

SOCIAL SERVICES DEPARTMENT



Portsmouth
CITY COUNCIL

COMMUNITY CARE

CONTRACTING FOR SOCIAL CARE SERVICES

STANDARD FORM CONTRACT

PORTSMOUTH CITY COUNCIL

SOCIAL SERVICES DEPARTMENT

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SCHEDULE A - FORM OF CONTRACT

1. Service Purchaser: Portsmouth City Council

1.1 Address: Social Services Department
Civic Offices
Guildhall Square
Portsmouth
Post Code: PO1 2EP

Representative:

Designation

Signature Date

Authorised Signatory Date

Authorised Signatory Date

2. Service Provider:

Address:

Post Code:

Representative:

Designation:

Signature Date

3. DESCRIPTION OF SERVICE

The Service Provider will provide to the Service Purchaser the Service which is described in detail in the Service Specification, and which is briefly summarised as follows:-

4. Contract Commencement Date:

5. Contract Period:

_____ from Contract Commencement Date;
or from Contract Commencement Date until _____

The Service Purchaser by written agreement of the Service Provider, may extend the Contract Period by a period not exceeding twelve months on giving four months notice in writing to the Service Provider.

(delete as appropriate)

6. Contract Price: _____

6.1 The Contract Price shall be increased with effect from 1 April in every year during the Contract Period, by a percentage equivalent to that provided for in Portsmouth City Council's Portfolio for Health & Social Care revenue budget or other appropriate budget by way of allowance for inflation during that period.

The Contract Price shall remain fixed throughout the Contract Period.
(Delete as necessary).

The parties agree to comply with the terms of this Contract as set out in the following documentation, which is attached hereto and form part of this Contract:

Schedule B - The General Conditions

Schedule C - The Special Conditions

Schedule D - The Service Specification

Additional Schedules

In the event of any conflict between schedules the Special Conditions will take precedence over the General Conditions and the General Conditions will take precedence to all other schedules.

SCHEDULE B - GENERAL CONDITIONS

1. Representatives of the Parties

- 1.1 Upon the commencement of this Contract, the Service Purchaser and Service Provider shall appoint a representative whose name shall be recorded in the form of Contract completed by the parties. Each party's representative shall have full authority to act on behalf of that party in connection with the Contract
- 1.2 Any change of representative must be accompanied by notice as soon as practicable to the other party of the name, address and telephone number of the new representative.

2. Standards

The Service Provider shall ensure that the standards set out in the Service Specification are met in its provision of the Service.

3. Quality Assurance

The Service Provider shall ensure that at all times adequate and effective quality assurance procedures are maintained

4. Inspection and Monitoring

The Service Provider shall at all times co-operate with the Service Purchaser's processes for inspection, monitoring, evaluations and quality audit in whatever way as is reasonably requested by the Service Purchaser.

5. Equal Opportunities

The Service Provider shall at all times operate a policy of equal opportunity in both staff recruitment and Service delivery and shall not treat one group of people less favourably than others because of their sex colour race religion nationality ethnic origin or disability in relation to decisions to recruit train or promote its personnel or in Service delivery.

6. Confidentiality

Subject to compliance with any provision in legislation or statutory guidance and the provisions of conditions 4 and 25 regarding disclosure of information, the Service Provider shall ensure that confidentiality is maintained at all times and in all matters relating to the Service or any user of the Service.

7. Legal Requirements

The Service Provider shall at all times conduct its affairs in a reputable manner and observe and comply with all legal requirements.

8. Insurance and Indemnity

8.1 The Service Provider shall maintain at all times the minimum insurance arrangements set out below, and any additional insurance arrangements set out in paragraph 4 of the Service Specification.

8.1.1 Employer's liability (minimum limit of indemnity £10,000,000 in respect of any one claim and unlimited in respect of number of claims).

8.1.2 Public liability (minimum limit of indemnity £5,000,000 in respect of any one claim and unlimited in respect of number of claims).

8.2 At the request of the Service Purchaser the Service Provider shall prove to the Service Purchaser's satisfaction that it has made the minimum (and, where appropriate, additional) insurance arrangements required.

8.3 The insurance arrangement made by the Service Provider shall include without limitation insurances in respect of the indemnity given by the Service Provider in Clause 8.4.

8.4 The Service Provider will indemnify the Service Purchaser against any actions claims, demands, proceedings, damages, costs, charges or expenses and other liability incurred by the Service Purchaser as the result of injury to or death of any person and loss or damage of any property arising out of the act, default or negligence of the Service Provider, its employees, agents or sub contractors or any breach of this Contract including without limitation breach of any statutory requirements in connection with the Service.

9. Legal Liability

Each party shall be liable for the consequences of any breach of its obligation under this Contract, including any injury to, or death of, any person, or loss of, or damage to, any property, except and to the extent that such consequences are a direct result of the act, omission, default or negligence of the other party, or except and to the extent that such breach is a direct result of circumstances beyond the party's control which could not reasonably have been avoided by that party.

10. Default

10.1 Without prejudice to the provision of condition 11.4 if either party considers the other party to be in default of their obligations under this Contract, they shall notify the other party in writing of the way in which it is considered they are in default, and if appropriate the matter shall be considered by all

parties at a meeting. All parties shall make a reasonable effort to agree a joint plan of action to remedy the situation.

- 10.2 If, despite any action taken in accordance with condition 10.1, a party still considers the other party to be in default, they may give that party notice specifying the default and the action to be taken to rectify it ("Default Notice"). The Default Notice shall state a period of time being a reasonable period of time, in which the required action is to be taken.

11. Termination

- 11.1 Without prejudice to the provisions of condition 11.4 if either party is in default of their obligation under the Contract and fails to comply with a Default Notice the other party may give notice in writing terminating this Contract ("Termination Notice"). A Termination Notice shall take effect four week from its date.
- 11.2 The Service Purchaser may terminate this Contract with immediate effect if the Service Provider becomes bankrupt or has an administration order made against it or presents its petition in bankruptcy or makes an arrangement with or assignment in favour of its creditors or agrees to continue this Contract under a committee of inspection of its creditors or goes into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or has a provisional liquidator, receiver or manager of its business or undertaking duly appointed or has possession taken by or on behalf of any creditor of any property the subject of a charge.
- 11.3 The Service Purchaser may terminate this Contract with immediate effect if the Service Provider ceases to trade or carry on business.
- 11.4 The Service Purchaser may terminate this Contract with immediate effect if there has been a serious failure in the standard of Service such as to pose a serious risk to the life, health or well-being of a Service user or in the event of a material breach of the terms of this Contract.
- 11.5 Either party may terminate this Contract on giving six months notice in writing to the other party.
- 11.6 Termination of this Contract shall have no effect on the liability of either party to the payment of any sums arising and already due in respect of proper performance under this Contract, or any rights of remedies of either party already accrued, prior to the date upon which termination takes effect.

12. Resolution of Disputes

- 12.1 The parties shall use their reasonable endeavors to resolve by agreement any dispute between them with respect to any matter relating to this Contract.

12.2 In the event that a dispute cannot be resolved by agreement the parties may agree to refer the dispute to an independent person agreed between the parties, or in the case of failure to agree, by an independent person appointed by the Service Purchaser's Director of Social Services or such other chief officer of the Service Purchaser as the Service Purchaser shall nominate. Any charge made and expenses reasonably incurred by an independent person so appointed shall be paid for by the parties in equal shares, unless the independent person determines that a greater share should be borne by one of the parties. Such independent person shall be given all information and assistance by the parties in carrying out their duties.

12.3 Any dispute which cannot be resolved under condition 12.2 shall unless the parties agree otherwise be referred to arbitration under the provisions of the Arbitration Act 1996 by a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the Chairman for the time being of the Chartered Institute of Arbitrators.

13. Assignment

13.1 Neither party shall assign or sub-contract any of their rights and obligations under this Contract without the prior consent in writing of the other party, such consent not to be unreasonably withheld.

13.2 The Service Provider must notify the Service Purchaser if the interests of the Service Provider are purchased or acquired by a company or any other person.

14. Complete Agreement

This Contract comprising a form of Contract completed by both parties, these General Conditions, any special conditions, the Service Specification, and any other schedules embodies the complete agreement between the Service Purchaser and Service Provider in respect of the provision of the Service, and supersedes all other written understandings and agreements with respect to the matters referred to in this Contract. Each party acknowledges that no other agreement or statement not contained in this Contract shall be valid and binding on either party.

15. No Waiver

No failure by a party to insist upon the strict performance of any condition of this Contract or to exercise any right of remedy upon breach of any provision of it shall constitute waiver of any condition or waiver of any subsequent breach or default in the performance of any condition.

16. Amendments

Any amendment to this Contract shall be recorded in writing and shall be signed by the parties.

17. Notices

All notices or instructions to be given under the terms of this Contract shall be in writing and served by personal delivery, post or facsimile to, the party receiving the notice at their address as shown in the form of Contract.

Either party may change its nominated address/addresses by prior written notice to the other party. Such written notice shall be effective upon actual receipt. Routine operation notices and communication and notices during any emergency or other unforeseen event may be made in person or by telephone. Such notices and communication shall be confirmed in writing as soon as reasonably practicable thereafter.

18. Severance

If any part of this Contract becomes invalid, illegal or unenforceable the parties shall endeavor to agree the terms of a mutually satisfactory provision to be substituted for that provision which as nearly as possible gives effect to their original intentions.

19. Termination in the Case of Corruption

If the Service Provider or his agent (with or without the Service Provider's knowledge) whether in relation to this or any other contract with the Council shall do or have done any act:

(i) which amounts to an inducement or reward to any person for doing or omitting to do any act relating to the obtaining or execution of the contract;

(ii) which is an offence under the Prevention of Corruption Acts 1889 to 1916

(iii) which amounts to the giving of a reward or fee the receipt of which is an offence under Section 117 of the Local Government Act 1972

the Service Purchaser shall be entitled to terminate this Contract and to recover from the Service Provider the amount of any loss resulting from such termination.

20. Reasonableness

Any steps of any kind to be taken by either party in accordance with the terms of this Contract shall be taken reasonably, in good faith and without unreasonable delay.

21. Special Conditions

These General Conditions shall apply to the Contract subject to variation by any special condition set out in the Contract.

22. Transfer of Undertakings (Protection of Employment)

22.1 The application of TUPE to the re-letting of any Contract will be a matter between the outgoing and incoming contractor and each should take their own legal advice regarding this matter.

- 22.2 The Service Provider agrees to indemnify the Service Purchaser against any claim arising from the non-application of TUPE or the Acquired Rights Directive.
- 22.3 During the re-letting stage of the Contract the existing contractor will provide such information as is necessary to allow bidders to assess the application of TUPE and prepare bids on the basis of TUPE applying.

23. Transfer of Information

During the Contract Period the Service Provider shall comply with all reasonable requests of the Service Purchaser to co-operate in such way as the Service Purchaser may require in connection with the making by the Service Purchaser of arrangements for the Service the subject of this Contract or any part of it, in the period following the end of the Contract Period, and in particular where the Service Purchaser considers that any such new arrangements may operate so as not to terminate the contracts of employment of those employees who are engaged in the Service at the end of the Contract period, the Service Provider shall comply with any request by the Service Purchaser for details of the terms and conditions of employment of any such employees.

24. Data Protection

24.1 Compliance

The parties to this Contract agree to comply with the Data Protection Act 1998 ("DPA") and the following 8 data principles laid down in the Act:-

The data must be:

- 24.1.1 fairly and lawfully processed
- 24.1.2 processed for limited purposes
- 24.1.3 adequate, relevant and not excessive
- 24.1.4 accurate
- 24.1.5 not kept for longer than is necessary
- 24.1.6 processed in line with the data subject rights
- 24.1.7 secure
- 24.1.8 not transferred to other countries without adequate protection

24.2 Personal Data

24.2.1 No Disclosure

Neither party ("the First Party") shall disclose or allow access to any personal data (as defined in the DPA) provided by the other ("the Second Party") or acquired by the First Party during the course of executing its obligations under this Contract, other than:

- 24.2.1.1 to a person employed or enabled by the First Party; or

24.2.1.2 as permitted by and in accordance with the DPA

24.3 Confidentiality

Any disclosure of or access allowed to personal data shall be made in confidence and shall extend only so far as is necessary for the purpose of carrying out this Contract or complying with any obligations imposed by the DPA.

24.4 Indemnity

The First Party shall fully indemnify the Second Party in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising, out of or in connection with any civil claim made in respect of information subject to the DPA, which claims would not have arisen but for some act, omission or negligence on the part of the First Party, its employees, agents or any sub-contractor (or anyone acting on its or their behalf).

25. Freedom of Information

25.1 The Service Provider shall assist the Service Purchaser at no additional charge in meeting any reasonable requests for information in relation to this Contract which are made to the Service Purchaser in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. The Service Purchaser may, from time to time, serve on the Service Provider an information notice requiring the Service Provider within such time and in such form as is specified in the information notice, to furnish to the Service Purchaser such information as the Service Purchaser may reasonably require relating to such requests for information.

25.2 The Service Provider acknowledges that in responding to requests for information described in condition 25.1 the Service Purchaser shall be entitled to provide information relating to this Contract. The Service Purchaser shall not, in responding to such requests for information, disclose any information which is exempt as described within any provision of Part II of the Freedom of Information Act 2000.

26. Contract (Rights of Third Parties) Act 1999

None of the provisions of this Contract are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Contract.

27. Interpretation

27.1 The Contract shall be governed interpreted and enforced according to the laws of England.

27.2 The singular shall include the plural and the plural the singular except where the context otherwise requires.

- 27.3 References to the Service Purchaser and Service Provider shall include in each case the party's employees and agents or persons working or acting on their behalf
- 27.4 Day, week and month means calendar day, calendar week and calendar month respectively.
- 27.5 Specific references to any statute, statutory instrument or other legislation shall be construed as including a reference to any re-enactment, modification, extension or replacement for the time being in force.

28. Definitions

In this Contract the following terms shall have the meaning given below:-

"Contract" means the contract between the parties comprising the form of Contract and all schedules stated in the form of Contract to form part of this Contract

"Default Notice" has the meaning given in General Condition 10.1

"General Conditions" means these general conditions

"Representative" means a representative appointed by either party in accordance with General Condition 1.

"Service" means the Service to be provided as described in the Service Specification.

"Service Specification" means the Service Specification attached hereto.

"Special Conditions" means the special conditions (if any) attached hereto.

"Termination Notice" has the meaning given in General Condition 11.2.

SCHEDULE C - SPECIAL CONDITIONS

1. Payment Procedure

2. Additional Insurance

Are any additional insurance arrangements necessary?

Yes/No *(delete as appropriate)*

If Yes, specify additional insurance arrangements necessary:

3. Other Special Conditions

Are there any other Special Conditions which apply to this Contract?

Yes/No *(delete as appropriate)*

If Yes, please specify below:

(Explanatory Note: In some cases it may be necessary to vary the General Conditions in some way in order to reflect the particular circumstances of a Service initiative. Where this is necessary the variation to the General Conditions concerned must be recorded here as a special condition).

SCHEDULE D - SERVICE SPECIFICATION

1.0 Service Description

- 1.1 User Groups
- 1.2 Eligibility criteria
- 1.3 Volume
- 1.4 Availability

2.0 Principles

An opportunity to list the overall principles that provide a framework for the Service provision. i.e. "all Service users have the right to a life which maintains a person's independence and well-being."

3.0 Service Aims and Purposes

4.0 Service Details

Detailed list of specific services broken down into component parts i.e. chiropody, meals transport.

5.0 Outcomes

The desired outcomes of each Service should be listed here.

6.0 Monitoring Arrangements

What information would you expect from the Service Provider and at what intervals. Review meetings may need to be attended. Who will be involved in the monitoring: Service Provider, Service Users, other bodies. How will monitoring information be recorded. See attached Contract Monitoring list for suggested criteria.

CONTRACT MONITORING

Measurable Performance Indicators

Complaints	Number of complaints Speed of response Do / would users feel comfortable making a complaint
Consultation	Are users views taken into account in delivering agreed tasks
Presentation	Are carers presentable Do carers carry ID
Reliability	Number of times Service missed
Information	Are users informed of changes / problems Are users provided with information on how to complain Are users provided with information about the Service Provider Do users know exactly what the Service Provider is contracted to do Do staff know exactly what providers are contracted to do Do users have contact name & telephone number, including out of hours Is the Social Services Department informed of any relevant user information Do users have a named worker
Continuity	Number of different carers in (specify time period)
Time Keeping	Carers arrive on time (time sheet may be requested) Carers stay full amount of time
Review	Is Service reviewed by Service Provider
Record Keeping	Time sheets signed after visit Are accurate records kept Is there an accurate task sheet Are receipts signed in money transactions Care plan / assessment up to date Health / disabilities recorded User / carer preferences recorded
Admin.	Invoices accurate Invoices on time
Conduct	Are carers helpful Are carers polite Are carers respectful / mindful of user dignity

Staffing / Supervision Is supervision taking place regularly
Qualifications held by staff
Average staff turnover
Staff supervision hours
Number of full time / agency / part time staff
Number of training hours per member of staff
Total number of care workers
Total number of supervisors

General indicators Total number of users
Total number of Service Users
Number of Contract hours
Number of "out of hours" hours
Eligibility Criteria adhered to

Service Provider's Codes of Practice

Service Provider's own monitoring duties / procedures:
Health and Safety Policy
Equal Opportunities Policy
Complaints Procedure
Manual Handling Procedure
Recruitment Procedure
Induction / Training Procedure
Quality Procedures