



**Dorset Council**

**and**

**[Provider]**

**FRAMEWORK AGREEMENT**

**relating to**

**the provision of Short Breaks  
for Children who are Disabled**

**Lot/s: [   ]**

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## PARTIES TO THE AGREEMENT

This Agreement is made between:

**Dorset Council** ('the Purchaser') whose principal place of business is at County Hall, Dorchester, Dorset, DT1 1XJ; and

**[The Provider]** ('the Provider') whose registered office is at [ ], company registration number [ ] /charity registration number [ ].

## BACKGROUND

- A.** The Purchaser has appointed the Provider to the Framework to provide Services on a call-off basis in respect of the Lots awarded, on the terms and conditions of this Framework Agreement.
- B.** The Framework may be opened as a whole or in part by Lot at intervals during each year at a frequency to be determined by the Purchaser. New providers may submit applications to join the Framework, existing providers may apply for participation in an additional Lot and providers may remove themselves from Lots at any time during the Agreement Period.
- C.** The Framework is divided into Lots as follows:
- Lot A Specialist Short Breaks  
Lot B Targeted Short Breaks
- The Lot/s awarded to the Provider are set out in Appendix 1.
- D.** This Framework Agreement sets out the terms and conditions for the provision of the Services which may be called off by the Purchaser under a Call-Off Contract awarded during the Agreement Period. Additional terms relevant to the particular Lot may be specified by the Purchaser as part of the Call-Off Contract should further competition for those Services be undertaken under the Framework Agreement.
- E.** There will be no obligation for the Purchaser to call off any Services under this Framework Agreement during the Agreement Period.

## DEFINITIONS AND INTERPRETATION

For the purposes of this Agreement the following definitions shall apply:

'Abuse'	describes a single action, repeated action or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to a Service User. This could include physical, emotional, financial, sexual, gender or racial abuse or neglect and abuse through the misapplication of drugs.
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'Agreement Period'		the period specified in Clause 2.1 (as extended if applicable) or ending on earlier termination in accordance with the terms of this Agreement or the law. For the avoidance of doubt, the term of any Call-Off Contract awarded under this Framework Agreement shall be stated in the Call-Off Contract.
'Call-Off Contract' or 'Contract',		the legally binding agreement for the provision of the Services between the Purchaser and the Provider comprising an Individual Placement Agreement or alternative form of contract, which constitutes an order for the Services, requiring the Services to be provided for a defined period and incorporating the terms and conditions of this Agreement together with any supplemental terms and appendices specified by the Purchaser relating to the Services which may be provided prior to undertaking further competition for the Services, and specifically excluding the Provider's terms and conditions of business.
'Commercially Sensitive Information'		any information so specified and provided by the Provider to the Purchaser in confidence.
'Confidential Information'		any information which has been designated as confidential by either party or by any Service User that ought to be considered as confidential (however it is conveyed) which either party may receive or obtain in connection with the operation of this Agreement.
'Contract Manager'		the competent person nominated by the Provider who shall: <ul style="list-style-type: none"> <li>- be the nominated officer of the Provider;</li> <li>- manage the Agreement and any Call-Off Contract awarded under it; and</li> <li>- make decisions about the provision of the Services.</li> </ul>
'Contract Price'		the price payable (exclusive of any applicable VAT) to the Provider by the Purchaser for the Services as set out in the Pricing Schedule at Appendix 2 for the full and proper performance of its obligations under this Agreement and/or any Call-Off Contract.
'Contracts Officer'		the person nominated by the Purchaser who shall: <ul style="list-style-type: none"> <li>- manage and administer the Agreement;</li> <li>- arrange payment for the Services;</li> <li>- monitor the Provider on a regular basis to ensure that the Agreement is adhered to;</li> </ul>

		- be responsible for ensuring that the information requested from the Provider, as detailed in Clause 10, is provided by the Provider at the time specified.
'Framework Agreement' or 'Agreement'		this agreement consisting of these terms and conditions, the appendices, the invitation to tender, the Provider's tender submission and any documents accompanying it. For the avoidance of doubt, these Framework terms shall take precedence over any terms set out in the Provider's tender submission.
'Framework'		the arrangements the Purchaser is putting in place for the provision of the Services by the appointment of a number of providers to the Framework on the terms of this Framework Agreement.
'Individual Placement Agreement' or 'IPA'		means if relevant the document setting out the Services requirements for each Call-Off Contract placed by the Purchaser, in a form substantially the same as that set out in Appendix 8.
'Lot'		the Services grouped into defined categories as set out on tender.
'Personnel'		all persons employed by the Provider together with the Provider's volunteers, agents and sub-contractors used in the performance of the Services.
'Premises'		any location where the Services are performed.
'Provider'		the Provider including its Personnel, agents, successors and permitted assigns, which is responsible for providing the Services.
'Service Specification'		the document at Appendix 1 which sets out the level, scope and standard of the Services to be provided under this Agreement and any Call-Off Contract.
'Service User(s)'		an individual who is, or will be, receiving the Services in accordance with the Service Specification and any related documents appended. Where appropriate, references to Service User shall include the Service User's carer.
'Services'		the Services that the Provider is obliged to provide to Service Users as specified in this

		Agreement including for the avoidance of doubt the Services set out in the Service Specification and the Service User's care plan, if applicable.
'TUPE'		the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
'Working Day'		Monday to Friday inclusive but not including any declared public holiday.

In this Agreement:

- Headings do not affect its interpretation or construction;
- Words importing the singular include the plural and vice versa;
- References to numbered clauses and appendices are references to the relevant clause in or Appendix to this Agreement;
- Any reference to an enactment includes a reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.
- In the event of any conflict between the clauses and appendices, the appendices shall prevail.
- References to the Purchaser and the Provider include references to any successor body or person to which shall fall the right to enforce the benefit of this Agreement or to which shall be transferred any statutory function of the Purchaser or the Provider whether by way of act of Parliament, statutory instrument, express agreement or deed or otherwise.

**1. SCOPE OF FRAMEWORK AGREEMENT AND AWARD OF CALL-OFF CONTRACTS**

- 1.1 This Framework Agreement governs the relationship between the Purchaser and the Provider in respect of the provision of the Services by the Provider to the Purchaser.
- 1.2 The Purchaser does not make any warranty, representation or agreement as to the nature, value or quantity of any Services that may be called off under this Framework Agreement.
- 1.3 The Provider acknowledges that there is no obligation on the Purchaser to purchase any Services from the Provider during the Agreement Period.
- 1.4 The Provider acknowledges that in entering into this Framework Agreement no form of exclusivity or volume guarantee has been granted by the Purchaser for Services from the Provider and that the Purchaser is at all times entitled to enter into other contracts with other providers for the provision of the Services.
- 1.5 The Provider shall perform all Call-Off Contracts entered into with the Purchaser in

accordance with the terms of this Framework Agreement.

- 1.6 The Framework shall re-open at intervals for providers to apply to be appointed onto the Framework during the Agreement Period, including those who have previously applied and failed to become a Framework provider (but excluding any whose Framework Agreement and/or Call-Off Contract has been terminated for Contract Non-Compliance).
- 1.7 There will be no limit on the number of providers on the Framework.
- 1.8 If the Purchaser decides to purchase Services through the Framework Agreement then it may award the Services following direct award or further competition, as set out in the Service Specification.
- 1.9 The terms laid down in the Framework Agreement may be supplemented at the further competition stage if they are not sufficiently precise for the purposes of the Call-Off Contract.
- 1.10 Further competition will be held with those Providers on the Framework Agreement that are on the Lot under which the Call-Off Contract is awarded.
- 1.11 Further competition will be undertaken in accordance with the process and criteria set out in the Service Specification. The basic terms and conditions of the Framework Agreement cannot be re-negotiated and the Service Specification cannot be substantively changed.
- 1.12 Following further competition, the Purchaser may award a Call-Off Contract to the Provider.
- 1.13 The Call-Off Contract constitutes an offer by the Purchaser to purchase the Services subject to the terms and conditions of the Framework Agreement and any additional terms set at further competition.
- 1.14 The Purchaser reserves the right to purchase Services by direct award as set out in the Service Specification on the terms laid down in this Framework Agreement.

## **2. ENTIRE AGREEMENT**

- 2.1 This Agreement contains the whole agreement between the parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

## **3. AGREEMENT PERIOD**

- 3.1 This Agreement shall commence on 1 April 2024 and shall continue until 31 March 2027 unless terminated earlier in accordance with the provisions of this Agreement or the law or extended in accordance with Clause 3.2.
- 3.2 The Agreement may be extended for two further periods of one year on a year by year basis. The Purchaser shall give reasonable notice to the Provider of its intention to offer an extension of the Agreement which shall normally be three months before the



Agreement end date.

#### **4. PROVIDER STATUS**

- 4.1 In carrying out the Services, the Provider shall be acting as principal and not as the agent of the Purchaser.
- 4.2 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- 4.3 Neither party shall have, nor represent that it has, any authority to make commitments on the other party's behalf. The Provider shall ensure that its Personnel do not say or do anything that might lead another person to believe that the Provider is acting as an agent of the Purchaser.

#### **5. PROVIDER'S OBLIGATIONS**

- 5.1 The Provider shall provide the Services during the Agreement Period fully in accordance with the Service Specification at Appendix 1, the Purchaser's reasonable instructions and the terms of this Agreement and any Call-Off Contract.
- 5.2 The Provider shall perform the Services with all reasonable care and skill, to avoid injury to persons or damage to property and so as to conform with all relevant legislative requirements and good industry practice and all relevant standards and specifications, whether specified in this Agreement or not.
- 5.3 The Provider shall ensure that suitable up to date contact details and arrangements are maintained for the Purchaser at all times and, as may be the case, Service Users.
- 5.4 The Provider shall assist the Purchaser in reviewing the planning, provision and operation of the Services, comply with the reasonable directions of the Purchaser and use all reasonable endeavours to carry out the Services in accordance with any variations to the Service Specification.
- 5.5 The Provider shall attend contract review meetings as reasonably required.
- 5.6 The Provider shall perform the Services in such a way as to promote the safe, efficient and professional delivery of the Services, and so as not to cause damage to the public perception of the Services or the reputation of the Purchaser.
- 5.7 The Provider shall properly manage and monitor the performance of the Services at all times, and immediately notify the Purchaser of any actual or potential problems that affect or might affect the delivery of the Services.
- 5.8 The Provider shall provide all Personnel, equipment, Premises, resources and other things required for the provision of the Services and shall maintain such equipment and Premises and other resources in a safe, serviceable and clean condition.
- 5.9 The Provider shall maintain registration with OFSTED and CQC for the duration of the Agreement and any Call-Off Contract, where relevant to the provision of the Services.

#### **6. PROVIDER'S PERSONNEL**

- 6.1 The Provider warrants and represents that all its Personnel assigned to the performance of the Services shall be suitably qualified, trained and experienced to provide the Services required and entitled to work in the UK, and shall be made fully aware of the Provider's obligations under this Agreement as it affects them in the performance of the Services.
- 6.2 The Provider shall at all times employ and assign to the Services Personnel who are fit and competent to provide the Services and of sufficient number to ensure that the Services are provided at all times in accordance with this Agreement and any Call-Off Contract.
- 6.3 The Provider shall promptly replace any Personnel assigned to the Services who cease to be in its employment or under its control for whatever reason and such replacements shall have the equivalent skill levels and shall in every way be suitable for the performance of the Services.
- 6.4 The Provider shall ensure all Personnel deployed on the Services are properly managed and sufficiently instructed and supervised with regard to the provision of the Services.
- 6.5 The Provider shall give and shall ensure that its Personnel give all reasonable assistance to the Purchaser in the investigation of complaints, disciplinary matters, claims for damages and similar matters.
- 6.6 The Purchaser shall have power upon written notice to require the Provider, but not unreasonably or vexatiously, to remove any Personnel from involvement in the Services whose admission or continued presence would be, in the reasonable opinion of the Purchaser, undesirable. The decision of the Purchaser shall be final and conclusive.
- 6.7 The Purchaser shall in no circumstances be liable either to the Provider or to any Personnel in respect of any award, cost, expenses, liability, loss or damage occasioned by such a removal and the Provider shall fully indemnify the Purchaser in respect of any claims made.

## **7. SERVICE CONTINUITY**

- 7.1 The Provider shall have contingency arrangements in place, as approved by the Purchaser, to ensure continuity of the Services at all times at no extra cost to the Purchaser. These shall include, but not be limited to, arrangements to deal with staff absences.
- 7.2 The Provider shall demonstrate, on request by the Purchaser for the duration of the Agreement and any Call-Off Contract, that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services, including an insolvency event affecting the Provider or any key sub-contractor, such plans and arrangements being appropriate to the scale of the Provider's commitments under the Call-Off Contract.
- 7.3 The Purchaser reserves the right to request detailed evidence of contingency plans, such as sight of the Provider's business continuity plan and evidence of the testing of

the plan, and to require review and/or amendment of the plan and any other contingency arrangements to meet the Purchaser's requirements and in any event the Provider shall review the plans as a minimum every six months.

## **8. VARIATIONS AND WAIVERS**

- 8.1 The Purchaser reserves the right to require changes to the Services ('a Service Variation') for any reason including to meet the Purchaser's policy prevailing at the time.
- 8.2 The Purchaser shall give reasonable written notice of any such Service Variation to the Provider.
- 8.3 In the event of a Service Variation, the Contract Price may also be varied. Such variation in the Contract Price shall be calculated by the Purchaser and agreed in writing with the Provider and shall be an amount which properly and fairly reflects the nature and extent of the Service Variation. The Contract Price prevailing at the time of the Service Variation shall be used as the basis for valuing such variation insofar as may be reasonable otherwise a fair valuation shall be made.
- 8.4 The Provider shall promptly provide such information as may be reasonably required to enable such a variation in the Contract Price to be calculated.
- 8.5 In the event of dispute, the matter shall be determined in accordance with the dispute resolution procedure at Clause 32.
- 8.6 The Purchaser and Provider may vary the Agreement by mutual written consent.
- 8.7 Failure by either party to insist on strict performance of the Agreement or to exercise any right or remedy on breach of any provision of the Agreement shall not constitute a waiver of the Agreement terms or a waiver of any subsequent breach or default in the performance of the Agreement. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

## **9. FINANCIAL ARRANGEMENTS**

- 9.1 The Purchaser shall pay the Provider the Contract Price as set out in the Call-Off Contract, based on the Pricing Schedule at Appendix 2.
- 9.2 The Contract Price shall be inclusive of all costs, expenses and overheads but exclusive of VAT which shall be charged at the prevailing rate.
- 9.3 All payments shall be made in sterling, unless otherwise agreed between the parties.
- 9.4 Payment shall be made within 30 days of receipt of a correct invoice for the Services performed to the satisfaction of the Purchaser.
- 9.5 Where the Provider enters into a sub-contract for the provision of the Services, the Provider shall include in that sub-contract a provision for payment within 30 days of receipt of a correct invoice.
- 9.6 If the Provider withdraws, makes unavailable or fails to provide the Services, either temporarily or permanently, the Purchaser reserves the right to require the Provider to reimburse a relevant proportion of the Contract Price in respect of the period of

unavailability, unless otherwise agreed in advance with the Purchaser. The Provider shall provide at its own expense such assistance as may be required by the Purchaser to calculate such proportion of the Contract Price.

- 9.7 If the Purchaser intends to withhold all or any part of a payment it shall give reasonable notice to the Provider to that effect, which notice shall specify the amount proposed to be withheld and the ground for doing so.
- 9.8 In the event of an extension to the Agreement Period, the Purchaser reserves the right to review and change the Contract Price.
- 9.9 Subject to Clause 8, the Contract Price shall remain fixed for the duration of the Agreement and any Call-Off Contract, and any extension period agreed under Clause 3.2, unless specified otherwise by the Purchaser.
- 9.10 Should the Provider consider it has a compelling case for an increase in the Contract Price, it may discuss it with the Purchaser having first submitted detailed evidence for the increase and transparent open book calculations demonstrating how such increase has been calculated.
- 9.11 For the avoidance of doubt, the Purchaser does not commit to agree to any increase in the Contract Price. The Purchaser will not pay any increase in the Contract Price which it has not agreed. The parties agree that the continued provision of the Services does not imply the Purchaser's agreement to an increase in the Contract Price. The Provider agrees to obtain the prior written agreement of the Purchaser to any increase in the Contract Price and as to when such increase, if agreed, is implemented.

## **10. INFORMATION**

- 10.1 The Provider shall maintain accurate documented information as may be required by the Purchaser.
- 10.2 The Provider shall submit to the Contracts Officer the following information:
  - 10.2.1 a written report, where appropriate, detailing evidence that the Services are meeting the objectives of this Agreement;
  - 10.2.2 a copy of the audited (or inspected) accounts as soon as they are available and an up-to-date copy of the governing document of the Provider, if not provided to the Purchaser previously;
  - 10.2.3 a copy of the Provider's current insurance policies in accordance with the requirements of Clause 17 if not provided previously.
- 10.3 The Purchaser may inspect books of accounts, financial documents and other records held by the Provider and may visit establishments at any time and without notice to view the performance of the Services and obtain such explanations as may be considered necessary in so far as they concern matters pertaining to the Agreement, any Call-Off Contract and any Service User using the Services.
- 10.4 The Provider shall ensure that all information held pertaining to Service Users is kept secure and reasonable steps are taken to prevent theft or loss.

10.5 The Purchaser reserves the right to seek from and share relevant information with other care and medical service providers, the Care Quality Commission, OFSTED, other local authorities, the police and Integrated Care Boards (as appropriate to the Services), in response to concerns raised in relation to standards of service provision or in relation to any child or adult protection investigation.

10.6 The Provider shall comply with the requirements of the Pan-Dorset Safeguarding Children Partnership (PDSCP) policies and procedures (as may be amended or re-enacted from time to time) in relation to information sharing.

## **11. AUDIT**

11.1 The Provider shall keep and maintain until six years after the Agreement has ended, or as long a period as may be agreed between the parties, full and accurate records of the Agreement and any Call-Off Contract, including the Services provided, all expenditure reimbursed by the Purchaser and all payments made by the Purchaser.

11.2 The Provider shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Agreement and any Call-Off Contract.

## **12. CONFIDENTIALITY**

12.1 Each party, its Personnel and any other person associated with either party shall keep confidential:

12.1.1 the terms of this Agreement and any Call-Off Contract; and

12.1.2 any and all Confidential Information that it may acquire in relation to the other party or any Service User.

12.2 Neither party shall use or disclose the other party's Confidential Information, without prior written consent, except to persons for the purpose of performing this Agreement and any Call-Off Contract, or where disclosure is expressly permitted under this Agreement.

12.3 The Provider shall only use the Purchaser's Confidential Information for the purposes of this Agreement and any Call-Off Contract.

12.4 The Provider shall take reasonable steps to ensure the Purchaser's Confidential Information is only given to its Personnel, professional advisors or consultants as strictly necessary for the performance of the Services. The Provider shall ensure its Personnel, professional advisors or consultants are aware of the Provider's confidentiality obligations under this Agreement.

12.5 The obligations on a party set out in Clauses 12.1 to 12.4 shall not apply to any Confidential Information which:

12.5.1 a party can demonstrate is or becomes public knowledge otherwise than by breach of this Agreement;

12.5.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;

- 12.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 12.5.4 is independently developed without access to the Confidential Information;
  - 12.5.5 is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- 12.6 Nothing in this Clause shall prevent the Purchaser from:
- 12.6.1 disclosing any Confidential Information for the purpose of:
    - 12.6.1.1. the examination and certification of the Purchaser's accounts; or
    - 12.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchaser has used its resources; or
  - 12.6.2 disclosing any Confidential Information obtained from the Provider:
    - 12.6.2.1 to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or
    - 12.6.2.2 to any person engaged in providing any services to the Purchaser for any purpose relating to or ancillary to this Agreement

provided that in disclosing information under sub-paragraph 12.6.2 the Purchaser discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate
- 12.7 The Provider shall ensure that its Personnel are aware of the Provider's confidentiality obligations under this Agreement.
- 12.8 In the event that the Provider fails to comply with this Clause, the Purchaser reserves the right to terminate the Agreement and any Call-Off Contract under it by notice in writing with immediate effect.
- 12.9 Information which a Service User wishes to be regarded as Confidential Information shall not be disclosed unless particular circumstances dictate otherwise, for example where there is prima facie evidence of a crime having been committed, or the information is directly relevant to the Services being provided or withholding the information would place Service Users or potential Service Users at risk, in which case the information must, in the first instance, be shared with the Purchaser.
- 12.10 As the security, safety and well-being of Service Users takes precedence over issues

of confidentiality, where the Provider has received information that a Service User has been Abused whilst in receipt of the Services or is at risk of Abuse, the Provider shall report this immediately to the Purchaser and/or the police as appropriate and shall co-operate fully with any subsequent procedures. In the same way, where the Purchaser has received information that a Service User has been Abused or is a risk of Abuse, the Purchaser shall report this immediately to the police and/or other agencies with a responsibility for the protection of vulnerable groups.

- 12.11 This Clause shall survive termination of this Agreement or any Call-Off Contract indefinitely.

### 13. DATA PROTECTION

#### Definitions

For the purposes of this Clause, the following terms shall have the following meanings:

**Agreed Purposes:** the provision of Services according to the Service Specification;

**Data Controllers in Common** where both parties are Controllers and process Personal Data under this Agreement and any Call-Off Contract independently of the other;

**Data Discloser:** a party that discloses Shared Personal Data to the other party;

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** have the meaning given in the Data Protection Legislation;

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under the Agreement and any Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**DPA 2018:** Data Protection Act 2018;

**EU GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679);

**Joint Controllers or Joint Control** where two or more entities are Controllers of the Personal Data and therefore jointly determine the purposes and means of processing;

**Permitted Recipients:** the parties to this Agreement, the Personnel of each party and any third parties engaged to perform obligations in connection with this Agreement and any Call-Off Contract;

**Processor Personnel** means all directors, officers, Personnel, agents, volunteers, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under the Agreement and any Call-Off Contract;

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

**Shared Personal Data:** the Personal Data to be shared between the parties under Clause 13.14 of this Agreement being all personal and sensitive Personal Data as defined by the Data Protection Legislation which is routinely created and collected in the course of providing the Services for the Agreed Purposes.

**Sub-processor:** any third party appointed to process Personal Data on behalf of that Processor related to this Agreement and any Call-Off Contract.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. Clauses 13.1 to 13.14 inclusive apply to the processing of Personal Data and are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the Controller, and the Provider is the Processor unless otherwise specified in Appendix 3. The only processing that the Processor is authorised to do is listed in Appendix 3 by the Controller and may not be determined by the Processor.
- 13.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 13.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;



- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement and any Call-Off Contract:

- (a) process that Personal Data only in accordance with Appendix 3, unless the Processor is required to do otherwise by law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - (i) nature of the Personal Data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix 3);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with Part 3 of the DPA 2018 and UK GDPR) as determined by the Controller;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement and any Call-Off Contract unless the Processor is required by law to retain the Personal Data.

13.6 Subject to Clause **Error! Reference source not found.**, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Agreement and any Call-Off Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
- (f) becomes aware of a Data Loss Event.

13.7 The Processor's obligation to notify under Clause **Error! Reference source not found.** shall include the provision of further information to the Controller in phases, as details become available.

13.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause in accordance with the requirements of the Data Protection Legislation and allow for audits by the Controller or the Controller's designated auditor.

13.9 The Processor shall designate its own data protection officer if required by the Data Protection Legislation.

13.10 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;

- (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 13.11 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.12 The Controller may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 13.13 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice instruct the Processor to amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Joint Controllers and Data Controllers in Common**

- 13.14 Clauses 13.15 to 13.24 inclusive set out the framework for the sharing of Personal Data between the parties as controllers, either as Joint Controllers or Data Controllers in Common. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 13.15 Each party shall comply with the obligations imposed on a Controller under the Data Protection Legislation and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement and any Call-Off Contract with immediate effect.
- 13.16 Each party shall be responsible for meeting their obligations under the Data Protection Legislation in providing information to any Data Subject in respect of whose Personal Data that party is Controller.
- 13.17 Each party shall be responsible for responding to a Data Subject Request in relation to Personal Data for which it is Controller in compliance with the Data Protection Legislation.
- 13.18 Each party shall:
- 13.18.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
  - 13.18.2 give full information to any Data Subject whose Personal Data may be processed under this Agreement and any Call-Off Contract of the nature of such processing. This includes giving notice that, on the termination of this Agreement or any Call-Off Contract, Personal Data relating to them may be retained by or, as the case may be,

- transferred to one or more of the Permitted Recipients, their successors and assignees;
- 13.18.3 process the Shared Personal Data only for the Agreed Purposes;
- 13.18.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- 13.18.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
- 13.18.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- 13.18.7 not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 13.19 Each party shall provide reasonable assistance to the other party in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 13.19.1 consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
- 13.19.2 promptly inform the other party in the event of receipt of a Data Subject Request in relation to Shared Personal Data;
- 13.19.3 assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data breach notifications, Data Protection Impact Assessments and consultations with the Information Commissioner or other regulators;
- 13.19.4 not disclose, release, amend, delete or block any Shared Personal Data in response to a Data Subject rights request without first consulting the other party wherever possible;
- 13.19.5 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement or any Call-Off Contract unless required by law to store the Shared Personal Data;

- 13.19.6 promptly notify the other party if it receives any request, complaint or communication relating to that party's obligations under the Data Protection Legislation;
  - 13.19.7 promptly notify the other party if it receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 13.19.8 promptly notify the other party if it receives a request from any third party for disclosure of Personal Data under the Agreement or any Call-Off Contract where compliance with such request is required or purported to be required by law; and
  - 13.19.9 promptly notify the other party if it becomes aware of a Data Loss Event or any breach of the Data Protection Legislation.
- 13.20 Each party shall comply with its obligation to notify a Personal Data Breach to the Information Commissioner's Office and, where applicable, Data Subjects, under the Data Protection Legislation in respect of the Personal Data for which it is Controller, (having first liaised with the other party to agree which party shall notify the Personal Data Breach to the Information Commissioner's Office), and each party shall inform the other party of any Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner's Office or Data Subject.
- 13.21 The parties agree to provide reasonable assistance to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.
- 13.22 The parties shall maintain complete and accurate records and information in respect of the Personal Data for which it is Controller in order to demonstrate compliance with this Clause and the Data Protection Legislation and to allow for audit of its Data Processing activity by the other party's designated auditor.
- 13.23 Each party shall, if relevant, be responsible for carrying out a Data Protection Impact Assessment in relation to the Personal Data for which it is Controller prior to commencing processing of such Personal Data, should that party consider it necessary, to ensure compliance with its obligations under the Data Protection Legislation with respect to Data Protection Impact Assessments.
- 13.24 Each party shall provide the other with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a Personal Data Breach, and the regular review of the parties' compliance with the Data Protection Legislation.

#### **14. FREEDOM OF INFORMATION**

- 14.1 The Provider acknowledges that the Purchaser is subject to the requirements of the Freedom of Information Act 2000 ('the FOIA') and the Environmental Information Regulations 2004 ('the EIR') and shall assist and co-operate with the Purchaser (at the Provider's expense) to enable the Purchaser to comply with its information disclosure requirements.

14.2 The Provider shall:

14.2.1 transfer all requests for information to the Purchaser (where it is reasonably apparent that such are intended to be requests for information for the Purchaser) as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;

14.2.2 provide the Purchaser with a copy of any information in its possession or power in the form that the Purchaser requires within five Working Day (or such other period as the Purchaser may specify) of the Purchaser requesting that information; and

14.2.3 provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser to respond to a request for information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.

14.3 The Purchaser shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:

14.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOIA or under the EIR; or

14.3.2 is to be disclosed in response to a request for information.

14.4 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Purchaser.

14.5 The Provider acknowledges that the Purchaser may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA or under the EIR, be obliged to disclose Information:

14.5.1 without consulting with the Provider; or

14.5.2 following consultation with the Provider and having taken its views into account.

14.6 The Provider shall ensure that all information produced in the course of this Agreement or relating to this Agreement or any Call-Off Contract thereunder is retained for disclosure and shall permit the Purchaser to inspect such records as requested from time to time.

14.7 The Provider acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Purchaser may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.3.

**15. WARRANTIES**

15.1 The Provider warrants and represents to the Purchaser that:

15.1.1 it has the full capacity and authority to enter into and perform this Agreement and any Call-Off Contract entered into under it and that the Agreement is executed by a duly authorised representative of the Provider;

- 15.1.2 it shall perform the Services using reasonable care and skill and suitably qualified Personnel, volunteers and agents, and to a standard which conforms to generally accepted industry standards and practice;
  - 15.1.3 it shall use all reasonable endeavours to achieve the outcomes in the Service Specification and that the outcomes will be in accordance in all material respects with the Service Specification and accompanying documents;
  - 15.1.4 the Provider's Personnel shall have the necessary skills, professional qualifications and experience to perform the Services in accordance with the Service Specification and industry standards and practice, being responsible for all costs, fees, expenses, and charges for training necessary or required for the Provider to perform the Services;
  - 15.1.5 it has obtained all necessary and required licences, consents and permits to perform the Services;
  - 15.1.6 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.
- 15.2 Each of the parties acknowledges that in entering into this Agreement it does not do so in reliance on any representation, warranty or other provision except as expressly provided for in this Agreement and any Clauses, warranties or other terms implied by statute or common law or by custom and practice are excluded from this Agreement to the fullest extent permitted by law.

## **16. LIABILITY AND INDEMNITIES**

- 16.1 Neither the Provider nor the Purchaser excludes nor limits its liability to the other for death or personal injury caused by its negligence or that of its Personnel, agents or sub-contractors, fraud by it or its Personnel or for any breach of obligation implied by Part 2 of the Supply of Goods and Services Act 1982.
- 16.2 The Provider shall indemnify the Purchaser fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising out of or in connection with this Agreement and any Call-Off Contract under it, caused directly or indirectly by any act or omission of the Provider in providing the Services unless such injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Purchaser.
- 16.3 Subject to Clauses 16.1 and 16.2, neither the Provider or the Purchaser shall be liable to the other in any event for any loss of profits, turnover, business opportunities, damage to goodwill or anticipated savings and/or indirect or consequential loss or damage.
- 16.4 The Purchaser shall not, under any circumstances, be liable for any damage to the Provider's property or Premises.
- 16.5 The parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 16 is held to be invalid under any law, it shall be deemed

omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability shall be subject to the remaining limitations and provisions set out in this Clause 16.

- 16.6 Nothing in this Clause 16 shall act to reduce or affect a party's general duty to mitigate its loss.

## **17. INSURANCE**

- 17.1 The Provider shall at all times effect and maintain appropriate insurance policies with a reputable insurer in relation to the provision of the Services.
- 17.2 Public liability insurance shall be maintained in such sum as is deemed prudent in all the circumstances by the Provider and in any event with a minimum level of indemnity of £5 million for any one claim.
- 17.4 Employers' liability cover shall be maintained with a minimum of £10 million for any one claim.
- 17.5 The Provider shall, if relevant to the Services, maintain a valid policy or policies of professional indemnity insurance with a minimum level of indemnity of £1 million. Cover shall remain in place after the conclusion of the Services for a period of at least seven years.
- 17.6 The Provider shall maintain motor vehicle insurance to cover all liabilities to third parties arising from the performance of the Services.
- 17.7 The Provider shall produce evidence of the insurances in force before commencement of the Services, and as subsequently required by the Purchaser. A copy of the insurance documents shall be submitted to the Contracts Officer.
- 17.8 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Clause, the Purchaser may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Provider. Such failure may be regarded as a serious breach of this Agreement.
- 17.9 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Agreement and any Call-Off Contract.
- 17.10 For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Agreement or any Call-Off Contract.

## **18. ASSIGNMENT AND SUB-CONTRACTING**

- 18.1 The Provider shall not transfer, assign or sub-contract directly or indirectly to any person or organisation any part of this Agreement or any Call-Off Contract without the previous written permission of the Purchaser.
- 18.2 Sub-contracting any part of this Agreement or Call-Off Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under this Agreement or any Call-Off Contract.
- 18.3 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.



- 18.4 Any such permitted transfer, assignment or sub-contracting shall be on the same terms as this Agreement and any Call-Off Contract, unless otherwise agreed between the parties.
- 18.5 The Purchaser shall be entitled to assign the benefit of the Agreement or Call-Off Contract or any part of the same and shall give written notice of any assignment to the Provider.
- 18.6 The Purchaser shall be entitled to novate this Agreement or any Call-Off Contract to any statutory successor which substantially performs any of the functions that the Purchaser previously performed.

## **19. RIGHTS OF THIRD PARTIES**

- 19.1 Except as expressly set out in this Agreement, a person who is not a party to this Agreement or any Call-Off Contract shall not have any rights under or in connection with it, in accordance with the Contracts (Rights of Third Parties) Act 1999.

## **20. DISCRIMINATION**

- 20.1 The Provider shall at all times operate a policy of equal opportunity in both staffing recruitment and service delivery. The Provider shall be required to forward a copy of this policy to the Purchaser when required and demonstrate its operation in the performance of the Services.
- 20.2 The Provider shall not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.
- 20.3 The Provider shall take all reasonable steps to secure the observance of this Clause by all Personnel engaged in the Services.
- 20.4 In the event of a finding of discrimination being made by any court or employment tribunal against the Provider or any sub-contractor appointed by the Provider during the performance of the Services, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of the Services, the Provider shall inform the Purchaser of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 20.5 The Provider shall indemnify the Purchaser in respect of any claims against the Purchaser which arise by reason of the Provider's breach of the legislation referred to in Clause 20.2 where such breach arises in the performance of its obligations under this Agreement or any Call-Off Contract.
- 20.6 The Provider may be required to answer questions raised by the Purchaser on matters referred to in this Clause.

## **21. MENTAL CAPACITY**

- 21.1 The Provider shall comply at all times with the requirements of the Mental Capacity Act 2005 ('the Act') and the Deprivation of Liberty Safeguards (and any successor to the same) in the provision of the Services.

**22. HUMAN RIGHTS ACT 1998**

- 22.1 The Provider shall, at all times when providing the Services act in a way that is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.
- 22.2 The Purchaser shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance with this Clause by the Provider. The Provider shall not resume provision of the Services or such part until the Purchaser is satisfied that the non-compliance has been rectified.

**23. HEALTH AND SAFETY**

- 23.1 The Provider shall comply with the Health and Safety at Work etc. Act 1974, and any other acts, orders and regulations and codes of practice relating to health and safety in the performance of the Services, including the Manual Handling Operations Regulations 1992 as amended, and are required to operate written policies which demonstrate such compliance.
- 23.2 The Provider's Premises shall conform to all requirements of the Chief Fire Officer and the requirements of the Regulation Reform (Fire Safety) Order 2005 and the Provider shall carry out a fire risk assessment to ensure Service Users are adequately protected against fire at all times.
- 23.3 The Purchaser shall be empowered to suspend the provision of the Services or part thereof in the event of non-compliance by the Provider with its legal duties in health and safety matters. The Provider shall not resume provision of the Services or such part until the Purchaser is satisfied that the non-compliance has been rectified.
- 23.4 The Purchaser places great emphasis on compliance with both the letter and spirit of health and safety legislation and expects full co-operation by the Provider with all statutory bodies including Environmental Health.
- 23.5 The Provider shall promptly notify the Purchaser of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Services.

**24. SERVICE PROVISION**

- 24.1 The Provider shall perform the Services in accordance with the principles of the Purchaser's 'Corporate Privacy, Dignity and Respect' Framework at Appendix 4.
- 24.2 If applicable to the Services the Provider shall adhere to the requirements of the Autism Act 2009 which provides a statutory framework to improve the provision of Services to meet the needs of children with autistic spectrum conditions.

**25. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 25.1 The Provider shall fully adopt and implement the Pan-Dorset Safeguarding Children Partnership (PDSCP) policies and procedures, these can be found in

<http://pandorsetscb.proceduresonline.com/contents.html> The Provider shall follow and fully implement the prescribed procedures in relation to safer recruitment in the PDSCP i.e. [http://pandorsetscb.proceduresonline.com/g\\_safe\\_rec.html](http://pandorsetscb.proceduresonline.com/g_safe_rec.html) and all other child safeguarding procedures as they have been or may be amended from time to time.. The Provider shall evidence compliance with these procedures.

- 25.2 Where it relates to the Services the Provider shall comply with the requirements of the Dorset Multi-Agency Safeguarding Adults Policy and Procedures, these can be found at <https://www.dorsetcouncil.gov.uk/care-and-support-for-adults/dorset-safeguarding-adults-board/dorset-safeguarding-adults-board.aspx>
- 25.3 The Provider shall fully comply with the Purchaser's Safeguarding Standards for Children's Contracted Services and review its safeguarding policy and procedures when the Purchaser notifies the Provider it is updated.
- 25.4 The Provider shall appoint a named safeguarding lead for the Services who is fully conversant with the requirements of the safeguarding procedures referred to at Clauses 25.1 to 25.2 as appropriate. The safeguarding lead shall ensure that there is a clear method for Service Users and relatives to recognise and report Abuse.
- 25.5 The Purchaser, acting reasonably, retains the right to require any Personnel to be withdrawn in the event of any safeguarding information coming to light which in the reasonable opinion of the Purchaser deems the Personnel unsuitable to work with the Service User. The Provider shall immediately notify the Purchaser in the event that it becomes aware of such information. The Purchaser shall under no circumstances be liable either to the Provider or the Provider's Personnel in respect of any award, cost, expenses, liability, loss or damage occasioned by withdrawal of Personnel from the Services and the Provider shall fully indemnify the Purchaser in respect of any such claims made.
- 25.6 The Provider must evidence that a robust staff recruitment, training and supervision programme is in place which meets best practice requirements and ensures all reasonable steps are taken to ensure the suitability and competency of the Personnel deployed to the Service User. The staff recruitment process must comply with all best practice safeguarding processes.
- 25.7 All allegations and incidents of harm must be followed up promptly and the details and action taken recorded in a special record/file for the purpose and on the personal file of the Service User.
- 25.8 The Provider shall have policies and procedures in place for Personnel concerning the investigation of allegations of financial irregularities and the involvement of police, the Purchaser and professional bodies.
- 25.9 Personnel employed by the Provider who are believed to have committed any offence defined by regulations must be immediately reported to the Disclosure and Barring Service, irrespective of whether their employment with the Provider comes to an end.
- 25.10 Training on prevention of harm to children at risk and on the current safeguarding policy and procedures shall be given to all Personnel within six months of employment and be updated every two years.

- 25.11 The Provider shall be required to withdraw Personnel and provide an acceptable substitute where it is appropriate to do so in order to comply with schemes of vetting and barring that are from time to time in force in order to comply with the requirements of the Safeguarding Vulnerable Groups Act 2006.
- 25.12 Failure to comply with the provisions of this Clause where relevant to the Services shall be deemed a Serious or Unacceptable Non-Compliance, as appropriate, in accordance with Clause 31 (Contract Non-Compliance).
- 25.13 In providing the Services, the Provider shall comply with the principles and obligations of the Prevent Duty in having due regard to the need to prevent people from being drawn into terrorism, in accordance with section 26 of the Counter-Terrorism and Security Act 2015 and government guidance. The Provider shall ensure that its Personnel have a good understanding of the Prevent Duty and are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with the issue.

## **26. DISCLOSURE AND BARRING SERVICE (DBS) CHECKS**

- 26.1 The Provider shall comply with the requirements of this Clause if the performance of the Services requires the Personnel of the Provider to provide services or work in settings for children or vulnerable adults and/or to have access to Personal Data (within the meaning of the Data Protection Legislation) held on the ICT systems of the Purchaser.
- 26.2 The Provider shall comply with all relevant law and government guidance for safeguarding children and vulnerable adults in performing the Services. This shall include, but shall not be limited to, the Protection of Freedoms Act 2012, the Safeguarding Vulnerable Groups Act 2006, the Rehabilitation of Offenders Act 1974 and all subsequent law, legislative amendments, sub-ordinate law, changes to government guidance and any additional government guidance that may be issued from time to time.
- 26.3 The Purchaser's DBS policies are available on request and may be subject to change to conform to changes in law, government guidance or the Purchaser's policy.
- 26.4 If the Provider's Personnel are required to provide Services or work in settings for children or vulnerable adults, the Purchaser's Code of Conduct – Contractors Working in Settings for Children or Vulnerable Groups at Appendix 5 shall be issued by the Provider to all Personnel engaged in the Services. The issue of the Code of Conduct to the Provider's Personnel shall be recorded by the Provider with confirmation provided to the Purchaser on request. The Purchaser may require any of the Provider's Personnel deployed on the Services to be withdrawn and an acceptable person substituted in the event of the Provider's Personnel failing to comply with the Code of Conduct.
- 26.5 The Provider shall be responsible for determining whether DBS checks are required for its Personnel and for obtaining such checks in accordance with its DBS checking policy and procedures. The Provider shall meet all costs in respect of the same.
- 26.6 The Provider shall provide the Purchaser with evidence of its compliance with Clauses 26.2 and 26.4 above by way of a DBS Check Summary recording details of DBS checks and recorded risk assessments undertaken on any conviction or other relevant information disclosed. These records shall be made available for inspection

by the Purchaser in the format set out in Appendix 6 at any time on request and as part of contract compliance monitoring.

- 26.7 If a conviction or other relevant information is disclosed, a risk assessment shall be conducted by the Provider to determine suitability to perform the Services. The assessment shall be undertaken and recorded in accordance with the process and format set out in Appendix 7 and shall take account of the Purchaser's policy on the employment of ex-offenders.
- 26.8 The Provider shall ensure that checks and assessment of suitability are undertaken before its Personnel provide the Services. The Provider shall ensure that its Personnel who are subject to DBS checking are required to declare all convictions received during the course of their deployment to work on the Services and that where a declaration is made, a further assessment of suitability is undertaken and recorded in the DBS Checks Summary referred to at Clause 26.6 above.
- 26.9 The Provider shall be a member of the DBS update service if required to do so by its regulator. The Purchaser may require the Provider to be a member of the DBS update service where the Purchaser has identified that this will assist effective service delivery and/or improve safeguarding and the Provider shall comply with such requirement.
- 26.10 The Purchaser reserves the right, acting reasonably, to conduct additional DBS checks on Personnel deployed on the Services, where deemed necessary, at the Provider's cost. The Purchaser shall provide an explanation for such action.
- 26.11 The Provider shall ensure that Personnel who are deployed to work on the Services and who are subject to DBS checking are in possession of a letter/ID badge from the Provider confirming clearance for presentation on request from the manager of the site where the Services are performed or from a Service User.
- 26.12 The Provider shall not under any circumstances deploy to regulated activity (within the meaning of the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012) any person who is barred from working with children and/or vulnerable adults or deploy any person to the Services who is reasonably deemed by the Purchaser to be unsuitable for deployment to the Services.
- 26.13 The Purchaser may require any of the Provider's Personnel deployed on the Services to be withdrawn and an acceptable person substituted in the event of:
- 26.13.1 the Provider failing to comply with its obligations under this Clause; or
  - 26.13.2 the Provider's Personnel refusing to complete a disclosure statement/application; or
  - 26.13.3 the disclosure at any stage of information that in the reasonable opinion of the Purchaser renders the Provider's Personnel unsuitable for deployment to the Services

and any such decision shall be taken in accordance with the Purchaser's policy on the employment of ex-offenders.

- 26.14 The Purchaser shall under no circumstances be liable either to the Provider or the Provider's Personnel in respect of any award, cost, expenses, liability, loss or damage occasioned by withdrawal of the Personnel from the Services in accordance with this Clause and the Provider shall fully indemnify the Purchaser in respect of any such claims made.
- 26.15 The Purchaser reserve the right to monitor the suitability of the Provider's Personnel to perform the Services.
- 26.16 The Purchaser shall closely monitor the Provider's compliance with this Clause to ensure that the Provider fully adheres to the law and procedures referred to, and the Provider shall fully co-operate with the Purchaser, at its own expense, to enable the Purchaser to carry out such monitoring requirements.
- 26.17 The Provider shall be responsible for meeting any reasonable costs arising from changes in law, government guidance or the Purchaser's policy relating to the carrying out of DBS checks on its Personnel.

## **27. SERVICE USER AND CARER INVOLVEMENT**

- 27.1 Service Users and carers shall be involved in all decisions which affect the provision of the Services and, where possible, in the planning of the delivery of the Services.

## **28. QUALITY ASSURANCE AND CONTROL**

- 28.1 The Provider shall adhere to the standards of service detailed in the Service Specification.
- 28.2 The Provider shall demonstrate compliance with its obligations under this Agreement and maintain a quality control programme in accordance with the Service Specification. This must include individual Service User feedback processes using formats which are accessible to all service users. Information must be made available to the Purchaser in respect of all aspects of contract compliance and quality control on request. Particular emphasis will be placed on the following areas:
- a) Recruitment, selection, management of Personnel, supervision and training.
  - b) Service provision and outcomes. The Provider shall achieve the measurable outcomes specified in the Service Specification (Appendix 1) and demonstrate forward planning and consistency of delivery.
  - c) Representation and the handling of Service User complaints.
  - d) Policies and procedures operated by the Provider and resultant practices within the Provider's organisation.
- 28.3 For the avoidance of doubt, nothing in this Agreement is intended to prevent the Provider from achieving higher quality standards than those required by this Agreement and/or any regulator and the Provider shall make all reasonable efforts to comply with all best practice guidance in relation to the provision of the Services.

## **29. COMPLAINTS**

- 29.1 The Provider shall establish and implement a procedure for examining Service Users' complaints regarding the Services. Service Users must be informed of the means of

registering a complaint. The procedure shall confirm how complaints are dealt with, a time scale for responses and how Service Users are informed of the outcome of a complaint.

29.2 The complaints procedure adopted by the Provider shall recognise the difficulty some Service Users may feel in raising a complaint because of their potential vulnerability. The procedure shall ensure that Service Users are encouraged and facilitated to make complaints through a range of methods with representation if necessary.

29.3 The Provider shall maintain a log of complaints showing:

- The name and address of the Service User;
- The name and address of the complainant (if different);
- The nature of the complaint;
- The response to the complaint and the time taken to respond; and
- The level of satisfaction of the complainant.

The log of complaints shall be accessible to the Purchaser on request. In addition, the Provider must supply to the Purchaser an analysis of all complaints relating to this Agreement and all Call-Off Contracts, and their outcomes, if requested.

29.4 Where a complaint remains unresolved, it shall be recorded in the Provider's log book and a copy of the record shall be forwarded to the Purchaser's Contracts Officer within two days of the Service User notifying the Provider that they remain unsatisfied.

29.5 Where a Service User remains dissatisfied following a complaint, the Provider shall inform the Service User of the Children's Services Directorate's complaints procedure operated by the Purchaser, which may then be instigated if the Service User so wishes.

29.6 The Provider shall also notify Service Users that they may, if they wish, complain directly to the Purchaser's Complaints Team without going through the Provider's own complaints procedure. Details of this are at:  
<https://www.dorsetcouncil.gov.uk/your-council/complaints-to-dorset-council.aspx>

29.7 In addition, if all complaints procedures have been exhausted and the Service User or their carer remains unhappy, the Provider shall inform them that they may contact the Local Government and Social Care Ombudsman on 0300 061 0614 or  
<https://www.lgo.org.uk/contact-us>

29.8 The Provider and its Personnel shall co-operate fully with the Purchaser in investigating and resolving complaints and every endeavour shall be made to improve the Services in the light of valid complaints in order to minimise complaints and reduce the likelihood of future complaints.

29.9 Complaints shall be an item for discussion at contract review meetings.

## **30. CONTRACT MANAGEMENT AND MONITORING ARRANGEMENTS**

30.1 The Provider shall take appropriate steps (which may include one or more contract implementation meetings) with the Purchaser to confirm the preferred communication and other procedures at the outset of the Agreement and any Call-Off Contract.

30.2 The Provider shall promptly give notice to the Purchaser of the identity of the Provider's Contract Manager appointed to manage the Services and any replacement for them.

Any Contract Manager shall be appropriately qualified and/or experienced for their responsibilities in relation to the Services.

- 30.3 The Purchaser shall monitor compliance with this Agreement and any Call-Off Contract, all financial and operational aspects of the Services and the standards of the Services provided with particular emphasis on quality.
- 30.4 The Contracts Officer shall be responsible for arranging and/or carrying out the monitoring of the Services using various approaches depending on the purpose of the monitoring, e.g. routine monitoring visit, contract review meeting, or a visit instigated as a result of a specific concern regarding the quality of the service being provided by the Provider.
- 30.5 In relation to the Purchaser's visits:
- 30.5.1 For planned visits such as routine monitoring and routine follow-up visits, the Provider shall be contacted in advance of the monitoring visit. If the suggested time and date is not convenient, the Provider shall contact the Contracts Officer without delay to arrange a mutually convenient time.
  - 30.5.2 All other visits shall be carried out by the Purchaser without giving prior notice to the Provider. Unannounced visits shall include visits in response to safeguarding referrals or complaints registered with the Purchaser.
- 30.6 In relation to contract review meetings, these shall be held on a regular basis, as specified within the Service Specification, between the Provider's Contract Manager and/or other representatives and the Purchaser's Contracts Officer. The purpose of these meetings shall be to:
- 30.6.1 monitor, review and evaluate the performance of the Provider against the Service Specification;
  - 30.6.2 evaluate and review the information reported by the Provider in accordance with the Service Specification.
  - 30.6.3 ensure that the data to be produced in accordance with the Service Specification has been reported accurately and that targets have been achieved. If not achieved, a plan of action shall be agreed between the parties.
  - 30.6.4 measure the outcomes against the Service Specification and discuss and identify areas for improvement or more focus;
  - 30.6.5 provide an opportunity for the Provider and the Purchaser to openly discuss any areas for future development, gaps in provision, current barriers to success, etc.
- 30.7 Where there are areas of non-compliance with the terms of this Agreement or any Call-Off Contract, the Provider shall be notified in writing in accordance with Clause 31.
- 30.8 The Provider shall comply with all records and monitoring requirements, as specified in this Agreement and the Service Specification.
- 30.9 Any costs incurred by the Provider in attending any meetings shall be at the Provider's expense.



- 30.10 The Provider shall ensure that the Purchaser and/or their representatives or agents have unrestricted access to the Services in order to benchmark, inspect, review and assess service delivery.

### **31. CONTRACT NON-COMPLIANCE**

- 31.1 For the purposes of this Clause, 'Contract Non-Compliance' means that in the opinion of the Purchaser, the Provider has failed either in whole or in part to comply with the terms of this Agreement or any Call-Off Contract, including the minimum performance measures set out in the Specification.

- 31.2 Contract Non-Compliance may be:

31.2.1 'Cautionary Non-Compliance' meaning that in the reasonable opinion of the Purchaser, there is Contract Non-Compliance but this does not amount to Serious Non-Compliance or Unacceptable Non-Compliance;

31.2.2 'Serious Non-Compliance' meaning that in the opinion of the Purchaser there is Contract Non-Compliance which places a Service User at serious risk to their physical, mental, emotional and/or financial well-being;

31.2.3 'Unacceptable Non-Compliance' meaning that in the opinion of the Purchaser there is Contract Non-Compliance which places a Service User at unacceptable risk to their physical, mental, emotional or financial well-being which for the avoidance of doubt shall amount to a fundamental breach of the Agreement and any Call-Off Contract.

- 31.3 Where the Purchaser is satisfied through the contract monitoring process or by any other means (which shall be at the discretion of the Purchaser) that Contract Non-Compliance has occurred, the Provider shall be informed at the earliest opportunity.

- 31.4 Where the Purchaser is satisfied that there has been Contract Non-Compliance they shall:-

31.4.1 make an assessment of the severity of the Contract Non-Compliance and the risks or potential risks to Service Users; and

31.4.2 if the Purchaser identifies risks or potential risks to Service Users, carry out an investigation. For the avoidance of doubt and at the Purchaser's discretion, the investigation may include a risk assessment of Service Users in receipt of the Services funded by the Purchaser; and

31.4.3 categorise the Contract Non-Compliance as:

31.4.3.1 'Unacceptable Non-Compliance'; or

31.4.3.2 'Serious Non-Compliance'; or

31.4.3.3 'Cautionary Non-Compliance'.

- 31.5 If Contract Non-Compliance is categorised as Unacceptable Non-Compliance, notice shall be served by the Purchaser on the Provider terminating the Agreement and/or the Call-Off Contract with immediate effect.

- 31.6 If Contract Non-Compliance amounts to Serious Non-Compliance then the Purchaser shall suspend the Agreement and/or Call-Off Contract with immediate effect by notice to the Provider until such time as in the opinion of the Purchaser the Serious Non-Compliance has been remedied. This shall not prevent the Purchaser taking alternative action at its discretion to remedy the Non-Compliance in accordance with the terms of this Agreement.
- 31.7 Otherwise than when Contract Non-Compliance amounts to Unacceptable Non-Compliance, the Provider shall be given a reasonable period of time as determined by the Purchaser and notified to the Provider to remedy the Contract Non-Compliance.
- 31.8 If the Contract Non-Compliance amounts to Cautionary Non-Compliance or Serious Non-Compliance and the Provider fails to remedy the Non-Compliance to the satisfaction of the Purchaser within such reasonable time period as is notified to the Provider under Clause 31.7 then the Purchaser shall be entitled to terminate the Agreement and/or Call-Off Contract by notice with immediate effect.
- 31.9 If Serious Non-Compliance and/or Cautionary Non-Compliance occur on more than three occasions the Purchaser may at its discretion terminate the Agreement and/or Call-Off Contract with immediate effect by notice to the Provider.
- 31.10 The Purchaser reserves the right to implement a Cautionary Non-Compliance or Serious Non-Compliance in relation to any pending child or adult protection referrals made under the multi-agency child or adult protection processes as a reasonable means to safeguard the welfare of any Service Users.
- 31.11 Notwithstanding the foregoing, in the event that the Purchaser reasonably considers that there has been Contract Non-Compliance, then the Purchaser may, without prejudice to, and in addition to, its rights under this Clause and Clause 38, do any of the following:
- 31.11.1 Make such deduction from the Contract Price to be paid to the Provider as the Purchaser shall reasonably determine to reflect the sums paid or sums which would otherwise be payable in respect of such of the Services as the Provider shall have failed to provide or performed inadequately which shall include in the event of the suspension under Clause 31.6;
  - 31.11.2 Without terminating the Agreement and/or Call-Off Contract itself provide or procure the provision of part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Purchaser that the Provider will be able to perform such part of the Services in accordance with the Agreement and Call-Off Contract.
  - 31.11.3 Without terminating the whole of the Agreement and/or Call-Off Contract, terminate the Agreement and/or Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such a part of the relevant Services.
- 31.12 The Purchaser may charge to the Provider any cost in respect of the provision of such part of the relevant Services by the Purchaser or by a third party to the extent that such costs exceed the Contract Price which would otherwise have been payable to the Provider for such part of the relevant Services.

## **32. RESOLUTION OF DISPUTES**

- 32.1 In the event that any disagreement or difference of opinion arises out of this Agreement or any Call-Off Contract which cannot be resolved by the Purchaser's Contracts Officer and the Provider's representative, the matter shall be dealt with as follows:
- 32.1.1 the contract managers for the Purchaser and the Provider shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred to the Purchaser's Executive Director of People - Children's and the Provider's Chief Executive (or equivalent) or their nominees for resolution.
  - 32.1.2 if within fourteen Working Days of the matter having been referred for resolution in accordance with Clause 32.1.1 no agreement has been reached as to the matter in dispute, the parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.
- 32.2 An independent expert shall be appointed by agreement between the parties. The parties shall promptly furnish to such expert all information relating to the dispute to enable them to give a decision as to what course of action in their reasonable opinion ought to be followed to give an outcome equitable to the parties taking into account the respective rights and obligations of the parties.
- 32.3 The decision of the expert shall be final and binding on the parties.
- 32.4 The parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.
- 32.5 Alternatively, the parties may agree to refer the matter for decision to arbitration whereupon the parties shall comply with the following provisions:
- 32.5.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 32.5.2 the arbitration fees shall be met by the Purchaser and the Provider in equal shares;
  - 32.5.3 the decision of the arbitrator shall be binding on the parties.

## **33. LEGAL/OMBUDSMAN PROCEEDINGS**

- 33.1 On written request from the Purchaser, the Provider or any of its Personnel, agents, officers or sub-contractors shall provide to the Purchaser all relevant information (including but not limited to documentation and statements from any Personnel, agents, officers or sub-contractors) and shall co-operate fully with and provide assistance and give evidence in connection with:
- 33.1.1 any legal or quasi-legal inquiry, arbitration or court proceedings in which the Purchaser may become involved; or
  - 33.1.2 any internal Purchaser disciplinary hearing arising out of or in connection with the Services or these Clauses;

33.1.3 any investigation by the Local Government and Social Care Ombudsman.

#### **34. STATUTORY FUNCTIONS**

34.1 Nothing in this Agreement or these Clauses shall be read as preventing or inhibiting the Purchaser or the Provider from carrying out any such statutory or regulatory duty as each may respectively be under, or as derogating therefrom, or as inhibiting or fettering the exercise of any statutory or regulatory power which either may respectively possess.

#### **35. INTELLECTUAL PROPERTY**

35.1 Neither the Purchaser nor the Provider shall acquire the intellectual property rights of the other.

35.2 The Provider shall not use the Purchaser's logo.

#### **36. PUBLICITY**

36.1 The Provider shall seek written approval from the Purchaser prior to the publication of any publicity where the Purchaser is acknowledged.

36.2 The Provider may state they are a provider to the Purchaser in any publicity with the Purchaser's prior written consent.

#### **37. SEVERANCE**

37.1 If any Clause of this Agreement or any Call-Off Contract is declared by any judicial or other competent authority or considered by the parties to be void, voidable, illegal or otherwise unenforceable:

37.1.1 The parties shall amend that provision in such reasonable manner as mutually agreed.

37.1.2 At the discretion of the parties it may be severed from this Agreement or any Call-Off Contract and the remaining Clauses shall except where otherwise provided remain in full force and effect unless otherwise terminable.

#### **38. TERMINATION**

38.1 The Purchaser may by notice in writing to the Provider terminate this Agreement and/or any Call-Off Contract as from the date of service of such notice if:

38.1.1 the Provider passes a resolution or a court makes an order that the Provider be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or

38.1.2 circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Provider; or

- 38.1.3 the Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Services; or
  - 38.1.4 the Provider becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986.
  - 38.1.5 the Provider has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up;
  - 38.1.6 the Provider has a petition presented to any court for its winding up or for an administration order;
  - 38.1.7 the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 38.1.8 the Provider suffers any distress, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within 7 days;
  - 38.1.9 the circumstances specified in Clause 39 arise;
  - 38.1.10 the Provider has become bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of the business for voluntary arrangements for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986; or
  - 38.1.11 the Provider has been convicted of a criminal offence or act of grave misconduct in the conduct of its business within the meaning of Regulation 57(8)(c) of the Public Contracts Regulations 2015 or any successor legislation; or
  - 38.1.12 the Provider has failed to comply with any obligations relating to the payment of any taxes or social security contributions.
- 38.2 The Purchaser may only exercise its right under Clause 38.1.3 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Provider shall notify the Contracts Officer immediately any change of control occurs.
- 38.3 Either the Purchaser or the Provider may at any time by notice in writing to the other party terminate this Agreement and/or any Call-Off Contract as from the date of service of such notice whenever any of the following events occurs:
- 38.3.1 the other party commits a material breach of any of its obligations under or in relation to this Agreement or any Call-Off Contract which is not capable of remedy or, if capable of remedy, is not remedied within 30 days after receipt of written notice from the non-breaching party of its intention to terminate; or

- 38.3.2 the other party is continually in breach or commits a series of repeated breaches of this Agreement or any Call-Off Contract, which cannot be remedied with 30 days of written notice from the non-breaching party of its intention to terminate.
- 38.4 This Agreement and/or any Call-Off Contract shall terminate:
  - 38.4.1 on the expiry of the Agreement Period or Call-Off Contract Period;
  - 38.4.2 immediately if any party commits a fundamental breach of the terms of this Agreement and/or any Call-Off Contract with the offended party serving written notice to the party in breach giving details of the way in which it is considered they are in breach.
- 38.5 The Purchaser may terminate the Agreement and/or any Call-Off Contract with immediate effect:
  - 38.5.1 in accordance with Clause 31;
  - 38.5.2 if in the Purchaser's reasonable opinion continuation of the Agreement and/or any Call-Off Contract would cause risk to the life, health or well-being of any Service User or potential Service User;
  - 38.5.3 in the event of the death of the Service User who is the subject of the Call-Off Contract; or
  - 38.5.4 immediately if the Provider has for any reason had their registration cancelled with a regulator, or has failed to remedy, following an agreed reasonable period, any issues highlighted by that regulator which deems the Services inadequate.
- 38.6 The parties may terminate the Agreement at any time on giving to the other not less than 3 months' notice in writing.
- 38.7 In addition to the grounds for termination of a Call-Off Contract elsewhere in this Agreement, the Purchaser or Provider may terminate a Call-Off Contract at any time on giving the other no less than one month's written notice.
- 38.8 In any case where immediate termination is permitted, the Purchaser may, at its discretion, initially suspend the Agreement and/or Call-Off Contract.
- 38.9 Termination of this Agreement shall not automatically terminate any Call-Off Contract made under it.
- 38.10 The termination of this Agreement or any Call-Off Contract, howsoever arising, is without prejudice to the rights, duties and liabilities of either party accrued at or prior to termination and subject thereto neither party shall have any further obligations to the other under this Agreement or Call-Off Contract. The Clauses of this Agreement or any Call-Off Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **39. PREVENTION OF CORRUPTION**

39.1 The Purchaser shall be entitled to terminate the Agreement and/or any Call-Off Contract immediately and recover from the Provider the amount of any loss or damage resulting from such termination if, in relation to this Agreement or Call-Off Contract or any other contract with the Purchaser, the Provider or any person employed by them or acting on their behalf shall have committed:-

39.1.1 any fraud

39.1.2 an offence under the Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

#### **40. CONSEQUENCES OF TERMINATION OR SUSPENSION**

40.1 Following termination by the Purchaser of this Agreement and/or Call-Off Contract, the Provider shall be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Services carried out up to the date of termination provided always that the Purchaser reserves the right to deduct from any such sum the amount of any claim the Purchaser may have in respect of any breach and / or failure by the Provider to perform its obligations under this Agreement or the Call-Off Contract.

40.2 The Purchaser shall not in any circumstances be liable to the Provider for any losses or expenses arising out of termination or suspension, and no payment shall be due from the Purchaser under this Agreement or any Call-Off Contract during any period of suspension.

40.3 Where the Purchaser terminates or suspends this Agreement and/or Call-Off Contract as a consequence of a breach by the Provider, the Purchaser shall be entitled to recover from the Provider:

40.3.1 any costs (including any administration costs) reasonably incurred by the Purchaser in respect of the supply of any part of the Services by the Purchaser or a third party; and

40.3.2 the amount of any other loss (including any administration costs) incurred by the Purchaser as a result of having to suspend or terminate this Agreement and/or Call-Off Contract.

The Purchaser shall take all reasonable steps to mitigate any additional expenditure.

40.4 The Provider shall upon the termination of this Agreement and/or any Call-Off Contract immediately deliver up to the Purchaser all correspondence, documents and other property belonging to the Purchaser which may be in their possession or under their control.

40.5 The Purchaser shall not in any circumstances be liable to the Provider for any losses or expenses arising out of termination or suspension of this Agreement and/or Call-Off Contract.

40.6 The provisions of this Clause shall survive the termination or expiry of this Agreement and/or any Call-Off Contract.

#### **41. FORCE MAJEURE**

- 41.1 Neither the Provider nor the Purchaser shall be liable for any delay in, or non-performance of, any obligation under the Agreement and/or any Call-Off Contract (other than the payment of money) caused by an event beyond the reasonable control of that party including but not limited to acts of God, war, explosion, fire, strike, flood, riot or civil commotion or any act or omission of the other party, or a force majeure event affecting a supplier, sub-contractor or a third party.
- 41.2 In the event such circumstances persist beyond a reasonable period given the nature of the event and its effect on the obligations under this Agreement and/or Call-Off Contract, then the other party shall have the right, for so long as the circumstances which prevent performance continue, to terminate this Agreement and/or Call-Off Contract by giving not less than 30 (thirty) Working Days' written notice to the other party.

#### **42. LAW AND JURISDICTION**

- 42.1 This Agreement and/or any Call-Off Contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English Courts.
- 42.2 This Agreement and/or Call-Off Contract is binding on the Purchaser and the Provider, their successors and assignees.

#### **43. CHANGE IN LAW**

- 43.1 The Provider shall neither be relieved of its obligations to perform its obligations under this Agreement and/or any Call-Off Contract nor be entitled to an increase in the Contract Price and/or any charges payable as a result of a change in law, if the change and its effect are known at the commencement of this Agreement.
- 43.2 If a change in law occurs or is shortly to occur which will significantly affect the provision of the Services or the cost of doing so, the Provider shall notify the Purchaser to express an opinion of the likely effects of the change including:
- 43.2.1 whether any change is required to the Services, the Contract Price or this Agreement and/or Call-Off Contract; and
- 43.2.2 whether the Provider requires any relief from compliance with its obligations.
- 43.3 If the parties to this Agreement agree upon the effects of the change in law and any financial consequences such agreement shall be implemented through the variation provisions of Clause 8.
- 43.4 In the case of any dispute arising under this Clause, it shall be resolved in accordance with Clause 32.

#### **44. CONFLICT OF INTEREST**

- 44.1 The Provider shall use reasonable endeavours to ensure that it and any of its Personnel, agents, suppliers or sub-contractors are not placed in a position where in the reasonable opinion of the Purchaser there is or may be an actual or potential conflict between the pecuniary or personal interests of the Provider and others and the duties owed to the Purchaser under the provisions of the Agreement and/or any Call-Off Contract. The Provider shall immediately disclose to the Purchaser full particulars



of any such conflict of interest which may arise.

44.2 Where such a conflict does arise the Provider shall take such reasonable steps as are required by the Purchaser for ending or avoiding the actual or potential conflict of interest or alleviating its effect. If the Provider fails to comply or is unable to comply with such measures, then the Purchaser shall have the right by notice in writing to terminate this Agreement and/or Call-Off Contract immediately. If the Purchaser terminates this Agreement and/or Call-Off Contract in accordance with this Clause, it shall reimburse the Provider against any commitments, liabilities or expenditure incurred or to be incurred which are reasonably and properly payable by the Provider in connection with the Services. However, it is expressly agreed that the Purchaser shall not be liable to pay any severance payment or compensation to the Provider for loss of profits.

44.3 The provisions of this Clause shall apply during the continuance of this Agreement and/or Call-Off Contract and for a period of two years after its termination.

#### **45. RIGHT OF SET OFF**

45.1 Without prejudice to any other rights and remedies available to it, the Purchaser shall be entitled to set off all or any of its liabilities to the Provider against all or any of the Provider's liabilities to it, and any liability, damage, loss, charge or expense which the Purchaser has incurred in consequence of any breach by the Provider of its obligations under this Agreement and/or any Call-Off Contract.

#### **46 LOCAL HEALTHWATCH**

46.1 In accordance with the provisions of the Local Government and Public Involvement in Health Act 2007 as amended by the Health and Social Care Act 2012, the Provider shall allow members of the Local Healthwatch to inspect Services commissioned by the Purchaser under any Call-Off Contract.

#### **47. TUPE**

47.1 If applicable, at any time during the last six months of the Agreement Period or the period of any Call-Off Contract, the Provider shall provide to the Purchaser within 20 Working Days of a written request such information as the Purchaser may reasonably require in respect of TUPE.

47.2 The Provider shall comply with its obligations under Clause 12 in relation to any information supplied under Clause 47.1.

47.3 The Provider shall permit the Purchaser to use the information for the purposes of TUPE and re-tendering.

47.4 If TUPE applies on termination of this Agreement and/or any Call-Off Contract then:

47.4.1 the Provider agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of the information under Clause 47.1;

- 47.4.2 the Provider agrees to indemnify the Purchaser from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities in connection with or as a result of any claim or demand by any Personnel or other personnel or person claiming to be an employee on any date upon which the Agreement and/or Call-Off Contract is terminated and/or transferred to any third party ('Relevant Transfer Date') arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- 47.5 In the event that the information provided by the Provider in accordance with Clause 47.1 becomes inaccurate, whether due to changes to the employment and personnel details of the affected Personnel made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Purchaser of the inaccuracies and provide the amended information within 10 Working Days.
- 47.6 The provisions of this Clause shall apply during the continuance of this Agreement and/or Call-Off Contract and indefinitely after its termination.

#### **48 NOTICES**

- 48.1 Any notice to be given under this Agreement shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider or the Purchaser at the address set out at the head of this Agreement or such other address as that party may from time to time notify to the other party in accordance with this Clause.
- 48.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:
- 48.2.1 if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt shall be deemed to occur at 9am on the next following Working Day; or
- 48.2.3 if delivered by first class mail, two Working Days after the day of posting.
- 48.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.
- 48.4 For the avoidance of doubt, this Clause does not apply to the service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.
- 48.5 Any notice to be given under any Call-Off Contract shall be given in accordance with the terms of the Call-Off Contract but in the absence of any provision in the Call-Off Contract, notice may be given by email to the Provider's Contract Manager and the Purchaser's Contracts Officer. Any notice sent by email will be deemed to have been received at the time of transmission.

#### **49 RECOVERY OF SUMS DUE**

- 49.1 Whenever any sum of money is recoverable from, or payable by, the Provider (including any sum which the Provider is liable to pay to the Purchaser under Clauses 31 or 40) the Purchaser may unilaterally deduct that sum from any sum then

due or which at any later time may become due to the Provider under any other contract with the Purchaser.

- 49.2 The Provider shall make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Provider.

## **50 IR35 RULES AND EMPLOYMENT STATUS**

- 50.1 The Provider agrees to notify the Purchaser as soon as reasonably practicable in the event of a change in the employment status of the Provider during the period of the Agreement and/or any Call-Off Contract within the meaning of Part 2 Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ('the IR35 Rules') and to provide all such information regarding the same as may be reasonably requested by the Purchaser.
- 50.2 The Provider shall indemnify the Purchaser fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from the Provider's failure to comply with Clause 50.1.

## **51. MODERN SLAVERY ACT 2015**

- 51.1 The Provider warrants and undertakes that in performing its obligations under the terms of this Agreement and/or any Call-Off Contract, it will:
- 51.1.1 comply with the Modern Slavery Act 2015; and
  - 51.1.2 not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015; and
  - 51.1.3 include in its subcontracting arrangements provisions that are at least as onerous as those set out in this clause 51.1.
- 51.2 The Provider warrants that neither it nor any of its officers, Personnel , agents or subcontractors has:
- 51.2.1 committed an offence under the Modern Slavery Act 2015 ('a MSA Offence'); or
  - 51.2.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
  - 51.2.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery Act 2015.

## **52. WHISTLEBLOWING**

- 52.1 The Provider shall be aware of and adhere to the principles set out in the Purchaser's whistleblowing policy in reporting concerns which arise during the Agreement and/or any Call-Off Contract and shall ensure that its agents and sub-contractors do the

same. The Purchaser's whistleblowing policy can be accessed on the Purchaser's website at [www.dorsetcouncil.gov.uk](http://www.dorsetcouncil.gov.uk)

**53. COUNTERPARTS**

53.1 This Agreement and/or any Call-Off Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement or Call-Off Contract.

**IN WITNESS WHEREOF** this Agreement has been executed as a Deed by the parties and delivered on the date stated below

**EXECUTED as a DEED** by affixing  
The COMMON SEAL of  
**DORSET COUNCIL** in the presence of:

**Authorised Signatory** .....

**Dated** .....

**EXECUTED as a DEED** by  
[ ] acting by a sole Director or by two Directors  
or by a Director and Company Secretary:

**Director** .....

**Company Secretary** .....  
**/Director**

Witness:

Witness Signature .....

Print Name .....

Address .....

Occupation .....

*This document must be executed as a Deed. You should check your company Articles to ensure you comply with the requirements for your company. Most commonly a document can be signed by a Director and a Company Secretary or by two Directors. If a sole Director can sign this document under your constitution, they will need an independent witness and the 'Witness' details section will need to be completed.*

**Appendix 1**

**Service Specification and Lots Awarded**

*{insert}*

**Appendix 2**

**Pricing Schedule**

*{insert}*

## Appendix 3

### Processing, Personal Data and Data Subjects

The Parties are Joint Controllers/Data Controllers in Common of the following Personal Data under the Call-Off Contract:

Personal Data for which the parties are Joint Controllers/Data Controllers in Common:

- Personal details – name, address & DOB
- Family, lifestyle and social circumstances
- Employment details
- Criminal offences, or alleged offences
- Physical or mental health or condition
- Racial or ethnic origin
- Contact with services
- Any relevant unique identifier (e.g. National Insurance number, unique pupil number etc)
- Personal identifiers of individuals (name, date of birth, gender, post code)
- Eligibility indicators (as set out in the financial framework)
- Status of the intervention
- Available unique identifiers

Contact details for point of contact for Data Subjects regarding their Personal Data:

[data.protection@dorsetcouncil.gov.uk](mailto:data.protection@dorsetcouncil.gov.uk)

- On receipt of a written request for personal information, or any other request pursuant to a Data Subject's rights under GDPR (e.g. requests to erase or amend personal data), forward the request to [data.protection@dorsetcouncil.gov.uk](mailto:data.protection@dorsetcouncil.gov.uk)
- Customers can make requests for Personal Data verbally. However, we will not disclose any Personal Data until we have confirmed the customer's identity. If you receive a verbal request, ask the customer to complete the Individual Rights Request form at [dorsetcouncil.gov.uk/dataprotection](http://dorsetcouncil.gov.uk/dataprotection) or if appropriate, complete the form on the customer's behalf

Your Name:

Organisation/Supplier Name: \*\*\*\*\*

Date:

Authorised Signature:

- Appendix 4 Dorset Council Corporate Privacy, Dignity and Respect Framework (*insert*)
- Appendix 5 Code of Conduct – Contractors Working in Settings for Children or Vulnerable Adults (*insert*)
- Appendix 6 DBS Check Summary – Contractors Working for Dorset Council (*insert*)
- Appendix 7 Risk Assessment – Disclosure of Criminal Convictions – Record Form (*insert*)
- Appendix 8 Individual Placement Agreement (if relevant)