

## **CONTRACT FOR SERVICES OF A CONSULTANT**

### **PARTIES**

The Authority: **Hertfordshire County Council**

and

The Contractor: **OLM Financial Management Ltd**

agree as follows:

### **1. DEFINITIONS**

The following terms have the following meanings:-

“Authority”

The Authority means the Local Authority placing the contract.

“Contract”

The contract means the agreement concluded between the Authority and the Contractor, including all specifications, patterns, Contractor's samples, plans, drawings and other documents incorporated or referred to therein.

“Contractor”

The Contractor means the company who by the contract undertakes to supply the services to the Authority as provided for in the contract. Where the Contractor is a single company or partnership the expression shall include the personal representatives of that company or of the partners.

“Provider”

Provider means a third party company that provides long term residential or supported living placement for service users approved by the Authority.

“Service User”

Service user means adults various complex health needs that are assessed as eligible for care services in a residential setting which are paid for in part or in full by the Authority.

“Contract Requirements”

The contract requirements means the requirements of the contract specified in schedule A

“Contract Price”

The contract price means the price exclusive of value added tax that is payable to the Contractor by the Authority under the contract for the full and proper performance by the Contractor of its part of the contract.

**“Services”**

The services means the work to be done and the other obligations of the Contractor as specified in the contract and all data, reports, drawings, specifications, designs, inventions, plans, programs and other material produced or acquired in the course of the performance of the work.

**“Case”**

A case means the contract agreeing to fund a service user in a long term residential or supported living placement paid for by the Authority.

**“Costing service completed”**

A costing service completed means a template has been submitted by the provider to the Contractor and this template has been analysed against the MyCareCosts database, industry averages and company’s house returns and a report has been produced as per Contract Requirements.

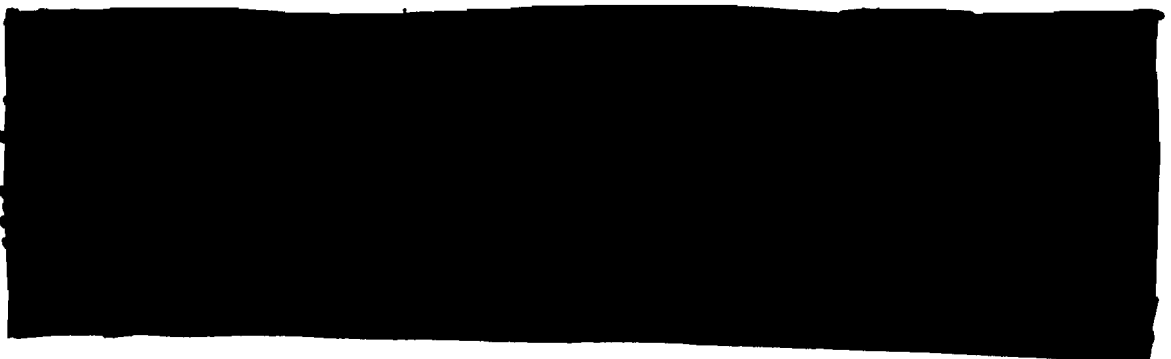
**“Negotiation service completed”**

A negotiation service completed means a negotiation has been completed with the provider either in person or virtually (telephone, email, fax etc...) on a specific case or group of cases which has led to a variation in price downwards from the original contract price.

**“New placement service completed”**

A new placement service completed means a negotiation has been completed with the provider either in person or virtually (telephone, email, fax etc...) on a specific placement or group of new placements which has led to a variation in price downwards from the original price quoted to the Authority by the preferred provider.

**“First calendar year case saving”**



**2. SERVICES TO BE PROVIDED**

2.1 The Contractor will undertake the provision of the MyCareCosts Service as per Contract Requirements for a total of [redacted] long term care cases in two stages which are as follows:

2.1.1 MyCareCosts Phase 1: Costing service for [redacted] long term care cases

2.1.2 MyCareCosts Phase 2: Negotiating service for circa [redacted] long term care cases (number of cases to be confirmed at negotiating stage)

### **3. DURATION OF CONTRACT**

The Contractor will start work with a kick-off meeting with the Authority in April 2010.

Once the MyCareCosts letters and templates have been sent to providers, the Contractor will commence the process of collecting and chasing the costing sheets. The following provides an indication of timescales for the review:

- MyCareCosts Phase 1 should be completed within 5 months from the date letters have been sent to providers
- MyCareCosts Phase 2 should be completed within 12 months from the date letters have been sent to providers

In this context the Contractor shall make reasonable endeavours to complete the contract in a timely and efficient manner and to the Authority's satisfaction.

### **4. STATUS OF THE CONTRACTOR**

- 4.1 The Contractor shall be an independent Contractor and nothing in this contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor
- 4.2 The Contractor shall bear exclusive responsibility for notifying Her Majesty's Revenue and Customs (HMRC) of any payments received from the Authority in connection with the service being provided.
- 4.3 The Contractor shall bear exclusive responsibility for the stamping of its National Insurance card as a self-employed person and for the discharge of any Income Tax and VAT liability arising out of remuneration for work performed by the Contractor under this Agreement.
- 4.4 The Contractor shall not, nor shall the Contractor procure that his agents and or servants, say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and
- 4.5 Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Contract or any negligence on the part of the Authority, his staff or agents.

### **5. CONTRACT PRICE**

For Services to be provided as set out in clause 2 the Authority shall pay the Contractor the following:

- 5.1 A consultancy fee per case per MyCareCosts Phase 1 costing service completed is set out in the Excel appendix *-Hertfordshire Partnership Pricing Tranche 3 v 0.03*. Total payment for MyCareCosts Phase 1 will not exceed £[REDACTED] exclusive of expenses and V.A.T.

\*Should the Authority remove a case or cases from the agreed placements schedule after the MyCareCosts letters have been issued by the Contractor to the providers and before the MyCareCosts Phase 1 costing service has been completed for the case or cases there shall be a charge to the Authority of £[REDACTED] per case removed.

A consultancy fee is set out in the Excel appendix -*Hertfordshire Partnership Pricing Tranche 3 v0.03*. Total Payment for MyCareCosts Phase 2 will not exceed £[REDACTED]. This fee is exclusive of expenses and VAT.

**\*\*Should the Authority remove a case or cases from the agreed placements schedule after they have given approval to the Contractor to proceed with negotiations and before MyCareCosts Phase 2 negotiation service has been completed for the case or cases there shall be a charge to the Authority of £[REDACTED] per case removed.**

- 5.2 A consultancy fee of £[REDACTED] per case per New Placement Service Completed. This fee is inclusive of expenses and exclusive of VAT.
- 5.3 An invoice shall be raised for payment upon each tranche of 10 MyCareCosts Phase 1 cases costing service completed by the Contractor. A final invoice for MyCareCosts Phase 1 services will be raised for payment upon completion of this phase as set out in clause 2 by the Contractor.
- 5.4 An invoice shall be raised for payment upon each tranche of 10 MyCareCosts Phase 2 cases negotiation service completed by the Contractor. A final invoice for MyCareCosts Phase 2 services will be raised for payment upon completion of this phase as set out in clause 2 by the Contractor.
- 5.5 An invoice shall be raised for payment upon each New Placement service completed.
- 5.6 The Authority shall pay all fees and charges within thirty (30) days of receipt of an agreed invoice that provides details of amount(s) claimed.
- 5.7 Upon signature of the contract the Authority agree to pay 10% of the MyCareCosts Phase 1 total payment immediately on presentation of an invoice from the Contractor in accordance with clause 5.6
- 5.8 The Contractor will discount subsequent invoices to credit payment made in 5.7 to ensure payment does not exceed terms agreed in 5.1.
- 5.9 In accordance with Variation Clause 19 of this agreement the Authority can purchase the services set out in the table below. All prices stated will be valid until 30/06/2011.

Service	Reason	Contract Price
[REDACTED]	[REDACTED]	£[REDACTED]
[REDACTED]	[REDACTED]	£[REDACTED]
[REDACTED]	[REDACTED]	£[REDACTED]
[REDACTED]	[REDACTED]	£[REDACTED]
[REDACTED]	[REDACTED]	£[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED] £ [REDACTED] OR [REDACTED]
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## **6. MATERIALS**

The Contractor will provide all its own materials to complete the above service including:

- MyCareCosts costing templates
- Laptops and Computer equipment as required
- Contractor provided standard documentation
- Administrational and project support to complete the project

## **7. OWNERSHIP / COPYRIGHT**

The Contractor will continue to own the MyCareCosts methodology, calculations and provider supplied templates unless specifically relating to a Service User's personal details.

## **8. SECRECY / CONFIDENTIALITY**

The Contractor shall not at any time during or after this agreement divulge to anyone any confidential information relating to the Authority's business or affairs other than to those for whom the Contractor holds the Authorities written authorisation to do so. The Contractor will ensure that all its partners, employees, sub-contractors and agents comply with this requirement.

## **9. INDEMNITY AND INSURANCE**

- 9.1 The Authority will indemnify and keep indemnified the Contractor against any and all loss, damage or liability suffered and legal fees and costs incurred as a result from a breach of this agreement by the Authority.
- 9.2 The Contractor shall indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, or loss of or damage to property, which is caused directly or indirectly by any act or omission of the Contractor.
- 9.3 The Authority will maintain a comprehensive policy of insurance to cover liability in respect of any act or default for which the Authority may become liable to indemnify the Contractor under the terms of this agreement.
- 9.4 The Contractor shall have an adequate level of insurance cover in respect of all risks which may be incurred by the Contractor arising out of performance of the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

## **10. WARRANTIES**

The Contractor warrants and undertakes that:

- a) it has full capacity and all necessary licences, permits and consents to enter into and to perform this Agreement;

- b) this Agreement is executed by a duly authorised representative of the Contractor;
- c) the provision of the Services shall not infringe any third parties' Intellectual Property rights;
- d) all statements and representations made by it to the Authority in the process leading to the entering into of this Agreement and in any response and any correspondence relating thereto are, to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be or become false or misleading.

## **11. ASSIGNMENT**

Neither party shall have the right to Assign or transfer this agreement and all rights under it.

## **12. TERMINATION**

12.1 Either party shall have the right to terminate this agreement at any time by giving the other party a thirty (30) days written notice after the commencement date, and shall have the right to recover any loss incurred as a result of such termination if either party or anyone employed or acting on their behalf:

- i) has offered or made any gift, whether in money or any other form, to any members, employees or agents as an inducement or reward for their behaviour in relation to this agreement; or
- ii) appears to have committed any offence under the Prevention of Corruption Acts or to have offered or paid any reward or fee contrary to Section 117(2) of the Local Government Act 1972.

12.2 If either of the parties to the contract breaches an essential condition of this agreement, the other may at any time give the offending party written notice specifying details of the breach. If within 5 working days of receiving the notice the breach has not been remedied, this agreement may be terminated immediately.

## **13. FAILURE TO PROVIDE THE SERVICES**

If the Contractor omit or fail to provide any part of the services in accordance with this agreement, the Authority shall have the right to give the Contractor notice to remedy such omission or failure within 28 days and if the Contractor does not do so, the Authority may withhold any payments due to the Contractor for as long as the omission or failure continues, or the Authority may deduct the cost of remedying the omission or failure from any payments owing to the Contractor.

If the failure to provide the services continues and is not remedied within a reasonable period, then the Authority reserves the right to deduct permanently the appropriate sum from the Contractors payment.

## **14. WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

## **15. NOTICES**

Notices served by one party on the other should be sent by one of the following methods:

- i) first-class post - deemed to have been received 2 working days after the day of posting
- ii) facsimile - deemed to have been received 24 hours after sending
- iii) electronic mail - deemed to have been received 24 hours after sending.

Any notices to the Contractor should be addressed to Chris Parsons at OLM Financial Management Limited, Richmond House, Richmond Road, Brighton, East Sussex, BN2 3RL

## **16. CHANGE OF ADDRESS**

Any change of address or telephone number by either party will be notified to the other as soon as possible but in any event within 2 working days of such a change.

## **17. FORCE MAJEURE**

Both parties shall be relieved from their respective obligations in the event of a national emergency, war, prohibitive governmental regulation, or if any other cause beyond their reasonable control makes the performance of this agreement impossible.

## **18. EQUAL OPPORTUNITIES**

The Contractor will adhere to the Authority's Equal Opportunities Policies, in the provision of services under this agreement.

## **19. VARIATION TO SERVICES TO BE PROVIDED**

Variations to the services to be provided under this agreement must be agreed in writing between both parties. The additional payment and extension of time, if any, shall be agreed between by both parties before any work associated with any such variation may be carried out and both parties must agree, sign and date a written variation order specifying the additional work, payment and extension of the time for performance, if any.

## **20. DISPUTE RESOLUTION**

- 20.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute. Such efforts may include the escalation of the dispute to the finance director (or equivalent) of each Party.
- 20.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 20.3 If the dispute cannot be resolved by the Parties pursuant to clause 19.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 19.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

- 20.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor shall comply fully with the requirements of the Agreement at all times.
- 20.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- (g) If independent mediation is used, each party shall be responsible for costs incurred, except when otherwise determined by the mediator.

**SIGNED by** .....

**On behalf of Hertfordshire County Council**

**Position** .....

**Date** .....

**SIGNED by** .....

**On behalf of OLM Financial Management Ltd**

**Position** .....

**Date** .....

