plan and (if requested) to make such changes to your plan as We may reasonably require to ensure that your Business Continuity Plan is consistent with Ours.

41. PERFORMANCE

You shall, throughout the Contract Period, but only to the extent of your obligations under this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

42. WHISTLEBLOWING

You are encouraged to report to the Commissioning Manager any concerns regarding us, our officers, Members, clients or anyone with whom You are engaged. Should You consider that the Commissioning Manager and/or Case Manager is involved in the issue or that our Commissioning Manager and/or Case Manager may have a conflict of interest, You should, report the matter via our website.

43. COMMUNITY, CULTURAL AND RELIGIOUS CONSIDERATIONS

You shall be aware of the need to observe any community, cultural and religious considerations whilst performing the Service.

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44. ENVIRONMENTAL POLICY

You agree to comply with our Environmental Policy as published by us from time to time.

45. EURO

45.1 Any requirement of law to account for the Service in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by You free of charge to us.

45.2 We will provide all reasonable assistance to facilitate compliance with Clause 45.1 by You.

46. SERVICE STANDARDS

46.1 The Service Provider shall provide the Services, or procure that they are provided:

46.1.1 in accordance with the Specification;

46.1.2 with reasonable skill and care and in accordance with the best practice;

46.1.3 in all respects in accordance with the Authority's policies and Government Guidance set out in clause 22; and

46.1.4 in accordance with all Applicable Laws.

46.2 Without limiting the general obligation set out in clause 46.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

46.2.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and

46.2.2 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

47. INDEMNITIES

47.1 The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its Representatives (excluding the Service Provider).

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48. LIMITATION OF LIABILITY

- 48.1 Subject to clause 48.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 48.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 48.3 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- 48.3.1 fraud or fraudulent misrepresentation;
 - 48.3.2 death or personal injury caused by its negligence;
 - 48.3.3 breach of any obligation as to title implied by statute; or
 - 48.3.4 any other act or omission, liability for which may not be limited under any applicable law.

49. AUDIT

- 49.1 During the Term and for a period of 6 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
- 49.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the;
 - 49.1.2 to review the integrity, confidentiality and security of any data relating to the Authority or any Service Users;
 - 49.1.3 to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 33 (Data Protection) and clause 35 (Freedom of Information) and any other legislation applicable to the Services;
 - 49.1.4 to review any records created during the provision of the Services;
 - 49.1.5 to review any books of account kept by the Service Provider in connection with the provision of the Services;
 - 49.1.6 to carry out the audit and certification of the Authority's accounts;
 - 49.1.7 to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 49.1.8 to verify the accuracy and completeness of the Management Reports delivered or required by this agreement

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50. INTELLECTUAL PROPERTY

50.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

50.1.1 in the course of performing the Services; or

50.1.2 exclusively for the purpose of performing the Services, shall vest in the Authority on creation.

50.2 The Service Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions

51. SEVERABILITY

51.1 If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

52. THIRD PARTY RIGHTS

52.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

53. PUBLICITY

53.1 The Service Provider shall not:

53.1.1 make any press announcements or publicise this agreement or its contents in any way; or

53.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders, without the prior Written Consent of the Authority.

53.2 The Service Provider shall promptly notify the Authority if it becomes aware of any actual or anticipated adverse media coverage or publicity in connection with the Services.

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GLOSSARY

39A IMCA	A 39A IMCA is instructed as soon as an application for Deprivation Of Liberty (DOL) authorisation is made, if the Relevant Person is unbefriended
39C IMCA	A 39C IMCA is instructed by the Supervisory Body during the period of a DOLS authorisation, where there is a gap in the appointment of an RPR. The 39C IMCA represents the Relevant Person temporarily until a new unpaid/paid representative is appointed
39D IMCA	A 39D IMCA may be instructed by the Supervisory Body at any time during the process where the Relevant Person and/or their RPR, family or unpaid carers, requests an IMCA, to support them under an authorisation
Best Interests Assessor	The person who carries out statutory deprivation of liberty assessments in relation to a request for a standard authorisation.
Decision Maker	The Decision Maker is the person who is proposing to take an action/ make a decision in relation to the care and/or treatment of an adult who lacks capacity.
DOLS (Deprivation of Liberty Safeguards)	Implemented in April 2009 as an extension of the Mental Capacity Act 2005, the Safeguards cover people over 18 years of age, who suffer from a mental disorder, and lack capacity to give consent to the arrangements made for their care and/or treatment in a care home/hospital. An authorisation may be granted in the person's best interests, after independent assessments.
Donee	Someone appointed under a Lasting Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the Lasting Power of Attorney.
Independent Mental Capacity Advocate(IMCA)	An Independent Mental Capacity Advocate (IMCA) is a professional instructed to act independently of the persons instructing them, to represent and support an unbefriended person who lacks capacity to make specific decisions.
Relevant Person	The person deprived of their liberty.

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Relevant Person's Representative (RPR)	A representative appointed by the Supervisory Body (Local Authority) to represent the Relevant Person who has been deprived of their liberty, once a standard DOL authorisation has been granted.
Responsible Body	In the case of a medical decision, the Responsible Body will be a National Health Service organisation. In the case of accommodation changes or adult protection, the Responsible Body will be the Local Authority
Supervisory Body (SB)	The SB will be the local authority for the area in which the person is ordinarily resident. If the person is not ordinarily resident in the area of any local authority, the SB will be the local authority for the area in which the care home or hospital is situated. A Supervisory Body is responsible for considering requests for authorisations, commissioning the required assessments and where all the assessments agree, authorising the deprivation of liberty.

**Independent Mental Capacity Advocacy
Service (IMCA) and Relevant Person's
Representative (RPR) Service**

SPECIFICATION

This document defines the independent Mental Capacity Advocacy Service and the Relevant Person's Representative Service purchased by Kent County Council and Medway Council

October 2012



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Introduction

1. The Mental Capacity Act 2005 makes it a legal requirement for people lacking Mental Capacity to have independent advocacy when there are no relatives or friends willing and/or able to speak for them. An IMCA Must be provided when decisions are being made regarding
 - (a) serious medical treatment
and/or
 - (b) a move to other accommodation, in specified circumstances.
2. An IMCA may be provided at the discretion of the Local Authorities, and following discussions with them regarding
 - (a) safeguarding procedures
 - (b) care reviews
3. where the Local Authorities consider that the provision of an IMCA would make a valuable difference.
 - (a) An IMCA is instructed as soon as an application for Deprivation Of Liberty (DOL) authorisation is made, if the Relevant Person is unbefriended.
 - (b) An IMCA may be instructed by the Supervisory Body at any time during the process where the Relevant Person and/or their RPR, family or unpaid carers, requests an IMCA to support them under an authorisation
 - (c) The Supervisory Body believes that instructing an IMCA will help to ensure that the person's rights are protected.
4. An IMCA Must be instructed during any gaps in the appointment of a RPR.
5. Once a standard DOL authorisation has been granted, the Supervisory Body Must appoint the RPR as soon as possible to represent the person who has been deprived of their liberty. If neither the Relevant Person or a Donee or deputy selects an eligible person and the Best Interests Assessor is unable to recommend anyone, the Supervisory Body Must identify an eligible person via this Service commissioned through the IMCA provider.
6. This Specification describes the requirements for the IMCA and RPR services for people lacking mental capacity, and sets out what is required of You in terms of objectives and outcomes.
7. In entering into a Contract with Kent County Council and Medway Council to provide IMCA and RPR services for people who lack mental capacity, You are undertaking to comply with the law, our Terms and Conditions and this Specification. This Specification is written, and should be read, in conjunction with the Terms and Conditions. The terms used are the same throughout both documents.

The Purpose of the Independent Mental Capacity Advocacy (IMCA) Service

8. The purpose of this Contract is to provide a specialist independent advocacy service to people covered by the Mental Capacity Act 2005 and The Deprivation of Liberty Safeguards 2008.
9. This is a Statutory Service under the Mental Capacity Act and The Deprivation of Liberty Safeguards, governed by the Act; the relevant Codes of Practice and Guidance as issued from time to time.
10. The IMCA Service Must be inclusive for all Service Users, including people with learning disabilities, dementia, acquired brain injury, mental health needs, and other conditions leading to a lack of mental capacity.
11. The IMCA Must provide high quality non-instructed advocacy for people with a variety of communication needs.
12. The IMCA service Must act as a source of information and support to a range of social and health care staff about the workings of the Mental Capacity Act, including Independent Mental Capacity Advocacy.
13. The IMCA service Must take an active role in supporting the local integration of the Mental Capacity Act (MCA) into local policy and procedure, e.g. participating in local implementation network, IMCA steering group and networking with other key stakeholders where appropriate.

The Purpose of the Relevant Person's Representative (RPR) Service

14. The purpose of the Relevant Person's Representative (RPR) Service is to provide specialist independent paid representative service to people under authorisation covered by the Deprivation of Liberty Safeguards (DOLS) 2008.
15. This is a Statutory Service under the Mental Capacity Act and The Deprivation of Liberty Safeguards, governed by the Act; the relevant Codes of Practice and Guidance as issued from time to time.
16. The RPR Service Must be inclusive for all Service Users, including people with learning disabilities, dementia, acquired brain injury, mental health needs, and other conditions leading to a lack of mental capacity.
17. You Must provide a high quality service for people with a variety of communication needs.
18. The RPR service Must take an active role in supporting the local integration of the Mental Capacity Act (MCA) into local policy and procedure, e.g. participating in local implementation network, IMCA steering group and networking with other key stakeholders where appropriate.

Core Principles of Independent Mental Capacity Advocacy (IMCA) and Relevant Person's Representative (RPR) Service

19. THE IMCA SERVICE AND THE RPR SERVICE MUST WORK ACCORDING TO THE FIVE PRINCIPLES OF THE MENTAL CAPACITY ACT.

- A person must be assumed to have capacity unless it is established that he/she lacks capacity.
 - A person is not to be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success.
 - A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision.
 - An act done, or decision made, under this Act for or on behalf of a person who lacks capacity Must be done, or made, in his/her best interests.
 - Before the act is done, or the decision is made, regard Must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.
20. You Must conduct the Service in accordance to the five key principles above and meet the needs and wishes of the Service User / Relevant Person in such a way as that the person's best interests are reflected.
21. You Must demonstrate a holistic approach to working with people, and make a detailed assessment of their wishes and needs, taking account of Your responsibilities.
22. The Service provided will be appropriate to people's needs, including their disability, race, culture, religion, sexuality, age, gender and communication preferences.
23. You Must be flexible & responsive to changes in Service User's / Relevant Person's situations.
24. Views expressed by IMCA/RPRs on behalf of people who lack Mental Capacity will be made in a manner that safeguards the Service User's / Relevant Person's human rights, ten point dignity challenge¹ and privacy and respects them and their individuality.

Service Outcomes for the IMCA Service

25. Independent safeguards have been provided for the unbefriended person who lacks capacity to make specific important decisions.
26. The Service User's involvement has been integral to the decision making process.
27. The Service User's views, wishes and feelings have been represented.
28. Other aspects and options relating to the Service User's care and support have been fully considered in the decision making process.
29. The least restrictive option, in the Service User's best interests, has been promoted.

30. There has been a positive impact in the knowledge and practice of social and health staff in relation to MCA and DOLS

Service Outcomes for RPR Service

31. Independent safeguards have been provided for the Relevant Person under a DOLS authorisation, including support and representation of the Relevant Person in all matters relating to DOLS.
32. The Relevant Person's views, wishes and feelings have been represented.
33. The Relevant Person has been supported to have a greater understanding of all matters relating to the DOLS authorisation.
34. The least restrictive option, in the Relevant Person's best interests, has been promoted.

IMCA Service Processes

35. The service Must be independent of the Local Authority and Health Service with its own Consultation and Complaints Procedure.
36. The IMCA service will provide a service to all individuals staying at the time of instruction within the local authorities, i.e. Kent and Medway, regardless of the person's ordinary residence / funding authority. Staying includes temporarily living within the local authorities or being an inpatient in a hospital in the area.
37. You Must have an understanding of the geography of the localities the contract has been awarded in.
38. The role of the IMCA will be to support and represent people who lack capacity, who have no one else to support them when major potentially life changing decisions are being made. You will do this by:
 - Being conversant with and operating in accordance with the Mental Capacity Act Code of Practice and the Deprivation of Liberty Safeguards Code of Practice determining in all circumstances how best to represent and support the person lacking capacity.
 - verifying that the instructions to act were issued by an Authorised Person
 - checking that the appropriate IMCA service has been instructed
 - allocating the case and provide the name of the IMCA to the referrer before the end of the following working day after receipt of instruction.
 - meeting with the Service User in private as far as practically possible
 - examining any of the Service User 's records that the IMCA considers relevant to the specific decision
 - consulting with all people involved professionally in the care and/or treatment of the Service User
 - consulting with any other relevant person who could comment on the Service User's, wishes, feelings, beliefs and values.
 - evaluating all the relevant information obtained:

- ascertaining what support the Service User has had to assist them with making the specific decision
 - ascertaining what the Service User 's wishes, feelings, beliefs and wishes would be in this situation
 - ascertaining what support the Service User requires in the decision making process
 - determining what options are in the Service User's best interests
 - ascertaining what alternatives there are
 - ascertaining if there is any benefit in further medical opinion
 - writing a report on the findings for the Decision Maker, which the Decision Maker is required to take into account
39. If You have concerns about whether an individual is eligible for the IMCA service for any reason, this should be raised as soon as practicable with the person making the instruction and if not resolved, referred immediately to Kent/Medway lead commissioner. If there is any doubt about the validity of an instruction, an IMCA should not be appointed.
40. A decision to withdraw an instruction can only be made by the instructor and not the IMCA service.
41. Where the instruction is withdrawn, the IMCA will cease representing the individual.
42. If You are concerned about the withdrawal of their service, the concern should be raised with the instructor in the first instance and if not resolved, referred immediately to Kent/Medway lead commissioner.
43. The IMCA intervention should cease in a timely fashion. The instruction will formally end when:
- The IMCA service has submitted their report and
 - the instructor has notified the IMCA service of the decision and
 - the IMCA service does not intend to challenge the decision on behalf of the person concerned.
44. The IMCA will provide written notification to the instructor when they have ended their work with all individuals.
45. Before undertaking any of the DOLS IMCA roles (39A, 39C, 39D), the IMCA must have acted as an IMCA for at least three months or worked on at least three cases.
46. A 39A IMCA instructed at the initial stage of the DOLS process has additional rights and responsibilities compared to an IMCA more generally instructed under the Mental Capacity Act 2005.
47. In these circumstances the IMCA Must be able to:
- Familiarise themselves with the Relevant Person's circumstances
 - Consider what information may be relevant to assessors during the Assessment Process

- Give information or make submissions to assessors, which assessors Must take into account in carrying out their assessments
 - Consider if there are any concerns about the outcome of the assessment process
 - Receive copies of any assessments from the Supervisory Body
 - Receive copies of authorisation and any related notices given by the Supervisory Body
 - Apply to the Court of Protection for permission to take the relevant person's case to the Court in connection with a matter relating to the DOLS process and/or outcome
48. A 39C IMCA is instructed by the Supervisory Body during the period of a DOLS authorisation, where there is a gap in the appointment of an RPR. The 39C IMCA represents the Relevant Person temporarily until a new unpaid/paid representative is appointed
49. A 39D IMCA instructed by the Supervisory Body during the period of a DOLS authorisation, have the following responsibilities:
- Provide extra support to the Relevant Person or a family member or friend acting as their representative(unpaid RPR) if they need it
 - Help them make use of the review process or access the Court of Protection
50. You Must understand that lacking Mental Capacity relates to many diverse groups of people. IMCAs require skills in communicating in non-standard ways, for example with people who have no spoken language.
51. You have the right to challenge the decision as if You were a person engaged in caring for the Service User or interested in their welfare.
52. Any disputes should be raised informally initially, then through the formal route of the Complaints Procedure of the Responsible Body. The principle is that disputes should be resolved at the lowest possible level. IMCA have powers to pursue complaints or disputes through the Court of Protection.
53. You Must work in partnership with all other agencies, including Statutory, independent and voluntary.
54. Those who might have become befrienders but do not wish to become involved in the decision, Should be consulted as befrienders in safeguarding proceedings, even when It is felt by the Decision Maker that they are not acting in the person's best interests.
55. You Must assist staff and Service Managers who are likely to refer their Service Users, to understand the role of the Independent Mental Capacity Advocate and know how and when to access the service.
56. You Must publicise Your Service in a range of ways in appropriate and accessible formats.
57. You Must meet all Statutory standards that might apply at any given time and will be able to evidence this, including in written Policy and Procedure statements.
58. Individual records and all electronic communication will comply with data protection and accessibility requirements and will record personal details, requirements and outcomes.

IMCAs should record whether or not the outcome supported or went against the views of the person and their reasons for this. It will be important that records show the methods used to arrive at any views expressed on behalf of the person. .

59. You Must keep suitable records for monitoring by the Local Authority, as and when requested, and in circumstances where the need arises, (the first review will be held at the end of three months, then at six months) The frequency of commissioning review will be determined at the six monthly review but to be no less than annually thereafter.
60. Each IMCA decision must have its own case number.
61. You must have a system to match case numbers with Service Users returning for further decisions to provide a history.
62. You Must meet regularly as required, with commissioners, Responsible Bodies and social care/health representatives to
 - a) report and discuss general progress;
 - b) feedback issues in the development of the IMCA role;
 - c) discuss any Service issues, and
 - d) review Performance Indicators.
63. This meeting may include Kent County Council and Medway Council.
64. You will be expected to develop policy and protocol with us and in line with emerging guidance from the DOH to support the operation of the service.
65. IMCA will only practice within their specific role and boundaries as defined in the Mental Capacity Act Code of Practice and the Deprivation of Liberty Safeguards Code of Practice. Any IMCA intervention over 20 hours will only be authorised following consultation with relevant commissioners.
66. The Service must provide information for all cases onto the Department of Health Database
67. The Service must provide information to relevant Commissioners on any complaints received
68. The IMCAs will be managed by, and primarily accountable to, the advocacy organisation that recruits and employs them, thereby maintaining their independence from the local Service Providers.
69. Arrangements must be in place to ensure continuity of service, for example during annual leave and staff sickness, and you will be expected to have a Business Plan/ Procedure in place prior to commencement of Service.

RPR Service Processes

70. An RPR, instructed during the period of a DOLS authorisation, provides the Relevant Person with independent representation and support. The RPR will:
 - maintain contact with the relevant person, including face to face contact

- represent and support the Relevant Person in all matters relating to DOLS, including, if appropriate, triggering a review, using an Organisation's Complaints Procedure on the person's behalf or making an application to the Court of Protection.
 - Receive copies of authorisations
 - Ensures the interests of the Relevant Person are safeguarded
 - Consults with carers and anyone who has an interest in the Relevant Person's welfare, to ensure that all decisions are made in their best interests
71. The Service Must cover the localities in which the contract has been awarded.
72. If Relevant Person's Representatives are provided to other authorities (local authorities or NHS) these services must be negotiated and charged / paid for separately to this agreement.
73. The Service must be independent of the Local Authorities and Health Services with its own Consultation and its own Complaints Procedure
74. You Must have an understanding of the geography of the localities the contract has been awarded in.
75. You must understand that lacking Mental Capacity relates to many diverse groups of people. RPRs require skills in communication in non – standard ways, for example with people who have no spoken language.
76. You must meet all Statutory standards that might apply at any given time and will be able to evidence this, including in written Policy and Procedure statements.
77. Individual records and all electronic communication will comply with data protection and accessibility requirements and will record personal details, requirements and outcomes.
78. You Must keep suitable records for monitoring by the Local Authority, as and when requested, and in circumstances where the need arises, (the first review will be held at the end of three months, then at six months) The frequency of commissioning review will be determined at the six monthly review but to be no less than annually thereafter.
79. You Must meet regularly as required, with commissioners, Responsible Bodies and social care/health representatives to
- e) report and discuss general progress;
 - f) feedback issues in the development of the RPR role;
 - g) discuss any Service issues, and
 - h) review Performance Indicators.
- This meeting may include Kent County Council and Medway Council.
80. You will be expected to develop policy and protocol with us and in line with emerging guidance from the DOH to support the operation of the service.
81. An RPR will only practice within their specific role and boundaries as defined in the Mental Capacity Act Code of Practice and Deprivation of Liberty Safeguards Code of Practice.

82. The Service must provide information to relevant Commissioners about any complaints received.
83. The RPRs will be managed by, and primarily accountable to, the organisation that recruits and employs them, thereby maintaining their independence from the local Service Providers.

Criteria for IMCA Referral

84. An IMCA Must be instructed when an Unbefriended Service User has been assessed as lacking capacity for specific decisions:

An NHS body is proposing,

- Serious medical treatment
- A stay of more than 28 days in hospital or 8 weeks in a care home
- To change a person's accommodation to another hospital for more than 28 days or more than 8 weeks in a care home.

A Local Authority is proposing:

- To change or provide residential accommodation for more than 8 weeks

And

- The person has no relative, friend or unpaid carer who is willing and /or appropriate to be consulted about their best interests

85. An IMCA may be provided at the discretion of the Local Authority, and following discussions with them, in safeguarding cases and care reviews, where the provision of the IMCA is considered as making a valuable difference.
86. As soon as an application for DOLS authorisation is made, the Supervisory Body Must instruct an IMCA to represent the person if he/she is unbefriended. The Kent & Medway DOLS Office will submit a completed Deprivation of Liberty Form 30 to request for a 39A/39C/39D IMCA.

Criteria for RPR Referral

87. Once a standard DOL authorisation has been granted, the Supervisory Body must appoint the RPR as soon as possible to represent the person who has been deprived of their liberty. If neither the Relevant Person or a Donee or deputy selects an eligible person and the Best Interests Assessor is unable to recommend anyone, the Supervisory Body must identify an eligible person via this Service.
88. The Kent & Medway DOLS Office will submit a completed standard form to appoint a paid RPR from this Service.

Service Inputs

89. The IMCA Service and the RPR Service Should be easily contactable, responsive and available for enquires/referrals and delivery of Service Monday to Friday between 9am – 5pm, except public holidays.
90. The IMCA service will make available electronically an appropriate referral form which covers each of the specified arrangements.
91. We expect a member of your staff to take enquiries/referrals over the phone. Where this is not possible an answer phone service should be available and a return response call made within the hour during working hours to the enquiry/referral source.
92. There is an expectation that the IMCA Service and the RPR Service will provide effective and timely response proportionate to the urgency of the decision to be made.
93. You Must have Your own internal quality assurance system and feedback mechanisms which Must include standard setting, monitoring, management and review processes, to ensure that the required Service quality is maintained.
94. IMCA and RPR will be well supervised. Formal supervision should be monthly and recorded and signed and dated by both parties. An appropriate qualified person Should be available for informal supervision as and when required, this may be by telephone.
95. IMCA will have undertaken the national training programme for Independent Advocates, which will cover generic advocacy competencies as well as a specific pathway to qualification for MCA/DOLS IMCA under the Mental Capacity Act, before they are allocated to work with a Service User.

Performance Monitoring and Performance Indicators

96. Performance monitoring is essential to ensure the effectiveness of procured services and contract compliance. Evidence gathered for performance monitoring purposes will also be used in future planning and strategic development.
97. You Must Self Monitor your service to ensure it is meeting the Specification and that outcomes are being achieved. The service will be reviewed through detailed performance monitoring and a partnership approach. This will include quarterly provider meetings (with both providers present) to share progress, best practice and resolve any issues.
98. During the term of the Agreement We will require from You on a 3 and 6 monthly basis, in the first year (and frequency thereafter determined) and in circumstances where need arises the following information for contract monitoring purposes:
 - Number of appropriate referrals, broken down by case type and gender, gender identity, age, disability, race, maternity/pregnancy, marriage/civil partnership and referrer type (to highlight the split between health and social care referrals, e.g. hospital team, community teams, care managers) ;
 - Number and sources of inappropriate and unallocated referrals, with reasons;

- Number of request to provide 20 or more hours of IMCA intervention for a single Service User, along with reasons for the request.
 - Number of pending referrals at the end of the quarter, broken down by case type and impairment of Service Users, showing actual numbers of hours spent;
 - Number of cases closed, broken down by case type and mental impairment, showing actual number of hours spent, with summary of outcomes;
 - Emerging patterns of referrals e.g. case type and referral source.
 - Information of any informal and formal complaints, and compliments the Service receives;
 - Information on staff turnover, training and supervision;
 - Commissioners may on request ask you for your Annual accounts specific to the IMCA service;
99. You must immediately report to Us any areas where you are encountering difficulties in fulfilling the terms of this agreement, with a proposal/improvement plan to rectify these difficulties.
100. The above information should be separately identified for IMCA Service provided more generally under the Mental Capacity Act 2005, IMCA Service provided under DOLS and RPR service, as this contract covers all of these categories of work.
101. The review meetings will discuss the progress of the service. It may also discuss the outcome of any review, future funding and any additional data requirements that may be useful and become apparent to either party.
102. You will be accountable for the IMCA Service and the RPR Service to the commissioners who are the Responsible Bodies. You are expected to undertake regular reviews and audits of Your Services and to link these to Your development plans. Results of Your quality assurance systems Must be available to commissioners and the reviewing officer as and when requested and at any review.

Assessing the Quality of the IMCA/ RPR Service

103. At the quarterly provider meetings (with both providers present) you will be expected to select and provide a sample of the following which will be analysed, discussed and reviewed:
- IMCA reports submitted to Decision Makers prior to decisions being made
 - Reports submitted by a 39A IMCA to the Best Interests Assessor
 - Reports submitted by 39C and 39D IMCAs when completing their work
 - Reports submitted by RPR when completing their work
 - Feedback from people instructing the IMCA Service
 - Feedback from Decision Makers
 - Instructions where the outcome supported the views of the person
 - Instructions where the outcome went against the views of the person, and the reasons for this
 - Instructions where the IMCA Service initiated informal or formal challenges in representing the person's views
 - Instructions where the RPR Service initiated informal or formal challenges

Further Requirements

Health and Safety

104. You produce and ensure compliance with safety policies and procedures to protect staff, including e.g. advice on:
- lone working,
 - working in rural or difficult locations,
 - use of bleeps/pagers, and
 - use of mobile telephones

Diversity and Inclusion

105. You Must understand and comply with Your Statutory obligations under equalities legislation.
106. You Must have an Inclusion Charter stating the aims and purpose of the Service regarding equality, diversity human rights and inclusion.
107. You Must demonstrate an understanding of how to deliver culturally appropriate services that take into account someone's specific diversity needs, e.g. race, gender or sexual orientation.
108. Information offered to the Service User Should be appropriate for their individual set of protected characteristics defined in The Equality Act 2010.
109. Your service delivered Must be Equality Impact Assessed and You Should be able to demonstrate this or provide evidence of impact assessments.

Staff Induction

In order to ensure that staff are appropriately trained to meet the Service User's needs, We require that:-

110. Staff, individually and collectively, have the skills and experience to deliver the service, which the Organisation states in its information material that it provides. The skills and experience of the IMCA/RPR are matched to the needs of the Service User, and they are able to communicate effectively with the Service User using the individual's preferred method of communication.
111. There is a structured induction process, which is completed by new members of staff, which encompasses the Training Organisation for Personal Social Services induction standards.
112. Induction Must be undertaken in a number of different ways:
113. Within the whole staff group there is the range of skills and competence required

working with and meeting the needs of the Service User.

114. The manager or supervisor of the IMCA/RPR providing the IMCA/RPR services has a knowledge and understanding of the specialism for which they are responsible.

Staff Qualifications

In order to ensure that the Service is provided by qualified and competent staff, We require that:-

115. You have allocated financial resources, and have plans and operational procedures to achieve and monitor the requirements for workforce training and qualification.
116. There is a staff development and training programme within the Organisation, which is reviewed and updated annually.
117. Each new member of staff undertakes training needs analysis on completion of induction or probationary period. This Must be incorporated into the staff training and development plan.
118. The need for refresher and updating training is identified at least annually during staff appraisal and incorporated into the staff development and training programme.
119. All staff are competent and trained to undertake the activities for which they are employed and responsible.
120. IMCA should undertake the national training programme for Independent Advocates, which should cover generic advocacy competencies as well as a specific pathway to qualification for MCA/DOLS IMCA under the Mental Capacity Act, before they are allocated to work with a Service User.
121. Managers should obtain a nationally recognised management qualification equivalent to NVQ level 4 in management.
122. Records of training and development undertaken, and the outcome, are kept on a central development file and on individual personnel files.
123. Managers undertake periodic management training to update their knowledge, skills and competence to manage the Organisation.

Staff Meetings and Supervision

In order to ensure that staff contribute positively and constructively to the standard of care offered by Your Organisation, We require that:-

124. You have clear and easily accessible mechanisms of support, which staff are aware of.
125. You debrief staff after emergencies or unusual situations.
126. All staff have an annual appraisal of their overall standard of performance and identification of training and development needs.
127. A record is kept of all disciplinary incidents and details entered in the personal file of the IMCA/RPR concerned.

128. Please also refer to the Service Inputs section of this document for requirements for formal supervision of your staff.

129. Please also see Service Inputs section regarding staff supervision requirement.

Safeguarding

130. KCC is fully committed to maintaining safeguarding standards as set out in the Kent and Medway Safeguarding Children's Procedures 2007 and the Multi Agency Adult Protection Policy, Protocols and Guidance for Kent and Medway (Amended Jan 2012). This document states that 'It is every adult's right to live free from abuse in accordance with the principles of respect, dignity, autonomy, privacy and equity.'

131. The definition of abuse is "a violation of an individual's human and civil rights by any other person or persons", and can consist of physical abuse, sexual abuse, psychological / emotional abuse, neglect, financial or material abuse and discrimination.

132. In order to ensure that Service Users are protected from abuse We require that:

- all your Staff are familiar with, and follow, the Kent and Medway Safeguarding Children's Procedures 2007 and the Multi Agency Adult Protection Policy, Protocols and Guidance for Kent and Medway (Amended Jan 2012) and your own policy and procedure on Adult Protection/Safeguarding;
- Your Safeguarding Policy Must include safeguarding vulnerable adults and children from any form of abuse or exploitation which includes physical, financial, psychological or sexual abuse, neglect, discriminatory, self-harm, inhuman or degrading treatment through deliberate intent, negligence or ignorance;
- You are required to have robust procedures in place for responding to suspicion or evidence of abuse or neglect to ensure the safety and protection of the Service User. The procedures Must reflect local multi-agency policies and procedures, including informing the Care Quality Commission and where appropriate involving the Police. This is in accordance with the Public Interest Disclosure Act 1998 and the Department of Health guidance "No Secrets" and the Independent Safeguarding Authority;
- Your Safeguarding Policy Must ensure that all allegations and incidents of abuse are followed up in a prompt specified timeframe. All details and actions taken are recorded in a special record / file kept specifically for the purpose, and on the personal file of the Service User;
- In addition to a Safeguarding Policy You Must also have a Public Interest Disclosure Act 1998 (Whistleblowing) policy which Will include procedures under which Staff can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way.

These can include situations when Staff believe that:

- a criminal offence has been committed
- someone has failed to comply with a legal obligation
- a miscarriage of justice has occurred
- the health and safety of an individual is being endangered; and there are or may be financial irregularities

- You Must have policies and procedures in place for Staff regarding the Service User's Will and bequests. The policies and procedures Must prevent the involvement of any Staff or members of their family in the making of, or benefiting from, the Service Users Will, soliciting any other form of bequest or legacy, acting as a witness or executor, and being involved in any way with any other legal arrangement;
- training on the prevention of abuse Must be given to all your Staff within three months of employment and Must be updated annually.

Security

In order to ensure that information regarding the Service User is secure, and is not compromised by any action undertaken by an IMCA/RPR from Your Organisation, We require that:-

133. You make staff aware of the risk of unintended breaches of confidentiality and make sure staff are able to identify situations in which it may occur. The principles of confidentiality are observed in discussion with colleagues and the line manager, particularly when undertaking training or group supervision sessions.
134. You make sure that staff do not carry with them more confidential information than they need for a day's work programme. When carrying information in car ensure that it is held in a lockable case
135. IMCA/RPR respect information given by the Service User or their representative in confidence and handle information about the Service User, in accordance with the Data Protection Act 1998 and Your written policies and procedures, and in the best interests of the Service User.
136. Suitable provision is made for the safe and confidential storage of the Service User's records and information, including the provision of lockable filing cabinets and the shielding of computer screens from general view when displaying personal data.
137. You make sure that staff who leave or change duties return all written information about their work.
138. Identity cards are provided for all IMCA/RPRs. The cards should display:
 - a photograph of the member of staff,
 - the name of the person and employing Organisation in large print,
 - the contact number of the Organisation, and
 - date of issue and expiry date, which Should not exceed 36 months from the date of issue.
139. The cards should be:
 - laminated or otherwise tamper proof,
 - renewed and replaced within at least 36 months from the date of issue, and
 - returned to You when employment ceases.

Quality Assurance

140. You shall have in place a quality management system to ensure internal control of quality and consistency of practice.
141. You will be expected to undertake regular reviews or audits of this service and link the results to your development plans.

142. You shall be committed to a process of continuous Service improvement.

Complaints

You Must have an easily understood, well-publicised and accessible procedure to enable an individual to make a complaint and for complaints to be investigated.

143. The Procedure Must include:

- Stages and Timescales for the process;
- Acknowledgement of all complaints and an explanation of what action is to be taken;
- Regular update of what is happening regarding the complaint;
- A written record of all complaints and compliments including details of any investigation and action taken.

Recruitment and Selection

144. You Must have a robust recruitment and selection procedures for staff that complies with the requirements of legislation.

145. Your staff will only be engaged in providing services following satisfactory completion of the following checks:

- verification of address, identity and where appropriate work permit
- two written references (when relevant one should be from the immediate past employer and should be followed by a telephone call to the referee prior to confirmation of employment.)
- driving licence where appropriate
- enhanced Criminal Records Bureau check, and
- certificates of qualifications and training for any prospective staff.

Statutes, Guides and other Useful Documents

146. Providers Should ensure that they have up to date working knowledge of all legislation pertaining to the delivery of the Service. Any links provided below were correct when this document was drafted.

Statutes

Statutes and Statutory instruments can be downloaded free of charge at www.legislation.hmso.gov.uk

Kent Care Services On-Line Directory

<http://www.kent.gov.uk/KCC.CareServices.Web.Sites.Public/>

Other Documents

- <http://www.kent.gov.uk/mentalcapacityact>
- Department of Health: The Fourth Year of the Independent Mental Capacity

Advocacy (IMCA) Service 2010/11

<http://www.dh.gov.uk>

- SCIE Guide 31: Good practice guidance for the commissioning and monitoring for the Independent Mental Capacity Advocacy services
<http://www.scie.org.uk>
- SCIE Guide 32: Practice Guidance on the involvement of Independent Mental Capacity Advocates (IMCAs) in safeguarding adults
<http://www.scie.org.uk>
- SCIE Guide 39: Independent Mental Capacity Advocate involvement in accommodation and care reviews
<http://www.scie.org.uk>
- SCIE Guide 41: IMCA and paid relevant person's representative roles in the Mental Capacity Act Deprivation of Liberty Safeguards
<http://www.scie.org.uk>
- SCIE Guide 42: Good practice guidance on accessing the Court of Protection
- Action for Advocacy: IMCA instruction best practice guidance
<http://www.actionforadvocacy.org.uk>
- Action for Advocacy: IMCA report writing best practice guidance
<http://www.actionforadvocacy.org.uk>
- Action for Advocacy: The involvement of Independent Mental Capacity Advocates (IMCAs) in serious medical treatment decisions: best practice guidance for healthcare professionals and IMCAs
<http://www.actionforadvocacy.org.uk>
- Action for Advocacy: Serious medical treatment decisions best practice guidance for IMCAs: cardiopulmonary resuscitation and decisions about DNAR
<http://www.actionforadvocacy.org.uk>
- Multi-Agency Adult Protection Policy, Procedures and Protocols for Kent and Medway
- <https://shareweb.kent.gov.uk/Documents/adult-Social-Services/adult-protection/revised-kent-medway-multi-agency-adult-protection-policy-protocols-and-guidance.pdf>
- http://www.kent.gov.uk/adult_social_services/social_services_professionals/advice_and_information/adult_protection/policies_and_acts/amendments.aspx
- Department of Health Policy & Guidance and Supplementary Practice Guidance for Adult Placement Schemes 2002
- Kent County Council's Good Care Guides

¹ <http://www.dignityincare.org.uk/Topics/championresources/?parent=6654&child=6664>

questions should be forwarded to:

Kent County Council
Families and Social Care Directorate
Brenchley House BH3
123-135 Week Street
Maidstone
Kent ME14 1RF
Telephone: (01622) ??????????
E-mail: sshqcontracts@kent.gov.uk

APPENDIX 2 - TUPE and Pension Provision

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT REGULATIONS 2006 ("TUPE") AND PENSION MATTERS

TUPE

TUPE ACKNOWLEDGEMENT

For the purposes of this Appendix-

"Agency Workers" means those workers who have completed the qualifying period under Regulation 3 of the Agency Workers Regulations 2010.

"Contract Period" has the meaning given in Clause 1 to this Contract.

"Costs and Losses" means all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the breach of the contractual clause in question.

"The Council" means the Kent County Council.

"Future Transfer" means any subsequent transfer of or re-provision of any service substantially similar to any of the Services or any part thereof by or on behalf of the Council on or following the assignment, expiry or termination of this Contract.

"Future Transfer Date" means the date on which any Future Transfer takes effect.

"Outgoing Contractor" means the outgoing provider(s) of the Services,

"Party" means a party to the Contract.

"Relevant Employees" means Staff who would be liable to transfer under TUPE irrespective of whether they actually transfer (and for the avoidance of doubt shall include Transferring Employees);

"Relevant Transfer" means a relevant transfer for the purposes of TUPE;

"Replacement Contractor" means any third party service provider appointed by or on behalf of the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

"Staff" means all persons employed by the Outgoing Contractor or as the case may be by the Council, by the Council, or by the Contractor to perform its obligations under this Contract together with the Outgoing Contractor's or as the case may be the Contractor's servants, agents, Agency Workers, suppliers and sub-contractors used in the performance of its obligations under the Contract.

"Sub-Contractor" means any legal entity which is not party to this Contract with whom the Contractor contracts to carry out any of the Services which are its contractual responsibility under this Contract.

"The Services" means the services to be supplied as required by the terms and conditions of this Contract.

"The Transfer Date" means the first day of the Contract Period

"Transferring Employees" means any Staff who are the subject of a Relevant Transfer;

"Transferring Original Employees" means those Staff whose contract of employment was originally with the Council but, by virtue of the application of the TUPE regulations (whether by one or more transfer there under), became employed under a contract of employment with the Outgoing Contractor.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) which implement the Acquired Rights Directive;

TUPE ACKNOWLEDGEMENT, AGREEMENT ON TRANSFER AND CONDUCT PRIOR TO TERMINATION OF THE CONTRACT

Transfer of employees from the Outgoing Contractors to the Contractor on the Transfer Date

1.1 OPERATION OF THE REGULATIONS

The Council hereby makes the Contractor aware that in connection with this Contract and in connection with the provision of the Specification under this Contract that there may be a Relevant Transfer of Transferring Employees employed or contracted by the Outgoing Contractors or their subcontractors from the Outgoing Contractor or their subcontractors to the Contractor. The Council is unable to offer the Contractor any warranties or indemnities in respect of these Transferring Employees or their status.

1.2 APPORTIONMENTS

1.2.1 The Outgoing Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees employed by the Outgoing Contractor (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to the Transfer Date. However the Council offers the Contractor no indemnities against the Outgoing Contractors failure to make those payments.

1.2.2 The Contractor or any Sub-Contractor appointed by the Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period on and after the Transfer Date, and will indemnify the Council and the Outgoing Contractor as the case may be in respect of the same.

1.3 INFORMATION AND CONSULTATION

1.3.1 The Contractor shall comply (and shall procure that any Sub-Contractor complies) with its obligations under Regulation 13 of the Regulations during the period prior to the Transfer Date.

1.3.2 The Contractor shall indemnify the Council or the Outgoing Contractor as the case may be against all Costs and Losses incurred as a result of:

1.3.2.1 any failure by the Contractor or any Sub-Contractor appointed by the Contractor to comply with its obligations under Regulation 13 of the Regulations, or any award of compensation under Regulations 12 or 15 of the Regulations arising from that failure;

1.3.2.2 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the Transferring Employees arising from or connected with any failure by the Contractor or any Sub-Contractor appointed by the Contractor to comply with any legal obligation to such trade union, body or person.

1.4 INDEMNITIES

1.4.1 The Contractor shall in respect of the Transferring Employees indemnify the Council and the Outgoing Contractor as the case may be against all Costs and Losses incurred by any party in connection with or as a result of:

1.4.2 any claim or demand by any Relevant Employee employed by the Outgoing Contractor prior to the Transfer Date (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, claims that he or she has been unlawfully discriminated against by reason of sex, marital or civil partnership status, gender reassignment, race, disability, age, sexual orientation, religion or belief (whether in breach of the provisions of the Treaty of Rome, the Equal Pay Directive, the Equal Treatment Directive, the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Age) Regulations 2006, the

Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 or otherwise) and/or the Equality Act 2010 in each case arising directly or indirectly from any act, fault or omission of the Outgoing Contractor, the Contractor or any Sub-Contractor appointed by the Contractor in respect of any Relevant Employee before, on or after the Transfer Date;

1.4.3 any failure by the Contractor or any Sub-Contractor appointed by the Contractor to comply with its obligations under Regulation 13 of the Regulations; and/or

1.4.3.1 any claim or demand by any Relevant Employee employed by the Outgoing Contractor, the Contractor or any Sub-Contractor appointed by the Contractor arising out of any change or proposed change in the terms and conditions of employment or working conditions before, on or after the transfer to the Contractor or any Sub-Contractor appointed by the Contractor; and/or

1.4.3.2 any claim or demand by any Transferring Employee relating to the Contractor's or any Sub-Contractor appointed by the Contractor's failure to comply with Clause 5 of this Appendix or with the principles set out in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector, The Best Value Authorities (Pensions) Direction 2007, the Pensions Acts 2004, 2008 and 2011 and any other statutory provision, guidance or regulation relating to workforce matters in local authority/ public sector service contracts or related matter whether in existence or to be enacted

1.4.4 Where applicable the Contractor confirms and agrees that at all times during the term of this Contract it shall have regard to and shall ensure that any Sub-Contractor appointed by the Contractor shall have regard to the principles set out in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and will comply with and shall ensure that any Sub-Contractor shall comply with Clause 5 of this Appendix, The Best Value Authorities (Pensions) Direction 2007 and any other statutory provision or regulation relating to workforce matters in local authority/ public sector service contracts or related matter whether in existence or to be enacted and will fully indemnify the Council and any Replacement Contractor from all Costs and Losses arising from its failure to do so.

1.4.5 Without prejudice to the foregoing, the Contractor shall comply at all times with its obligations under the Regulations and/or the Directive, and shall indemnify and hold harmless the Council and the Outgoing Contractor from and against all Costs and Losses, arising in connection with or as a result of any breach of such obligations.

General

1.5 The Council and the Contractor acknowledge that this Contract makes no further provision in connection with the Relevant Transfer as described in Clause 1.1 of this Appendix and that Clause 2 of this Appendix are included in order to deal with any Future Transfers occurring in connection with this Contract.

APPLICATION OF TUPE UPON EXPIRY OR TERMINATION OF THIS CONTRACT

2.1 The Council and the Contractor acknowledge and confirm that in the event of assignment, expiry or termination of this Contract and in the event of any Future Transfer by the Council, TUPE may apply but that the position shall be determined in accordance with the law at the relevant date as the case may be and this Clause 2 of this Appendix is without prejudice to such determination. The Parties hereby confirm that they will comply with their TUPE obligations arising pursuant to a Future Transfer.

2.2 The Parties shall (or, if applicable, the Council shall use its reasonable endeavours to procure that the Replacement Contractor shall) comply with their respective obligations under TUPE and any other applicable legislation or agreement with regard to the information to be given to and consultation with the Relevant Employees or any trade union or other representatives on their behalf. The Contractor will provide and shall procure that any Sub-Contractor appointed by the Contractor shall:

2.2.1 provide to the Council, or the Replacement Contractor (as applicable) the employee liability information required pursuant to Regulation 11 of TUPE in accordance with the timescale specified therein, and shall warrant at the time of providing such employee liability information that such information will be updated to take account of any changes to such information as is required by TUPE; and

2.2.2 indemnify and keep indemnified in full the Council and at the Council's request any Replacement

Contractor against all Costs and Losses arising from any claim by any party as a result of the Contractor or any Sub-Contractor appointed by the Contractor failing to provide or promptly to provide the Council or any Replacement Contractor where requested by the Council with any employee liability information or as a result of any material inaccuracy in or omission from the employee liability information.

2.2.3 comply and shall procure that any Sub-Contractor appointed by the Contractor shall comply with its obligations (including without limitation under regulation 13(4) of TUPE) in respect of each Future Transfer occurring pursuant to this Contract whether upon assignment, expiry or termination.

2.3 Immediately on the expiry, termination or assignment of this Contract, the Contractor shall fully indemnify the Council and where applicable any Replacement Contractor (and if requested by the Council enter into a deed of indemnity with the Council or any Replacement Contractor whereby the Contractor agrees to pay and to indemnify the Council or the Replacement Contractor (as applicable)) against all Costs and Losses arising out of-

2.3.1 any claim or demand by any Relevant Employee arising from and relating to his employment with the Contractor or any Sub-Contractor appointed by the Contractor prior to the Future Transfer Date and due to, arising from or relating to an act, fault or omission of the Contractor and/or the Sub-Contractor in relation to any Relevant Employee prior to the Future Transfer Date;

2.3.2 any claim or demand arising out of or in connection with employment with the Contractor or any Sub-Contractor appointed by the Contractor, or the termination thereof, by any past, present or future employee of the Contractor or one of the Contractor's Sub-Contractors, who is not a Relevant Employee;

2.3.3 any claim by or on behalf of any Relevant Employee pursuant to Regulation 4(9) of TUPE on the grounds that the identity of the Council or the Replacement Contractor as his employer is both a substantial change and to his material detriment;

2.3.4 subject to Clause 2.4.2 of this Appendix below, any claim arising out of any failure by the Contractor or any Sub-Contractor appointed by the Contractor to comply with TUPE regulations 11 or 13 prior to the Future Transfer Date;

2.3.5 any claim or demand by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or or any Sub-Contractor appointed by the Contractor in respect of any Relevant Employees) arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, staff association or employee representative;

2.3.6 the matters referred to in Clause 2.5 of this Appendix below;

PROVIDED that this indemnity shall not apply to any claim arising as a result of any act, fault or omission of the Contractor which arises or is occasioned directly or indirectly from any act, fault or omission of the Council or the Replacement Contractor.

2.4 On termination or assignment of this Contract, the Council shall fully indemnify the Contractor (and if requested by the Contractor enter into a deed of indemnity with the Council (or, if applicable the Council shall use its reasonable endeavours to procure that the Replacement Contractor shall enter into such a deed with the Contractor) whereby the Council or the Replacement Contractor (as the case may be) agree to pay and to indemnify the Contractor (as applicable)) against all Costs and Losses arising out of-

2.4.1 any claim by any Relevant Employee arising from and relating to his employment or the termination of his employment with the Council or the Replacement Contractor (as applicable) on or after the Future Transfer Date and arising from an act, fault or omission of the Council or the Replacement Contractor (as applicable) in relation to any Relevant Employee whether before, on or after the Future Transfer Date; and

2.4.2 any claim arising from a failure by the Council or the Replacement Contractor (as applicable) to supply the Contractor with information in respect of "measures" under TUPE regulation 13(4);

2.4.3 any claim arising from a failure by the Council or the Replacement Contractor (as applicable) to comply with its obligations to consult the Relevant Employees or their representatives pursuant to regulation 13 of TUPE prior to the termination or assignment of this Contract;

PROVIDED that this indemnity shall not apply to any claim arising as a result of any act, fault or omission of the Council or the Replacement Contractor which arises or is occasioned directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor appointed by the Contractor.

2.5 If, by operation of law, the contract of employment of any individual who is not a Transferring Employee takes effect or is alleged to take effect as if originally made with the Council or the Replacement Contractor (as applicable) as a consequence of the termination or assignment of this Contract, the Contractor agrees that:

2.5.1 in consultation with the Council or the Replacement Contractor (as applicable), it will, within 7 days of being so requested by the Council or the Replacement Contractor (as applicable) (as long as the request is made no later than 14 days after the Council or the Replacement Contractor (as applicable) becomes aware of such transfer of employment), make to that individual an offer in writing to employ him under a new contract of employment or to continue employing him under the terms of his existing employment contract to take effect upon the termination referred to below; and

2.5.2 the offer to be made will be such that none of the terms and conditions of the new contract save insofar that they relate to any occupational pension scheme will differ from the corresponding provision of that person's contract of employment immediately prior to the Future Transfer Date; and

2.5.3 the Council or the Replacement Contractor (as applicable) shall be entitled to terminate the employment of the individual and the Contractor shall indemnify and keep indemnified the Council or the Replacement Contractor (as applicable) against all Costs and Losses arising from or in connection with the employment of such an individual until such termination and the termination of the employment itself.

2.6 All salaries and other emoluments and the cost of all benefits, including (but not limited to) accrued holiday pay, tax and national insurance payments, bonus and commission arrangements relating to the Transferring Employees shall be borne by the Contractor or any Sub-Contractor appointed by the Contractor (as applicable) up to the Future Transfer Date and by the Council or the Replacement Contractor (as applicable) on and after the Future Transfer Date and all necessary apportionments shall be made to give effect to this Clause 2.6 of this Appendix.

2.7 The Contractor shall fully indemnify the Council and the Replacement Contractor against all Costs and Losses arising from its or its Sub-Contractors failure to comply with Clause 2.6 of this Appendix and the Council shall fully indemnify the Contractor and any Sub-Contractor appointed by the Contractor against all Costs and Losses arising from its or the Replacement Contractor's failure to comply with Clause 2.6 of this Appendix.

2.8 During the 12 months preceding the expiry of this Contract after the Council (as the case may be) has given notice to terminate this Contract or at any other time as directed by the Council and within 15 working days of being so requested by the Council, the Contractor shall and shall ensure that any Sub-Contractor appointed by the Contractor shall fully and accurately disclose to the Council any and all information in relation to all employees and workers whether employed by the Contractor or by any Sub-Contractor appointed by the Contractor engaged in providing the Services as set out in Clause 3 of this Appendix and a list of all Relevant Employees who are liable to transfer as a consequence of a Future Transfer as in the form set out in Clause 4 of this Appendix as the Council may request.

2.9 The Contractor shall warrant the accuracy of all the information provided to the Council, pursuant to this Clause 2.8 of this Appendix and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the specification (or any part thereof) for this Contract.

2.10 The Contractor shall notify the Council as soon as reasonably practicable in writing of any material changes to the information supplied in accordance with Clause 2.9 of this Appendix as soon as reasonably practicable as and when such changes arise;

2.11 The Contractor agrees that it shall not and shall ensure that any Sub-Contractor appointed by the Contractor shall not with reference to any Relevant Employees in the period six months prior to the expiry of the Contract other than with the Council's prior consent and in accordance with prevailing market conditions:

2.11.1 other than in circumstances where an individual resigns voluntarily or where an individual's employment is terminated pursuant to policies and procedures of the Contractor or the Sub-Contractor

appointed by the Contractor (in which cases the said individual may be replaced) make any material increase or decrease in the numbers of Relevant Employees;

2.11.2 make any material increase in the remuneration or other material change in the terms and conditions of the Relevant Employees other than in the ordinary course of business and with the Council's prior written consent; and

2.11.3 transfer any of the Relevant Employees to another part of its business or move other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Council's prior written consent.

2.12 The Contractor shall indemnify and shall keep indemnified in full the Council and any Replacement Contractor against all Costs and Losses arising from any claim by any party as a result of the Contractor's or any Sub-Contractor appointed by the Contractor's failure to comply with the Contractor's obligations under Clauses 2.8, 2.9, 2.10 and 2.11 of this Appendix above save that this indemnity shall not apply in respect of any failure to the extent that such information was originally provided to the Contractor by the Council and was materially inaccurate or incomplete when originally provided.

3. EMPLOYEE INFORMATION

Individual terms and conditions

3.1 Copies of all current employment contracts, and all other terms and conditions of employment.

3.2 A schedule comprising in respect of each Relevant Employee, the following particulars:-

- (a) full name of the employee and his/her current employer;
- (b) post/job title;
- (c) hours of work (indicating whether the employment is considered to be full or part time);
- (d) sex;
- (e) date of birth;
- (f) date of commencement of employment (and if different, date of commencement of period of continuous employment);
- (g) place of work;
- (h) holiday entitlement;
- (i) notice period (or, if relevant, duration of fixed-term);
- (j) normal retirement age;
- (k) remuneration (including rate and intervals at which paid);
- (l) pension details;
- (m) sick pay entitlements

3.3 Details of any changes of terms and conditions in relation to any employee within the last 12 months.

3.4 Copies of any employee handbooks, rules and other policies, procedures, arrangements or agreements in relation to:-

- (a) redundancy procedures and payments;
- (b) redeployment procedures;
- (c) sickness absence and sick pay entitlements;
- (d) equal opportunities;
- (e) disciplinary matters;
- (f) maternity and other parental rights;

and details of whether or not each of the above are discretionary or contractual.

3.5 Copies of any job descriptions.

3.6 Details of any practices or customs which although not written down form part of employees' terms and conditions of employment.

Collective bargaining

3.7 Details of the names of all trade union and other employee representatives, with the name of the trade union, the position held and how long the position was held.

3.8 Details of any trade union recognised by the Contractor and/or any other employer of a Relevant Employee giving the date and details of the recognition agreement (and a copy if available), with brief details of current and historic labour relations and any pending negotiations.

3.9 Details of any other agreement, whether local or national, with any trade union or other body of employee representatives (and copies if available) including any informal recognition and procedure arrangements and other arrangements honoured by "custom and practice".

Disputes

- 3.10 Details of any dispute or potential dispute with any employee or former employee within the last 2 years whether brought under the disciplinary, dismissal or grievance procedure of the Contractor or any other employer of a Relevant Employee or otherwise and any matters which might give rise to such.
- 3.11 Details of any litigation threatened or pending within the last 2 years against the Contractor or any other employer of a Relevant Employee, including any court, employment tribunal or arbitration claims or any matters which might give rise to such.
- 3.12 Details of any enquiry, correspondence or contact within the last 2 years between the Contractor or any other employer of a Relevant Employee and the Equality and Human Rights Commission, the Commission for Racial Equality, the Equal Opportunities Commission, the Health and Safety Inspector, the Inland Revenue or any similar body concerning employees.
- 3.13 Details of any court judgment or employment tribunal award within the last 2 years in respect of any employee dispute (including confirmation of whether satisfied).
- 3.14 Details, and, if available, copies, of any warnings given to employees under the disciplinary or capability procedure or similar procedures of the Contractor or any other employer of a Relevant Employee within the last 2 years.

Dismissals

- 3.15 Details of all dismissals/resignations within the last 12 months including reasons for the dismissal/resignation.
- 3.16 Details of all employees recruited within the last 12 months.
Working Time Regulations 1998
- 3.17 Copies of any individual, collective and workforce agreements entered into pursuant to the Working Time Regulations.

Health and Safety

- 3.18 Details of any health and safety committees/representatives.
- 3.19 Details of any health and safety complaints or recommendations or claims within the last 5 years.

Trainees/Consultants

- 3.20 Details of all individuals involved in the provision of the Contract working on training, work experience or similar schemes.
- 3.21 Details of all consultancy agreements or self-employed personnel who are or may actually be employees.

Absent employees

- 3.22 Details of all employees who have notified the Contractor or any other employer of a Relevant Employee that they are pregnant or who are currently absent on maternity leave together with confirmation of their expected week of confinement and any confirmed dates for the start or end of maternity leave.
- 3.23 Details of all employees on long term sick leave together with confirmation of the nature of their illness and the duration and dates of their absence(s).
- 3.24 Details of all employees absent on other leave together with confirmation of the nature of such leave and dates of their absence(s).

Job Evaluation Scheme

- 3.25 A copy of any job evaluation scheme.

Sub-Contractor Employees

- 3.26.1 All details under Clause 3 of any individuals employed by Sub-Contractors.

Pension

- 3.27 A list of all pension schemes (both occupational and personal) applicable to the employees.
- 3.28 Details of any current or pending applications for early retirement.

3.29 Agency Workers

- 3.29.1 Details of all Agency Workers engaged by the Contractor or any Sub-Contractor in connection with the Services within the 12 calendar months prior to the proposed Transfer Date. ; including (i). The total number of agency workers engaged;

- (ii). The areas of business in which they are engaged; and
- (iii). The types of work that they are contracted to undertake.

3.29.2 Details of the current employment status of those Agency Workers

3.29.3 Details of those Agency Workers to whom Regulation 5 of the Agency Worker Regulations 2010 will be applicable on the Transfer Date

TRANSFERRING EMPLOYEES

4. The Contractor represents that in its opinion that by virtue of the Regulations and/or the Directive the following employees will transfer to the Employment of the Council, the Council, the School or the Replacement Contractor in the event of a Future Transfer:

(Insert name of Employee and name of the current employer if not the Contractor)

PENSIONS

5. For the purposes of Clause 5 of this Appendix the following definitions have the following meanings:

“Administration Regulations”

means the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239), including any regulation, statute, or other legislation amending, superseding or re-enacting them, from time to time;

“Admission Body”

means a transferee admission body for the purposes of regulation 6 of the Administration Regulations;

“Cessation Date”

any date on which the Contractor or the Sub-Contractor ceases to be an Admission Body as defined in Clause 5.1 or this Appendix (Contractor to become an Admission Body) other than as a result of the termination of this contract or because it ceases to employ any Eligible Employees;

“Compensation Regulations”

means the Local Government (Discretionary Payments) Regulations 1996 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, as amended from time to time;

“Contractor Admission Agreement”

an admission agreement or agreements entered into in accordance with regulation 6 of the Administration Regulations by the Council and the Contractor or a Sub-Contractor (as appropriate);

“Council”

means Kent County Council, as administering authority for the purposes of Schedule 1 of the Administration Regulations of the Kent County Council Pension Fund;

“Eligible Employees”

Employees transferring into the employment of the Contractor or a Sub Contractor from the Outgoing Contractor as the case may be who are active members of or eligible to join the LGPS on a Relevant Transfer Date;

“Relevant Transfer Date”

the date on which an Eligible Employee transfers to the Contractor and/or one or more Sub-Contractor by virtue of this Agreement whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;

Contractor to Become an Admission Body

5.1 The Contractor shall offer Eligible Employees (or ensure that they are offered by any Sub-Contractor) and Eligible Employees shall have the right from a Relevant Transfer Date to either:

5.1.1 Membership of the LGPS, and the Contractor shall procure that it and/or each Sub-Contractor shall become an Admission Body. The Contractor shall before the Relevant Transfer Date execute and procure that each Sub-Contractor executes a Contractor Admission Agreement which will have effect from and including the Relevant Transfer Date; or

5.1.2 Rights to acquire pension benefits that count as being the same or broadly comparable to or better than those that the Eligible Employee had before the Relevant Transfer Date.

5.1.3 The Parties expressly agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Clause 5 of this Appendix to the extent necessary to ensure that an Eligible Employee shall have the right to enforce this Clause 5.1 under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

Contractor Admission Agreement/ LGPS Funding Deficit

5.2.1 The Contractor shall before each Relevant Transfer Date execute a Contractor Admission Agreement (and where applicable a second or subsequent Contractor Admissions Agreement) referred to in Clause 5.1.1 of this Appendix (Contractor to Become an Admission Body) and will reasonably procure that the Council executes each such Contractor Admission Agreement before the Relevant Transfer Date.

5.2.2 The Contractor shall be responsible for the LGPS funding deficit in respect of any Eligible Employees.

Indemnity for a Breach of the Contractor Admission Agreement

5.3 Without prejudice to the generality of this Clause 5 (Pensions), the Contractor hereby indemnifies the Council or any Replacement Contractor from and against all Costs and Losses suffered or incurred by it or them which arise from any breach by the Contractor or any Sub-Contractor of the terms of any Contractor Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this contract (howsoever caused).

Indemnity or Bond

5.4 Without prejudice to the generality of the requirements of this Clause 5 (Pensions), the Contractor shall procure that it and each Sub-Contractor shall as soon as reasonably practical obtain an indemnity or bond required in accordance with any Contractor Admission Agreements.

Right of Set Off

5.5 The Council shall have a right to set off against any payments due to the Contractor under this contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor or from any Sub-Contractor (as applicable) under any Contractor Admission Agreement.

Undertaking from the Contractor

5.6 The Contractor undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

5.6.1 all information which the Council or its professional advisers may reasonably request from the Contractor or any Sub-Contractor for the administration of the LGPS or concerning any other matters raised in connection with this Clause shall be supplied to them as expeditiously as possible;

5.6.2 it shall not and shall procure that any Sub-Contractor shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Contractor or the Sub-Contractor of such reasonable costs as the Council may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given; and

5.6.3 until the Relevant Transfer Date, it shall not and shall procure that any Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters

stated in Clause 5.1 of this Appendix (Contractor to Become an Admission Body) to and including Clause 5.5 of this Appendix (Right of Set Off) inclusive without the consent in writing of the Council (not to be unreasonably withheld or delayed) and the Council;

5.6.4 it shall not and shall procure that any Sub-Contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) and the Council provided that the Contractor and/or Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

Discretionary Benefits

5.7 Where the Contractor or a Sub-Contractor is an Admission Body, the Contractor shall and/or shall procure that any Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council, the Council, the School or the Outgoing Contractor (as the case may be); and

5.8 Where the award of benefits in Clause 5.7 of this Appendix (Discretionary Benefits) is not permitted under the Compensation Regulations and/or the LGPS or the Contractor and/or a Sub-Contractor is not an Admission Body, the Contractor shall and/or shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council or the Outgoing Contractor (as the case may be);.

5.9 Under Clause 5.7 and 5.8 of this Appendix (Discretionary Benefits), where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council, or the Outgoing Contractor's (as the case may be) written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and/or shall procure that any Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

Claims from Eligible Employees or Trade Unions

5.10 The Contractor hereby indemnifies the Council and/or any Replacement Contractor from and against all Costs and Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Contractor and/or of the Council or any Replacement Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

5.10.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this contract; or

5.10.2 arise out of the failure of the Contractor and/or Sub-Contractor to comply with the provisions of this Clause 5 (Pensions) before the date of termination or expiry of this contract and the Council and the Contractor agree that this Clause 5 (Pensions) of this Appendix shall be enforceable by either an Eligible Employees or their Trade Unions).

Liability for Costs

5.11 The costs of the Council necessarily and reasonably incurred in connection with the Contractor Admission Agreement shall be borne by the Contractor.

Transfer to another employer

5.12 Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall and shall procure that any Sub-Contractor shall:

5.12.1 consult with and inform those Eligible Employees of the pension provisions relating to that

transfer; and

5.12.2 procure that the employer to which the Eligible Employees are transferred (the New Employer) complies with the provisions of this Clause 5 (Pensions) provided that references to the "Sub-Contractor" will become references to the New Employer, references to Relevant Transfer Date will become references to the date of the transfer to the New Employer and references to Eligible Employees will become references to the Eligible Employees so transferred to the New Employer

Pension Issues on Expiry or Termination

5.13 The Contractor shall and shall procure that any Sub-Contractor shall:

5.13.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees) ;

5.13.2 promptly provide to the Council such documents and information mentioned in Clause 5.6.1 which the Council may reasonably request in advance of the expiry or termination of this contract; and

5.13.3 fully co-operate with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this contract.

S38 and S39 of the Administration Regulations

5.14 The Contractor and, if relevant, any Sub-Contractor, will be entirely responsible for any liability which the Contractor or the Sub-Contractor may have to pay as contributions or any other sum of money to the LGPS, calculated under regulation 38(2) of the Administration Regulations, which is payable under regulation 39(1) of the said regulations, as a result of the termination or expiry of any Contractor Admission Agreement or the termination of this contract and the Contractor will indemnify the Council or the Replacement Contractor (as the case may be) in respect of the same.

5.15 For the avoidance of doubt, the indemnity provided in Clause 5.14 of this Appendix includes any amounts payable as a result of the non-payment of contributions properly payable by the Contractor and, if relevant, any Sub-Contractor, during its or their period of admission in the LGPS in accordance with any Contractor Admission Agreement and prior to the termination of any Contractor Admission Agreement.

Sub-Contractors

5.16 In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on any Relevant Contractor in the same terms as those imposed on it pursuant to this Appendix and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Council indemnified in full against all Costs and Losses incurred by the Council or the Replacement Contractor as a result of or in connection with any failure on the part of the Contractor to comply with this Clause 5.16 and/or the Sub-Contractor's failure to comply with such terms.