

KingsmithCare

Terms and Conditions Relating to the Supply of Care Services

This Agreement is made on the day of 20..... between

(1) Kingsmith Care Ltd of Bishop Creighton House, 374 - 380 Lillie Road, London SW6 7PH, Telephone: 020 7871 9450

("We", "Us" or "Our"); and

(2) [Client's Name]

of [Client's Address]

.....
("You" or the "Client")

Important

A. This Agreement, which includes your Making Every Action Matter booklet ("Client Guide"), sets out the terms under which we will provide home care services to you. You are advised to read all of the documentation carefully before signing and, if you require, you may wish to obtain the advice of a close relative, friend or legal adviser before signing.

B. This Agreement comprises the following documents:

1. **Client Guide;**
2. **Terms and Conditions;**
3. **Fees Schedule; and**
4. **Care Plan,**

as may be amended from time to time.

C. Your attention is drawn in particular to the following clauses:

- 2: Our fees**
- 6: Your home as a workplace**
- 11: Insurance and liability**
- 13: Cancellation and termination**

Signed on behalf of Kingsmith Care

.....

Signed by / on behalf of (delete as appropriate) the Client

.....

Where this agreement is signed on your behalf, the person who signs the agreement:

- agrees to irrevocably guarantee (by way of primary obligation) that you will perform all the terms of this agreement;
(in the case of a relative or other third party)
- commits you to performing all the terms of this agreement
(in the case of a deputy or attorney).

.....
(Specify capacity e.g. attorney, deputy, relative or other third party)

.....
(Print name and address in full)

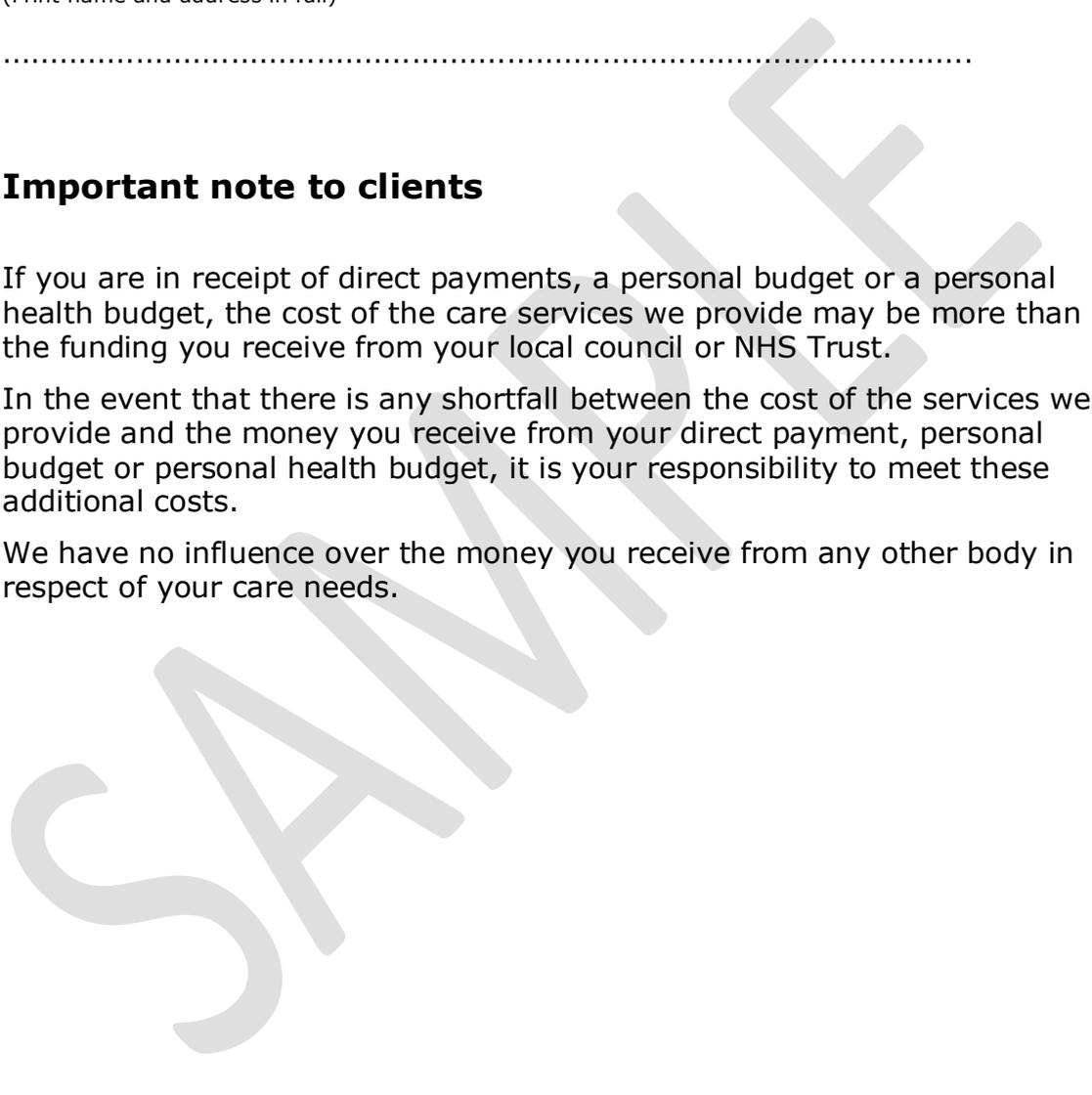
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Important note to clients

If you are in receipt of direct payments, a personal budget or a personal health budget, the cost of the care services we provide may be more than the funding you receive from your local council or NHS Trust.

In the event that there is any shortfall between the cost of the services we provide and the money you receive from your direct payment, personal budget or personal health budget, it is your responsibility to meet these additional costs.

We have no influence over the money you receive from any other body in respect of your care needs.



Terms and Conditions

The following terms are used in this document:

'Agreement'	means the agreement between you and us set out in the signed agreement and these Terms and Conditions (as varied from time to time in accordance with these Terms and Conditions).
'Cancellation Notice'	means the cancellation notice contained in the Notice of the Right to Cancel set out at the end of these Terms and Conditions.
'Care Manager'	means the care manager notified to you in your Care Plan.
'Care Plan'	means a written description, prepared by us, describing the nature and level of Services which you have requested we supply to you, amended from time to time.
'Careworker'	means the person providing the Service on our behalf. (Where more than one person is providing the service for you, "Careworker" should be read as "Careworkers" in this Agreement).
'Days'	means calendar days.
'Engagement'	means the direct employment or engagement of a Careworker by you under any arrangement for the provision of services or the Services.
'Fees'	means the fees for the Service notified to you initially in the Fee Schedule and as amended in accordance with these Terms and Conditions from time to time.
'Fee Schedule'	means the schedule, provided by us, setting out the Fees payable by you / on your behalf for the Services (as amended in accordance with these Terms and Conditions from time to time).
'Home'	means your home address.
'Sensitive Personal Data'	this term shall have the same meaning as in the Data Protection Act 1998 (namely personal information about you and in particular your racial or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, membership of a trade union, medical or physical health or condition, sexuality or the commission or alleged commission of any offence). For the avoidance of doubt, we adhere to the Data Protection Act 1998 and we will never misuse your data.
'Service'	the managed homecare services to be provided by us to you at your Home (or if your Care Plan includes it) assistance with activities outside

your home, provided in accordance with this Agreement.

'Statutory Regulator'

Where the Service you require is subject to regulation, we are required to be registered with The Care Quality Commission. Contact details for the Statutory Regulator are provided in the Client Guide, and upon request.

'Timesheets'

means the documents recording the time spent by the Careworker providing the Service and signed by you to confirm their accuracy.

'We', 'Us' or 'Our'

Kingsmith Care of of Bishop Creighton House, 374 - 380 Lillie Road, London SW6 7PH. Registered in Companies House, Number 7504701.

'You', 'the Service User' or 'Client'

the person to whom the Service is being provided by us.

1. Assessment of your care needs

- 1.1 We will visit you and your Home to discuss your care requirements prior to the commencement of the Service, or (if we are required to provide care in emergency situations) at the earliest opportunity during the next 3 working days. We will work with you, your family and any appropriate external social or health care professionals to assess and agree the level of service that you will require and will set out the Service in the Care Plan.
- 1.2 You will inform us and keep us informed of all information which may be relevant to the Care Plan including, but not limited to, your likes, dislikes, allergies, and lifestyle preferences, physical and medical conditions.
- 1.3 We will provide the Service set out in the Care Plan to you.
- 1.4 We will formally review the Care Plan:
 - (a) 2 weeks after commencement of the Service,
 - (b) on a three monthly basis thereafter;
 - (c) at your reasonable request; and
 - (d) at any other time as we consider appropriate or desirable;
- 1.5 We will review the Care Plan with you, your family and, where applicable, any other appropriate external social or health care professionals. We will also carry out regular reviews when circumstances change or when we consider it appropriate or desirable. You shall use your best endeavours to participate in the review of the Care Plan.

- 1.6 If your needs change or increase to a level which cannot be met by us, we will tell you without delay, and will endeavour to discuss alternative arrangements, and agree a mutually acceptable solution. We will continue to provide the Service to you during this period.

2. Our fees

- 2.1 We reserve the right to charge a deposit (as detailed in the Fee Schedule) in respect of the Fees if we consider (in our absolute discretion) it necessary. You shall only be entitled to a refund of the deposit if this agreement is terminated in accordance with these Terms and Conditions. You shall not be entitled to any interest on the refunded deposit.
- 2.2 We shall notify you prior to commencing each assignment the basis on which our fee will be calculated, which may be:
- (a) the time spent in minutes providing the Service at the rates set out in the Fee Schedule (the means of recording the time spent providing the Service will be by way of Timesheets), and/or
 - (b) the unit rate per episode as set out in the Fee Schedule (the means of recording the number of episodes will be by way of Timesheets).
- 2.3 You will sign the Careworker's Timesheets on each occasion that the Service is provided in order to verify their accuracy. If you are unable to sign the Careworker's timesheets, alternative arrangements will be specified in your care plan. In the unlikely event that Timesheets are inaccurate you must contact the Care Manager without delay. We will still be entitled to charge you the Fees if you do not sign the Timesheets.
- 2.4 We will invoice you on a fortnightly basis for the Service in accordance with the Fee Schedule. We shall clearly identify on our invoices any other expenses (such as travel expenses) incurred by us in performing the Service.
- 2.5 An administrative fee will be charged for replacement/copy invoices at the rate of £1.50 per copy.
- 2.6 You will pay our Fees in accordance with the Fee Schedule and within 21 days of the date of each invoice.
- 2.7 We may engage the services of a debt factoring company to collect the Fees on our behalf.
- 2.8 We reserve the right, in the event that you have failed to pay the Fees, within 21 days of the date of each invoice, to:-
- (a) suspend the Service in accordance with clause 12.1 until payment has been made in full; and/or

- (b) set off any amount owing to us against the deposit notified to you in the Fee Schedule; and/or
 - (c) charge interest on such sum from the due date at the annual rate of 4% above the base lending rate from time to time of The Bank of England on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and you shall pay interest immediately on demand.
- 2.9 We will be entitled to review and increase our Fees for the Service on an annual basis and at any other interval if:
- (a) there is a change to the Service; and/or
 - (b) the cost of providing the Service increases; and/or
 - (c) a change is necessary in order to comply with any applicable safety, regulatory or statutory requirements.
- 2.10 Unless the increase in our Fees is because of a change to the Service we will give you and / or your representative at least 4 weeks' notice of any increase in our Fees.
- 2.11 If you do not agree to our increased Fees you may terminate this Agreement in accordance with clause 13.2.
- 2.12 No monies of any kind should be paid to the Careworker. You are not responsible for the Careworker's National Insurance contributions or Income Tax.

3. Our staff

- 3.1 We will exercise reasonable care and skill to meet your individual needs as set out in the Care Plan and to provide suitably trained, sufficiently skilled, experienced and competent Careworkers to provide the Service.
- 3.2 We will ensure that the Service is provided as close as reasonably possible to the times agreed between us from time to time, but in some cases the Careworker may attend at other times due to transport problems, the need to respond to emergency situations with other clients, or other problems. In the event that it is necessary for a Careworker to attend your Home at a different time to that agreed, we will give you as much notice as possible.
- 3.3 We will endeavour to supply a named careworker each time we supply the Service to you. However, annual leave, sickness, availability and unforeseen events may require us to supply an alternative care worker. We will endeavour to give you as much advance notice as circumstances allow.

- 3.4 If a Careworker fails to attend your Home, or you are not satisfied with the standard of the Service, you must notify us by telephone, without delay.
- 3.5 Our Careworkers are not permitted to carry out the following tasks:
- (a) heavy lifting of any kind, including lifting or moving you without appropriate equipment or with an insufficient number of people;
 - (b) household maintenance (including DIY tasks);
 - (c) assistance with your finances, unless this is part of the Service specified in your care plan;

And other tasks as detailed in the client guide.

4. Permanent engagement of our staff

- 4.1 Any direct Engagement by you of a Careworker supplied by us shall render you liable to pay either a Permanent Engagement Fee to us calculated in accordance with clause 4.2(b) (below), or to engage the Careworker for an extended (6 month) period, in accordance with clause 4.2 (a) (below).
- 4.2 If you directly engage the Careworker you shall be obliged to decide whether to:
- (a) continue to have the Careworker supplied on the same terms for an extended period of 6 months from the date we receive notice of your intention to directly engage the Careworker, following which the Careworker shall be able to transfer to you without the payment of any fee; or
 - (b) pay a fee for the direct engagement as set out in the Fee Schedule. For the avoidance of doubt the fee shall only be payable where the engagement occurs within 14 weeks of the date the Careworker first provided the Service or within 8 weeks of the Careworker last providing the service. Provided that if there has been a break of more than 42 days between the first time the Careworker provided the Service and the last time the Careworker provided the Service, the latter date shall be deemed to be the start date of the 14 week period.
- 4.3 Any introduction of a Careworker by you to another employer, agency or organisation similar to Ours which results in the engagement of that Careworker by the third party shall render you liable to pay an Introduction Fee to us in accordance with clause 4.4 (below).

- 4.4 The fee for the introduction of a Careworker is set out in the Fee Schedule and shall only be payable if an engagement by a third party takes place within 14 weeks of the date the Careworker first provided the Service or within 8 weeks of the Careworker last providing the Service. Provided that if there has been a break of more than 42 days between the first time the Careworker provided the Service and the last time the Careworker provided the Service, the latter date shall be deemed to be the start date of the 14 week period.
- 4.5 Please note that if you Engage a Careworker supplied by us in accordance with clause 4.2 you may become responsible for paying employers' national insurance contributions and maintaining employers' liability insurance.

5. Gifts and payments

- 5.1 The Careworker (or any other person employed by us) is not permitted to accept any gifts or tips. Please do not leave any items or money to the Careworker (or any other person employed by us) in your will.

6. Your Home as a workplace

- 6.1 You will provide a safe environment and appropriate equipment to allow the Careworker to carry out the Service. This shall include:
- (a) completing with Kingsmith Care a risk assessment of your home environment, and seeing through any action points from this as required;
 - (b) maintaining a generally clean and safe home free of risks and hazards;
 - (b) maintaining a safe route of access to and from your home;
 - (c) providing any equipment supplied by you, or a third party, that is required to deliver your care such as lifting and transfer aids, wheelchairs and other mobility aids;
 - (d) providing all domestic cleaning equipment such as vacuum cleaners, mops, irons etc;
 - (e) informing us of any communicable diseases in the household; and
 - (f) ensuring that any equipment supplied by you, or a third party, that is required to deliver your care is regularly maintained and inspected in accordance with all relevant safety requirements.
- 6.2 An entry plan for your Home may be agreed with you and if so will appear in the Care Plan.
- 6.3 Your telephone must not be used by Careworkers except for the following reasons:

- (a) you or they have a medical emergency. We will not be responsible for payment of your telephone bills; or
 - (b) they have been given permission by yourself. We will not be responsible for payment of your telephone bills.
- 6.4 Any supplies and / or equipment to be made available by the Client and / or by Us are set out in the Care Plan.

7. Complaints & service monitoring

- 7.1 We will operate a feedback procedure by which you or someone acting on your behalf can make a complaint or suggestion in relation to the Service. This procedure is described in the Client Guide. Upon request we will also provide a copy of the procedure to any representative who is acting on your behalf.
- 7.2 Should you have a reasonable cause to complain regarding the Service provided by us, please inform the Care Manager as soon as possible, using the complaints procedure contained in the Service User Guide.
- 7.3 In order to comply with the requirements of the Statutory Regulator or to monitor the quality of the Service, it may be necessary, from time to time, for a member of our staff to observe, supervise, or work with the Careworker in your Home. We will give you as much notice as possible if any person other than the Careworker is to attend your Home and you will use your best endeavours to co-operate with us in respect of this clause 7.3.
- 7.4 You may be asked to participate in user satisfaction surveys, or to be interviewed in person:
- (a) as part of our quality assurance procedures; or
 - (b) at the request of the Statutory Regulator.
- 7.5 You are not obliged to reply to satisfaction surveys or interviews. We will always request your consent before we commence any Service monitoring in your Home.

8. Helpline

- 8.1 We will operate an office hours telephone helpline, and an out of hours telephone helpline, as specified in the Client Guide. This line can be used in relation to problems such as: your care needs changing, or your Careworker not arriving as expected. For the avoidance of doubt, this telephone number should not be used for medical or other emergencies.

9. Confidentiality

- 9.1 We will respect your privacy and confidentiality but you agree that we may disclose confidential information (including Sensitive Personal Data) about you to our Careworkers or to any other person if we believe such disclosure is in your best interest; is appropriate for the performance of the Service; or is required as a matter of law. Details of your name, address and payment record may be submitted to a credit reference agency. If another person or organisation is paying your fees, and / or has agreed to guarantee your obligations under this Agreement, details of their name, address and payment record may also be submitted to a credit reference agency.
- 9.2 You agree that we may disclose personal data (including sensitive personal data) about the Careworker and that such information is strictly confidential. You also agree that you will not disclose, either directly or indirectly, such information to any other person, company or firm for any reason unless such disclosure is required by law, the Statutory Regulator or any relevant local authority.

10. Records

- 10.1 We will ensure that the Careworker shall keep a daily written record of the care you receive, any assistance with your medication and any other significant information. Unless specified otherwise in the Care Plan these records will be kept at your Home while they are in use. We are required to keep these records and they remain our property. You agree to return them to us once the Service ends or at any other time. We will provide you with copies at your request.

11. Insurance & liability

- 11.1 Our liability to you shall be limited to the extent of our insurance cover in respect of the claim from time to time.

Our current insurance cover for public liability insurance in respect of any one claim is £10,000,000

Any consequences that arise out of the same act of default by us shall be treated as giving rise to only one claim.

By signing this Agreement you acknowledge that any additional household or public liability cover is your responsibility.

- 11.2 You are also responsible for any additional motor insurance in respect of any vehicle owned by you or used in connection with your care and further warrant that any vehicle that is used in connection with your care is in good repair and condition and is regularly and properly maintained.

- 11.3 We accept no liability, howsoever caused, on behalf of ourselves, our servants, agents or contractors for any losses, costs, damages, claims or expenses in connection with the dishonesty of the Careworker.
- 11.4 We accept no liability, howsoever caused, on behalf of ourselves, our servants, agents or contractors for any losses, costs, damages, claims or expenses in connection with our failure to provide the Service.
- 11.5 **For the avoidance of doubt, our liability does not extend to cover damage to your vehicle(s) or your Home howsoever caused. We will not accept liability for any excess, loss, expenses, damage or delay arising from such damage. All such costs must be covered by either your motor insurance policy or home insurance policy or paid by you personally.**
- 11.6 Nothing in this Agreement limits or excludes our liability
- (a) for death or personal injury resulting from negligence; or
 - (b) for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation.

12. Withdrawal of the Service

- 12.1 We reserve the right to withdraw a Careworker and/or to cancel this Agreement with immediate effect in circumstances which, in our reasonable opinion, make the continued provision of the Service untenable. Such circumstances would include (but would not be limited to) any failure by you to pay (or persistent late payment of) our invoices, failure by you, or someone else at your home to provide a safe environment and/or appropriate equipment for the Service, sexual or racial harassment, extreme alcohol consumption, unreasonable behaviour or requests that a Careworker undertake unreasonable or illegal activities.
- 12.2 Smoking: for the health and safety of our staff we ask you and anyone else present in your home, to refrain from smoking and ventilate any room in that will be used for your care for at least one hour before the agreed time. If you smoke while your Careworker is with you, the Careworker will be obliged to leave your home for the duration of your smoking and shall not be permitted to re-enter your home until 1 hour after you last smoked, in accordance with our smoke-free workplace policy. Any additional requirements or any variation to this clause will be specified in your Care Plan.

13. Cancellations and termination

- 13.1 You can cancel the Service at any time (and for any reason) within 7 days of signing this Agreement by giving us notice in writing or using the Cancellation Notice contained in the Notice of the Right to Cancel attached to this Agreement.

- 13.2 In all other cases, you must give us at least 14 days' notice in writing if you no longer require the Service or want to suspend the Service for a period of time. If you give less than 14 days' notice we reserve the right to charge a Cancellation Fee or a Service Suspension Fee as set out in the Fee Schedule.
- 13.3 Please note if you suspend the service for a period of time in accordance with clause 13.2 we cannot guarantee that the same Careworker attend your Home when you resume the Service.
- 13.4 In the event that you wish to cancel an individual assignment you must give us at least 48 hours' notice to a manager of the organisation otherwise you will be charged for the assignment in full.
- 13.5 If cancellation of an assignment arises as a result of your admission to hospital, fees will be chargeable but only in relation to the time we were due to provide the Service on the day you were admitted to hospital.
- 13.6 We may terminate this Agreement:
- (a) by giving 14 days' written notice for any reason; or
 - (b) after giving 14 days' written notice that you have failed to pay the Fees; or
 - (c) after giving 14 days' written notice that we are unable to meet your needs, in accordance with clause 1.4.
- 13.7 This Agreement will terminate immediately in the event of your death and (for the avoidance of doubt) your estate will remain responsible for paying any outstanding fees.

14. Third Party Rights

- 14.1 No person who is not a party to this Agreement is to have any right pursuant to the Contracts (Rights of Third Parties) Act 1999 to benefit from or to enforce any provision of this Agreement and the parties to this Agreement may agree to cancel or vary the whole of any part of this Agreement without being required to seek or obtain the consent of any third party.

15. Force Majeure

- 15.1 Neither we nor you shall have any liability to the extent that any delay in or failure to perform any of our respective obligations under this Agreement is caused by any factor beyond our respective reasonable control. Any of our respective obligations that are not affected by any factor beyond our respective reasonable control will continue to bind Us and You.

16. Assignment

16.1 We may transfer, assign, charge or deal in any other manner with all or any of our rights under this Agreement or may sub-contract any or all of our obligations under it.

17. General

17.1 We may vary these terms and conditions in writing by giving you and / or your representative at least 2 weeks' notice. If you do not agree to the variation you may terminate this Agreement in accordance with clause 13.2.

17.2 If any provision of this Agreement is found by a court or other competent authority to be invalid or unenforceable that shall not affect the validity of the remainder of this Agreement.

17.3 The Agreement, these Terms and Conditions and the Care Plan constitute all the terms and conditions between you and us (subject to the variations allowed for by those Terms and Conditions) and is made to supersede all previous agreements and arrangements relating your care.

17.4 You acknowledge that you have not been induced to enter into this Agreement by any representation or promise that the Agreement does not expressly contain (but this clause shall not exclude any liability for any representation made by us that was made fraudulently).

17.5 Any notice required to be given to us under the Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by courier. Any notice required under the Agreement shall not be validly served if sent by other means.

17.6 This Agreement shall be construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Notice of the Right to Cancel

- You have a right to cancel this agreement if you so wish.
- This right can be exercised by delivering, or sending to us (including by electronic mail) the Cancellation Notice below at any time within the period of 7 days starting with the date you sign this agreement.
- You can still cancel this agreement at any other time by giving us 14 days' notice in writing (as set out in clause 13.2 of the Terms and Conditions).
- Notice of cancellation will take effect as soon as it is posted or sent to us by any other means.
- You may be asked to pay for any services you receive if you cancel this agreement before the period of 7 days starting on the date you sign this agreement.

SAMPLE

Cancellation Notice

If you wish to cancel this agreement you **MUST DO SO IN WRITING** and deliver personally or send (which may be by electronic mail) this notice to the person named below. You may use this form if you want to but you do not have to.

(Complete, detach and return this form **ONLY IF YOU WISH TO CANCEL THIS AGREEMENT**)

To:
(Name of Managing Director or other authorised person)

I hereby give notice that I wish to cancel my agreement

dated (insert date)

with Kingsmith Care.

Signed:

Name and Address:

.....

.....

Date:

Please sign below if you agree to us providing the Service within the 7 day period you have to cancel this agreement:

Delete as appropriate:

I do/do not agree to Kingsmith Care providing any services within the period of seven days starting with the date of this agreement was signed

..... (your signature)

Fee Schedule

Initial Assessment Fee:	No charge.
Discretionary Deposit:	7 x the applicable daily rate.
Travelling Expenses:	Each assignment (where a member of staff drives you), their cost – which you will be required to pay – will be a mileage charge calculated at the rate of 40 pence per mile (subject to review in accordance with clause 2.11 of this Agreement).
Permanent Engagement Fee:	In accordance with clause 4.1 of this Agreement, if you employ or engage the Careworker directly, we reserve the right to charge you a reasonable fee to cover our costs in recruiting and training an alternative Careworker which shall be a minimum of £1,500; alternatively you must hire the Careworker under the same terms for a further 6 months following you giving notice to us.
Introduction Fee:	In accordance with clause 4.3 of this Agreement, if you introduce the Careworker to a third party which results in their employment or engagement, we reserve the right to charge a fee which shall be a minimum of £1,500.
Cancellation Fee:	The full cost of the scheduled assignment unless 48 hours notice has been given.
Service Suspension Fee:	50% of the applicable daily rate stated in the Fee Schedule.
Minimum fees:	Minimum fee is two hours over 7 calendar days, with no session being less than 30 minutes in duration. After half an hour sessions are charged per 15 minutes thereafter.