



DORSET CARE FRAMEWORK

FRAMEWORK AGREEMENT

BETWEEN

DORSET COUNTY COUNCIL

NHS DORSET CLINICAL COMMISSIONING GROUP

AND

XXXXXX

FOR THE PROVISION OF

XXXXXXXXXXXXXX

LOT/S XXX

CONTENTS

Background

Definitions and Interpretation

1. Scope of Framework Agreement
2. Framework Agreement Period
3. Call-Off Award Procedure
4. Re-Opening the Framework
5. Provider's Obligations
6. Provider's Personnel
7. Service Continuity
8. Variations and Waivers
9. Financial Arrangements
10. Information
11. Audit
12. Confidentiality
13. Data Protection
14. Freedom of Information
15. Warranties
16. Liability and Indemnities
17. Insurance
18. Assignment and Sub-Contracting
19. Rights of Third Parties
20. Discrimination
21. Mental Capacity
22. Human Rights Act 1998
23. Health and Safety
24. Safeguarding Vulnerable Adults
25. Disclosure and Barring Service (DBS) Checks
26. Safeguarding Children
27. Service User and Carer Involvement
28. Quality Assurance and Management
29. Complaints/Representations and Compliments
30. Contract and Performance Management
31. Contract Non-Compliance
32. Resolution of Disputes

33. Legal/Ombudsman Proceedings
34. Statutory Functions
35. Intellectual Property Rights
36. Publicity
37. Severance
38. Termination
39. Prevention of Corruption
40. Consequences of Termination or Suspension
41. Force Majeure
42. Change in Law
43. Conflict of Interest
44. Right of Set Off
45. Local Healthwatch
46. TUPE
47. Notices
48. Service Interruption
49. Recovery of Sums Due
50. Provider Status
51. Counterparts
52. Law and Jurisdiction
53. Entire Agreement

Additional Terms Relating to Care and Support in a Care Home (With and Without Nursing)

54. Temporary Absence from the Care Home
55. Ending a Placement
56. Death of a Service User

Additional terms Relating to Care and Support at Home

57. Termination of Individual Service User Arrangements
58. Absence including Hospitalisation
59. Death of a Service User

Appendices:

- Appendix 1 Overarching Service Specification
Service Specification for XXXXXXXXX
- Appendix 2 Pricing Schedule
- Appendix 3 Dorset Care Framework Appendices comprising:
 - Appendix 1: Care and Support at Home Quality Monitoring Standards
 - Appendix 2: Residential Care and Support (with and without Nursing)
Quality Monitoring Standards
 - Appendix 3: Performance Monitoring
 - Appendix 4: Service User commissioning based upon outcomes illustration
 - Appendix 5: Multi-Agency Safeguarding Adults Policy and Procedures and
Children's Pan-Dorset Multi Agency Safeguarding Policies and
Procedures (February 2017)
 - Appendix 6: Moving and handling of adult Service Users: Policy for
providers
 - Appendix 7: Pan Dorset Guidance on the Provision of Equipment to Care
Homes and Care Homes with Nursing
 - Appendix 8: Individual Service Funds
 - Appendix 9: Activity by area
 - Appendix 10: Service User Pathway
 - Appendix 11: Care Navigators
 - Appendix 12: The Dorset Partnership for Older People Programme (POPP)
 - Appendix 13: Glossary of Terms

This Framework Agreement is made between:

- **Dorset County Council** of County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ;
- **NHS Dorset Clinical Commissioning Group** of Vespasian House, Barrack Road, Dorchester, DT1 1TG

(together ‘the Commissioning Partners’) and

- **XXXXXXXXXXXXX** (‘the Provider’) (company registration number: **XXXXXX**/charity registration number **XXXXXX**) whose registered office is at **XXXXXXXXXXXXXXXXXXXXX**

BACKGROUND

1. The Commissioning Partners placed a contract notice in the Official Journal of the European Union (OJEU ref 2017/S 057-105972EN, publication date 22/03/2017) seeking expressions of interest from providers for the provision of care and support services under a framework agreement to the Commissioning Partners throughout the County of Dorset.
2. The Framework is divided into the following lots:

Segment 1 - Care and Support at Home

- Lot 1 – Care and Support at Home
- Lot 2 – Day Opportunities
- Lot 3 – Intermediate Care
- Lot 4 – Rapid Response
- Lot 5 – Roaming Nights
- Lot 6 – Short Breaks
- Lot 7 – Live in Care
- Lot 8 – Extra Care
- Lot 9 – Children’s Care and Support at Home and Community Support

Segment 2 – Community Innovation

- Lot 1 – Creative solutions utilising community assets

Segment 3 – Care and Support in a Care Home (with and without nursing)

- Lot 1 – Care and Support in a Care Home (with and without nursing)
- Lot 2 – Day Opportunities
- Lot 3 – Intermediate Care

The lots are further broken down into the following geographical areas:

- Service Area 1: West Dorset
- Service Area 2: Weymouth & Portland
- Service Area 3: North Dorset
- Service Area 4: Christchurch

Service Area 5: East Dorset
 Service Area 6: Purbeck

3. On the basis of the Provider's tender, the Commissioning Partners have selected the Provider to enter into a framework agreement to provide services to the Commissioning Partners on a call-off basis in accordance with the terms of this Framework Agreement.
4. This Framework Agreement sets out the award and ordering procedure for services which may be required by the Commissioning Partners, the terms and conditions for any Call-Off Contract which may be concluded and the obligations of the Provider during and after the Term of this Framework Agreement.
5. If the Provider provides Services to Dorset County Council under this Framework Agreement at a residential/nursing home in the Bournemouth or Poole area, the terms and conditions of contract of Bournemouth Borough Council or Borough of Poole, as appropriate, will apply in relation to service users placed in those homes by NHS Dorset Clinical Commissioning Group. The Provider acknowledges that this provision may apply to other service areas, as appropriate.

DEFINITIONS AND INTERPRETATION

For the purposes of this Framework 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 person. This could include physical, emotional, financial, sexual, racial abuse, neglect and abuse through the misapplication of drugs.
Agreement Manager	the person nominated by the Provider who: - (i) shall be the XXXXXX or his/her duly appointed nominee; (ii) shall manage the Framework Agreement and make decisions about the provision of the Services.
Authorised Officer	the XXXXXX of the Commissioning Partners or their duly appointed nominee, who shall: (i) approve funding for the Services; (ii) ensure that the Services are meeting service delivery objectives in line with the Commissioning Partners' priorities.
Call-Off Contract	the legally binding agreement comprising the terms of this Framework Agreement for the provision of the Services together with any supplemental terms relating to an individual Service made between the Commissioning

	Partners and the Provider comprising an Order for the Services.
Call-Off Commencement Date	the date set out in the Order when the Services will commence.
Commercially Sensitive Information	any information so specified and provided by the Provider to the Commissioning Partners in confidence.
Confidential Information	any information, data or material of any nature which any party may receive or obtain in connection with the operation of this Framework Agreement including information which by its nature is clearly confidential and including sensitive personal information and Commercially Sensitive Information.
Contracts Officer	the officer of the Commissioning Partners responsible for: <ul style="list-style-type: none"> (i) managing and administering the Framework Agreement; (ii) arranging payment for the Services; (iii) monitoring the Provider in accordance with the requirements of the Service Specification, in conjunction with the Authorised Officer and the Link Officer, to ensure that the Framework Agreement is adhered to; (iv) ensuring that any information requested from the Provider, as detailed in the Framework Agreement and Service Specification, is provided by the Provider at the time specified.
Contract Review	the arrangements made by the Commissioning Partners with the Provider to consider any aspect of the Framework Agreement and Service Specification or the performance of the Services.
Equipment	the Provider's equipment, including any specialist equipment, which is needed to provide the Services in accordance with the requirements of the Service Specification.
Framework Agreement or Framework	this Framework Agreement consisting of these terms and conditions, the appendices, the invitation to tender, the Provider's tender submission and any documents accompanying it.
Framework Price	the price payable (exclusive of any applicable VAT) to the Provider by the Commissioning Partners as set out in the Pricing Schedule at

		Appendix 2 for the full and proper performance of its obligations under this Framework Agreement.
Law		any law, statutory provision or subordinate legislation and, to the extent they are legally binding, any other enactment, order, regulation, regulatory policy, guidance, industry code, applicable judgement or a relevant court of law or a decision of a tribunal or regulatory body which applies to the provision of the Services.
Link Officer		the Commissioning Partners' XXXXX Officer of the Adult & Community Services Directorate, or their duly appointed nominee, who shall be:- (i) the first point of contact for the Provider on a day-to-day basis; and (ii) responsible for monitoring the Services to ensure that the objectives of this Framework Agreement and the Service Specification are met.
Order		an order for the Services served by the Commissioning Partners on the Provider on the terms of this Framework Agreement.
Outcome		describes the end result of the Services provided by the Provider, which can be used to measure the effectiveness of the Services. An outcome may be a strategic outcome which is applicable to all Service Users, or an individual outcome which pertains to the individual Service User and is identified in the Service User's care and support plan.
Personnel		all persons employed by the Provider together with the Provider's volunteers, contractors, sub-contractors and agents, used in the performance of the Services under this Framework Agreement.
Premises		any location where the Services are provided.
Provider		the organisation appointed by the Commissioning Partners to provide the Services under this Framework Agreement and including the Provider's Personnel, successors and permitted assigns.
Service Specification		the documents at Appendix 1 which set out the level, scope and standards of the Services to be provided by the Provider under this Framework Agreement comprising the Overarching

		Specification and the specification/s appropriate to the lot/s awarded.
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 delivers to Service Users as specified in this Framework Agreement including for the avoidance of doubt the Services set out in the Service Specification and the Service User's care and support plan.
Term		the duration of this Framework Agreement as specified in Clause 2.1 or ending on earlier termination in accordance with the terms of this Framework Agreement.
TUPE		the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
Vulnerable Adult		any person aged 18 years and over who: <ul style="list-style-type: none"> (i) is or may be in need of community care services by reason of mental or other disability, age or illness; and (ii) is or may be unable to take care of him or herself; or (iii) is unable to protect themselves against significant harm or serious exploitation.
Working Day		Monday to Friday inclusive but not including any declared Public Holiday.

In this Framework 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 Framework Agreement;
- Words importing any gender include every gender;
- Any reference to an enactment includes a reference to that enactment as amended or replaced from time to time and to any subordinate Law or byelaw made under that enactment;

- The provisions of the appendices are incorporated in this Framework Agreement;
- In the event of any conflict between the Clauses and appendices, the appendices shall prevail;
- Any periods of time referred to in this Framework Agreement and expressed in days shall refer to calendar days unless stated otherwise;
- Reference to a Clause is a reference to the whole of that Clause unless otherwise stated;
- References to a party include reference to any successor body or person to which shall fall the right to enforce the benefit of this Framework Agreement or any paragraph in it, or to which shall be transferred any statutory function of any of the Parties, whether by way of act of Parliament, statutory instrument, express agreement or deed or otherwise.

1. SCOPE OF FRAMEWORK AGREEMENT

- 1.1 This Framework Agreement governs the relationship between the Commissioning Partners and the Provider in respect of the provision of the Services by the Provider to the Commissioning Partners.
- 1.2 The Commissioning Partners do 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 Commissioning Partners to purchase any Services from the Provider during the Term.
- 1.4 The Provider acknowledges that in entering into this Framework Agreement no form of exclusivity or volume guarantee has been granted by the Commissioning Partners for Services from the Provider and that the Commissioning Partners are at all times entitled to enter in to 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 Commissioning Partners in accordance with the requirements of this Framework Agreement and the Service Specification.
- 1.6 The Provider acknowledges that the Commissioning Partners are independently responsible for their obligations under this Framework Agreement and a Commissioning Partner is not responsible or accountable for, and shall have no liability in relation to the conduct of the other Commissioning Partner or the performance or non-performance by that Commissioning Partner of any Call-Off Contract.

2. FRAMEWORK AGREEMENT PERIOD

- 2.1 This Framework Agreement shall commence on 1 December 2017 and shall continue until 30 November 2022 unless terminated earlier in accordance with the provisions

of this Framework Agreement.

3. CALL-OFF AWARD PROCEDURE

3.1 If a Commissioning Partner decides to purchase Services through the Framework Agreement then it may:

3.1.1 award an Order for the Services in accordance with the terms laid down in This framework Agreement without re-opening competition; or

3.1.2 award an Order for the Services following a further competition, where all the terms are not laid out in this Framework Agreement.

3.2 The Commissioning Partner may place an Order with the Provider in a form agreed with the Provider.

3.3 The Order constitutes an offer by the Commissioning Partner to purchase the Services subject to the terms and conditions of the Framework Agreement.

3.4 Where the terms laid down in the Framework Agreement are not sufficiently precise or complete for the particular Call-Off Contract, further competition will be held with all those Providers within the Framework Agreement capable of meeting the particular requirement.

3.5 Further competition will be undertaken in accordance with the process and criteria set out in Sections 2.3 and 2.4 of the Overarching Service Specification. The basic terms and conditions of the Framework Agreement cannot be renegotiated and the Service Specification cannot be substantively changed.

4. RE-OPENING THE FRAMEWORK

4.1 Annually during the Framework Agreement Term, providers of the Services who are not on the Framework, including those that have previously applied and failed to become Framework Providers and those whose Framework Agreements have been terminated (but excluding any whose Framework Agreement has been terminated for Contract Non-Compliance) will be given a further opportunity to obtain a place on the Framework Agreement.

4.2 The Commissioning Partners will advertise this opportunity before the anniversary of the Framework commencement date or as defined by the Commissioning Partners' business needs.

4.3 Potential providers will be invited to submit a tender on the same terms and against the same selection and evaluation criteria as the when the Framework was first established.

4.4 During the annual opening of the Framework arrangements, Providers will be invited to submit improvements to the tender pursuant to which they became a Framework Provider or to any previously improved tender. If a Provider chooses to submit an improved tender it will be evaluated at the same time and on the same terms as tenders submitted by potential providers.

4.5 Following the evaluation of any tenders from potential providers and the evaluation of any revised tenders from Providers and taking into account the original tender scores

previously received by Providers that have not submitted improved tenders, successful potential providers will be admitted to the Framework and Providers will be re-ranked accordingly.

4.6 Providers that are successful in obtaining a place on the Framework Agreement under this Clause will enter into a Framework Agreement on the same terms as this Framework Agreement.

4.7 There will be no limit to the number of Providers on this Framework.

5. PROVIDER'S OBLIGATIONS

5.1 The Provider shall provide the Services during the Term fully in accordance with the Service Specification and the terms of this Framework Agreement.

5.2 The Provider shall perform the Services with all reasonable care and skill to the highest standard, and in compliance with the Law and all relevant standards and specifications, whether specified in this Framework Agreement or not.

5.3 The Provider shall be registered with the Care Quality Commission ('CQC') at all times during the Term, where appropriate to the Services provided, and shall fully comply with CQC requirements in this regard.

5.4 The Provider shall ensure that suitable up to date contact details and arrangements are maintained for the Commissioning Partners at all times.

5.5 The Provider shall assist the Commissioning Partners in reviewing the planning, provision and operation of the Services, comply with the reasonable directions of the Commissioning Partners and use all reasonable endeavours to carry out the Services in accordance with any variations to the Service Specification.

5.6 The Provider shall attend Contract Review meetings as reasonably required.

5.7 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 Commissioning Partners.

5.8 The Provider shall properly manage and monitor the performance of the Services at all times, and immediately notify the Commissioning Partners of any actual or potential problems that affect or might affect the delivery of the Services.

5.9 The Provider shall provide all Personnel, Equipment, Premises, resources and other things required for the provision of the Services at its own expense and shall maintain such Equipment and Premises and other resources in a safe, serviceable and clean condition.

5.10 The Provider shall meet statutory obligations under Law relevant to the Services and have policies and procedures in place as set out in the Service Specification to ensure that these are met. Where appropriate to the Services, this includes ensuring that all vehicles used to transport Service Users are taxed, appropriately insured, MOT'd with a valid certificate, maintained in accordance with the manufacturer's instructions and are suitable for the transportation of Service Users.

5.11 In the event of a change in ownership of a care home used to provide the Services, the Provider shall notify the Commissioning Partners at least two months in advance.

6. PROVIDER'S PERSONNEL

- 6.1 The Provider shall provide the Services using suitably qualified Personnel who are at all times entitled to work in the United Kingdom.
- 6.2 All Personnel shall be made fully aware of the Provider's obligations under this Framework Agreement as it affects them in the performance of the Services.
- 6.3 The Provider shall at all times employ and assign to the Services Personnel who are fit, competent and fully trained to provide the Services and of sufficient number to ensure that the Services are provided at all times in accordance with this Framework Agreement.
- 6.4 The Provider shall give and shall ensure that its Personnel give all reasonable assistance to the Commissioning Partners in the investigation of complaints, disciplinary matters, claims for damages and similar matters.
- 6.5 A Commissioning Partner may, upon written notice, but not unreasonably or vexatiously, request the Provider to remove any Personnel from involvement with a Service User in order to ensure the safety and needs of that Service User. The Provider shall not unreasonably withhold consent to such a request. The Commissioning Partner shall specify the reason for its request.
- 6.6 The Commissioning Partner 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 Commissioning Partner in respect of any claims made.
- 6.7 If applicable (and the Provider shall satisfy itself in this regard) the Provider shall comply with its obligations and requirements under the Transfer of Undertakings (Protection of Employment) Regulations 2006 in relation to the provision of the Services.
- 6.8 The Provider shall comply with the provisions regarding Personnel in the Service Specification.

7. SERVICE CONTINUITY

- 7.1 In accordance with the requirements of the Service Specification, the Provider shall have contingency arrangements in place, as approved by the Commissioning Partners, to ensure continuity of the Services at all times at no extra cost to the Commissioning Partners. These shall include, but not be limited to, arrangements to deal with staff absences.
- 7.2 The Provider shall demonstrate 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, appropriate to the scale of the Provider's commitments under this Framework Agreement.
- 7.3 The Commissioning Partners reserve the right to request detailed evidence of contingency plans such as sight of the Provider's business continuity plan, and to require review and/or amendment of the plans and any other contingency arrangements to meet the Commissioning Partners' requirements.

8. VARIATIONS AND WAIVERS

- 8.1 The Commissioning Partners reserve the right to require changes to the Services (a 'Service Variation') for any reason including, but not limited to, meeting the Commissioning Partners' policy prevailing at the time but so as not to constitute a material variation to the Framework Agreement.
- 8.2 The Commissioning Partners shall give reasonable written notice of any such Service Variation to the Provider. Reasonable notice shall be deemed to have been given if it is either:-
- 8.2.1 three months' notice for changes to the Service Specification which the Commissioning Partners consider will result in more or less Personnel being required or significantly more costs being incurred by the Provider; or
 - 8.2.2 one month's notice in any other case.
- 8.3 In the event of a Service Variation, the Framework Price may also be varied. Such variation shall be calculated by the Commissioning Partners 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. Otherwise, the Framework Price prevailing at the time of the Service Variation shall be used as the basis for valuing such Service Variation, in so far as may be reasonable, and otherwise a fair valuation shall be made.
- 8.4 The Provider shall co-operate with the Commissioning Partners on any request for a Service Variation and promptly provide such information as may be reasonably required to enable such a variation in the Framework Agreement 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 Commissioning Partners and Provider may vary the Framework Agreement by mutual written consent.
- 8.7 Failure by a party to insist on strict performance of the Framework Agreement or to exercise any right or remedy on breach of any provision of the Framework Agreement shall not constitute a waiver of the terms of the Framework Agreement or a waiver of any subsequent breach or default in the performance of the Framework Agreement. The rights and remedies provided in this Framework Agreement are cumulative and not exclusive of any rights and remedies provided by Law.

9. FINANCIAL ARRANGEMENTS

- 9.1 In consideration of the Provider's performance of its obligations under this Framework Agreement, the Commissioning Partners shall pay the Provider the Framework Price during the Term as detailed in Pricing Schedule 1.
- 9.2 The Framework Price shall be inclusive of all costs, expenses and overheads but exclusive of VAT which shall be charged at the prevailing rate.
- 9.3 Payment shall be made within 30 days of receipt of a correct invoice for the Services performed to the satisfaction of the Commissioning Partners.

- 9.4 If the Provider withdraws, makes unavailable or fails to provide the Services, either temporarily or permanently, the Provider shall reimburse the Commissioning Partners the relevant proportion of the Framework Price in respect of the period of unavailability, unless otherwise agreed in advance with the Commissioning Partners.
- 9.5 If a Commissioning Partner intends to withhold all or any part of a payment it shall give notice to the Provider to that effect, which notice shall specify the amount proposed to be withheld and the ground for doing so.
- 9.6 Where the Provider enters into a sub-contract for the Services, the Provider shall include in that sub-contract provision for any sum due to the sub-contractor under a correct invoice to be paid within thirty days of receipt of that invoice.

10. INFORMATION

- 10.1 The Provider shall maintain accurate documented information as required under this Framework Agreement and the Service Specification.
- 10.2 The Provider shall submit a brief, non-technical annual report for the Commissioning Partners. The report will summarise the Provider's achievements in providing the Services with particular reference to value for money and to what Service Users have achieved. The Provider will include in such report annual results for the statistical measures defined within the Service Specification.
- 10.3 In addition, the Provider shall submit to the Contracts Officer the following information:-
- 10.3.1 a copy of the Provider's audited (or inspected) accounts as soon as they are available for each year of the Framework Agreement;
- 10.3.2 a copy of the Provider's current insurance policies to be submitted at the beginning of the Term and thereafter on the anniversary of the renewal of the policies, in accordance with the requirements of Clause 17;
- 10.4 The Commissioning Partners, or their representative, 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 Framework Agreement and the Service Users using the Services. The Commissioning Partners may also request copies of the above documents be supplied confidentially by email or posted within a reasonable timescale. The Provider shall supply copies of all such requested information.
- 10.5 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.
- 10.6 The Commissioning Partners reserve the right to seek from and share relevant information with other care and medical service providers, the Care Quality Commission, other local authorities, the police and Clinical Commissioning Groups (as appropriate to the Services), in response to concerns raised in relation to standards of service provision or in relation to any safeguarding investigation.
- 10.7 The Provider shall comply with the requirements of the Dorset Multi Agency Safeguarding Adults Policy and Procedures (April 2015) and the Children's Pan-Dorset Multi Agency Safeguarding Policies and Procedures (February 2017)

(Appendix 3) and any subsequent amendments in relation to information sharing.

10.8 The provisions of this Clause shall in respect of any Services performed under this Framework Agreement survive its expiry or its termination for any reason.

11. AUDIT

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

11.2 The Provider shall on request afford the Commissioning Partners or the Commissioning Partners' representatives such access to those records as may be required by the Commissioning Partners in connection with the Framework Agreement at no cost to the Commissioning Partners.

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 Framework Agreement; and

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

except that this Framework Agreement may be provided to a Service User on request.

12.2 No party shall use or disclose the other party's Confidential Information, without prior written consent, except to persons and for the purpose of performing this Framework Agreement, or where disclosure is expressly permitted under this Framework Agreement.

12.3 The Provider shall only use the Commissioning Partners' Confidential Information for the purposes of this Framework Agreement.

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

12.6 Nothing in this Clause shall prevent the Commissioning Partners from:-

12.6.1 disclosing any Confidential Information for the purpose of:-

12.6.1.1. the examination and certification of the Commissioning Partners' accounts; or

12.6.1.2 an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Commissioning Partners has used their 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 Commissioning Partners for any purpose relating to or ancillary to this Framework Agreement

provided that in disclosing information under sub-clause 12.6.2 the Commissioning Partners disclose 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 In the event that the Provider fails to comply with this Clause, the Commissioning Partners reserve the right to terminate the Framework Agreement by notice in writing with immediate effect.

12.8 Information which the 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 Commissioning Partners.

12.9 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 subject to Abuse whilst in receipt of the Services or is at risk of Abuse, the Provider shall report this immediately to the Commissioning Partners and/or the police as appropriate and shall co-operate fully with any subsequent procedures. In

the same way, where a Commissioning Partner has received information that a Service User has been the subject of Abuse or is a risk of Abuse, the Commissioning Partner shall report this immediately to the police and/or other agencies with a responsibility for the protection of vulnerable adults.

12.10 This Clause shall survive termination of this Framework Agreement indefinitely.

13. DATA PROTECTION

13.1 The Commissioning Partners and the Provider shall assist and co-operate with each other to meet their respective obligations under the Data Protection Act 1998 ('DPA') which arise in connection with this Framework Agreement.

13.2 Personal data as defined in the DPA supplied by and/or processed on behalf of the Commissioning Partners (electronic or manual) is owned by the Commissioning Partners.

13.3 The Provider shall maintain appropriate confidentiality and security arrangements in respect of all personal data supplied by and/or processed on behalf of the Commissioning Partners which includes taking appropriate technical and contractual measures to guard against unauthorised or unlawful processing and prevent accidental loss, destruction or damage to the personal data, and must comply fully with the principles of the DPA when processing that personal data.

13.4 The Provider shall provide to the Commissioning Partners, upon request, such information as it may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA which for the avoidance of doubt is a fundamental Clause of this Framework Agreement.

13.5 The Provider shall promptly notify the Commissioning Partners of any breach of the security measures required to be put in place pursuant to Clause 12.3 and co-operate with the Commissioning Partners in any investigation that may be necessary as a result of any such breach.

13.6 The Provider shall ensure it does not knowingly or negligently do or omit to do anything which places a Commissioning Partner in breach of its obligations under the DPA.

13.7 In the event that the Provider fails to comply with this Clause, the Commissioning Partners reserve the right to terminate the Framework Agreement by notice in writing with immediate effect.

13.8 The Provider shall indemnify the Commissioning Partners in respect of any loss arising from the Provider's failure to comply with the provisions of this Clause.

13.9 The provisions of this Clause shall apply during the continuance of the Framework Agreement and indefinitely after its expiry or termination.

14. FREEDOM OF INFORMATION

14.1 The Provider acknowledges that the Commissioning Partners are subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and shall assist and co-operate with the Commissioning Partners (at the Provider's expense) to enable

the Commissioning Partners to comply with their information disclosure requirements under the Act.

14.2 The Provider shall:-

14.2.1 transfer all requests for information to the Commissioning Partner (where it is reasonably apparent that such are intended to be requests for information for the Commissioning Partner) 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 Commissioning Partner with a copy of any information in its possession or power in the form that the Commissioning Partner requires within five Working Days (or such other period as the Commissioning Partner may specify) of the Commissioning Partner requesting that information; and

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

14.3 The Commissioning Partner 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

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 Commissioning Partner.

14.5 The Provider acknowledges that the Commissioning Partner may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA, 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 Framework Agreement or relating to this Framework Agreement is retained for disclosure and shall permit the Commissioning Partners 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 Commissioning Partners may nevertheless be obliged to disclose Confidential Information in accordance with Clause 13.4.

15. WARRANTIES

15.1 The Provider warrants and represents to the Commissioning Partners that:-

- 15.1.1 it has the full capacity and authority to enter into and perform this Framework Agreement and any Call-Off Contract entered into under it, and that the Framework Agreement is executed by a duly authorised representative of the Provider;
 - 15.1.2 it shall perform the Services using reasonable care and skill with suitably qualified Personnel, 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 shall 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, the Provider 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 or 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 Framework Agreement;
 - 15.1.7 as at the Framework Agreement commencement date, all information, statements and representations contained in its tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Commissioning Partners prior to the execution of this Framework Agreement and it will promptly advise the Commissioning Partners of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 15.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Commissioning Partners.
- 15.2 Each of the parties acknowledges that in entering into this Framework Agreement it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Framework Agreement and any Clauses, warranties or other terms implied by statute or common law are excluded from this Framework Agreement to the fullest extent permitted by Law.

16. LIABILITY AND INDEMNITIES

- 16.1 No party excludes or limits liability to the other party for death or personal injury caused by its negligence or that of its Personnel, agents, contractors 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 Commissioning Partners fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising out of or in connection with this Framework Agreement and any Call-Off Contract entered into under it, caused directly by any act or omission of the Provider in providing the Services, (which shall include but not be limited to, any claim brought by a third party who suffers damage or loss as a result or consequence of the Provider's failure to comply with its obligations under Clause 13), unless such injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Commissioning Partners.
- 16.3 Subject to Clause 16.1, neither party 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 Commissioning Partners 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 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.
- 16.6 Nothing in this Clause 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.
- 17.3 Medical malpractice cover, where appropriate to the Services provided, shall be maintained with a minimum level of indemnity of £10 million in the aggregate.
- 17.4 Employers' liability cover shall be maintained with a minimum level of indemnity of £10 million for any one claim.
- 17.5 The Provider shall, where appropriate to the Services provided, maintain motor vehicle insurance to cover all liabilities to third parties arising from the performance of the Services.
- 17.6 The Provider shall produce evidence of the insurances in force before commencement of the Services, and on each anniversary of this Framework Agreement. A copy of the insurance documents shall be submitted to the Contracts Officer.

- 17.7 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Clause, the Commissioning Partners may make alternative arrangements to protect their interests and may recover the reasonable costs of such arrangements from the Provider. Such failure shall be regarded as a material breach of this Framework Agreement.
- 17.8 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Framework Agreement.
- 17.9 For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Framework Agreement.

18. ASSIGNMENT AND SUB-CONTRACTING

- 18.1 The Provider shall not transfer, assign, novate or sub-contract directly or indirectly to any person or organisation any part of this Framework Agreement without the prior written permission of the Commissioning Partners.
- 18.2 Sub-contracting any part of this Framework Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under this Framework Agreement.
- 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 Framework Agreement, unless otherwise agreed between the parties.
- 18.5 The Commissioning Partners shall be entitled to assign or novate the Framework Agreement or any part of it, including to any statutory successor, and shall give written notice of any such assignment to the Provider.

19. RIGHTS OF THIRD PARTIES

- 19.1 In accordance with the Contracts (Rights of Third Parties) Act 1999, a person who is not a party to this Framework Agreement shall not have any rights under or in connection with it.

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 Commissioning Partners 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 Law.

- 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 Commissioning Partners of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 20.5 The Provider shall indemnify the Commissioning Partners in respect of any claims against the Commissioning Partners which arise by reason of the Provider's breach of the Law referred to in Clause where such breach arises in the performance of its obligations under this Framework Agreement.
- 20.6 The Provider may be required to answer questions raised by the Commissioning Partners 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 and the Deprivation of Liberty Safeguards in the provision of the Services as set out in the Specification.
- 21.2 Where appropriate, the Provider shall ensure that it facilitates access to the Independent Mental Capacity Advocacy Service when a Service User is determined to lack mental capacity and has no relatives or friends appropriate to assist them in making key decisions including decisions relating to a change in accommodation such as residential or nursing care, or serious medical treatment not covered by the Mental Health Act 2005.

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 Commissioning Partners 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 Commissioning Partners are 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, in addition to any requirements set out in the Service Specification.
- 23.2 The Provider shall comply with the Manual Handling Operations Regulations 1992 and the policy on Moving and Handling of Adult Service Users in Appendix 3.
- 23.3 Disposal of all clinical waste, including medicines, shall be in accordance with the Environmental Protection Act 1990, the Special Waste Regulations 1996 and Waste

Management, A Duty of Care, A Code of Practice, and all other relevant government guidance.

- 23.4 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.
- 23.5 The Commissioning Partners 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 Commissioning Partners are satisfied that the non-compliance has been rectified.
- 23.6 The Commissioning Partners place great emphasis on compliance with both the letter and spirit of health and safety Law and expect full co-operation by the Provider with all statutory bodies including Environmental Health.
- 23.7 The Provider shall promptly notify the Commissioning Partners 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.
- 23.8 When Service Users in wheelchairs are being transported, wheelchair anchor points and grips must conform to the relevant British Standards Specification and be used in accordance with the manufacturer's instructions. Personnel must be assessed as competent to assist the Service User to enter and exit vehicles.
- 23.9 The Provider shall make its health and safety policy statement available to the Commissioning Partners on request.

24. SAFEGUARDING VULNERABLE ADULTS

- 24.1 The Provider shall comply with the requirements of the Dorset Multi-Agency Safeguarding Adults Policy and Procedures (April 2015), a copy of which is appended to this Framework Agreement at Appendix 3, and any subsequent amendments issued by the Commissioning Partners.
- 24.2 The Provider shall appoint a named safeguarding lead for the Services who is fully conversant with the requirements of the safeguarding procedures referred at Clause 24.1. The safeguarding lead shall ensure that there is a clear method for Service Users and relatives to recognise and report abuse.
- 24.3 The Provider's Personnel shall not commence any duties unless the requirements of Clause 25 have been met in full and the Provider has made all reasonable efforts to ensure that the deployment of the Personnel shall present no risks to the Service User or any people they come into contact with who may be at risk.
- 24.4 The Commissioning Partners retains the right to require any Personnel to be withdrawn in the event of any DBS or safeguarding information coming to light which in the reasonable opinion of the Commissioning Partners deems the Personnel unsuitable to work with the Service User. The Provider shall immediately notify the Commissioning Partners in the event that it becomes aware of such information. The Commissioning Partners 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 Commissioning Partners in respect of any such claims made.

- 24.5 The Provider must evidence that a robust staff recruitment, training and supervision programme is in place which 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 good practice safeguarding processes.
- 24.6 As a matter of good practice, the Provider is required to take up two references as a minimum when recruiting staff. At least one of these references shall be sourced from the line manager of their previous employer and the references shall include the following checks:
- ❖ Full details of dates of employment and their career history with any gaps justified;
 - ❖ Detail of the positions held in their previous employment;
 - ❖ Their reason for leaving the previous post;
 - ❖ Details of any disciplinary action that may have been taken;
 - ❖ Whether they have ever been named in a safeguarding investigation and if so, the details and the outcome of that investigation; and
 - ❖ Whether or not the previous employer would willingly re-employ the individual.
- 24.7 The Provider shall have robust procedures in place for responding to suspicions, allegations or evidence of harm or neglect (including whistle-blowing) to ensure the safety and protection of the Service User.
- 24.8 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.
- 24.9 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 Commissioning Partners and professional bodies.
- 24.10 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.
- 24.11 Training on prevention of harm to adults 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.
- 24.12 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.
- 24.13 Failure to comply with the provisions of this Clause shall be deemed a Serious or Unacceptable Non-Compliance, as appropriate, in accordance with Clause 31.
- 24.14 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.

25. DISCLOSURE AND BARRING SERVICE (DBS) CHECKS

- 25.1 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 sensitive data (within the meaning of the DPA) held on the ICT systems of the Commissioning Partners. For the purposes of this Clause, the term Personnel shall include volunteers.
- 25.2 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.
- 25.3 The Commissioning Partners' DBS policies are available on request and may be subject to change to conform to changes in Law, government guidance or the Commissioning Partners' policy.
- 25.4 If the Provider's Personnel are required to provide services or work in settings for children or vulnerable adults, the Commissioning Partners' 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 Commissioning Partners on request. The Commissioning Partners 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.
- 25.5 The Commissioning Partners shall, in accordance with their DBS checking policy, determine whether DBS checks are required and if so whether the Provider's DBS checking policy and procedures for conducting checks and determining the suitability of the Provider's Personnel to be engaged in providing the Service are sufficient, in which case Clauses 25.8 and 25.9 shall apply, or whether DBS checks must be conducted by the Commissioning Partners for this purpose, in which case Clauses 25.6 and 25.7 shall apply.
- 25.6 If the Commissioning Partners, in line with their DBS policy, determine that the Provider's Personnel require a DBS check to be conducted by the Commissioning Partners, this shall be at the Provider's expense. The cost shall include the cost of the check, an administration fee (£12.50) per check, and a fee (£6) per check if an external validation check is required. The Provider acknowledges the sums in brackets are subject to change as a result of Law or policy change by the Disclosure and Barring Service (or its successor), Disclosure Scotland or the Commissioning Partners.
- 25.7 The Commissioning Partners shall make an assessment of suitability to provide the Services. The Provider shall ensure that confirmation of suitability is obtained from the Commissioning Partners before its Personnel provide the Services. The Provider shall also ensure that its Personnel who are subject to DBS checking are required to:-

- 26.7.1 discuss their disclosure with the Commissioning Partners if necessary to determine suitability; and
- 26.7.2 declare all convictions received during the course of their deployment to work on the Services. Where a declaration is made during the course of their deployment, the Provider shall either conduct an assessment of suitability or advise the Commissioning Partners which shall decide whether suitability to work on the Agreement is affected and whether a new DBS check is required to inform a reassessment of suitability.
- 25.8 If the Commissioning Partners accept DBS checks undertaken by the Provider (otherwise known as accepting portability), which checks shall, for the avoidance of doubt, be undertaken by the Provider at the Provider's expense, the Provider shall provide the Commissioning Partners with evidence of its compliance with Clauses 25.2 and 25.4 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 Commissioning Partners in the format set out in Appendix 5 at any time on request and as part of Framework Agreement compliance monitoring.
- 25.9 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 5 and shall take account of the Commissioning Partners policy on the employment of ex-offenders.
- 25.10 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 25.8 above.
- 25.11 In certain defined circumstances, the Commissioning Partners may, at their discretion, obtain a DBS Adult First check to permit the Provider's Personnel to provide the Services pending completion of a DBS check. The Commissioning Partners shall inform the Provider should this apply. The cost of a DBS Adult First check is £6 which shall be met by the Provider. The Provider acknowledges that this sum is subject to change as a result of Law or policy change by the Disclosure and Barring Service (or its successor), Disclosure Scotland or the Commissioning Partners.
- 25.12 The Provider shall be a member of the DBS update service if required to do so by its regulator. The Commissioning Partners may require the Provider to be a member of the DBS update service where the Commissioning Partners have identified that this will assist effective service delivery and/or improve safeguarding and the Provider shall comply with such requirement.
- 25.13 The Commissioning Partners reserve the right, acting reasonably, to conduct additional DBS checks on Personnel deployed on the Services, where deemed necessary, at the Provider's cost. The Commissioning Partners shall provide an explanation for such action.
- 25.14 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 or written confirmation/ID badge from the Commissioning Partners (where checks and/or assessment of suitability are undertaken by the Commissioning Partners) confirming clearance for presentation on request from the manager of the site where the Services are performed or from a Service User.

- 25.15 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 Commissioning Partners to be unsuitable for deployment to the Services.
- 25.16 The Commissioning Partners may require any of the Provider's Personnel deployed on the Services to be withdrawn and an acceptable person substituted in the event of:-
- 25.16.1 the Provider failing to comply with its obligations under this Clause; or
 - 25.16.2 the Provider's Personnel refusing to complete a disclosure statement/application; or
 - 25.16.3 the disclosure at any stage of information that in the reasonable opinion of the Commissioning Partners renders the Provider's Personnel unsuitable for deployment to the Services;

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

- 25.17 The Commissioning Partners 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 Commissioning Partners in respect of any such claims made.
- 25.18 The Commissioning Partners reserve the right to monitor the suitability of the Provider's Personnel to perform the Services.
- 25.19 The Commissioning Partners 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 Commissioning Partners, at its own expense, to enable the Commissioning Partners to carry out such monitoring requirements.
- 25.20 The Provider shall be responsible for meeting any reasonable costs arising from changes in Law government guidance or the Commissioning Partners' policy relating to the carrying out of DBS checks on its Personnel.

26. SAFEGUARDING CHILDREN

- 26.1 Where relevant to the Services provided, the Provider agrees to fully adopt and implement the Bournemouth and Poole Inter-Agency Safeguarding Procedures (www.bournemouth-poole-lscb.org.uk/inter-agency_safeguarding_procedures) with regard to the necessary sharing of information between agencies where children and young people may be considered to be at risk either to themselves or to others.

26.2 The Provider agrees to fully adopt and implement the Dorset Safeguarding Children Board (DSCB) policies and procedures (www.dorsetlscb.co.uk/site/advice-for-people-working-with-children/). The Provider shall follow and fully implement the prescribed procedures in relation to safer recruitment of staff and all other child safeguarding procedures. The DSCB policy can be found on the Dorset County Council website: www.dorsetforyou.com/safeguardingchildrenboard

27. SERVICE USER AND CARER INVOLVEMENT

27.1 The Provider shall involve Service Users and carers in all decisions which affect the provision of the Services and, where possible, in the planning of the delivery of the Services.

27.2 The Provider will assist with any formal Service User reference group convened by the Commissioning Partners to meet their Service Users and obtain confidential feedback.

27.3 The Provider will comply with the provisions relating to Service User involvement and empowerment in the Service Specification.

28. QUALITY ASSURANCE AND MANAGEMENT

28.1 The Provider shall maintain its own quality management system to demonstrate compliance with its obligations under this Framework Agreement.

28.2 Where the Provider is providing Care and Support at Home or Residential Care and Support (with and without Nursing), the Services will be monitored in accordance with the requirements of the relevant Quality Monitoring Standards in Appendix 3.

28.3 Information must be made available to the Commissioning Partners in respect of all aspects of contract compliance and quality management on request.

28.4 For the avoidance of doubt, nothing in this Framework Agreement is intended to prevent the Provider from achieving higher quality standards than those required by this Framework 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.

28.5 The Provider shall comply with all reasonable written requests made by any regulator, the National Audit Office or its appointed auditors, any authorised NHS person or the authorised representatives of local Healthwatch for information relating to the provision of the Services. The Provider shall give all reasonable assistance and provide all reasonable facilities to facilitate this.

28.6 The Provider shall implement all relevant recommendations:-

28.6.1 in any report by a regulator;

28.6.2 agreed with the National Audit Office as needing to be made following any audit; and

28.6.3 that are otherwise agreed by the Provider and the Commissioning Partners to be implemented.

29. COMPLAINTS/REPRESENTATIONS AND COMPLIMENTS

- 29.1 The Provider shall establish a clear and accessible procedure for examining Service Users' complaints regarding the Services. Service Users, together with their carers and relatives must be informed of the means of registering a complaint. The procedure shall indicate how complaints are dealt with, give a time scale for responses and show how Service Users are informed of the outcome of a complaint. The process shall be approved by the Commissioning Partners.
- 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 Commissioning Partners on request. In addition, the Provider must supply to the Commissioning Partners an annual analysis of complaints 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 Commissioning Partners' 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 that they may, if they wish, complain directly to the Commissioning Partners without going through the Provider's own complaints procedure. The address to contact is:-

The Complaints Officer
Freepost Business Reply Licence No. RRYH-AGJZ-TRGG
Dorset County Council
County Hall
Colliton Park
Dorchester
Dorset, DT1 1XJ Telephone: 01305 221061

Details of Dorset County Council's complaints procedure can be accessed on the Dorset for You website where there is provision for a complaint to be made online.

- 29.6 In addition, a Service User may contact the Local Government Ombudsman on 0300 061 0614 or PO Box 4771, Coventry, CV4 0EH.
- 29.7 The Provider shall also provide the complainant with the option of complaining directly through the local Help with NHS Complaints Service. The contact details are:-

Telephone: 0300 343 7000; or
E-mail: enquiries@dorsetadvocacy.co.uk

29.8 The Provider and its Personnel shall co-operate fully with the Commissioning Partners in investigating and resolving complaints and shall use complaints as a learning process to improve the Services and reduce the likelihood of future complaints.

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

30. CONTRACT AND PERFORMANCE MANAGEMENT

30.1 The Provider shall take appropriate steps (which may include one or more contract implementation meetings with the Commissioning Partners) to confirm the preferred communication and other procedures at the outset of the Framework Agreement.

30.2 The Provider shall promptly give notice to the Commissioning Partners of the identity of the Provider's Contract Manager appointed to manage the Services and any replacement for him. Any Contract Manager shall be appropriately qualified and/or experienced for his responsibilities in relation to the Services.

30.3 The Commissioning Partners shall monitor contract compliance, 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 Commissioning Partners' 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 Commissioning Partners without giving prior notice to the Provider. Unannounced visits shall include visits in response to safeguarding referrals or complaints registered with the Commissioning Partners.

30.6 Contract review meetings shall be held as required by the Commissioning Partners.

30.7 Any costs incurred by the Provider in attending contract review meetings shall be at the Provider's expense.

30.8 The Provider shall ensure that the Commissioning Partners and/or their representatives or agents have reasonable access to the Services in order to benchmark, inspect, review and assess service delivery.

30.9 The Provider shall be monitored against the performance and Outcome measures set out in the Service Specification and Appendix 3. The Commissioning Partners will use performance measures to measure the Provider's success in realising Outcomes for Service Users.

- 30.10 The key performance monitoring measures are set out in the Service Specification and support the Commissioning Partners' overarching performance monitoring framework.
- 30.11 The key performance monitoring measures shall be submitted on a quarterly basis to the responsible Commissioning Partner.
- 30.12 The Commissioning Partners will use the performance measures under the Framework to compare the performance of Providers on the Framework and use such comparisons in internal performance management and in contract reviews with the Provider.
- 30.13 Where performance monitoring measures indicate that the Provider does not meet the Commissioning Partners' minimum performance standards, the provisions of Clause 31 shall apply.
- 30.14 The Commissioning Partners reserve the right to revise the Framework performance standards and to set minimum standards for any performance indicator from time to time.
- 30.15 The Commissioning Partners shall undertake an annual review on or about the anniversary of the Framework commencement date at which the success of the Services will be determined and any variation to the Services agreed.

31. CONTRACT NON-COMPLIANCE

- 31.1 For the purposes of this Clause, 'Contract Non-Compliance' means that in the opinion of the Commissioning Partners, the Provider has failed either in whole or in part to comply with the terms of this Framework Agreement, 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 Commissioning Partners, 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 reasonable opinion of the Commissioning Partners 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 reasonable opinion of the Commissioning Partners there is Contract Non-Compliance which places a Service User at unacceptable risk to their physical, mental, emotional and/or financial well-being which for the avoidance of doubt shall amount to a fundamental breach of the Framework Agreement.
- 31.3 Where the Commissioning Partners are satisfied through the monitoring process or by any other means (which shall be at the discretion of the Commissioning Partners) that Contract Non-Compliance has occurred, the Provider shall be informed at the earliest opportunity unless in the reasonable opinion of the Commissioning Partners it is reasonable not to do so. If the Provider is not informed the Commissioning Partners shall record the reasons for not informing the Provider.

- 31.4 Where the Commissioning Partners are satisfied that there has been Contract Non-Compliance the Commissioning Partners 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 Commissioning Partners identify risks or potential risks to Service Users, carry out an investigation. For the avoidance of doubt and at the Commissioning Partners' discretion, the investigation may include a risk assessment of Service Users in receipt of the Services who are funded by the Commissioning Partners; 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 may be served by the Commissioning Partners on the Provider terminating the Framework Agreement and/or Call-Off Contract with immediate effect without the requirement to give notice notwithstanding that the Service User and/or their representatives might disagree with the Commissioning Partners' decision.
- 31.6 If Contract Non-Compliance amounts to Serious Non-Compliance then the Commissioning Partners may suspend the Framework Agreement/Call-Off Contract with immediate effect by notice to the Provider until such time as the Commissioning Partners are satisfied at their discretion that the Serious Non-Compliance is remedied ('a block'). The Commissioning Partners may decide at their discretion that Service Users in receipt of Services from the Provider face an unacceptable risk in which case the Commissioning Partners reserve the right to transfer the Service User to another provider without notice. This shall not prevent the Commissioning Partners taking alternative action at their discretion to remedy the Contract Non-Compliance in accordance with the terms of this Framework Agreement.
- 31.7 Alternatively, the Commissioning Partners may place a 'caution' on the Framework Agreement and/or Call-Off Contract. A caution will serve as a warning to the Commissioning Partners' relevant staff that when considering making a referral they may extra enquiries to satisfy themselves that the Provider can meet the assessed needs of the Service User. If the Commissioning Partners cannot satisfy themselves in this regard, they shall be entitled to make a referral to another provider.
- 31.8 Other than when Contract Non-Compliance is categorised as Unacceptable Non-Compliance, the Provider shall at the discretion of the Commissioning Partners be given a reasonable period of time as determined by the Commissioning Partners and notified to the Provider to remedy the Contract Non-Compliance.
- 31.9 If the Contract Non-Compliance is categorised as Serious Non-Compliance and the Provider fails to remedy the Serious Non-Compliance to the satisfaction of the Commissioning Partners within such reasonable time period as is notified to the Provider under Clause 31.8 then the Commissioning Partners shall be entitled to terminate the Framework Agreement and/or Call-Off Contract by notice with immediate effect notwithstanding that the Service User and or their representatives might disagree with the Commissioning Partners' decision.

- 31.10 If Contract Non-Compliance is categorised as Cautionary Non-Compliance and is not remedied to the Commissioning Partners' satisfaction within such a time period as is notified under Clause 31.9 then the Commissioning Partners may decide in their discretion that the Contract Non-Compliance amounts to Serious Non-Compliance. In this event the Commissioning Partners shall notify the Provider and the provisions of Clauses 31.8 and 31.9 shall then apply.
- 31.11 If Serious Non-Compliance and/or Cautionary Non-Compliance occur on more than three occasions in a period of one week, the Commissioning Partners may terminate the Framework Agreement and/or Call-Off Contract with immediate effect by notice to the Provider notwithstanding that the Service User and/or their representative might disagree with the Commissioning Partners' decision.
- 31.12 The Commissioning Partners reserve the right at their discretion to implement a Cautionary Non-Compliance or Serious Non-Compliance in relation to any pending safeguarding adults referrals made under the multi-agency safeguarding process as a reasonable means to safeguard the welfare of any Service Users who could potentially receive services from the Provider.
- 31.13 Where the Commissioning Partner identifies Unacceptable or Serious Non-Compliance which affects the well-being of service users, they retain the right to advise all relevant Personnel.
- 31.14 In the event of the Provider failing to remedy a Serious or Cautionary Non-Compliance identified by the Commissioning Partners in the timescale specified in Clause 31.8 (Stage 1), the Commissioning Partners reserve the right to temporarily suspend the Provider's Call-Off Contract and to ask another Provider (which shall usually be the back-up Provider in the designated commissioning area) to provide the Services while the Provider achieves Contract compliance within the timescale specified by the Commissioning Partners (Stage 2).
- 31.15 The Commissioning Partners will accept a request from a Service User of Services provided by a Provider subject to Stage 2 remedial measures to transfer those Services to such back-up Provider. The Commissioning Partners will arrange for a Service User to return to the Provider, should the Service User so request, when, in the reasonable opinion of the Commissioning Partners, the Provider has demonstrated improvement in the Services such as to comply with the terms of this Framework Agreement.
- 31.16 Should the Provider not achieve the required improvement in the timescale given, the Commissioning Partners may give notice to terminate the Framework Agreement and/or Call-Off Contract within immediate effect (Stage 3).
- 31.17 Notwithstanding the foregoing, in the event that the Commissioning Partners reasonably consider that there has been Contract Non-Compliance by the Provider, then the Commissioning Partners may, without prejudice to, and in addition to, its rights under this Clause and Clause 38, Termination, do any of the following:-
- 31.17.1 withhold or make such deduction from the Framework Price to be paid to the Provider as the Commissioning Partners shall reasonably determine to reflect the sums paid or sums which would otherwise be payable in respect of those Services that the Provider has failed provide or performed inadequately;

- 31.17.2 without terminating this Framework Agreement and/or any 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 Commissioning Partners that the Provider will be able to perform such part of the Services in accordance with the Framework Agreement;
 - 31.17.3 without terminating the whole of the Framework Agreement and/or any Call-Off Contract, terminate the Framework Agreement and/or Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Framework Price shall be made) and thereafter itself provide or procure a third party to provide such a part of the relevant Services.
- 31.18 The Commissioning Partners may charge to the Provider any reasonable costs in respect of the provision of such part of the relevant Services by the Commissioning Partners or by a third party.

32 RESOLUTION OF DISPUTES

- 32.1 In the event that any disagreement or difference of opinion arises out of this Framework Agreement which cannot be resolved by the Commissioning Partners' Contracts Officer and the Provider's representative, the matter shall be dealt with as follows:-
- 32.1.1 the contract managers for the Commissioning Partners 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 the parties convene 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 Commissioning Partners' Director of Adult and Community Services (or their nominee) a senior nominee of NHS Dorset Clinical Commissioning Group, and the Provider's Chief Executive (or their nominee) 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 him to give a decision as to what course of action in his 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 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 Commissioning Partners 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 Commissioning Partners, the Provider or any of its Personnel, agents, officers, contractors or sub-contractors shall provide to the Commissioning Partners all relevant information (including but not limited to documentation and statements from any Personnel, agent, officers, contractors 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 Commissioning Partners may become involved; or
 - 33.1.2 any internal Commissioning Partner's disciplinary hearing arising out of or in connection with the Services or this Framework Agreement;
 - 33.1.3 any investigation by an ombudsman.

34. STATUTORY FUNCTIONS

- 34.1 Nothing in this Framework Agreement shall be read as preventing or inhibiting the Commissioning Partners 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 they may respectively possess.

35. INTELLECTUAL PROPERTY RIGHTS

- 35.1 Except as may be set out expressly in this Framework Agreement, no Party shall acquire the intellectual property rights of the other Party.
- 35.2 Subject to the branding permission set out in 2.14 of the Service Specification, the Provider shall not use the logo of the Commissioning Partners without prior written consent.

36. PUBLICITY

- 36.1 The Provider shall seek written approval from the Commissioning Partners prior to the publication of any publicity of the Services where the Commissioning Partners are acknowledged.

37. SEVERANCE

- 37.1 If any Clause of this Framework Agreement 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 Framework Agreement and the remaining Clauses of this Framework Agreement shall except where otherwise provided remain in full force and effect unless otherwise terminable.

38. TERMINATION

38.1 The Commissioning Partners may by notice in writing to the Provider terminate this Framework Agreement 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 Framework Agreement; or
- 38.1.4 the Provider becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986; or
- 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; or
- 38.1.6 the Provider has a petition presented to any court for its winding up or for an administration order; or
- 38.1.7 the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 38.1.8 the Provider suffers any distraint, 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; or
- 38.1.9 the circumstances specified in Clause 39 or elsewhere in this Framework Agreement arise; or
- 38.1.10 the Provider becomes 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 professional misconduct in the conduct of its business within the meaning of Regulation 57(8)(c) of the Public Contracts Regulations 2015; 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 Commissioning Partners may only exercise their right under Clause 38.1.3 within six months after a change of control occurs and shall not be permitted to do so where they have agreed in advance to the particular change of control that occurs. The Provider shall notify the Contracts Officer in writing immediately any change of control occurs.
- 38.3 This Framework Agreement shall terminate:-
- 38.3.1 on the expiry of the Term;
- 38.3.2 immediately if either party commits a fundamental breach of the terms of this Framework Agreement 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.
- 38.4 Either the Commissioning Partners or the Provider may at any time by notice in writing to the other terminate this Framework Agreement as from the date of service of such notice whenever any of the following events occurs:-
- 38.4.1 the other party commits a material breach of any of its obligations under or in relation to this Framework Agreement which is not capable of remedy or, if capable of remedy, is not remedied within 30 (thirty) days after receipt of written notice from the non-breaching party of its intention to terminate; or
- 38.4.2 the other party is continually in breach or commits a series of repeated breaches of this Framework Agreement, which cannot be remedied with 30 (thirty) days of written notice from the non-breaching party of its intention to terminate.
- 38.5 The Commissioning Partners may terminate the Framework Agreement with immediate effect:-
- 38.5.1 in accordance with Clause 31;
- 38.5.2 if in the Commissioning Partners' reasonable opinion continuation of the Framework Agreement would cause risk to the life, health or well-being of any Service User or potential Service User;
- 38.5.3 if the Provider has for any reason had their registration cancelled with the CQC or has failed to remedy, following an agreed reasonable period, any issues highlighted by CQC which deem the service inadequate.
- 38.6 The Commissioning Partners and the Provider may terminate the Framework Agreement at any time on giving to the other not less than 3 months' notice in writing.
- 38.7 In any case where immediate termination is permitted, the Commissioning Partners may, at their discretion, initially suspend the Framework Agreement and/or Call-Off Contract.
- 38.8 On the termination or re-tender of the Framework Agreement and/or Call-Off Contract for any reason where the placement of the Service User with the Provider continues, the price payable for the Services under the replacement contract arrangement shall apply from the commencement date of that new arrangement.

- 38.9 The termination or expiry of the Framework Agreement shall not automatically terminate any Call-Off Contract provided neither party is in default of its obligations under the Framework Agreement and/or Call-Off Contract.
- 38.10 The Provider may not terminate a Call-Off Contract on less than 28 days' notice.
- 38.11 The Commissioning Partners may terminate the Framework Agreement with immediate effect in respect of a Provider if a Call-Off Contract for the Services has been offered but not entered into for a period of six months since the last framework review.
- 38.12 The termination of this Framework Agreement 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 Framework Agreement. The Clauses of this Framework Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

39 PREVENTION OF CORRUPTION

- 39.1 The Commissioning Partners shall be entitled to terminate the Framework Agreement immediately and recover from the Provider the amount of any loss or damage resulting from such termination if, in relation to this Framework Agreement or any other contract with the Commissioning Partners, the Provider or any person employed by him or acting on his 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 SUSPENSION OR TERMINATION

- 40.1 Following termination by the Commissioning Partners of this Framework Agreement, the Provider shall be entitled to such proportion of the Framework 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 Commissioning Partners reserve the right to deduct from any such sum the amount of any claim the Commissioning Partners may have in respect of any breach, Contract Non-Compliance and / or failure by the Provider to perform its obligations under this Framework Agreement.
- 40.2 The Commissioning Partners 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 Commissioning Partners under this Framework Agreement during any period of suspension pursuant to Clause 31.6 or otherwise.
- 40.3 Where the Commissioning Partners terminate or suspend the Framework Agreement as a consequence of a breach or Contract Non-Compliance by the Provider, the Commissioning Partners shall be entitled to recover from the Provider:-
- 40.3.1 any costs (including any administration costs) reasonably incurred by the Commissioning Partners in respect of the supply of any part of the Services by the Commissioning Partners or a third party; and

40.3.2 the amount of any other loss (including any administration costs) incurred by the Commissioning Partners as a result of having to suspend or terminate the Framework Agreement.

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

40.4 The Provider shall upon the termination of the Framework Agreement immediately deliver up to the Commissioning Partners all correspondence, documents and other property belonging to the Commissioning Partners which may be in its possession or under its control.

40.5 The provisions of this Clause shall survive the termination or expiry of this Framework Agreement.

41. FORCE MAJEURE

41.1 Neither the Commissioning Partners nor the Provider shall be liable for any delay in, or non-performance of, any obligation under this Framework Agreement (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, contractor or 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 Framework Agreement, then the other party shall have the right, for so long as the circumstances which prevent performance continue, to terminate this Framework Agreement by giving not less than 30 (thirty) Working Days' written notice to the other party.

42. CHANGE IN LAW

42.1 The Provider shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase in the Framework 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 the Framework Agreement.

42.2 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 Commissioning Partners to express an opinion of the likely effects of the change including:-

42.2.1 whether any change is required to the Services, the Framework Price or this Framework Agreement; and

42.2.2 whether the Provider requires any relief from compliance with its obligations.

42.3 If the parties to this Framework 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.

42.4 In the case of any dispute arising under this Clause, it shall be resolved in accordance with Clause 32.

43. CONFLICT OF INTEREST

- 43.1 The Provider shall use reasonable endeavours to ensure that it and any of its Personnel, agents, suppliers, contractors or sub-contractors are not placed in a position where in the reasonable opinion of the Commissioning Partners 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 Commissioning Partners under the provisions of the Framework Agreement. The Provider shall immediately disclose to the Commissioning Partners full particulars of any such conflict of interest which may arise.
- 43.2 Where such a conflict does arise the Provider shall take any reasonable steps as are required by the Commissioning Partners 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 Commissioning Partners shall have the right by notice in writing to terminate this Framework Agreement immediately. If the Commissioning Partners terminate this Framework Agreement in accordance with this Clause, they 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 Commissioning Partners shall not be liable to pay any severance payment or compensation to the Provider for loss of profits.
- 43.3 The provisions of this Clause shall apply during the Term of the Framework Agreement and for a period of two years after its termination.

44. RIGHT OF SET OFF

- 44.1 Without prejudice to any other rights and remedies available to it, a Commissioning Partner 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 Commissioning Partner has incurred in consequence of any breach by the Provider of its obligations under the Framework Agreement.

45 LOCAL HEALTHWATCH

- 45.1 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 Commissioning Partners under this Framework Agreement, so as to enable members of the community to contribute their views in relation to health and social care service development and delivery.

46. TUPE

- 46.1 At any time during the last twelve months of the Framework Agreement Term, the Provider shall provide to the Commissioning Partners within 20 Working Days of a written request such information as the Commissioning Partners may reasonably require in respect of TUPE.

- 46.2 The Provider shall comply with its obligations under Clause 12, Confidentiality, in relation to any information supplied under Clause 46.1.
- 46.3 The Provider shall permit the Commissioning Partners to use the information for the purposes of TUPE and re-tendering.
- 46.4 If TUPE applies on termination of this Framework Agreement then:-
- 46.4.1 the Provider agrees to indemnify the Commissioning Partners fully and to hold them 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 46.1;
- 46.4.2 the Provider agrees to indemnify the Commissioning Partners 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 of the Provider on any date upon which the Framework Agreement expires or 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.
- 46.5 In the event that the information provided by the Provider in accordance with Clause 46.1 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 Commissioning Partners of the inaccuracies and provide the amended information within 10 Working Days.
- 46.6 Where there are employees transferring to the Provider at the commencement date of this Framework Agreement or any Call-Off Contract who are members of or were eligible to be members of the Dorset County Council Pension Scheme immediately before the commencement date and the Provider wishes to offer those employees continued membership of that pension scheme, the Provider shall procure that prior to the commencement date it shall obtain an admission agreement with the Dorset County Council Pension Fund and shall procure that the admission agreement will have effect from and including the commencement date. A bond or a parent guarantee will be required in respect of those transferring employees formerly employed by the Commissioning Partners who are currently members of the Dorset County Council Pension Scheme.
- 46.7 If the Provider does not wish to offer such employees membership of the Dorset County Council Pension Scheme or is of the reasonable opinion that it is not possible to become an admitted body via an admission agreement then the Provider shall provide access to a pension scheme that is broadly comparable to the Dorset County Council Pension Scheme as determined by the Dorset County Council Pension Fund Actuary at a cost to the Provider.
- 46.8 Where there are employees transferring to the Provider at the commencement date of this Framework Agreement or any Call-Off Contract who are members of or were eligible to be members of the NHS Pension Scheme immediately before the commencement date, the Provider will comply in all respects with the government

policy *Fair Deal for Staff Pensions – staff transferring from central government (Fair Deal 2013)* or any replacement to the same, in respect of pension requirements for transferring employees.

- 46.9 The Provider will fully comply with its obligations in respect of the pension arrangements made under Clauses 46.6 to 46.8 for the Term of the Framework Agreement or Call-Off Contract if longer.
- 46.10 The Provider will indemnify the Commissioning Partners against all liabilities arising from any failure by the Provider to comply with the requirements in Clauses 46.6 to 46.9.
- 46.11 The Commissioning Partners reserve the right to terminate the Framework Agreement or any Call-Off Contract should the Provider fail to comply with its obligations under Clauses 46.6 to 46.9.
- 46.12 The provisions of this Clause shall apply during the continuance of this Framework Agreement and indefinitely after its termination.

47 NOTICES

- 47.1 Any notice to be given under this Framework Agreement shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider or the Commissioning Partners at the address set out at the head of this Framework Agreement, or such other address as that party may from time to time notify to the other party in accordance with this Clause.
- 47.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:-
 - 47.2.1 if delivered by hand before 4.00 pm on a Working Day, at the time of delivery, otherwise receipt shall be deemed to occur at 9.00 am on the next following Working Day; or
 - 47.2.3 if delivered by first class inland mail, two Working Days after the day of posting.
- 47.3 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.
- 47.4 Notice shall not be given by email.

48. SERVICE INTERRUPTION

- 48.1 In all cases where the statutory duties of the Commissioning Partners are triggered by an interruption to the Services, whether or not as a consequence of the business failure of the Provider (as defined by the Care and Support (Business Failure) Regulations 2014), the Provider shall use best endeavours to assist the Commissioning Partners to discharge those duties, such assistance to include the provision of relevant information as may be requested by the Commissioning Partners.

49. RECOVERY OF SUMS DUE

49.1 Wherever any sum of money is recoverable from, or payable by, the Provider (including any sum which the Provider is liable to pay to the Commissioning Partners under Clause 31 or Clause 40) the Commissioning Partners 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 Commissioning Partners.

49.2 The Provider shall make any payments due to the Commissioning Partners 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 Commissioning Partners to the Provider.

50. PROVIDER STATUS

50.1 In carrying out the Services, the Provider shall be acting as principal and not as the agent of the Commissioning Partners.

50.2 This Framework 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 Framework Agreement.

50.3 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 Commissioning Partners.

51. COUNTERPARTS

51.1 This Framework Agreement 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 Framework Agreement.

52. LAW AND JURISDICTION

52.1 This Framework Agreement 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.

52.2 This Framework Agreement is binding on the Commissioning Partners and the Provider, their successors and assigns.

53. ENTIRE AGREEMENT

53.1 This Framework Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Framework Agreement.

53.2 This Framework Agreement supersedes all prior negotiations, representations and undertakings whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

ADDITIONAL TERMS RELATING TO CARE AND SUPPORT IN A CARE HOME (WITH AND WITHOUT NURSING)

54. TEMPORARY ABSENCE FROM THE CARE HOME

54.1 Hospitalisation

- 54.1.1 Where the Service User is admitted to hospital, the Provider shall inform the Commissioning Partners within twenty four hours of admission.
- 54.1.2 The Provider, in addition to informing the Commissioning Partners within twenty four hours of an admission, shall complete a change of circumstances form and submit this to the Commissioning Partners. The Provider should ensure that the duplicate copy of the form is retained for their records. The Commissioning Partners can supply additional forms.
- 54.1.3 The Commissioning Partners will continue to pay the Provider for the placement for up to six weeks from the Service User being admitted into hospital. During that period, the Commissioning Partners will be responsible for carrying out a formal review in order to determine the expected length of time that the Service User will be away from the home and if the Service User is likely to return to the home.
- 54.1.4 If during the first six weeks of absence the Commissioning Partners determine that the Service User's absence will exceed the six weeks but the Service User is expected to return to the home, the Commissioning Partners shall negotiate an extension to the arrangement for the desired period in order to reserve the room for the Service User's return. In such circumstances, prior to the Service User returning to the home, the Commissioning Partners shall review the care arrangements to ensure that the home can still meet the Service User's care needs.
- 54.1.5 If after the first six weeks of absence the Commissioning Partners expect the Service User to return to the home, the Commissioning Partners shall negotiate an extension to the arrangement for the desired period in order to reserve the room for the Service User's return. In such circumstances, prior to the Service User returning to the home, the Commissioning Partners shall review the care arrangements to ensure that the home can still meet the Service User's care needs at the same care/funding level. If not, the Commissioning Partners will seek alternative care arrangements either within the same home or an alternative care home under a separate arrangement i.e. the issue of a new care and support plan and agreement for the placement of Service User to confirm the new placement arrangements.
- 54.1.6 If the Commissioning Partners determine that the Service User is not expected to return to the home, they will give the appropriate notice in accordance with Clause 55.
- 54.1.7 For NHS Dorset funded placements, payment will cease on the day of admission to the new home.

54.2 Absences other than Hospitalisation

- 54.2.1 Where the Service User is absent from the home for any reason other than being admitted to hospital, the agreement for the placement of Service User may terminate where the period of absence exceed two weeks in accordance

with Clause 55. Where the Commissioning Partners wish to continue to purchase the service of the Provider, arrangements will be made and agreed. During such times the notice period shall be one week.

- 54.2.2 If it is determined that the Service User will return to the home on a planned date, the Commissioning Partners shall negotiate an extension to the arrangement for the desired period in order to reserve the room for the Service User's return.
- 54.2.3 The Provider shall inform the Commissioning Partners immediately of any absence other than that specified in the care and support plan. This should include the reason for and the expected length of absence.
- 54.2.4 Where the absence is expected to exceed two weeks, the Provider shall complete a change of circumstances form detailing the date at which the absence started and forward the form to the Commissioning Partners.
- 54.2.5 The Provider shall ask the Service User and their family and/or carers to notify the home and the Commissioning Partners of any planned absences to be made during the year.
- 54.3 The Commissioning Partners shall continue to pay the Provider the placement cost for a Service User for any period of absence not exceeding six weeks in the event of hospitalisation, or two weeks in the event of absence for any other reason unless agreed otherwise between the parties.
- 54.4 The Provider shall ensure that the accommodation occupied by the Service User is kept available for the Service User to return to unless the agreement for placement of Service User is terminated in accordance with Clause 55. During such period the Service User's accommodation shall not be made available for use by any other individual or for any other purpose. Payment of the placement cost shall cease immediately if the accommodation is used for alternative purposes as from the date such use commenced.
- 54.5 If a situation arises, except in cases of emergency hospital admission, where it appears no longer appropriate for a Service User to continue to receive the Services from the Provider, no decision to discharge or transfer the Service User will take place without the consultation and agreement of the Service User and the Commissioning Partners. Out of normal office hours the Commissioning Partners' out of hours service should be contacted.

55. ENDING A PLACEMENT

A placement may be ended in any of the following circumstances:

55.1 Short term/respite placements

Where a placement has been made for a fixed period, the placement will either:

- 55.1.1 end on the expiry of that period subject to renewal for a further fixed period by agreement between all the parties; or
- 55.1.2 end at any time during the agreement period by one of the parties giving notice to terminate the arrangement in accordance with this Clause.

55.2 Initial trial period – long term placements

55.2.1 During the initial six week trial period, the Commissioning Partners, the Provider or the Service User (or their duly authorised representative) may end the placement by giving notice to the other parties. Such notice will take effect upon the expiry of seven days or on such date as is agreed between all the parties. During the period of notice, the Service User will continue to be liable for the payment of their financial contribution. The Provider agrees that the departure of the Service User from the care home will be conditional on the Commissioning Partners securing suitable arrangements for the future care of the Service User.

55.2.2 After the initial trial period, any party may end the agreement by giving two weeks' notice. During the notice period, the Service User will continue to be liable for their financial contribution.

55.3 Death of the Service User

55.3.1 If the Service User dies during the period of the placement, the placement will end on the day of death and the following will apply:

- (i) the Service User's family, carers or executors (as appropriate) will be responsible for clearing the Service User's room within a reasonable time i.e. 2 to 3 days.
- (ii) where arrangements cannot be secured within a reasonable period, the Commissioning Partners, in liaison with the Service User's family, carers or executors, and the Provider, will negotiate reasonable compensation for the Provider to clear the room on behalf of the Service User's family, carers or executors (as appropriate). Such compensation shall be paid from the estate of the Service User.

55.3.2 The Commissioning Partners shall pay the Provider up to and including the day of death for the placement cost in accordance with Clause 56.

55.3.3 The Service User's contribution to the placement cost which is paid directly to the Provider shall also be payable to the Commissioning Partners up to and including the day of death and, as such the Commissioning Partners reserve the right to claim this from the Service User's estate after the date of death, if necessary.

55.4 Service User's Request to Transfer to Another Home

55.4.1 If the Service User requests a transfer to another home or is dissatisfied with the care provided, he/she may request a transfer. The Service User has a right, at any time within the placement period, to request a transfer to another home. Any such request should be referred to the Commissioning Partners who will investigate the reasons for such a request. If the request is reasonable, a suitable date of transfer will be agreed by all parties and the Commissioning Partners will make appropriate arrangements in consultation with the Provider and the Service User (or his/her duly authorised representatives).

The Commissioning Partners shall serve appropriate notice to the Provider according to the outcome of the Commissioning Partners' investigation under the terms of this placement as follows:

- (i) where the Commissioning Partners have determined that the Provider has either in whole or part failed to comply with any condition of this Framework Agreement, the Commissioning Partners shall only pay the Provider for the care provided whilst the Service User is resident at the home.
- (ii) where the investigation has confirmed that the Service User's request to transfer does not relate to any breach of this Framework Agreement on the part of the Provider, the Commissioning Partners shall give the Provider two weeks' notice to terminate the agreement which will be effective from the time of notification to terminate by the Commissioning Partners.
- (iii) where the Commissioning Partners have determined that the home can no longer meet the deteriorating care needs of the Service User, the Commissioning Partners shall only pay the Provider for the care provided whilst the Service User is resident at the home.

55.5 Absence from the Home into Hospital

55.5.1 Where the Service User is admitted to hospital and his/her stay is expected to exceed six weeks, the Commissioning Partners shall pursue one of the following arrangements:

- (i) if during the first six weeks of absence it is known that the Service User will not be returning to the care home, the Commissioning Partners will notify the Provider accordingly giving the appropriate two weeks' notice from the date the care home is advised of this fact; or
- (ii) if after the first six weeks of absence the Commissioning Partners expect the Service User's absence from the home to exceed six weeks but they are expected to return to the home, the Commissioning Partners shall negotiate an extension to the placement for the desired period in order to reserve the room for the Service User's return. In such circumstances, prior to the Service User returning to the home, the Commissioning Partners shall review the care arrangements to ensure that the home can still meet the Service User's care needs.

55.5.2 For placements funded by NHS Dorset, payment will cease on the day of admission into hospital.

55.6 Absence from the Home other than Hospitalisation

55.6.1 Where the Service User has an unplanned absence from the home for a period of time exceeding two weeks for any reason other than being admitted to hospital, the Commissioning Partners shall determine the reason for, and length of, the continued absence. If it is determined that the Service User's absence will be prolonged for a period of time or if the Service User does not intend to return to the home, the agreement for the placement of the Service User will end with the Commissioning Partners giving two weeks' notice to the Provider which will be effective from the date that confirmation of the termination is notified to the Provider.

55.7 General

- 55.7.1 The Provider may request the removal of the Service User where, in the reasonable opinion of the Provider, continuation of the placement would give rise to serious risk to the life, health and well-being of the Service User, or other Service Users. The Commissioning Partners shall investigate whether the Provider has reasonable grounds for making a decision to remove the Service User. Where it is deemed appropriate for the Service User to be removed, the Commissioning Partners will be responsible for securing alternative care arrangements. In such circumstances, the Commissioning Partners shall only pay the Provider for the care provided while the Service User is resident at the home.
- 55.7.2 Where a Service User has assets that, when realised, result in the Service User no longer requiring public financial support, the agreement for the placement of the Service User will terminate with immediate effect on the day the assets are realised as supported by written confirmation from the Commissioning Partners.
- 55.7.3 The Provider will make the necessary arrangements to collect the Service User's full contribution (and any top up contribution if applicable) towards the placement cost for their care with effect from the commencement of the placement and account to the Commissioning Partners for any payments made during this period by the Commissioning Partners to the Provider.
- 55.8 The Commissioning Partners reserve the right to end the placement with immediate effect where, in their reasonable opinion, the Service User is at risk of detriment to their physical, mental or financial well-being whether through the Provider being in breach of the Framework Agreement in relation to Services provided to the Service User or otherwise. The views of the Service User and/or their representative will be sought and taken into account. The parties agree, however, that the final decision in respect of ending the placement will be taken by the Commissioning Partners in accordance with what they deem are the best interests of the Service User.
- 55.9 The Provider will advise the Commissioning Partners in writing as soon as reasonably possible if it plans to close the home. Two months' notice of transfer of ownership shall be given in accordance with Clause 5.11. In such circumstances, the Commissioning Partners reserve the right to end the placement immediately, particularly if the arrangement gives rise to serious risk to the life, health and well-being of the Service User or other Service Users.

56. **DEATH OF A SERVICE USER**

- 56.1 Upon the death of a Service User, the Provider must notify the Commissioning Partners within 24 hours. A change of circumstances form shall be forwarded to the Commissioning Partners.
- 56.2 Upon the death of a Service User, the Provider shall be responsible for requesting the Service User's next of kin (or where appropriate the local district council) to make the necessary arrangements, including funeral arrangements.
- 56.3 Upon the death of a Service User, where a Service User has been placed in the care home as an emergency admission or short term/respite placement, the Commissioning Partners shall be responsible for notifying and requesting that the

Service User's next of kin (where such exists) make the necessary arrangements, including funeral arrangements.

- 56.4 Upon the death of a Service User, the Commissioning Partners shall pay the Provider for the placement cost excluding any continuing healthcare contribution up to and including the day of death. In exceptional circumstances, the Commissioning Partners may agree to fund additional days whilst the Service User's room is being vacated. The Commissioning Partners' decision on what constitutes exceptional circumstances shall be final. NHS Dorset's obligation to pay the Provider the continuing healthcare contribution for the Service User shall cease on the date of death.

ADDITIONAL TERMS RELATING TO CARE AND SUPPORT AT HOME

57. TERMINATION OF INDIVIDUAL SERVICE USER ARRANGEMENTS

- 57.1 The following terms and conditions shall apply in relation to individual Service User arrangements in addition to the terms set out in this Framework Agreement and any Call-Off Contract:

57.1.1 The arrangement for an individual Service User may be terminated by either party giving one week's written notice.

57.1.2 The Service User or, where appropriate, their carer, may request termination of the arrangement and alternative suitable arrangements to be put in place. In such instances the reasons for the request will be investigated by the relevant Commissioning Partner in accordance with Clause 27.1.

57.1.3 Where it has been agreed by the parties that the arrangement shall be provided for a fixed period the arrangement shall cease on the expiry of that period.

57.1.4 If the Service User dies during the provision of the Services, the arrangement shall cease on the day of death.

58. ABSENCE INCLUDING HOSPITALISATION

- 58.1 Where the Service User is absent for any reason including admission to hospital, the arrangement shall be suspended with immediate effect and the relevant Commissioning Partner notified immediately. The relevant Commissioning Partner shall then negotiate with the Provider regarding the future service requirements.

58.2 Payment shall only be made for Services delivered. If, however a representative of the Provider reports for work at a Service User's home at the specified time and is unable to gain entry for whatever reason the relevant Commissioning Partner shall pay the Provider for the hours booked. Where 24 hours' notice that the care is not required has been given by either the Service User or the relevant Commissioning Partner, no payment shall be made.

- 58.3 The Provider retains the right to enter into a private arrangement for the provision of any additional services over and above the Services purchased under an individual commissioned care package, and will be responsible for making appropriate arrangements for charging and collecting the fees for this additional service. Where such arrangements are secured, the Provider shall inform the relevant Commissioning

Partner. Any changes to care plans or the provision of additional services to meet the health needs of CHC eligible Service Users must be agreed with the NHS Case Co-ordinator and an adjustment to the contracted hours arranged in advance of any additional services being delivered.

59. DEATH OF A SERVICE USER

59.1 Upon the death of a Service User, the Provider must notify the relevant Commissioning Partner within 24 hours. The Change of Circumstance Form shall be forwarded to:

59.1.1 Dorset County Council: Exchequer Services – Assessment Team, County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ; and/or as appropriate

59.1.2 NHS Dorset Clinical Commissioning Group, Vespasian House, Barrack Road, Dorchester, Dorset DT1 1TG

59.2 Upon the death of a Service User, the relevant Commissioning Partner shall be responsible for requesting the Service User's next of kin, or where appropriate the local District Council, to make the necessary arrangements, including funeral arrangements.

59.3 Upon the death of a Service User, the Provider shall be paid as follows:

59.3.1 Dorset County Council shall pay up to and including the day of death; and

59.3.2 NHS Dorset Clinical Commissioning Group shall pay up to and including the day of death plus 24 hours.

DORSET CARE FRAMEWORK

FRAMEWORK AGREEMENT FOR THE PROVISION OF XXX (xxx to xxx)

SIGNATURE SECTION

This page forms part of the Framework Agreement detailed above. If you are in agreement with the content of the Framework Agreement and the Appendices, please return a copy of this page signed and dated as required. Following receipt you will be sent copies of the signature pages for all parties for you to keep with your copy of the Framework Agreement document.

PARTIES TO THE FRAMEWORK AGREEMENT

THE COMMISSIONING PARTNERS

Dorset County Council, County Hall, Colliton Park, Dorchester, DT1 1XJ

NHS Dorset Clinical Commissioning Group, Vespasian House, Barrack Road, Dorchester, Dorset DT1 1TG

THE PROVIDER

Name:

Address

.....

Registered office (if different from address):

.....

.....

Company/charity registration number:

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

Authorised Signatory

SIGNED for and on behalf of
NHS DORSET CLINICAL COMMISSIONING GROUP

Authorised Signatory

EXECUTED as a DEED by
XXXXXXXXXXXXXX
acting by a Director or its Secretary:-

Director

Secretary/Director

Witness:
Witness Signature
Print Name
Address
Occupation

*This document must be executed as a Deed.
If you are signing as a company, you should check with your governing document (Articles of Association) to ensure you comply with the requirements for your company. Most commonly a document can be signed by a Director and a Secretary or two Directors. If one Director only is signing this document you will need someone to witness their signature and complete the 'Witness' details.*