

**TERMS AND CONDITIONS OF CONTRACT FOR SERVICES TO BE  
PURCHASED BY THE VALE OF GLAMORGAN COUNCIL**

THIS AGREEMENT is made on the ..... day of ..... 20.. BETWEEN:

(1) The Council

and

(2) The Provider

**1. Definitions**

In these conditions (hereinafter called "the Conditions") unless the context otherwise requires:

1.1 "the Council" means the Vale of Glamorgan Council of Civic Offices, Holton Road, Barry, CF63 4RU

"the Contract" means the Contract arising from the acceptance by the Provider of these Conditions, or the acceptance by the Council of a Tender in whole or in part (a copy of which Tender (if any) is attached hereto) and which Contract incorporates the Conditions

"the Contract Term" means the term commencing on [ ] and expiring on [ ] (subject to the provisions for early termination contained in these Conditions)

"FOIA" means the Freedom of Information Act 2000

"Nominated Representatives" means the persons appointed by the Council and by the Provider in accordance with Condition 7

"the Provider" means the person, firm or company whose name appears in Schedule 1

"Price" means the price stated in paragraph 2 of Schedule 1

"Services" means the Services provided under this Contract and as set out in the Specification

"Service User" means a person or persons nominated by the Council in writing from time to time to receive the Services

"Specification" means the description of the Services set out in Schedule 2

"Tender" means the document or documents wherein the Provider offers to supply the Services to the Council

**2. Interpretation**

In this Contract unless the context otherwise requires:

- 2.1 words importing any gender include every gender;
- 2.2 words importing the singular number include the plural number and vice versa;
- 2.3 words importing persons include firms companies and corporations and vice versa;
- 2.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Contract;
- 2.5 reference in any schedule to this Contract to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 2.6 where any obligation is undertaken by two or more persons jointly they are to be jointly and severally liable in respect of that obligation;
- 2.7 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 2.8 any party who agrees to do something shall be deemed to fulfil that obligation if that party procures that it is done;
- 2.9 the headings to the clauses, schedules and paragraphs of this Contract shall not affect the interpretation;
- 2.10 any sum payable by one party to the other shall be exclusive of VAT which shall where it is chargeable be paid in addition to the sum in question at the time when the sum in question is due to be paid;
- 2.11 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.

### **3. Conditions of Supply**

- 3.1 The Conditions shall apply to all contracts for the supply of Services by the Provider to the Council to the exclusion of all other terms and conditions including any terms or conditions which the Provider may purport to apply under any supply offer or similar document or in correspondence. These Conditions constitute the entire understanding between the Council and the Provider with respect to the subject matter covered by the Contract and supersede all previous contracts and understandings between the parties save that all representations, statements or warranties made or given by the Provider, its servants and agents (whether orally in writing or in any of the Provider's brochures, catalogues and advertisements) regarding the Services shall be deemed to be express conditions of the Contract.
- 3.2 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Council.

### **4. Services**

The Provider shall provide the Services in accordance with these Conditions.

## **5. Duration**

This Contract shall continue for the Contract Term subject to the provisions for early termination contained in these Conditions.

## **6. Payments**

6.1 The Council shall pay the Price to the Provider at the times and in the manner specified in Schedule 1 of these Conditions subject to receipt of a valid invoice addressed to the Council. The Price is exclusive of any VAT which shall be due at the rate ruling on the date of the valid VAT invoice which shall be addressed to the Council.

6.2 The Provider shall send invoices to the Council at the address given in the Contract.

6.3 The Provider's invoice shall quote the Tender number or otherwise make reference to the Contract and shall be sent at the times specified in Schedule 1. Payment will normally be made within 30 days of receipt of a correct invoice by the Council.

6.4 In the event that an over or under payment is made to the Provider by the Council, then the Provider will issue as appropriate, a credit note and further invoice stating the correct price as soon as reasonably practicable following identification of the over or under payment. Any overpayment or underpayment shall be refunded or paid as the case may be by the appropriate party within 30 days of the issue of the credit note and invoice or within any timescales specifically provided for in this Contract. If there are queries regarding details on the invoice or compliance with the terms of the Contract payment will not be made until the queries are resolved.

## **7. Nominated Representatives**

7.1 On or prior to the Commencement Date, the Provider and the Council shall each appoint a person to act as its Nominated Representative in connection with this Contract. Each party shall notify the other in writing of the name, address and telephone number of its Nominated Representative within fourteen days of the appointment, unless already named in paragraph 4 of Schedule 1. Any change of the Nominated Representative shall be notified in writing to the other party from time to time as appropriate.

## **8. Quality and Review**

8.1 The Provider shall ensure that the Services delivered are to the highest professional standard and meet the requirements set out in the Specification.

8.2 Without prejudice to the foregoing the Provider undertakes that the Services will be provided using all reasonable skill and care.

8.3 The Nominated Representatives of the Council and the Provider will meet at the frequency indicated in paragraph 6 of Schedule 1 to discuss the level and standard of Service provided.

- 8.4 Actions agreed at these meeting shall be implemented by the parties concerned with all due diligence and in a timely manner.

## **9. Inspection and Monitoring**

- 9.1 The Provider shall co-operate with the Council's procedures for the inspection and monitoring of quality and financial audits as reasonably requested by the Council. In this context the Provider shall grant the Council the following rights:

9.1.1 right of access at all reasonable times for the Council's representatives to all accounting records relating to the provision of the Services and to all supporting information;

9.1.2 right to receive promptly upon request copies of all information relating to the Service and/or its and their servants agents employees and contractors management and governance;

9.1.3 the right to receive promptly upon request explanations for any queries arising from audit activity.

- 9.2 The Provider shall inform the Council of any circumstances that occur that may have a material adverse effect on the Council's reputation forthwith upon becoming aware of the same.

## **10. Cancellation on Account of Corruption**

The Council shall be entitled to cancel the Contract and to recover from the Provider the amount of any loss resulting from such cancellation if the Provider shall have

- (i) offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or the execution of the Contract or any other Contract with the Council or
- (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council or
- (iii) if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Provider) or
- (iv) if in relation to any Contract with the Council the Provider or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

## **11. Right of Set-off**

The Council shall have the right to deduct from any sum that is due or may become due to the Provider whether under the Contract or otherwise, all costs, charges and expenses due to the Council from the Provider.

## **12. Indemnities**

- 12.1 The Provider shall fully indemnify and keep indemnified the Council against all losses, damages, actions, claims, demands and liability suffered and legal fees and costs incurred by the Council resulting from a breach of this Contract by the Provider.
- 12.2 The Provider shall indemnify and keep indemnified the Council against any act neglect or default of the Provider its employees or any persons or bodies wholly or partly under its control.

## **12. Assignment and Sub-letting**

The Provider shall not charge transfer assign sub-contract or otherwise dispose of the whole or any part of its rights and obligations pursuant to this Contract without the prior written permission of the Council. The Council may charge transfer or otherwise deal with all or any of its rights and obligations pursuant to this Contract and the Provider consents to all such dealings. Service Users shall have the right to enforce the obligations of the Provider in accordance with the Contracts (Rights of Third Parties) Act 1999. The terms and conditions of this Contract may be rescinded or varied without the consent of any person benefiting under this clause.

## **13. Notices**

- 13.1 Any notice under or in connection with this Contract shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery at or to the address of the party set out in the Contract or at or to such other address as may be subsequently notified by one party to the other. Notice to the Council shall only be effective if it identifies the name of the officer appearing on the Contract or Tender.
- 13.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:
- 13.2.1 if delivered personally when left at the addresses in condition 1.1 or Schedule 1 as the case maybe and
- 13.2.2 if sent by recorded delivery 3 days after posting

## **14. Insurance**

The Provider shall obtain and keep in full force and effect with a reputable insurance company the following insurance policies with stated minimum levels of cover: -

Employers Liability £10,000,000  
Public Liability £5,000,000  
[Professional Indemnity Insurance £3,000,000]

and shall provide evidence of such policies to the Council upon request.

## **15. Termination**

15.1 This Contract may be terminated by the Council by notice in writing to the Provider such notice to take effect as specified in the notice if the Provider: -

15.1.1 becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for the voluntary arrangements for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;

15.1.2 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or the making of an administrative order;

15.1.3 has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

15.1.4 has a provisional liquidator receiver or manager of its business or undertaking duly appointed;

15.1.5 has an administrative receiver as defined in the Insolvency Act 1986 appointed;

15.1.6 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;

15.1.7 is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitle the court to make a winding-up order;

15.2 Either party may terminate this Contract by serving on the other party prior written notice such termination to take effect as specified in the notice, if the other party commits a substantial or material breach of this Contract and, if such breach is capable of remedy within 14 days, fails to remedy the same within 14 days of service of written notice requiring remedy. Notwithstanding the foregoing this Contract may be terminated by the Council by service of notice in writing on the Provider (such notice to be of immediate effect) if the Council considers there is an actual or potential risk to Service Users or if the well being of Services Users is or maybe adversely affected by the continuation of this Contract. The Council's opinion in this regard shall be binding on the parties to this Contract.

15.3 The Contract may be terminated by either party upon service of [ ] months' prior written notice upon the other party such termination to take effect upon expiry of the notice. During the period of notice both parties shall co-operate to ensure that the interests of Service Users may be met under whatever new arrangements may be proposed.

## **16. Equal Opportunities**

- 16.1 The Provider shall at all times comply with its statutory obligations and shall not treat one group of people less favourably than others because of their colour, race, nationality, ethnic origin, disability, sex or sexual orientation in relation to decisions to recruit, train, promote or retain staff.
- 16.2 The Provider shall observe so far as possible the Commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 1983.

## **17. Confidentiality**

- 17.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of this Contract:
- (i) the Provider acknowledges that the Council is subject to the FOIA and to the attendant Codes of Practice;
  - (ii) nothing contained in this Contract shall prevent the Council from disclosing and/or publishing under the provisions of the Data Protection Act 1998 and/or FOIA any term or condition or information contained in or relating to this Contract.
- 17.2 The Provider shall:
- (i) co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the Data Protection Act 1998 and/or FOIA;
  - (ii) supply all such information and documentation at no cost to the Council and within seven days of receipt of any request.
- 17.3 The Provider shall not publish or otherwise disclose any information contained in this Contract or in any negotiations leading to it without the Council's previous written consent unless the Provider is bound to publish and/or disclose such information under the Data Protection Act 1998 and/or FOIA and such information is not exempt from such disclosure and/or publications under the provisions of the Data Protection Act 1998 and/or FOIA

## **18. Arbitration**

- 18.1 All disputes, differences or questions arising out of this Contract or as to the rights or obligations of the parties under it or in connection with its construction shall in the first instance be referred to the Council's Director of [ ] and to the Managing Director of the Provider. Each party shall use reasonable endeavours to reach a negotiated solution by the next progress meeting.
- 18.2 Any dispute difference or question which cannot be resolved as set out in Condition 18.1 shall be referred to arbitration by a single arbitrator to be agreed between the parties or failing agreement, within 14 days by an arbitrator to be appointed at the request of any party by the President for the time being of The Law Society of England and Wales having due regard to any representations made to him as to the appropriate qualifications of such arbitrator. The arbitration shall take place in London and shall be in

accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force.

## **19. Legal Effect**

- 19.1 The invalidity, illegality or unenforceability of any term or condition of this Contract shall not affect the validity, legality or enforceability of any other term or condition of this Contract.
- 19.2 No waiver by the Council of any breach of this Contract by the Provider shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 19.3 The Contract shall not create any rights for the benefit of or enforceable by any person not a party to this Contract.
- 19.4 The Contract shall be construed in accordance with English Law.
- 19.5 The Provider shall comply in all respects with all applicable laws and regulations from time to time (whether of the United Kingdom or elsewhere) relating to the contract and the provision of the Services

## **20. Force Majeure**

- 20.1 Neither party shall be liable for any default due to any act of God, war, civil disturbance, malicious damage, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party ('Force Majeure Event').
- 20.2 Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.
- 20.3 If any Force Majeure Event delays or prevents the performance of the obligations of either party for a continuous period in excess of [one month] the party not so affected may give notice to the affected party to terminate this Contract specifying the date (which shall not be less than 7 days after the date on which the notice is given) on which termination will take effect. Such a termination notice shall be irrevocable except with the consent of both parties.
- 20.4 Any such termination shall be without prejudice to the rights and remedies of the Council in respect of any antecedent breach of the Contract by the Provider.
- 20.5 Any monies paid by the Council for Services not received from the Provider shall be repaid immediately by the Provider on demand and credit notes and new invoices issued promptly by the Provider to the Council as appropriate.

## **21 Waiver**



No waiver or forbearance by the Council (whether express or implied) in enforcing any of its rights under this Contract shall prejudice its right to do so in the future.

**22 Law and courts of England and Wales– service of proceedings**

22.1 This contract is subject to the law of England and Wales.

22.2 The parties submit to the exclusive jurisdiction of the courts of England and Wales and irrevocably agree that proceedings issued out of the said courts may without prejudice to the rules of service of such courts be served by delivering such proceedings in an envelope addressed to the party to be served at the address for such party set out in this Contract.

In witness whereof the parties hereto have executed this Contract the day and year first before written.

Signed for and on  
Behalf of the Provider

\_\_\_\_\_  
Authorised Signatory

THE COMMON SEAL OF  
THE VALE OF GLAMORGAN  
COUNCIL WAS AFFIXED IN  
THE PRESENCE OF:

\_\_\_\_\_  
Director of Legal and Regulatory  
Services

## SCHEDULE 1

**PROVIDER**

*Name, address- and title if individuals*

**1 Services:**

*(two liner giving brief outline of Service to be provided but qualify with 'in accordance with the Specification')*

**2 Price:**

*£xx,xxx.xx [per month/quarter/annum] payable in advance/arrears on the first working day of each month/on the quarter days 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July and 1<sup>st</sup> October in each year/on each anniversary of the Commencement Date*

**3 Commencement Date:** [            ]

**4 Nominated Representatives:**

The Purchaser: *name and title*

The Provider: *name and title*

**5 Frequency of review meetings**

**6 Information Required and Frequency of Invoices**

**7 Supplementary Insurance (if applicable)**

*e.g. Vehicle Insurance- comprehensive cover*

**SCHEDULE 2**  
**SPECIFICATION**

- 1 Statement of Principle/Purpose
- 2 Definition of Service User Group
- 3 Volume/Availability
- 4 Access to Service
- 5 Responsibilities of the Purchaser
- 6 Responsibilities of the Provider
- 7 Staffing
- 8 Policy
- 9 Equality Action Plan
- 10 Monitoring

**CONTRACT FOR THE PROVISION OF XXXXXXXXXXXXXXXXX**

**1 Statement of Principle/Purpose**

A general statement outlining principle of service including policy under which contract is being let eg: -

*Assisting with rehabilitation programmes and life skills training.  
Relief care, enabling Carers to have a break and providing care for those living alone.  
What outcome is desired.*

**2 Definition of Service User Group**

Eligibility criteria- who is service aimed at and for, who is it not for

**3 Volume/Availability**

*How much- if this varies, state maximum and minimum  
How often  
When- hours/days/weeks- Bank Holidays  
Where*

**4 Access to Service**

Referral- gate keeping- by VoG & Provider

*Who agrees referral  
Emergency referral  
Catchment area  
Category  
Care plan needed  
Visit before placement  
Waiting list  
Record referrals/refusals*

## **5 Responsibilities of the Purchaser**

*Detailed Care Plan  
Support, eg with training, Equality Action Plan  
Regular meetings with Provider/Service User/Carer  
Outcomes- expected benefits to Service User/Carer etc  
Exit strategy*

## **6 Responsibilities of the Provider**

*Comply with Care Plan  
Regular meetings with Purchaser/Service User/Carer  
How Service will be provided  
Facilities to be provided- Day Centre bathing facility, kitchen, no smoking  
Transport  
Refreshments, and at whose cost- record  
Personal care- detail?  
Activities  
Community support (eg Service User visited at Day Centre by physio)  
Invoicing Details- cross-reference to 9 Schedule 1  
Records to be kept- cross-reference to Monitoring  
Medication  
Notify Purchaser if Service User refuses Service  
Notify Purchaser if Service User is believed to be at risk  
Outcomes- desired outcomes of Service should be listed here  
Exit strategy*

## **7 Staffing**

*Numbers  
Managerial responsibilities  
Training- required/to be given  
Employment practice may be necessary if no prior investigation has been carried out  
Police checks  
Identification to be carried  
"Provider must have sufficient staff to provide the Service as set out in this Specification"  
Must not accept gifts, witness wills etc  
Details of items to be included in Complaints records (clause 17 of Terms and Conditns)*

## **8 Policy**

Any SSD policy required to be observed by the Provider to be listed e.g. H&Safety, Abuse  
*also: - whistle blowing  
Food Safety (General Food Hygiene) Regulations  
Food Safety Act 1990*

*Consult Professionals from relevant service area*

## **9 Equality Action Plan**

Stages agreed before start of contract, to be achieved as contract progresses. This must be included unless it can be clearly demonstrated that it is not applicable to the Contract.

*An Equality Action Plan ("Equality Action Plan") shall be agreed between the Purchaser and the Provider at the beginning of the Contract. It shall be operated during the Contract at stages detailed as follows:*

- i)*
- ii)*

iii)

*This Equality Action Plan shall be reviewed as part of the monitoring process, paragraph 8.*

*Identify timescale for each stage*

## **10 Monitoring**

*Who, how often, whose responsibility*

*What information would you expect from the Provider and at what intervals*

*Review meetings to be attended*

*Who will be involved in monitoring- provider/Service Users/other bodies*

*How will monitoring information be recorded*

*Cross-reference to Responsibility of Provider*

*Include Equality Action Plan if applicable*

*Identify any links with Departmental Planning/Policy/Performance objectives*

*Target setting*

*Outcomes achieved*

### **SCHEDULE 3**

#### **SPECIAL TERMS & CONDITIONS**

*e.g.*

*REGISTRATION if Registration is needed for provision of the Service*