

Schedule 3 – Contract Terms

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DEFINITIONS AND INTERPRETATION

For the purposes of these Contract Terms the following definitions shall apply: -

Abuse	describes a single action, repeated action or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to a Service User. This could include physical, emotional, financial, sexual, gender or racial abuse or neglect and abuse through the misapplication of drugs.
Commercially Sensitive Information	any information so specified and provided by the Provider to the Council 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 these Contract Terms awarded under it, including information which by its nature is clearly confidential and including sensitive personal information and Commercially Sensitive Information.
Contract Manager	the person nominated by the Provider to manage the Contract or their appointed nominee.
Contract Price	the price payable (exclusive of any applicable VAT) to the Provider by the Council for the full and proper performance of its obligations which is set out in these Contract Terms.
Contracts Officer	the officer of the Council responsible for: managing and administering the Contract Terms awarded under it; arranging payment for the Services; monitoring the Provider in accordance with the requirements of the Service Specification, to ensure that the Contract Terms are met;

	(iv) ensuring that any information requested from the Provider, as detailed in the Contract Terms, Service Specification, is provided by the Provider at the time specified.
Dorset Council Purchasing Area	Being the administrative areas covered by Dorset Council, Bournemouth, Christchurch and Poole (BCP) Council, and all or part of local authority areas that share a border with Dorset Council.
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.
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.
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.
Premises	any location where the Services are provided.
Provider	the organisation appointed by the Council to provide the Services and including the

	Provider's Personnel, successors and permitted assigns
Service Specification	the Specification at Schedule 3 which set out the level, scope and standards of the Services to be provided by the Provider.
Service User(s)	an individual who is, or will be, receiving the Services in accordance with the Service Specification. Where appropriate, references to Service User shall include the Service User's carer or authorised representative.
Services	the services that the Provider delivers to Service Users as specified in the Service Specification and the Service User's care and support plan, on the terms of these Contract Terms.
Term	the duration of this Contract as specified in the Contract or ending on earlier termination in accordance with these terms.
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
Vulnerable Adult	any person aged 18 years and over who: is or may be in need of community care services by reason of mental or other disability, age or illness; and is or may be unable to take care of themselves; or 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 these Contract Terms:

Headings do not affect its interpretation or construction;

Words importing the singular include the plural and vice versa;

References to numbered Clauses and appendices or schedules are references to the relevant Clause in or appendix or schedule to these Contract Terms;

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 and schedules are incorporated in these Contract Terms;

In the event of any conflict between the Clauses and appendices or schedules, the appendices or schedules shall prevail and in the event of any conflict between the Contract Terms;

Any periods of time referred to in these Contract Terms 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 these Contract Terms 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.

Any documents in electronic links embedded in these Contract Terms, and any revision or update to the same during the Contract Terms , shall form part of the Contract Terms .

1 NOT USED

2 NOT USED

3 NOT USED

4 PROVIDER'S OBLIGATIONS

4.1 The Provider shall provide the Services during the Term fully in accordance with the Service Specification and the terms of these Contract Terms including the appendices and schedules.

4.2 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 these Contract Terms or not.

4.3 The Provider shall be registered with any regulator with whom they are required to be registered for the purposes of providing the Services at all times during the Term and shall fully comply with that regulator's requirements in that regard.

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

4.5 The Provider shall assist the Council in reviewing the planning, provision and operation of the Services, comply with the reasonable directions of the Council and, subject to Clause 7 (Variations and Waivers), use all reasonable endeavours to carry out the Services in accordance with any variations to the Service Specification.

4.6 The Provider shall attend contract review meetings as reasonably required.

4.7 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 Council.

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

4.9 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. The Provider shall be responsible for purchasing and maintaining all Equipment that may be required during the Services to meet the needs of Service Users and for the avoidance of doubt, this obligation shall take precedence over any provision to the contrary in the appendices or schedules to these Contract Terms.

4.10 The Provider shall meet statutory obligations under Law relevant to the Services at its own cost and shall have policies and procedures in place as set out in the Service Specification to ensure that these are met. Where relevant to the

Services, this includes ensuring that all vehicles used to transport Service Users are taxed, appropriately insured, have an MOT with a valid certificate, maintained in accordance with the manufacturer's instructions and are suitable for the transportation of Service Users.

4.11 The Provider shall use the Council' e-brokerage system where required to do so.

4.12 Where relevant, the Provider will co-operate and engage with the Council to meet government funding conditions to ensure the Council can prepare their markets for reform, particularly the impact of section 18(3) of the Care Act 2014, and to implement measures to secure the long-term sustainability of the market, as appropriate to local circumstances.

5 PROVIDER'S PERSONNEL

5.1 The Provider shall provide the Services using suitably qualified Personnel who are at all times entitled to work in the United Kingdom.

5.2 All Personnel shall be made fully aware of the Provider's obligations under these Contract Terms as it affects them in the performance of the Services.

5.3 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 these Contract Terms.

5.4 The Provider shall give and shall ensure that its Personnel give all reasonable assistance to the Council in the investigation of complaints, disciplinary matters, claims for damages and similar matters.

5.5 The Council 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 Council shall specify the reason for its request.

5.6 The Council 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 Council in respect of any claims made.

5.7 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.

5.8 The Provider shall comply with any additional provisions regarding Personnel in the Service Specification.

6 SERVICE CONTINUITY

6.1 The Provider shall have contingency arrangements in place, as approved by the Council, to ensure continuity of the Services at all times at no extra cost to the Council. These shall include, but not be limited to, arrangements to deal with staff absences.

6.2 The Provider shall demonstrate, on request by the Council, for the duration of the Contract, that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services, including an insolvency event affecting the Provider or any key-subcontractor, such plans to be appropriate to the scale of the Provider's commitments under the Contract.

6.3 The Service Provider must submit no later than 31st March each year a copy of their current Business Continuity Plan and evidence of insurance.

6.4 The Purchaser reserves the right to request detailed evidence of contingency plans such as sight of the Provider's business continuity plan and evidence of the testing of the plan, and to require review and/or amendment of the plan and any other contingency arrangements to meet the Council' requirements, and in any event the Provider shall review the plans as a minimum every six months.

7 VARIATIONS AND WAIVERS

7.1 The Council reserve the right to require changes to the Contract Terms or Services (a 'Variation') for any reason including, but not limited to, meeting the Council' policy prevailing at the time but so as not to constitute a material variation to the Contract Terms.

7.2 The Council shall give reasonable written notice of any such Variation to the Provider. Reasonable notice shall be deemed to have been given if it is either:

7.2.1 three months' notice for changes to the Service Specification which the Council consider will result in more or less Personnel being required or significantly more costs being incurred by the Provider; or

7.2.2 one month's notice in any other case.

7.3 In the event of a Variation, the Contract Price may also be varied. Such variation shall be calculated by the Council and agreed in writing with the Provider and shall be an amount which properly and fairly reflects the nature and extent of the Variation. Otherwise, the Contract Price prevailing at the time of the Variation shall be used as the basis for valuing such Variation, in so far as may be reasonable, and otherwise a fair valuation shall be made.

7.4 The Provider shall co-operate with the Council on any request for a Variation and promptly provide such information as may be reasonably required to enable such a variation in the Contract Price to be calculated.

7.5 In the event of dispute, the matter shall be determined in accordance with the dispute resolution procedure at Clause 30 (Resolution of Disputes).

7.6 Any variation to the Contract Price shall be dealt with under Clause 8 (Financial Arrangements).

7.7 The Council and Provider may vary the Contract Terms by mutual written consent.

7.8 Failure by a party to insist on strict performance of the Contract Terms or to exercise any right or remedy on breach of any provision of the Contract Terms shall not constitute a waiver of the terms of the Contract Terms or a waiver of any subsequent breach or default in the performance of the Contract Terms. The rights and remedies provided in these Contract Terms are cumulative and not exclusive of any rights and remedies provided by Law.

8 FINANCIAL ARRANGEMENTS

8.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Provider the Contract Price set out in Schedule 2.

8.2 The Contract Price shall be inclusive of all costs, expenses and overheads but exclusive of VAT which shall be charged at the prevailing rate.

8.3 Payment shall be made within 30 days of receipt of a correct invoice for the Services performed to the satisfaction of the Council.

8.4 If the Provider withdraws, makes unavailable or fails to provide the Services, either temporarily or permanently, the Provider shall reimburse the Council the relevant proportion of the Contract Price in respect of the period of unavailability, unless otherwise agreed in advance with the Council.

8.5 If the Council intends to withhold all or any part of a payment it shall give reasonable notice to the Provider to that effect, which notice shall specify the amount proposed to be withheld and the ground for doing so.

8.6 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.

8.7 Invoices must be submitted promptly and any queries on non-payment must be raised within three (3) months of delivery of the Services. If queries are received outside this timescale, the Council offers no guarantee of payment.

8.8 The Contract Price is fixed for the duration of the Contract unless specified otherwise by the Council.

8.9 Should the Provider consider it has a compelling case for an increase in the Contract Price, including but not limited to where a change of need can be evidenced, it may seek to discuss it with the Council having first submitted detailed

evidence for the increase and transparent open book calculations demonstrating how such increase has been calculated.

8.10 In the event of an increase in the Contract Price being unacceptable to the Council, they reserve the right to negotiate with the Provider and should these negotiations prove unsuccessful with no agreement reached, the parties may invoke Clause 30 (Resolution of Disputes) or the Council may at their discretion purchase the Services elsewhere.

8.11 For the avoidance of doubt, the Council do not commit to agree to any increase in the Contract Price. The Council will not pay any increase in the Contract Price which they have not agreed. The Provider agrees that the continued provision of the Services does not imply the Council' agreement to an increase in the Contract Price. The Provider agrees to obtain the prior written agreement of the Council to any increase in the Contract and as to when such increase, if agreed, is implemented.

9 INFORMATION

9.1 The Provider shall maintain accurate documented information as required under these Contract Terms and the Service Specification.

9.2 In addition, the Provider shall submit to the Contracts Officer the following information:

9.2.1 a copy of the Provider's audited (or inspected) accounts as soon as they are available for each year of the Contract Terms;

9.2.2 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 16 (Insurance);

9.3 The Council, or their representatives, 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 Contract Terms and the Service Users using the Services. The Council may also request copies of the above documents be supplied confidentially by email within a reasonable timescale. The Provider shall supply copies of all such requested information.

9.4 The Provider shall ensure that all information held pertaining to Service Users is kept secure and reasonable steps are taken to prevent theft or loss.

9.5 The Council reserve the right to seek from and share relevant information with other care and medical service providers, regulators, other local authorities, the police and other parties (as appropriate to the Services), in response to concerns raised in relation to standards of service provision or in relation to any safeguarding investigation.

9.6 The Provider shall comply with the requirements of Clause 23 (Safeguarding Children and Vulnerable Adults) in respect of information sharing in safeguarding matters.

9.7 The provisions of this Clause shall survive the expiry or termination for any reason of these Contract Terms.

10 AUDIT

10.1 The Provider shall keep and maintain until six years after the Contract Terms have ended, or for as long a period as may be agreed between the parties, full and accurate records of the Contract Terms, including the Services provided, all expenditure reimbursed by the Council and all payments made by the Council.

10.2 The Provider shall on request afford the Council or their representatives such access to those records as may be required by the Council in connection with the Contract Terms at no cost to the Council.

11 CONFIDENTIALITY

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

11.1.1 the terms of these Contract Terms; and

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

except that these Contract Terms may be provided to a Service User on request.

11.2 No party shall use or disclose the other party's Confidential Information, without prior written consent, except to persons and for the purpose of these Contract Terms, or where disclosure is expressly permitted under these Contract Terms.

11.3 The Provider shall only use the Council' Confidential Information for the purposes of these Contract Terms.

11.4 The Provider shall take reasonable steps to ensure the Council' Confidential Information is only given to its Personnel, professional advisors or consultants as strictly necessary for the purpose of these Contract Terms. The Provider shall ensure its Personnel, professional advisors or consultants are aware of the Provider's confidentiality obligations under these Contract Terms.

11.5 The obligations on a party set out in Clauses 11.1 to 11.4 shall not apply to any Confidential Information which:

11.5.1 a party can demonstrate is or becomes public knowledge otherwise than by breach of these Contract Terms;

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

11.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

11.5.4 is independently developed without access to the Confidential Information;

11.5.5 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.

11.6 Nothing in this Clause shall prevent the Council from:

11.6.1 disclosing any Confidential Information for the purpose of:

11.6.1.1. the examination and certification of the Council' accounts; or

11.6.1.2 an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used their resources; or

11.6.2 disclosing any Confidential Information obtained from the Provider:

11.6.2.1 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

11.6.2.2 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to these Contract Terms

provided that in disclosing information under sub-clause 11.6.2 the Council 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.

11.7 In the event that the Provider fails to comply with this Clause, the Council reserve the right to terminate the Contract Terms by notice in writing with immediate effect.

11.8 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 Council.

11.9 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 Council and/or the police as appropriate and shall co-operate fully with any subsequent procedures. In the same way, where the Council has received information that a Service User has been the subject of Abuse or is a risk of Abuse, the Council shall report this immediately to the police and/or other agencies with a responsibility for the protection of Vulnerable Adults.

11.10 This Clause shall survive termination of these Contract Terms indefinitely.

12 DATA PROTECTION

Definitions

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

- **Agreed Purposes:** the provision of Services according to the relevant Service Specification for the contract awarded;
- **Data Controllers in Common** where both Parties are Controllers and process Personal Data under the Contract independently of the other;
- **Data Discloser:** a party that discloses Shared Personal Data to the other party;
- **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
- **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** have the meaning given in the Data Protection Legislation;
- **Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of these Contract Terms, including any Personal Data Breach;

- Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- DPA 2018: Data Protection Act 2018;
- EU GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679);
- Joint Controllers or Joint Control where two or more entities are Controllers of the Personal Data and therefore jointly determine the purposes and means of processing;
- Permitted Recipients: the parties to this Agreement, the employees of each party and any third parties engaged to perform obligations in connection with this Agreement ;
- Processor Personnel means all directors, officers, employees, agents, volunteers, consultants and contractors of the Processors and/or of any Sub-Processor engaged in the performance of its obligations under the Contract;
- Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
- Shared Personal Data: the Personal Data to be shared between the parties under Clause 12.14 of this Agreement being all personal and sensitive Personal Data as defined by UK GDPR which is routinely created and collected in the course of providing the Services for the Agreed Purposes.
- Sub-processor: any third party appointed to process Personal Data on behalf of that Processor related to this Contract.
- UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. Clauses 12.1 to 12.14 inclusive apply to the Processing of Personal Data and is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the Controller and the Provider is the Processor unless otherwise specified in Appendix 9. The only processing that the Processor is authorised to do is listed in Appendix 9 by the Controller and may not be determined by the Processor.

12.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

12.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:

- a) process that Personal Data only in accordance with Appendix 9, unless the Processor is required to do otherwise by law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - i. nature of the Personal Data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
- c) ensure that:
 - v. the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Appendix 9);
 - vi. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Processor's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

- C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with Part 3 of the DPA 2018 and UK GDPR) as determined by the Controller;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

12.6 Subject to Clause 12.7, the Processor shall notify the Controller immediately if it:

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

12.7 The Processor's obligation to notify under Clause 12.6 shall include the provision of further information to the Controller in phases, as details become available.

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

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

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

- a) notify the Controller in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Controller;
- c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause such that they apply to the Sub-processor; and
- d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

12.11 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

12.12 The Controller may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to these Contract Terms).

12.13 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice instruct the Processor to amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Joint Controllers and Data Controllers in Common

12.14 Clauses 12.15 to 12.24 inclusive set out the framework for the sharing of Personal Data between the parties as controllers, either as Joint Controllers or Data Controllers in Common. Each party acknowledges that one party (referred to in this clause as the Data Discloser) will disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

12.15 Each party shall comply with the obligations imposed on a Controller under the Data Protection Legislation and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate these Contract Terms with immediate effect.

12.16 Each party shall be responsible for meeting their obligations under the UK GDPR in providing information to any Data Subject in respect of whose Personal Data that party is Controller.

12.17 Each party shall be responsible for responding to a Data Subject Request in relation to Personal Data for which it is Controller in compliance with UK GDPR.

12.18 Each party shall:

12.18.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

12.18.2 give full information to any Data Subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

12.18.3 process the Shared Personal Data only for the Agreed Purposes;

12.18.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

12.18.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

12.18.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;

12.18.7 not transfer any Personal Data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

12.19 Each party shall provide reasonable assistance to the other party in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

12.19.1 consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;

12.19.2 promptly inform the other party in the event of receipt of a Data Subject Request in relation to Shared Personal Data;

12.19.3 assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data breach notifications, Data Protection Impact Assessments and consultations with the Information Commissioner or other regulators;

12.19.4 not disclose, release, amend, delete or block any Shared Personal Data in response to a Data Subject rights request without first consulting the other party wherever possible;

12.19.5 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by Law to store the Shared Personal Data;

12.19.6 promptly notify the other party if it receives any request, complaint or communication relating to that party's obligations under the Data Protection Legislation;

12.19.7 promptly notify the other party if it receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

12.19.8 promptly notify the other party if it receives a request from any third party for disclosure of Personal Data under the Agreement where compliance with such request is required or purported to be required by Law; and

12.19.9 promptly notify the other party if it becomes aware of a Data Loss Event or any breach of the Data Protection Legislation.

12.20 Each party shall comply with its obligation to notify a Personal Data Breach to the Information Commissioner's Office and, where applicable, Data Subjects, under the UK GDPR in respect of the Personal Data for which it is Controller, (having first liaised with the other party to agree which party shall notify the Personal Data Breach to the Information Commissioner's Office), and each party shall inform the other party of any Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner's Office or Data Subject.

12.21 The parties agree to provide reasonable assistance to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

12.22 The parties shall maintain complete and accurate records and information in respect of the Personal Data for which it is Controller in order to demonstrate compliance with this Clause and the Data Protection Legislation and to allow for audit of its Data Processing activity by the other party's designated auditor.

12.23 Each party shall, if relevant, be responsible for carrying out a Data Protection Impact Assessment in relation to the Personal Data for which it is Controller prior to commencing processing of such Personal Data, should that party consider it necessary, to ensure compliance with its obligations under the Data Protection Legislation with respect to Data Protection Impact Assessments.

12.24 Each party shall provide the other with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a Personal Data Breach, and the regular review of the parties' compliance with the Data Protection Legislation.

13 FREEDOM OF INFORMATION

13.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with their information disclosure requirements under the Act.

13.2 The Provider shall-

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

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

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

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

13.3.1 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

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

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

13.5 The Provider acknowledges that the Council 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:

13.5.1 without consulting with the Provider; or

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

13.6 The Provider shall ensure that all information produced in the course of these Contract Terms, or relating to these Contract Terms is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

13.7 The Provider acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 13.5.

14 WARRANTIES

14.1 The Provider warrants and represents to the Council that:

14.1.1 it has the full capacity and authority to enter into and perform these Contract Terms entered into under it, and that the Contract Terms is executed by a duly authorised representative of the Provider;

14.1.2 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;

14.1.3 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;

14.1.4 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 as necessary or required for the Provider to perform the Services;

14.1.5 it has obtained all necessary and required licences, consents and permits to perform the Services;

14.1.6 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 Contract Terms;

14.1.7 as at the commencement date of the Contract Terms, 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 Council prior to the execution of these Contract Terms and it will promptly advise the Council 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;

14.1.8 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 these Contract Terms which may be entered into with the Council.

14.2 Each of the parties acknowledges that in entering into these Contract Terms it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Contract Terms and any Clauses, warranties or other terms implied by statute or common law or custom and practice are excluded from these Contract Terms to the fullest extent permitted by Law.

15 LIABILITY AND INDEMNITIES

15.1 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.

15.2 The Provider shall indemnify the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising out of or in connection with these Contract Terms 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 12 (Data Protection)), unless such injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Council.

15.3 Subject to Clause 15.1, 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.

15.4 The Council shall not, under any circumstances, be liable for any damage to the Provider's property or Premises sustained in the course of providing the Services.

15.5 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.

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

16 INSURANCE

16.1 The Provider shall at all times effect and maintain appropriate insurance policies with a reputable insurer in relation to the provision of the Services.

16.2 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.

16.3 Medical malpractice cover, where appropriate to the Services provided, shall be maintained with a minimum level of indemnity of £1 million and a maximum level of £10 million for any one claim.

16.4 Employers' liability cover shall be maintained with a minimum level of indemnity of £5 million for any one claim.

16.5 Professional indemnity cover shall be maintained with a minimum level of indemnity of £1 million in relation to any one claim.

16.6 The Provider shall, where appropriate to the Services provided, maintain adequate motor vehicle insurance to cover all liabilities to third parties arising from the performance of the Services.

16.7 The Provider shall produce evidence of the insurances in force before commencement of the Services, and on each anniversary of these Contract Terms. A copy of the insurance documents shall be submitted to the Contracts Officer in accordance with Clause 9.2.2 (Information).

16.8 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Clause, the Council 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 these Contract Terms.

16.9 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under these Contract Terms.

16.10 For the avoidance of doubt, minimum insurance levels shall not be a limit of liability under the Contract Terms.

17 ASSIGNMENT AND SUB-CONTRACTING

17.1 The Provider shall not transfer, assign, novate or sub-contract directly or indirectly to any person or organisation any part of these Contract Terms awarded under it without the prior written permission of the Council.

17.2 Sub-contracting any part of these Contract Terms shall not relieve the Provider of any obligation or duty attributable to the Provider under these Contract Terms.

17.3 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

17.4 Any such permitted transfer, assignment or sub-contracting shall be on the same terms as these Contract Terms unless otherwise agreed between the parties.

17.5 The Council shall be entitled to assign or novate the Contract Terms or any part of them, including to any statutory successor to the Council, and shall give written notice of any such assignment to the Provider.

17.6 The Provider may transfer, assign, novate or sub-contract directly or indirectly to any person or organisation within the Provider's business group any part of these Contract Terms with the prior written permission of the Council.

18 RIGHTS OF THIRD PARTIES

18.1 In accordance with the Contracts (Rights of Third Parties) Act 1999, a person who is not a party to these Contract Terms shall not have any rights under or in connection with it.

19 DISCRIMINATION

19.1 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 Council when required and demonstrate its operation in the performance of the Services.

19.2 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.

19.3 The Provider shall take all reasonable steps to secure the observance of this Clause by all Personnel engaged in the Services.

19.4 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 Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

19.5 The Provider shall indemnify the Council in respect of any claims against the Council which arise by reason of the Provider's breach of the Law referred to in this Clause where such breach arises in the performance of its obligations under these Contract Terms.

19.6 The Provider may be required to answer questions raised by the Council on matters referred to in this Clause.

20 MENTAL CAPACITY

20.1 The Provider shall comply at all times with the requirements of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards (to be replaced by the Liberty Protection Safeguards) where required in the provision of the Services and as may be set out in the Service Specification.

20.2 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.

21 HUMAN RIGHTS

21.1 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.

21.2 The Council shall be empowered to suspend the provision of the Services or part thereof in the event of a failure to comply with this Clause by the Provider. The Provider shall not resume provision of the Services or such part until the Council are satisfied that the failure to comply has been rectified.

22 HEALTH AND SAFETY

22.1 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.

22.2 The Provider shall comply with the Manual Handling Operations Regulations 1992 (as amended) and the policy on Moving and Handling of Adult Service Users in Appendix 14.

22.3 Where relevant to the Services, disposal of all clinical waste, including medicines, shall be in accordance with the Law and all relevant government and best practice guidance.

22.4 Where the Provider provides Premises for the delivery of the Services, such Premises shall conform to all requirements of the Chief Fire Officer and the requirements of the Law and the Provider shall carry out a fire risk assessment to ensure Service Users are adequately protected against fire at all times.

22.5 The Council shall be empowered to suspend the provision of the Services or part thereof in the event of the failure of the Provider to comply with its legal duties in health and safety matters. The Provider shall not resume provision of the Services or such part until the Council are satisfied that the failure of the Provider to comply has been rectified.

22.6 The Council 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.

22.7 The Provider shall promptly notify the Council 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.

22.8 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.

22.9 The Provider shall make its health and safety policy statement available to the Council on request.

23 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

23.1 Where it relates to the Services, the Provider shall comply with the requirements of the Pan Dorset Multi-Agency Safeguarding Policy and Procedures, these can be found at Appendix 2 or at: [Policies and Procedures - Dorset Bournemouth Christchurch and Poole SABs](#) and any subsequent amendments or policies and procedures issued by the Council.

23.2 The Provider shall fully adopt and implement the Pan-Dorset Safeguarding Children Partnership (PDSCP) policies and procedures located at [Policies and Procedures - Dorset Bournemouth Christchurch and Poole SABs](#). The Provider shall follow and fully implement the prescribed procedures in relation to safer recruitment in the PDSCP i.e [Policies and Procedures - Dorset Bournemouth Christchurch and Poole SABs](#) and all other child safeguarding procedures as they have been or may be amended from time to time. The Provider shall evidence compliance with these procedures.

23.3 The Provider shall fully comply with the Safeguarding Standards for Children's Contracted Services and review its safeguarding policy and procedures when the Council notify the Provider it is updated.

23.4 Where relevant to the Services, the Provider shall appoint a named safeguarding lead for the Services who is fully conversant with the requirements of the safeguarding procedures referred to at Clauses 23.1 to 23.3 as appropriate. The safeguarding lead shall ensure that there is a clear method for Service Users and relatives to recognise and report abuse.

23.5 The Council, acting reasonably, retain the right to require any Personnel to be withdrawn in the event of any safeguarding information coming to light which in the reasonable opinion of the Council deems the Personnel unsuitable to work with the Service User. The Provider shall immediately notify the Council in the event that it becomes aware of such information. The Council 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 Council in respect of any such claims made.

23.6 The Provider must evidence that a robust staff recruitment, training and supervision programme is in place which meets best practice requirements and ensures all reasonable steps are taken to ensure the suitability and competency of the Personnel deployed to the Service User. The staff recruitment process must comply with all best practice safeguarding processes.

23.7 All allegations and incidents of harm must be followed up promptly and the details and action taken recorded in a special record/file for the purpose and on the personal file of the Service User.

23.8 The Provider shall have policies and procedures in place for Personnel concerning the investigation of allegations of financial irregularities and the involvement of police, the Council and professional bodies.

23.9 Personnel employed by the Provider who are believed to have committed any offence defined by regulations must be immediately reported to the Disclosure and Barring Service, irrespective of whether their employment with the Provider comes to an end.

23.10 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.

23.11 The Provider shall be required to withdraw Personnel and provide an acceptable substitute where it is appropriate to do so in order to comply with schemes of vetting and barring that are from time to time in force in order to comply with the requirements of the Safeguarding Vulnerable Groups Act 2006.

23.12 Failure to comply with the provisions of this Clause where relevant to the Services shall be deemed a Serious or Unacceptable Non-Compliance, as appropriate, in accordance with Clause 29 (Contract Non-Compliance).

23.13 In providing the Services, the Provider shall comply with the principles and obligations of the Prevent Duty in having due regard to the need to prevent people from being drawn into terrorism, in accordance with section 26 of the Counter-Terrorism and Security Act 2015 and government guidance. The Provider shall ensure that its Personnel have a good understanding of the Prevent Duty and are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with the issue.

24 DISCLOSURE AND BARRING SERVICE (DBS) CHECKS

24.1 The Provider shall comply with the requirements of this Clause if the performance of the Services requires the Personnel of the Provider to provide services or work in settings for children or Vulnerable Adults and/or to have access to Personal Data (within the meaning of the Data Protection Legislation) held on the ICT systems of the Council.

24.2 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.

24.3 The Council' DBS policies are available on request and may be subject to change to conform to changes in Law, government guidance or the Council' policy.

24.4 If the Provider's Personnel are required to provide services or work in settings for children or Vulnerable Adults, the Council' 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 Council on request. The Council 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.

24.5 The Provider shall be responsible for determining whether DBS checks are required for its Personnel and for obtaining such checks in accordance with its DBS checking policy and procedures. The Provider shall meet all costs in respect of the same.

24.6 The Provider shall provide the Council with evidence of its compliance with Clauses 24.2 and 24.4 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 Council in the format set out in Appendix 6 at any time on request and as part of contract compliance monitoring.

24.7 If a conviction or other relevant information is disclosed, a risk assessment shall be conducted by the Provider to determine suitability to perform the Services. The assessment shall be undertaken and recorded in accordance with the process and format set out in Appendix 4 and shall take account of the Council policy on the employment of ex-offenders.

24.8 The Provider shall ensure that checks and assessment of suitability are undertaken before its Personnel provide the Services. The Provider shall ensure that its Personnel who are subject to DBS checking are required to declare all convictions received during the course of their deployment to work on the Services in the format set out in Appendix 7 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 24.6 above.

24.9 In urgent situations, the Council 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 Council shall inform the Provider should this apply. The cost of a DBS Adult First check shall be met by the Provider.

24.10 The Provider shall be a member of the DBS update service if required to do so by its regulator. The Council may require the Provider to be a member of the DBS update service where the Council have identified that this will assist effective service delivery and/or improve safeguarding and the Provider shall comply with such requirement.

24.11 The Council 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 Council shall provide an explanation for such action.

24.12 The Provider shall ensure that Personnel who are deployed to work on the Services and who are subject to DBS checking are in possession of a letter/ID badge from the Provider confirming clearance for presentation on request from the manager of the site where the Services are performed or from a Service User.

24.13 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 Council to be unsuitable for deployment to the Services.

24.14 The Council may require any of the Provider's Personnel deployed on the Services to be withdrawn and an acceptable person substituted in the event of:-

24.14.1 the Provider failing to comply with its obligations under this Clause; or

24.14.2 the Provider's Personnel refusing to complete a disclosure statement/application; or

24.14.3 the disclosure at any stage of information that in the reasonable opinion of the Council renders the Provider's Personnel unsuitable for deployment to the Services and any such decision shall be taken in accordance with the Council' policy on the employment of ex-offenders.

24.15 The Council 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 Council in respect of any such claims made.

24.16 The Council reserve the right to monitor the suitability of the Provider's Personnel to perform the Services.

24.17 The Council 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 Council, at its own expense, to enable the Council to carry out such monitoring requirements.

24.18 The Provider shall be responsible for meeting any reasonable costs arising from changes in Law, government guidance or the Council' policy relating to the carrying out of DBS checks on its Personnel.

25 SERVICE USER AND CARER INVOLVEMENT

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

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

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

26 QUALITY ASSURANCE AND MANAGEMENT

26.1 The Provider shall maintain its own quality management system to demonstrate compliance with its obligations under these Contract Terms.

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

26.3 For the avoidance of doubt, nothing in these Contract Terms is intended to prevent the Provider from achieving higher quality standards than those required by these Contract Terms 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.

26.4 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 to facilitate this.

26.5 The Provider shall implement all relevant recommendations:

26.5.1 in any report by a regulator;

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

26.5.3 that are otherwise agreed by the Provider and the Council to be implemented.

26.6. Where on commencement of the Contract the Provider has a CQC rating of “Requires Improvement” and has submitted an action plan for improvement that is acceptable to the Council, the Provider will have one CQC inspection cycle to gain a “Good” or “Outstanding” rating.

26.7 If at the next CQC inspection, the Provider’s rating has not improved to a rating of “Good” or “Outstanding” the Council reserves the right to give notice to end the Contract with immediate effect. If at any time, the Provider gains the “Good” CQC rating, they may re-apply to join the Contract.

26.8 If the Provider is rated “Inadequate” by CQC the Council will give notice to end the Contract with immediate effect.

27 COMPLAINTS

27.1 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 (if relevant) must be informed of the means of registering a complaint. The procedure shall indicate how complaints are dealt with, give a timescale for responses and show how Service Users are informed of the outcome of a complaint. The process shall be approved by the Council.

27.2 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.

27.3 The Provider shall maintain a confidential 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 Council on request. In addition, the Provider must supply to the Council an annual analysis of complaints and their outcomes, if requested.

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

27.5 Where a Service User or their carer remains dissatisfied following a complaint, the Provider shall inform the Service User of the Council's complaints procedure which may then be instigated if the Service User so wishes.

27.6 The Provider shall also notify Service Users and, if applicable their carer, that they may, if they wish, complain using the Council's complaints procedure without going through the Provider's own complaints procedure. See:
<https://www.dorsetcouncil.gov.uk/your-council/complaints-to-dorset-council.aspx>

or <https://www.dorsetccg.nhs.uk/wp-content/uploads/2019/03/Customer-Care-and-Complaints-Policy.pdf>

27.7 In addition, if all complaints procedures have been exhausted and the Service User or their carer remains unhappy, the Provider shall inform them that they may contact the Local Government Ombudsman on 0300 061 0614 or <https://www.lgo.org.uk/contact-us> or the Parliamentary and Health Service Ombudsman on 0345 015 4033 or <https://www.ombudsman.org.uk>

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

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

28 CONTRACT AND PERFORMANCE MANAGEMENT

28.1 The Provider shall take appropriate steps (which may include one or more contract implementation meetings with the Council) to confirm the preferred communication and other procedures at the outset of the Contract Terms.

28.2 The Provider shall promptly give notice to the Council of the identity of the Provider's Contract Manager appointed to manage the Services and any replacement for them. Any Contract Manager shall be appropriately qualified and/or experienced for their responsibilities in relation to the Services.

28.3 The Council shall monitor contract compliance, all financial and operational aspects of the Services and the standards of the Services provided, with particular emphasis on quality.

28.4 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.

28.5 In relation to the Council' visits:

28.5.1 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.

28.5.2 All other visits shall be carried out by the Council without giving prior notice to the Provider. Unannounced visits shall include visits in response to safeguarding referrals or complaints registered with the Council.

28.6 Contract review meetings shall be held as required by the Council.

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

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

28.9 The Provider shall be monitored against the performance monitoring and Outcome measures whether set out in the Service Specification or appendices. The Council will use performance measures to measure the Provider's success in realising Outcomes for Service Users.

28.10 The Provider shall comply with the requirements of the key performance monitoring measures set out in the Service Specification.

28.11 Where performance monitoring measures indicate that the Provider does not meet the Council' minimum performance standards, the provisions of Clause 29 (Contract Non-Compliance) shall apply.

28.12 The Council reserve the right to revise the performance measures from time to time.

28.13 The Council shall undertake an annual review on or about the anniversary of the Contract commencement date at which the success of the Services will be determined and any variation to the Services agreed.

28.14 Where a contract is made with a care home whose CQC-registered address is located outside of the Dorset Council Purchasing Area, the Council will undertake at regular intervals a desktop review which may include:

- a) Contact with the host local authority to understand whether there have been any safeguarding or contractual concerns and if so, get copies of any action plans that may be in place
- b) Review the Care Quality Commission's most recent inspection report to ensure that the services are compliant with CQC requirements.

29 CONTRACT NON-COMPLIANCE

29.1 For the purposes of this Clause, 'Contract Non-Compliance' means that in the opinion of the Council, the Provider has failed either in whole or in part to comply with the terms of these Contract Terms, including the minimum performance measures set out in the Specification.

29.2 Contract Non-Compliance may be:

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

29.2.2 Serious Non-Compliance meaning that in the reasonable opinion of the Council there is Contract Non-Compliance which places a Service User at serious risk to their physical, mental, emotional and/or financial wellbeing;

29.2.3 Unacceptable Non-Compliance meaning that in the reasonable opinion of the Council 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 Contract Terms.

29.3 Where the Council are satisfied through the monitoring process or by any other means (which shall be at the discretion of the Council) that Contract Non-Compliance has occurred, the Provider shall be informed at the earliest opportunity unless in the reasonable opinion of the Council it is reasonable not to do so. If the Provider is not informed, the Council shall record the reasons for not informing the Provider.

29.4 Where the Council are satisfied that there has been Contract Non-Compliance, the Council shall:

29.4.1 make an assessment of the severity of the Contract Non-Compliance and, if relevant, the risks or potential risks to Service Users; and

29.4.2 if the Council identify risks or potential risks to Service Users, carry out an investigation. For the avoidance of doubt and at the Council' discretion, the investigation may include a risk assessment of Service Users in receipt of the Services who are funded by the Council; and

29.4.3 categorise the Contract Non-Compliance as:

29.4.3.1 Unacceptable Non-Compliance; or

29.4.3.2 Serious Non-Compliance; or

29.4.3.3 Cautionary Non-Compliance.

29.5 If Contract Non-Compliance is categorised as Unacceptable Non-Compliance, notice may be served by the Council on the Provider terminating the Contract with immediate effect without the requirement to give notice notwithstanding that the Service User and/or their representatives might disagree with the Council' decision.

29.6 If Contract Non-Compliance amounts to Serious Non-Compliance then the Council may suspend the Contract with immediate effect by notice to the Provider until such time as the Council are satisfied at their discretion that the Serious Non-Compliance is remedied ('a block'). The Council may decide at their discretion that Service Users in receipt of Services from the Provider face an unacceptable risk in which case the Council reserve the right to transfer the Service User to another provider without notice. This shall not prevent the Council taking alternative action at their discretion to remedy the Contract Non-Compliance in accordance with the terms of these Contract Terms.

29.7 Alternatively, the Council may place a 'caution' on the Contract. A caution will serve as a warning to the Council' relevant staff that when considering making a referral they may need to undertake extra enquiries to satisfy themselves that the Provider can meet the assessed needs of the Service User. If the Council cannot satisfy themselves in this regard, they shall be entitled to make a referral to another provider.

29.8 Other than when Contract Non-Compliance is categorised as Unacceptable Non-Compliance, the Provider shall at the discretion of the Council be given a reasonable period of time as determined by the Council and notified to the Provider to remedy the Contract Non-Compliance.

29.9 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 Council within such reasonable time period as is notified to the Provider under Clause 29.8 then the Council shall be entitled to terminate the Contract by notice with immediate effect notwithstanding that the Service User and or their representatives might disagree with the Council' decision.

29.10 If Contract Non-Compliance is categorised as Cautionary Non-Compliance and is not remedied to the Council' satisfaction within such a time period as is notified under Clause 29.8 then the Council may decide in their discretion that the Contract Non-Compliance amounts to Serious Non-Compliance. In this event the Council shall notify the Provider and the provisions of Clauses 29.8 and 29.9 shall then apply.

29.11 If Serious Non-Compliance and/or Cautionary Non-Compliance occur on more than three occasions in a period of one month, the Council may terminate the Contract with immediate effect by notice to the Provider notwithstanding that the Service User and/or their representative might disagree with the Council' decision.

29.12 The Council 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.

29.13 Where the Council identifies Unacceptable or Serious Non-Compliance which affects the well-being of service users, they retain the right to advise all relevant personnel.

29.14 Notwithstanding the foregoing, in the event that the Council reasonably consider that there has been Contract Non-Compliance by the Provider, then the Council may, without prejudice to, and in addition to, their rights under this Clause and Clause 36 (Termination), do any of the following:

29.14.1 withhold or make such deduction from the Contract Price as the Council 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 to provide or performed inadequately;

29.14.2 without terminating these Contract Terms 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 Council that the Provider will be able to perform such part of the Services in accordance with the Contract Terms ;

29.14.3 without terminating the whole of the Contract Terms, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such a part of the relevant Services.

29.15 The Council may charge to the Provider any reasonable costs in respect of the provision of such part of the relevant Services by the Council or by a third party.

30 RESOLUTION OF DISPUTES

30.1 In the event that any disagreement or difference of opinion arises out of these Contract Terms which cannot be resolved by the Council' Contracts Officer and the Provider's representative, the matter shall be dealt with as follows:

30.1.1 the contract managers for the Council 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 Council' Executive Director of People - Adults (or their nominee) a senior nominee of NHS Integrated Care Board, and the Provider's Chief Executive (or their nominee) for resolution.

30.1.2 if within fourteen Working Days of the matter having been referred for resolution in accordance with Clause 30.1.1 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.

30.2 An independent expert shall be appointed by agreement between the parties. The parties shall promptly furnish to such expert all information relating to the dispute to enable them to give a decision as to what course of action in their reasonable opinion ought to be followed to give an outcome equitable to the parties taking into account the respective rights and obligations of the parties.

30.3 The decision of the expert shall be final and binding on the parties.

30.4 The parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.

30.5 Alternatively, the parties may refer the matter for decision to arbitration whereupon the parties shall comply with the following provisions:

30.5.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

30.5.2 the arbitration fees shall be met by the Council and the Provider in equal shares;

30.5.3 the decision of the arbitrator shall be binding on the parties.

31 LEGAL/OMBUDSMAN PROCEEDINGS

31.1 On written request from the Council, the Provider or any of its Personnel, agents, officers, contractors or sub-contractors shall provide to the Council 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:

31.1.1 any legal or quasi-legal inquiry, arbitration or court proceedings in which the Council may become involved; or

31.1.2 any internal Council's disciplinary hearing arising out of or in connection with the Services or these Contract Terms;

31.1.3 any investigation by an ombudsman.

32 STATUTORY FUNCTIONS

32.1 Nothing in these Contract Terms shall be read as preventing or inhibiting the Council 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.

33 INTELLECTUAL PROPERTY RIGHTS

33.1 Except as may be set out expressly in these Contract Terms, no party shall acquire the intellectual property rights of the other party.

33.2 The Provider shall not use the logo of the Council without prior written consent.

34 PUBLICITY

34.1 The Provider shall seek written approval from the Council prior to the publication of any publicity of the Services where the Council are acknowledged.

35 SEVERANCE

35.1 If any Clause of these Contract Terms is declared by any judicial or other competent authority or considered by the parties to be void, voidable, illegal or otherwise unenforceable:

35.1.1 the parties shall amend that provision in such reasonable manner as mutually agreed;

35.1.2 at the discretion of the parties it may be severed from these Contract Terms and the remaining Clauses of these Contract Terms shall except where otherwise provided remain in full force and effect unless otherwise terminable.

36 TERMINATION

36.1 The Council may by notice in writing to the Provider terminate these Contract Terms as from the date of service of such notice if:

36.1.1 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

36.1.2 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

36.1.3 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 Contract Terms ; or

36.1.4 the Provider becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986; or

36.1.5 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

36.1.6 the Provider has a petition presented to any court for its winding up or for an administration order; or

36.1.7 the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

36.1.8 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

36.1.9 the circumstances specified in Clause 39 (Prevention of Corruption) or elsewhere in these Contract Terms arise; or

36.1.10 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

36.1.11 the Provider has been convicted of a criminal offence or act of grave professional misconduct in the conduct of its business; or

36.1.12 the Provider has failed to comply with any obligations relating to the payment of any taxes or social security contributions.

36.2 The Council may only exercise their right under Clause 36.1.3 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.

36.3 These Contract Terms shall terminate:

36.3.1 on the expiry of the Term;

36.3.2 immediately if either party commits a fundamental breach of the terms of these Contract Terms 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.

36.4 Either the Council or the Provider may at any time by notice in writing to the other terminate these Contract Terms as from the date of service of such notice whenever any of the following events occurs:

36.4.1 the other party commits a material breach of any of its obligations under or in relation to these Contract Terms 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

36.4.2 the other party is continually in breach or commits a series of repeated breaches of these Contract Terms, which cannot be remedied with 30 (thirty) days of written notice from the non-breaching party of its intention to terminate.

36.5 The Council may terminate the Contract Terms with immediate effect:

36.5.1 in accordance with Clause 29 (Contract Non-Compliance);

36.5.2 if in the Council' reasonable opinion continuation of the Contract would cause risk to the life, health or well-being of any Service User or potential Service User;

36.5.3 if the Provider has for any reason had their registration cancelled with a regulator, or has failed to remedy, following an agreed reasonable period, any issues highlighted by that regulator which deem the service inadequate.

36.6 The Council and the Provider may terminate the Contract Terms at any time on giving to the other not less than 3 months' notice in writing.

36.7 In any case where immediate termination is permitted, the Council may, at their discretion, initially suspend the Contract Terms.

36.10 The termination of these Contract Terms 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 these Contract Terms. The Clauses of these Contract Terms which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

37 PREVENTION OF CORRUPTION

37.1 The Council shall be entitled to terminate the Contract Terms immediately and recover from the Provider the amount of any loss or damage resulting from such termination if, in relation to these Contract Terms or any other contract with the Council, the Provider or any person employed by them or acting on their behalf shall have committed:-

37.1.1 any fraud;

37.1.2 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.

38 CONSEQUENCES OF SUSPENSION OR TERMINATION

38.1 Following termination by the Council of these Contract Terms, the Provider shall be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Services carried out up to the date of termination provided always that the Council reserve the right to deduct from any such sum the amount of any claim the Council may have in respect of any breach, Contract Non-Compliance and/or failure by the Provider to perform its obligations under these Contract Terms .

38.2 The Council 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 Council under these Contract Terms during any period of suspension pursuant to Clause 29.6 (Contract Non-Compliance) or otherwise.

38.3 Where the Council terminate or suspend the Contract Terms as a consequence of a breach or Contract Non-Compliance by the Provider, the Council shall be entitled to recover from the Provider:

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

38.3.2 the amount of any other loss (including any administration costs) incurred by the Council as a result of having to suspend or terminate; and the Council shall take all reasonable steps to mitigate any additional expenditure.

38.4 The Provider shall upon the termination of the Contract Terms immediately deliver up to the Council all correspondence, documents and other property belonging to the Council which may be in its possession or under its control.

38.5 The provisions of this Clause shall survive the termination or expiry of these Contract Terms.

39 FORCE MAJEURE

39.1 Neither the Council nor the Provider shall be liable for any delay in, or non-performance of, any obligation under these Contract Terms (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, pandemic or epidemic or any act or omission of the other party, or a force majeure event affecting a supplier, contractor, sub-contractor or a third party.

39.2 In the event such circumstances persist beyond a reasonable period given the nature of the event and its effect on the obligations under these Contract Terms, then the other party shall have the right, for so long as the circumstances which prevent performance continue, to terminate these Contract Terms by giving not less than 30 (thirty) Working Days' written notice to the other party.

40 CHANGE IN LAW

40.1 The Provider shall neither be relieved of its obligations under these Contract Terms nor be entitled to an increase in the Contract Price and/or any charges payable as a result of a change in Law, if the change and its effect are known at the commencement of the Contract Terms.

40.2 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 Council to express an opinion of the likely effects of the change including:-

40.2.1 whether any change is required to the Services, Contract Price, or the Contract Terms; and

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

40.3 If the Council and the Provider agree upon the effects of the change in Law and any financial consequences, such agreement shall be implemented through the variation provisions of Clause 7 (Variation and Waivers).

40.4 In the case of any dispute arising under this Clause, it shall be resolved in accordance with Clause 30 (Resolution of Disputes).

41 CONFLICT OF INTEREST

41.1 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 Council there is or may be an actual or potential conflict between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract Terms. The

Provider shall immediately disclose to the Council full particulars of any such conflict of interest which may arise.

41.2 Where such a conflict does arise, the Provider shall take any reasonable steps as are required by the Council 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 Council shall have the right by notice in writing to terminate these Contract Terms immediately. If the Council terminate these Contract Terms 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 Council shall not be liable to pay any severance payment or compensation to the Provider for loss of profits.

41.3 The provisions of this Clause shall apply during the Term of the Contract Terms and for a period of two years after its termination.

42 RIGHT OF SET OFF

42.1 Without prejudice to any other rights and remedies available to it, the Council 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 Council has incurred in consequence of any breach by the Provider of its obligations under the Contract Terms .

43 LOCAL HEALTHWATCH

43.1 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 Council under these Contract Terms, so as to enable members of the community to contribute their views in relation to health and social care service development and delivery.

44 TUPE

44.1 At any time during the last twelve months of the Contract, the Provider shall provide to the Council within 20 Working Days of a written request such information as the Council may reasonably require in respect of TUPE.

44.2 The Provider shall comply with its obligations under Clause 11 (Confidentiality) in relation to any information supplied under Clause 44.1.

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

44.4 If TUPE applies on termination of the Contract then:-

44.4.1 the Provider agrees to indemnify the Council 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 44.1;

44.4.2 the Provider agrees to indemnify the Council 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 Contract 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.

44.5 In the event that the information provided by the Provider in accordance with Clause 44.1 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 Council of the inaccuracies and provide the amended information within 10 Working Days.

44.6 Where there are employees transferring to the Provider at the commencement date of the Contract who are members of or were eligible to be members of the Dorset 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 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 Council who are currently members of the Dorset Council Pension Scheme.

44.7 If the Provider does not wish to offer such employees membership of the Dorset 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 Council Pension Scheme as determined by the Dorset Council Pension Fund Actuary at a cost to the Provider.

44.8 Where there are employees transferring to the Provider at the commencement date of the 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.

44.9 The Provider will fully comply with its obligations in respect of the pension arrangements made under Clauses 44.6 to 44.8 for the duration of the Contract.

44.10 The Provider will indemnify the Council against all liabilities arising from any failure by the Provider to comply with the requirements in Clauses 44.6 to 44.9.

44.11 The Council reserve the right to terminate the Contract Terms should the Provider fail to comply with its obligations under Clauses 44.6 to 44.9.

44.12 The provisions of this Clause shall apply during the continuance of these Contract Terms and indefinitely after termination or expiry of the same.

45 NOTICES

45.1 Any notice to be given under these Contract Terms shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider or the Council at the address set out at the head of these Contract Terms, or such other address as that party may from time to time notify to the other party in accordance with this Clause.

45.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:

45.2.1 if delivered by hand before 4pm on a Working Day at the time of delivery, otherwise receipt shall be deemed to occur at 9am on the next following Working Day; or

45.2.2 if delivered by first class mail, two Working Days after the day of posting.

45.3 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.

45.4 Notice shall not be given by email.

46 SERVICE INTERRUPTION

46.1 In all cases where the statutory duties of the Council 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 Council to discharge those duties, such assistance to include the provision of relevant information as may be requested by the Council.

47 RECOVERY OF SUMS DUE

47.1 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 Council under Clause 29 (Contract Non-Compliance) or Clause 38 (Consequences of Termination)) the Council 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 Council.

47.2 The Provider shall make any payments due to the Council 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 Council to the Provider.

48 MODERN SLAVERY

48.1 The Provider warrants and undertakes that in performing its obligations under the terms of these Contract Terms, it will:

48.1.1 comply with the Modern Slavery Act 2015; and

48.1.2 not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015; and

48.1.3 include in its subcontracting arrangements provisions that are at least as onerous as those set out in this Clause.

48.2 The Provider warrants that neither it nor any of its officers, Personnel, agents, contractors or sub-contractors has:

48.2.1 committed an offence under the Modern Slavery Act 2015 ('a MSA Offence');

48.2.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

48.2.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

49 WHISTLEBLOWING

49.1 The Provider shall be aware of and adhere to the principles set out in the Council' respective whistleblowing policies in reporting concerns which arise during the Term of the Contract Terms and shall ensure that its agents, contractors and sub-contractors do the same. The Council' whistleblowing policy can be accessed at www.dorsetcouncil.gov.uk for the Council and by emailing communications@dorsetccg.nhs.uk for the CCG.

50 PROVIDER STATUS

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

50.2 These Contract Terms shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

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 Council.

51 COUNTERPARTS

51.1 These Contract Terms 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 Contract Terms.

52 LAW AND JURISDICTION

52.1 These Contract Terms 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 These Contract Terms is binding on the Council and the Provider, their successors and assigns.

53 ENTIRE AGREEMENT

53.1 These Contract Terms constitutes the entire agreement between the Parties relating to the subject matter of the Contract Terms.

53.2 These Contract Terms 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.

Appendix 9 - Data Processing Schedule

NOTE: THIS TABLE RELATES ONLY TO DATA FOR WHICH THE COUNCIL IS CONTROLLER AND THE PROVIDER IS PROCESSOR.

Description	Guidance	Provider Response
Subject matter of the processing	This should be a high level, short description of what the processing is about e.g. employees, service users	
Duration of the processing	For example, for the duration of the contract including any extension or in accordance with instructions from the Council	
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc</p>	
Type of Personal Data	For example, name, address, date of birth, NI number, contact details, pay, images, job status biometric data etc	

<p>Categories of Data Subject</p>	<p>For example, Service Users, Staff (including volunteers), students / pupils, members of the public, users of a particular website etc.</p>	
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Describe how long the data will be retained for, how it will be returned or destroyed</p>	