



Hampshire  
County Council

Dated

**HAMPSHIRE COUNTY COUNCIL**

**-and-**

[

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**CARE HOME FRAMEWORK AGREEMENT**

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Reference: AS15180

©Adults', Health and Care Department  
Hampshire County Council  
Elizabeth II Court  
The Castle  
Winchester SO23 8UJ

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**THIS AGREEMENT** is made on

**BETWEEN: -**

- (1) **HAMPSHIRE COUNTY COUNCIL** whose principal place of business is at The Castle Winchester Hampshire SO23 8UJ (the "**Council**"); and
- (2) [ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (the "**Service Provider**").

## **BACKGROUND**

- a) The Council placed a contract notice 2024/S 000-001291 on 15<sup>th</sup> January 2024 in Find a Tender seeking expressions of interest from potential providers to enrol for a place on the Care Home Framework for the delivery of residential and or nursing care services ("the Services") to the Council, Hampshire and Isle of Wight Integrated Care Board ("HIOW ICBW") and Southampton City Council ("Contracting Bodies").
- b) The procurement was conducted under Part 2, Chapter 3 Section 7 of the Public Contracts Regulations 2015 (Social and other Specific Services).
- c) The Service Provider submitted an Enrolment Application on [INSERT DATE] in response to the contract notice.
- d) On the basis of the Service Provider's Enrolment Application, the Council appointed the Service Provider to the Care Home Framework for delivery of the Services.
- e) This Care Home Framework Agreement sets out the terms and conditions governing the Service Provider's appointment to the Care Home Framework Agreement.
- f) The Contracting Bodies may publish individual service specifications and Call-Off Contracts for delivery of the Services based on individual requirements throughout the Term.
- g) Each Call-Off Contract shall be executed in the names of the Contracting Body and the Service Provider and shall relate to a specific residential and or nursing home ("the Home") from which the Services shall be delivered. Where the Service Provider has multiple Homes the Home shall enter in to a Call-Off Contract in respect of each Home.

**IT IS AGREED** as follows:

### **1. INTERPRETATION**

- 1.1. Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

<b>"Approval"</b>	means the prior written approval of the Council
<b>"Audit"</b>	means an audit carried out pursuant to Clause 10
<b>"Auditor"</b>	means an external or internal auditor of the Contracting Body as the context requires
<b>"Award Criteria"</b>	means the criteria designed, developed and published by the Contracting Bodies to be applied to individual awards of Call-Off Contracts awarded under this Care Home Framework Agreement during the Term
<b>"Call-Off Contract"</b>	means the legally binding agreement(s) (made pursuant to the provisions of this Care Home Framework Agreement) for the provision of Services made between a Contracting Body and the Home comprising of the Home's tender at call-off stage and the Contracting Body's Call-Off Terms and Conditions
<b>"Call-Off Terms and Conditions"</b>	means the terms and conditions published by the Contracting Bodies in respect of individual call-offs
<b>"Care Home Framework Agreement"</b>	means this Agreement and all Schedules to this Agreement
<b>"Care Home Framework Agreement Commencement Date"</b>	means the commencement date of the Care Home Framework Agreement 01/04/2024
<b>"Care Home Framework Agreement Initial Term"</b>	means the period commencing on the Care Home Framework Agreement Commencement Date and ending on 31/03/2029
<b>"Care Home Framework Agreement Manager"</b>	means the person appointed by the Council
<b>"Care Quality Commission"</b>	means the independent regulator of health and social care in England and any successor bodies
<b>"Change of Control"</b>	shall have the same meaning as set out in section 450 and 451 of the Corporation Tax Act 2010

<p><b>"Commercially Sensitive Information"</b></p>	<p>means any Confidential Information comprised of information:</p> <ul style="list-style-type: none"> <li>a) which is provided in writing by the Service Provider to the Council in confidence and designated as Commercially Sensitive Information; and/or</li> <li>b) that constitutes a trade secret</li> </ul>
<p><b>"Complaint"</b></p>	<p>means any formal complaint raised by any Contracting Body in relation to the performance of this Care Home Framework Agreement or any Call-Off Contract in accordance with Clause 29</p>
<p><b>"Confidential Information"</b></p>	<p>has the meaning set out in Clause 11</p>
<p><b>"Contracting Bodies"</b></p>	<p>means the Council, Hampshire and Isle of Wight Integrated Care Board and Southampton City Council as set out in the Find a Tender Notice. The term <b>"Contracting Body"</b> means any one of the Contracting Bodies and shall include any successor bodies.</p>
<p><b>"Data Protection Legislation"</b></p>	<p>means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018</p>
<p><b>"Designated Contract Manager"</b></p>	<p>means the person appointed by the Home as amended from time to time</p>
<p><b>"Environmental Information Regulations"</b></p>	<p>mean the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations</p>
<p><b>"Enrolment Application"</b></p>	<p>means the enrolment application submitted by the Service Provider to the Council on [Date of the submission]</p>
<p><b>"Extension Period"</b></p>	<p>up to 5 years can be taken as either a single extension or across multiple extensions;</p>
<p><b>"Find a Tender Notice"</b></p>	<p>means the contract notice published on Find a Tender on 15/01/2024</p>

<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
<b>"Framework Providers"</b>	means the group of providers who have been admitted to the Care Home Framework each of whom having validly executed their own copy of the Care Home Framework Agreement
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Care Home Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Body
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
<b>"Guidance"</b>	means any guidance issued or updated by HM Government from time to time in relation to the Regulations
<b>"Home"</b>	The residential and or nursing home(s) operated by the Service Provider and registered with CQC from which the Service Provider shall deliver the Services
<b>"Information"</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000
<b>"Intellectual Property Rights"</b>	means all patents, rights to inventions, utility models copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world

<b>"Law" and "Laws"</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
<b>"Management Information"</b>	<p>means the following information which the Council may reasonably request from the Service Provider throughout the Term:</p> <ul style="list-style-type: none"> <li>a) details of any prosecutions, notifications of infringements or other notices or other actions by the Health &amp; Safety Executive, or other enforcing body over the last 12 months, in respect of any breach or suspected breach by the Service Provider of health and safety or equivalent legislation;</li> <li>b) where relevant, details of any warnings, prosecutions, enforcement or other actions by the Care Quality Commission over the last 12 months;</li> <li>c) details of any safeguarding incidents, investigations, remediation or action plans or other actions over the last 12 months;</li> <li>d) details of any order of any kind in relation to the affairs of the Service Provider or the issuing to the Service Provider any warning notices or suspension whether as a result of any misconduct or mismanagement on the Service Provider's part or otherwise;</li> <li>e) notification of any breaches committed by the Service Provider over the last 12 months of contracts to provide similar services;</li> <li>f) certificate of compliance with Clause 7;</li> <li>g) details of all Call-Off Contracts entered into with any Contracting Body; and</li> <li>h) such other information as the Council may reasonably require.</li> </ul>



<b>"Material Default"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) The cessation of the Home's registration with the Care Quality Commission for the Regulated Activity of providing personal care; or</li> <li>b) The cessation of the Home's registration in respect of the registered office(s) delivering the Services under any Call Off Contracts; or</li> <li>c) any breach of Clause 6 (<i>Service Provider Warranties, Representations and Obligations</i>), Clause 7 (<i>Corrupt Gifts and Payments of Commission</i>), Clause 8 (<i>Statutory Requirements</i>), Clause 9 (<i>Provision of Management Information</i>), Clause 10 (<i>Records and Audit Access</i>), Clause 11 (<i>Confidentiality</i>), Clause 12 (<i>Data Protection</i>) and Clause 13 (<i>Freedom of Information</i>)</li> </ul>
<b>"Month"</b>	means a calendar month
<b>"Parent Company"</b>	shall have meaning as set out in section 1162 of the Companies Act 2006
<b>"Party"</b>	means the Council and/or the Service Provider

<p><b>“Prohibited Act”</b></p>	<p>offering giving or agreeing to give to any employee, agent, servant or representative of the Council or any Contracting Body or person employed by or on behalf of the Council or any Contracting Body any gift or consideration of any kind as an inducement or reward: for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Care Home Framework Agreement or any Call-Off Contract or other contract with the Council or any Contracting Body or person employed by or on behalf of the Council or any Contracting Body (including its award to the Home, execution or any rights and obligations contained in it); or for showing or not showing favour or disfavour to any person in relation to this Care Home Framework Agreement or any Call-Off Contract or other contract with the Council or any Contracting Body; entering into this Care Home Framework Agreement or any Call-Off Contract or other contract with the Council or any Contracting Body where a commission has been paid or has been agreed to be paid by the Home or on its behalf, or to its knowledge unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council or Contracting Body; committing any offence: under the Prevention of Corruption Act 1916, the Bribery Act 2010; or under legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to this Care Home Framework Agreement or any Call-Off Contract or other contract with the Council or Contracting Body; or defrauding or attempting to defraud or conspiring to defraud the Council or any Contracting Body</p>
<p><b>“Regulated Activity”</b></p>	<p>has the meaning as set out in Part 2 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006</p>
<p><b>"Regulations"</b></p>	<p>means the Public Contracts Regulations 2015</p>
<p><b>"Regulatory Bodies"</b></p>	<p>means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise (and any successor bodies), are entitled to regulate, investigate, or influence the matters dealt with in this Care Home Framework Agreement or any other affairs of the Council and <b>“Regulatory Body”</b> shall be construed accordingly</p>
<p><b>"Request(s) for Information"</b></p>	<p>means a request for information or an apparent request under the FOIA or the Environmental Information Regulations</p>

<b>"Services"</b>	means the residential and or nursing home services as more particularly set out in specifications published by the Contracting Bodies in respect of individual call-offs
<b>"Service Provider"</b>	means the Party set out at Party 2 above, which may be any organisation which operates one or more Homes under any Call Off Contracts awarded under this Care Home Framework Agreement.
<b>"Staff"</b>	means all persons employed by the Home together with the Home's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Care Home Framework Agreement or Call-Off Contracts
<b>"Sub-Contractor"</b>	means any third party engaged by the Home to perform any part of the Services under a Call-Off Contract
<b>"Term"</b>	means the Care Home Framework Agreement Initial Term including any Extension Periods
<b>"Working Days"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales
<b>"Year"</b>	means a calendar year

1.2. The interpretation and construction of this Care Home Framework Agreement shall all be subject to the following provisions:-

- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) words importing the masculine include the feminine and the neuter;
- c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- f) headings are included in this Care Home Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Care Home Framework Agreement;

- g) references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Care Home Framework Agreement so numbered;
- h) references in this Care Home Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Care Home Framework Agreement so numbered;
- i) reference to a Clause is a reference to the whole of that clause unless stated otherwise;
- j) in the event and to the extent only of any conflict between the Clauses and the Schedules, the Clauses shall prevail over the Schedules; and
- k) in the event and to the extent only of any conflict between this Care Home Framework Agreement and any Call-Off Terms and Conditions published by the Contracting Bodies in respect of Individual Awards under the Open Framework, individual Call-Off Terms and Conditions shall prevail over this Care Home Framework Agreement.

## 2. **TERM**

- 2.1 This Care Home Framework Agreement shall take effect on the Care Home Framework Agreement Commencement Date and shall terminate at the end of the Term.
- 2.2 The Council shall not be entitled to extend the Care Home Framework Agreement beyond the Initial Term by more than five (5) Years up to a maximum period of ten (10) Years. The terms and conditions applicable to the Extension Periods will be the same as those set out in this Agreement except for any amendments and variations agreed and made to it under clause 21 (Variations).

## 3. **SCOPE**

- 3.1. This Care Home Framework Agreement governs the relationship between the Council and the Service Provider in respect of the Service Provider's appointment to the Care Home Framework.
- 3.2. Subject to the following provisions of this clause the Contracting Bodies may at their absolute discretion and from time to time call off Services from the Home in accordance with the call off procedures published by the Contracting Body.
- 3.3. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contracting Bodies in respect of the total quantities or values of the Services to be ordered by them pursuant to this Care Home Framework Agreement and the Service Provider

acknowledges and agrees that it has not entered into this Care Home Framework Agreement on the basis of any such undertaking, statement, promise or representation.

- 3.4. The Contracting Bodies acknowledge that there is no obligation for the Home to submit tenders in response to any call-off opportunities.

#### 4. **NON-EXCLUSIVITY**

- 4.1 The Service Provider acknowledges that, in entering this Care Home Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Contracting Bodies for Services from the Home and that the Contracting Bodies are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

#### 5. **AWARD PROCEDURES**

- 5.1. The Contracting Bodies may design, develop and publish call-off procedures in respect of Call-Off Contracts awarded under this Care Home Framework during the Term.
- 5.2. The Contracting Bodies may make direct awards under this Care Home Framework during the Term.

#### 6. **SERVICE PROVIDER WARRANTIES, REPRESENTATIONS AND OBLIGATIONS**

- 6.1. The Service Provider warrants, represents and undertakes that:
- a) it has full capacity and authority to enter into and to perform this Care Home Framework Agreement;
  - b) this Agreement is executed by a duly authorised representative of the Service Provider;
  - c) there are no actions, suits or proceedings or regulatory investigations pending or, threatened against or affecting the Service Provider before any court or administrative body or arbitration tribunal that might affect the ability of the Service Provider to meet and carry out its obligations under this Agreement;
  - d) it will perform and procure the performance of its obligations under this Agreement in compliance with all applicable Laws;
  - e) it has, and will continue to hold, all consents and regulatory approvals necessary to provide the Services;
  - f) in entering into this Care Home Framework Agreement it has not committed any Fraud;
  - g) as at the Commencement Date, all information, statements and representations contained in the Service Provider's Enrolment

Application are true, accurate and not misleading 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;

- h) shall discharge its obligations under this Agreement using personnel of required skill, experience and qualifications and with all due skill, care and diligence;
- i) all information that it provides as part of the Services (save for information which originated with the Council) shall in all material respects be accurate, complete and not misleading;
- j) it has not committed any Prohibited Act;
- k) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Care Home Framework Agreement and any Call-Off Contract which may be entered into with the Contracting Bodies;
- l) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Care Home Framework Agreement and any Call-Off Contract which may be entered into with the Contracting Bodies;
- m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue; and in the last three (3) Years prior to the date of this Care Home Framework Agreement:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Service Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Care Home Framework Agreement.

6.2. The Service Provider warrants that to the best of its knowledge, information and belief, after having made appropriate enquiries, checks and registrations, at the Commencement Date the Home's Staff which are working or involved

in the delivery of the Services in any capacity, whether as employer, employee or volunteer, or who the Service Provider would be required to remove under the terms this Agreement.

- 6.3. The Service Provider shall (at no additional cost to the Council) maintain such records as are necessary pursuant to applicable Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council or its authorised representative.
- 6.4. During the Term the Service Provider shall maintain appropriate registrations for the delivery of the Services with the Care Quality Commission or any other Regulatory Bodies for each Home from which they are delivering the Services.
- 6.5. The Service Provider shall immediately inform the Council of any changes to its registration with the Care Quality Commission or any other Regulatory Bodies throughout the Term and any Extension Periods.
- 6.6. During the Term should there be any change(s) to the information provided within the Service Provider's Enrolment Application which may in the Council's reasonable opinion otherwise result in failure to be appointed to the Care Home Framework the Service Provider shall immediately notify the Council of such change(s).

## **7. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 7.1. The Service Provider shall not and shall procure that all Staff shall not in connection with this Care Home Framework Agreement or any Call-Off Contract commit a Prohibited Act.
- 7.2. The Service Provider warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Care Home Framework Agreement or any Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Care Home Framework Agreement.
- 7.3. The Service Provider shall:
  - a) if requested, provide the Council with any reasonable assistance, at the Service Provider's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
  - b) if requested within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 7 by the Service Provider and all persons associated with it. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

- 7.4. The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council if requested) to prevent the Service Provider or the Service Provider's Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 7.5. If any breach of clause 7.1 is suspected or known, the Service Provider shall notify the Council immediately.
- 7.6. If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 7.1, the Service Provider must respond promptly (within the timeframe set by the Council) to the Council's enquiries, co-operate with any investigation and allow the Council to audit books, records and any other relevant documentation.
- 7.7. Where the Council suspends the Service Provider's appointment to the Care Home Framework Agreement under clause 15 it shall be permitted to recover from the Service Provider the amount of any reasonable losses incurred resulting from such suspension.
- 7.8. Despite clause 30 (*Dispute Resolution*), any dispute relating to:
- a) the interpretation of clause 7; or
  - b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

## **8. REGISTRATION REQUIREMENTS**

- 8.1. The Service Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Care Home Framework Agreement and any Call-Off Contract.
- 8.2. The Service Provider shall notify the Council within 24 hours of any Care Quality Commission or other Regulatory Body directing an inquiry into or making an order of any kind in relation to the affairs of the Service Provider or issuing to the Service Provider any warning notices or suspension whether as a result of any misconduct or mismanagement on the Service Provider's part or otherwise.

## **9. PROVISION OF MANAGEMENT INFORMATION**

- 9.1. The Service Provider shall submit any such Management Information as reasonably requested by the Council to the Council in such form as the Council shall require throughout the Term and at such other times as the Council may request.
- 9.2. Where Management Information is requested in accordance with clause 9.1 above any such Management Information shall be submitted within 20 Working Days of the Council's request.



9.3. The Council may share the Management Information supplied by the Service Provider with the Contracting Bodies.

9.4. The Council may make changes to the Management Information which the Service Provider is required to supply and shall give the Service Provider 20 Working Days written notice of any changes.

## 10. **RECORDS AND AUDIT ACCESS**

10.1. The Service Provider shall keep and maintain until six (6) years after the expiry of this Care Home Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Care Home Framework Agreement including the Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body.

10.2. The Service Provider shall keep the records and accounts referred to in Clause 10.1 above in accordance with good accountancy practice.

10.3. The Service Provider shall afford the Council (or relevant Contracting Body upon reasonable request by the Council) and/or the Auditor such access to such records and accounts as may be required from time to time.

10.4. The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Term and for a period of six (6) years after expiry of the Term to the Council (or as long a period as may be agreed between the Parties), (or relevant Contracting Body) and the Auditor.

10.5. Subject to the Council's rights of confidentiality, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

- a) all information requested by the Auditor within the scope of the Audit;
- b) reasonable access to premises controlled by the Service Provider and to equipment used in the provision of the Services; and
- c) access to its Staff.

10.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 10, unless the Audit reveals a Material Default by the Service Provider in which case the Service Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

## 11. **CONFIDENTIALITY**

11.1. The following definitions apply in the Care Home Framework Agreement.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a Party or its Staff, representatives or advisers (together its Representatives) to the other Party and that Party's

Representatives in connection with the Care Home Framework Agreement concerning:

- a) the terms of the Care Home Framework Agreement;
- b) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, clients, service providers, plans, intentions, or market opportunities of the disclosing Party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing Party belongs); and
- c) any information developed by the Parties in the course of carrying out this Care Home Framework Agreement.

11.2. The term "Confidential Information" does not include any information that:

- a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this clause); or
- b) was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party; or
- c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving Party; or
- d) was known to the receiving Party before the information was disclosed to it by the disclosing Party; or
- e) the Parties agree in writing is not confidential or may be disclosed; or
- f) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

11.3. Each Party shall keep the other Party's Confidential Information confidential and shall not:

- a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under the Care Home Framework Agreement ("Permitted Purpose"); or
- b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.

- 11.4. A Party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- a) it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and
  - b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 11.
- 11.5. A Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible.
- 11.6. The Council, in line with the Government's ongoing drive to open up the activities of the public sector to greater scrutiny, has prepared its transparency agenda and the Service Provider hereby agrees that, notwithstanding anything set out in this clause 11 or elsewhere in this Care Home Framework Agreement, the Council shall be entitled to publish this Care Home Framework Agreement in whole or in part (including from time to time any agreed changes to this Care Home Framework Agreement), in whatever form the Council may decide.
- 11.7. On expiry of this Care Home Framework Agreement, each Party shall:
- a) return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - b) erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
  - c) certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 11.8. The provisions of this clause 11 shall survive for a period of six (6) years from expiry of the Care Home Framework Agreement.

## 12. **DATA PROTECTION**

- 12.1 The Parties shall at all times during the Term comply with provisions equivalent to the Data Protection Legislation.

## 13. **FREEDOM OF INFORMATION**

- 13.1. The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Service Provider's

expense) to enable the Council to comply with its information disclosure obligations.

- 13.2. The Service Provider shall and shall procure that its sub-contractors shall:
- a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - b) provide the Council with a copy of all information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
  - c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 13.3. The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Care Home Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 13.4. In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 13.5. The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Services:
- a) in certain circumstances without consulting the Service Provider; or
  - b) following consultation with the Service Provider and having taken their views into account;
  - c) provided always that where 13.2 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 13.6. The Service Provider shall ensure that all information produced in the course of the Care Home Framework Agreement or relating to this Care Home Framework Agreement is retained for a period of six (6) years from expiry of the Care Home Framework Agreement and shall permit the Council to inspect such records as requested from time to time.

## 14. **PUBLICITY**

- 14.1. Unless otherwise directed by the Council, the Service Provider shall not make any press announcements or publicise this Care Home Framework Agreement in any way without the Council's prior written consent.
- 14.2. The Council and the Commissioning Bodies shall be entitled to publicise this Care Home Framework Agreement and may disclose it in accordance with any legal obligation upon the Council, including, but not limited to, any examination of this Care Home Framework Agreement by the Auditor or otherwise.
- 14.3. The Council shall be entitled to publicise the names of the Service Providers appointed to the Care Home Framework and/or any associated Call Offs Contracts.
- 14.4. The Service Provider shall not do anything which may damage the reputation of the Council or bring the Council into disrepute.

## 15. **SUSPENSION AND TERMINATION**

### Operational or Business Circumstances

- 15.1. The Council may suspend the Service Provider's appointment to the Care Home Framework Agreement with immediate effect in the following circumstances:
  - a) where the Service Provider commits a Material Default and:-
    - (i) the Service Provider has not remedied the Material Default to the satisfaction of the Council within three (3) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
    - (ii) the Material Default is not, in the reasonable opinion of the Council, capable of remedy; or
  - b) if the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts OR (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - c) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider; or
  - d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Service Provider being a company other than for the sole purpose of a scheme for a

solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider; or

- e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Service Provider; or
- f) a floating charge holder over the assets of the Service Provider has become entitled to appoint or has appointed an administrative receiver; or
- g) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider; or
- h) the Service Provider, being an individual, is the subject of a bankruptcy petition or order; or
- i) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or
- j) the Service Provider being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- k) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause (inclusive); or
- l) the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- m) the Service Provider, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- n) the Service Provider, or the Staff or any person acting upon the Service Provider's behalf (in all cases whether or not acting with the Service Provider's knowledge), breaches clause 7.1.

#### Delivery of Call-Off Contracts

15.2. The Council may suspend the Service Provider's appointment to the Care Home Framework Agreement with immediate effect in the following circumstances:

- a) where the Home commits a Material Default in relation to any Call-Off Contracts; or

- b) where the Home has a Call-Off Contract terminated or suspended by the Council;
- c) where one or more of the Home's registered offices has a Care Quality Commission rating which is deemed inadequate by the Care Quality Commission;
- d) where the Service Provider is informed that any licences including Home Office licences required for the delivery of the Services are suspended or revoked;
- e) the Service Provider is in breach of clauses 6.4 – 6.6 inclusive.
- f) where the Council is notified that a Change of Control has occurred, or where no notification of the Change of Control has been made the date that the Council becomes aware of the Change of Control.

### **Consequences of Suspension**

- 15.3 If the Council suspends the Service Provider's appointment to the Open Framework in accordance with clause 15.1 or 15.2 the Council may apply any such suspension(s) to:
- a) whole or part of any existing Call-Off Contracts delivered by the Home including for the avoidance of doubt any whole or part of the Call-Off Terms and Conditions and schedules; and or
  - b) where new Call-Off Contracts are awarded to the Home, whole or part of any new Call-Off Contracts including for the avoidance of doubt any whole or part of the Call-Off Terms and Conditions and schedules.
- 15.4 If the Council exercises any rights of suspension in accordance with clause 15 it shall serve notice of suspension to the Service Provider which shall include:
- a) the Council's mechanism of review; and
  - b) the actions required by the Service Provider/Home and supporting evidence in order to lift the suspension and the timescales for doing so.
- 15.5 The period of suspension served by the Council shall be any such period as the Council considers necessary in order for it to investigate the reasons for the suspension(s), which may include working with the Home to develop an action plan to address the reasons and any such evidence giving rise to a suspension(s) and timescales for such action to be taken by the Home in order to remedy the issue(s) identified by the Council.

### **Termination**

- 15.6 The Council may terminate this Care Home Framework Agreement without cause (and without liability to the Home) upon six (6) months' prior written notice to the Service Provider.

- 15.7 The Service Provider may terminate its appointment to this Care Home Framework Agreement without cause (and without liability to the Council) upon serving six (6) months' prior written notice to the Council, or a period as agreed with the Council other than in circumstances where the Home is delivering Services under any existing Call-Off Contracts.
- 15.8 The Council may terminate the Service Provider's appointment to this Care Home Framework by serving a Termination Notice which shall have immediate effect or shall contain a notice period to the Service Provider where:
- a) The Service Provider has lost its registration with the Registered Body;
  - b) the Service Provider is in Material Default of a Call-Off Contract and such Material Default is not remedied in accordance with the Remediation Plan Process or such Material Default is considered irretrievable by the Council;
  - c) The Service Provider is suspended in accordance with 15.5 and the suspension has not been resolved within the timeframe set by the Council;
  - d) Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the Council may terminate this Agreement immediately (or following such notice period as it sees fit) by serving a Termination Notice, without liability to the Service Provider if:
    - i) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or
    - ii) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
    - iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider being a company other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider; or
    - iv) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Service Provider; or
    - v) a floating charge holder over the assets of the Service Provider has become entitled to appoint or has appointed an administrative receiver; or



vi) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider; or

vii) the Service Provider, being an individual, is the subject of a bankruptcy petition or order; or

viii) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

ix) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in the above sub clauses (inclusive); or

x) the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

xi) the Service Provider, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

xii) where the Council is notified that a Change of Control has occurred, or where no notification of the Change of Control has been made the date that the Council becomes aware of the Change of Control; or

xiii) the Council is of the opinion that the Service Provider no longer meets all the eligibility criteria for admission onto the Care Home Framework.

15.9 If a Termination Notice is served in accordance with this clause:

- a) The Service Provider shall be prevented from submitting an Enrolment Application to rejoin the Care Home Framework as set out in the Termination Notice; and
- b) Termination shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## **16 CHANGE OF CONTROL**

16.1 In circumstances where the Service Provider undergoes a Change of Control the controlling organisation shall submit the Enrolment Application and satisfy the eligibility requirements in order to be appointed to the Care Home Framework Agreement prior to the Council granting Approval.

- 16.2 The Service Provider shall obtain the Council's Approval prior to executing any Change of Control.
- 16.3 The Council may suspend and or terminate the Service Providers' appointment to this Care Home Framework Agreement with immediate effect of:-
- a) being notified that a Change of Control has occurred; or
  - b) where no notification has been made, the date that the Council becomes aware of the Change of Control.

## **17. CONSEQUENCES OF EXPIRY**

- 17.1 The Service Provider shall continue to fulfil its obligations under this Care Home Framework Agreement until the date of expiry of this Care Home Framework Agreement or such other date as required under this clause 17.
- 17.2 Expiry of this Care Home Framework Agreement shall not cause Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force until expiry or terminated in accordance with the terms and conditions of such contracts.
- 17.3 Within thirty (30) Working Days of the expiry of this Care Home Framework Agreement, the Service Provider shall return to the Council any data and Confidential Information belonging to the Council in the Service Provider's possession, power or control, either in its then current format or in a format nominated by the Council, together with other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Care Home Framework Agreement, or such period as is necessary for such compliance.
- 17.4 The Council shall be entitled to require access to data or information arising from the provision of the Services from the Home until the latest of:
- a) the expiry of a period of twelve (12) Months following expiry of this Care Home Framework Agreement; or
  - b) the expiry of a period of three (3) Months following the date on which the Home ceases to provide Services under any Call-Off Contract.
- 17.5 Expiry of this Care Home Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Care Home Framework Agreement prior to expiry.
- 17.6 The provisions of Clauses 6 (*Service Provider Warranties, Representations and Obligations*), 7 (*Corrupt Gifts and Payments of Commission*), 10 (*Records and Audit Access*), 11 (*Confidentiality*), 12 (*Data Protection*), 13 (*Freedom of Information*), 17 (*Consequences of Expiry*), 19 (*Liability*), and 31 (*Law and Jurisdiction*) shall survive the expiry of this Care Home Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive expiry.

**18. SUB-CONTRACTING AND ASSIGNMENT**

18.1 The Service Provider shall not be entitled to give, bargain, sell, assign, let or otherwise dispose of any or all of its rights and obligations under this Care Home Framework Agreement without the prior written consent of the Council.

**19. LIABILITY**

19.1 Where the Service Provider comprises more than one person the obligations and liabilities of the Service Provider under this Care Home Framework Agreement shall be the joint and several obligations of those persons comprised in the Service Provider.

19.2 No Party excludes or limits its liability for:

a) death or personal injury caused by its negligence, or that of its Staff; and

b) fraud or fraudulent misrepresentation by it or its Staff.

19.3 Subject to Clause 19.1 the Service Provider's total liability in connection with this Care Home Framework Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be unlimited.

19.4 For the avoidance of doubt the Parties total liability under any Call-Off Terms and Conditions shall be as set out in each respective Call-Off Terms and Conditions.

19.5 Subject to Clause 19.3 the Service Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Care Home Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This Clause shall not apply to the extent that the Service Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Material Default, or the negligence or Material Default of its Staff or by any circumstances within its or their control.

**20. INSURANCE**

20.1 The Service Provider shall effect and maintain adequate policies of insurance in accordance with any Call-Off Contract.

**21. VARIATIONS TO THIS CARE HOME FRAMEWORK AGREEMENT**

21.1 A variation to this Agreement shall only be valid if it has been agreed in writing and signed by both Parties.

21.2 Subject to clause 21.1 the following provisions shall not constitute a material variation to this Agreement:

a) In the event of any Guidance, legislative or regulatory changes coming in to force during the Term the Parties agree to modify this Care Home Framework Agreement accordingly to effect such change(s) in order to ensure compliance with applicable Laws and legislative requirements;

b) Variation to the way in which the Council receives notices;

22. c) Amendment to extend the geographical scope of the Services to enable the Contracting Bodies to make out of county Placements. **RIGHTS OF THIRD PARTIES**

22.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 this Care Home Framework Agreement is not intended to, and does not, give any person who is not a Party to this Care Home Framework Agreement any rights to enforce any provisions contained in this Care Home Framework Agreement.

23. **SEVERABILITY**

23.1 If any provision of this Care Home Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Care Home Framework Agreement had been executed with the invalid provision eliminated.

23.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Care Home Framework Agreement, the Council and the Home shall immediately commence good faith negotiations to remedy such invalidity.

24. **CUMULATIVE REMEDIES**

24.1 Except as otherwise expressly provided by this Care Home Framework Agreement, all remedies available to either Party for breach of this Care Home Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

25. **WAIVER**

25.1 The failure of either Party to insist upon strict performance of any provision of this Care Home Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Care Home Framework Agreement.

25.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

26. **ENTIRE AGREEMENT**

- 26.1 This Care Home Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 26.2 Each of the Parties acknowledges and agrees that in entering into this Care Home Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Care Home Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Care Home Framework Agreement.
- 26.3 Nothing in this Clause 26 shall operate to exclude Fraud or fraudulent misrepresentation.

## 27. THE COUNCIL'S STATUTORY FUNCTIONS

- 27.1 Nothing in this Care Home Framework Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

## 28. NOTICES

- 28.1 Any notice or other communication required to be given under this Agreement, shall be sent electronically, in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at its address as set out herein or as otherwise specified by the relevant party by notice in writing to each other party.

### For the Council

Name: Adults' Health and Care Contracts Team

Address: The Castle  
Winchester  
SO23 8UJ

Email Address: [as.contracts@hants.gov.uk](mailto:as.contracts@hants.gov.uk)

### For the Service Provider: (for finance matters, registered manager, owner)

Name: **Name of Service Provider**

Address: **Address of Service Provider**

Telephone Number: **Phone number of Service Provider**

Email: **Email address of Service Provider**

- 28.2 The Service Provider is required to notify the Council of any changes to the details in the notices section above.
- 28.3 Any notice of other communication shall be deemed to have been duly received:
- a) if delivered personally, when left at the address and for the contact referred to in this clause; or
  - b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
  - c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
  - d) if sent electronically (this may include email, electronic tendering or other electronic means as designated by the Council) on a business day, deemed delivery shall be the business day of sending; or
  - e) if sent electronically on a non-business day, deemed delivery shall be on the next business day.
- 28.4 A notice required to be given under this Agreement shall be validly given if sent electronically.
- 28.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 28.6 Any notice or communication shall be deemed to have been duly received when made through the Council's electronic tendering system and recorded as having been sent.

## 29. **COMPLAINTS HANDLING AND RESOLUTION**

- 29.1 The Service Provider shall notify the Council of any Complaint made by a Contracting Body within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Service Provider's plans to resolve such Complaint.
- 29.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Care Home Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Service Provider to take remedial action under the provisions of this Care Home Framework Agreement or a Call-Off Contract, the Service Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- 29.3 Within two (2) Working Days of a request by the Council, the Service Provider shall provide full details of a Complaint to the Council, including details of steps taken to its resolution.

## 30. **DISPUTE RESOLUTION**

- 30.1 Any question, or difference, or dispute, arising in connection with the construction, meaning or operation of this Care Home Framework Agreement or any matter arising out of or in connection with this Care Home Framework Agreement, shall in the first instance be referred to the Care Home Framework Agreement Manager and the Designated Contract Manager for discussion and resolution. If the matter is not resolved within ten (10) Working Days of such referral, the matter shall be referred to the next level of the Council's and the Service Provider's management which shall be directors or other senior representatives of the Parties with authority to settle the dispute.
- 30.2 If the dispute is not resolved under clause 30.1 the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (ADR notice) to the other Party to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.
- 30.3 No Party may commence any court proceedings or arbitration in relation to any dispute arising out of this Care Home Framework Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 30.4 If the unresolved matter is having a serious effect on the Services, the Parties shall use every reasonable endeavour to reduce the elapsed time in completing the process. Neither Party may initiate any legal action until the process has been completed, unless such Party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have.
- 30.5 The obligations of the Parties under this Care Home Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Home and its Staff and associates shall comply fully with the requirements of this Care Home Framework Agreement at all times.

## **31. LAW AND JURISDICTION**

- 31.1 The Council and the Service Provider accept the exclusive jurisdiction of the English courts and agree that this Care Home Framework Agreement is to be governed by and construed according to English Law.

**AS WITNESS** whereof this Care Home Framework Agreement has been executed by the Parties

**On behalf of Hampshire County Council:**

Authorised signatory .....

Authorised signatory .....

**On behalf of Name of the Provider:**

.....  
Authorised Signatory

.....  
Name of Authorised Signatory

.....  
Occupation

.....  
Witness Signature

.....  
Name of the Witness

.....  
Occupation

Address