

DATED

2024

**DRAFT OPEN FRAMEWORK AGREEMENT FOR THE
PROVISION OF HOMECARE AND DOMICILIARY CARE
SERVICES**

Between

WESTMORLAND & FURNESS COUNCIL

and

[PROVIDER]

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DRAFT

PARTIES

- (1) **WESTMORLAND & FURNESS COUNCIL** whose principal place of business is at Kendal County Hall, Busher Walk, Kendal LA9 4RQ (**Council**).
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Provider**).

BACKGROUND

- (A) The Council placed a contract notice Reference on on the Find a Tender portal seeking tenders from potential providers to establish an open framework for the provision of homecare and domiciliary care services to itself and the Other Contracting Bodies identified in the contract notice.
- (B) In accordance with the principles of the Public Contracts Regulations 2015 ("Regulations"), the Council has used the light touch regime to establish an open framework.
- (C) The procurement process permits the receipt of further tenders, and acceptance by the Council, until the Termination Date of the Framework so other providers can be added to this Framework.
- (D) On the basis of the Provider's Tender, the Council and the Provider enter into this Agreement to allow the Provider to deliver Services in accordance with its terms.
- (E) This Agreement sets out the procedure for ordering Services, the terms and conditions for the provision of the Services and the obligations of the Provider under this Agreement.
- (F) It is the Parties' intention that the Council or any Other Contracting Bodies have no obligation to place Instructions with the Provider under this Agreement or at all. For the avoidance of doubt, the Council and any Other Contracting Body may request the Services or any other Services via any other procurement process at the Council's discretion.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

Accreditation and Enrolment: means the evaluation of a provider's request to participate in the Framework and the subsequent admittance to the list of Framework providers that fulfil the Council's Selection Criteria.

Achieved KPIs: means the standard of performance actually achieved by the Provider in the provision of the Service in each Measurement Period.

Agreement: means this agreement and all Schedules to this agreement.

Approval: means the prior written consent of the Council.

Audit: means an audit carried out pursuant to clause 10.

Auditor: means person appointed to carry out an audit of a Framework Provider.

Authorised Representative: means the persons respectively designated as such by the Council and the Provider, the first such persons being set out in clause 31.

Call-off Terms and Conditions: means the terms and conditions in Schedule 4.

Portal: means the portal used by the Council and advised to the Provider from time to time.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Commencement Date: means the 1st of April 2024.

Complaint: means any formal complaint raised by any Framework User against the Provider in relation to the performance under the Agreement or any Contract in accordance with clause 20.

Confidential Information: means any information which has been designated as confidential by either Party in writing including trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation. For the avoidance of doubt this includes all information relating to Service Users or their carers.

Contract: means a legally binding agreement (made pursuant to this Framework Agreement) for the provision of Services between the Council or a Framework User and the Provider and comprising a completed Instruction Form, completed Support Plan, Schedule 2 and its appendices, Schedule 5, Schedule 6 and the Call-off Terms and Conditions.

CQC: means the Care Quality Commission and any other government body or agency which is equivalent to or succeeds or replaces it, or is transferred any of the functions of the Care Quality Commission during the Term.

Data Controller: shall have the same meaning as set out in the Data Protection Legislation.

Data Processor: shall have the same meaning as set out in the Data Protection Legislation.

Data Protection Legislation: means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK General Data Protection Regulation (UK GDPR), and the Data Protection Act 2018 (DPA 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 General Data Protection Regulation (EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.

Data Subject: shall have the same meaning as set out in the Data Protection Legislation

Default: means failure to meet a KPI as set out in clause 15 or other action or inaction identified in this Agreement as a Default.

Default Notice: means the notice given by the Council to the Provider under clause 15.

Direct Loss: means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Loss

Environmental Information Regulations: 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.

Find a Tender Notice: means the notice published by the Council as set out under Background paragraph A

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that 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.

Framework: means the arrangement established by the Council for commissioning Services from a variety of care providers which this Agreement is part of.

Framework Providers: means the Provider and other suppliers appointed as framework providers under the Framework.

Framework User: means any organisation who uses the Framework to purchase Services from the Provider and who is either the Council or Other Contracting Body described in the Find a Tender Notice.

Indirect Loss: means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any losses under any sub-contracts which are not of themselves Indirect Loss

Information: has the meaning given under section 84 of the FOIA.

Instruction: means an order for Services issued by a Framework User to the Provider in accordance with the award procedures in clause 4.

Instruction Form: means a document setting out details of an Instruction in the form set out in Schedule 3 or as otherwise agreed in accordance with Schedule 1 or clause 25.2.

Intellectual Property Rights: means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off.

KPIs: means the key performance indicators set out in Schedule 7.

Law: 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, common law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Living Wage Foundation means the Living Wage Foundation Charity No. 1107264 registered name Citizens UK Charity whose registered office is at Citizens UK, 1 & 3 Jacquard Point, Tapestry Way London E1 2FJ

Real Living Wage means the Living Wage rate set by the Living Wage Foundation

Management Information: means the information the Council requires and or requests from the Provider either under this Agreement and or any Contracts to monitor performance of the Provider under this Agreement and in delivering Services under Contracts.

Measurement Period: means the time period identified in Schedule 7 within which the performance of a KPI is measured.

Month: means a calendar month.

Other Contracting Body (ies): means all Framework Users except the Council.

Parent Company: means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider.

Holding Company shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

Party: means the Council and/or the Provider.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Price: means the prices set out in Schedule 5;

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by a Framework User a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - i. under the Bribery Act 2010;
 - ii. under legislation creating offences concerning fraudulent acts;
 - iii. at common law concerning fraudulent acts relating to this Agreement or any other contract a Framework User; or
- (d) defrauding, attempting to defraud or conspiring to defraud a Framework User.

Quality Improvement Plan: means a plan to improve the quality of the Service and its delivery and outcomes for Service Users.

Regulated Activity: in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies including the CQC, which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council or Provider.

Requests for Information: means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Requirement: is where a Framework User identifies a Service User and the Services the Service User needs;

Schedule: means a schedule to this Agreement.

Selection Criteria: means the requisite criteria (as updated by the Council from time to time) that the Provider must meet and maintain throughout the term of the Agreement in order to successfully complete their Accreditation and Enrolment onto the Framework which will be reaffirmed by the Provider on an annual basis on the anniversary of the Commencement Date.

Services: means the home care services as detailed in Schedule 2 as well as any specific requirements identified in a Support Plan and or Instruction Form.

Service User: means any individual identified in an Instruction Form as requiring Services.

Staff: means all persons used by the Provider in the delivery of the Services or in the performance of the Provider's obligations under this Agreement or Contracts and for the avoidance of doubt shall include employees, consultants, agency personnel, directors, volunteers, sub- contractors or personnel used by subcontractors.

Subcontract: any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services and or any of the obligations in this Agreement from that third party.

Subcontractor: the contractors or providers that enter into a Subcontract with the Provider.

Support Plan: means a document issued by a Framework User to the Provider setting out specific care requirements for a Service User in addition to the general care requirement's set out in a completed Instruction Form and Schedule 2 specification.

Target KPI: the minimum level of performance every Measurement Period for a KPI which is required by the Council as set out in Schedule 7.

Tender: means the tender submitted by the Provider to the Council in order to be appointed to the Framework as set out in Schedule 8.

Term: means the period set out in clause 2.

Termination Date: means the date of expiry or termination of this Agreement.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 The interpretation and construction of this 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 Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (g) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules;
- (h) references in this 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 Agreement so numbered;
- (i) references in this 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 Agreement so numbered;
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (k) any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
- (l) references to the Council shall be deemed to include its successors in title and assigns;
- (m) if any Party to this Agreement is a partnership then provision of this Agreement will bind each and every partner jointly and severally;
- (n) subject to clause 31.5 a reference to writing or written includes email except where otherwise expressly stated in the Framework Agreement; and
- (o) any period regulating a notice period that the Council is required or empowered to give under this Agreement shall be a minimum notice period and in the event a longer period of notice is given by the Council this shall not invalidate the notice.

1.3 Nothing in this Agreement shall limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

1.4 Any amendment to this Agreement shall not have retrospective effect.

1.5 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of this Agreement;
- (b) Schedule 1 to this Agreement;
- (c) Schedule 2 to this Agreement;
- (d) the remaining schedules to this Agreement.

2. TERM OF FRAMEWORK AGREEMENT

2.1 The Agreement shall take effect on the Commencement Date and (unless it is extended in accordance with clause 2.2 or terminated in accordance with the terms of this Agreement or is otherwise lawfully terminated) shall terminate at the end of the 2nd anniversary of the Commencement Date.

2.2 The Council may extend this Agreement for a further period or periods of up to a further 12 months by providing the Provider 3 months' notice before the end of the current Term. On acceptance by the Provider, the Agreement shall continue for the period set out in the notice.

3. SCOPE OF FRAMEWORK AGREEMENT

3.1 The Council has appointed the Provider to be part of the Framework and the Provider is eligible to receive Instructions for Services from Framework Users during the Term.

3.2 The Parties acknowledge and agree that Other Contracting Bodies have the right to order Services pursuant to the Framework provided that they obtain Approval from the Council, comply at all times with the Regulations and the procedure in clause 4. If there is a conflict between clause 4 and the Regulations, the Regulations shall take precedence.

- 3.3 Framework Users may at their absolute discretion and from time to time order Services from the Provider in accordance with the procedure set out in clause 4 during the Term.
- 3.4 The Provider agrees that it shall be available to receive Instructions in accordance with Schedule 1 from a Framework User between 0700 hours and 2300 hours every day of the Term.
- 3.5 The Provider acknowledges and accepts that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Council or any of the Framework Users for the Services and that the Council and Framework Users 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.
- 3.6 The Council shall not in any circumstances be liable to the Provider or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Provider to any Other Contracting Body.
- 3.7 During the Term, the Council and the Provider will work closely together in a spirit of trust and co-operation in order to develop a mutually beneficial relationship. In particular the Provider shall inform the Council as soon as reasonably practicable of any material changes or developments in its business or of an operational, legal, financial or resourcing nature that may impact on the performance of this Agreement.
- 3.8 The Provider agrees where it offers to the general public, either through a direct payment or individual service fund, services the same as or similar to the Services the Provider shall not charge the recipient of services any more than the hourly rate identified in Schedule 5. This clause 3.8 is enforceable by any person under the Contracts (Rights of Third Parties) Act 1999.
- 3.9 In order to enable contact with the Provider for out of hours service referrals the Provider shall provide the Council with an emergency contact telephone number or numbers which can be used between 0700 and 0900 hours and 1700 and 2300 hours during weekdays, and 0700 and 2300 hours at weekends and on bank holidays.
- 3.10 The Provider will have Staff available to respond to Out of Hours service referrals during the periods 0700 to 0900 hours and 1700 to 2300 hours weekdays and 0700 to 2300 hours at weekends and on bank holidays.
- 3.11 It is the Provider's responsibility to ensure that the Framework User is always able to contact the Provider by telephone between 07.00 and 2300 hours every day of the year, either via their office or by emergency contact telephone numbers.

- 3.12 The Provider shall make provision to ensure that where a Service User's needs require the Service to commence within a few hours of the Provider receiving an Instruction, that the Provider is resourced to do this.
- 3.13 The Provider shall not subject the Council to derogatory or abusive treatment nor commit any act or omissions that would, bring the Council into disrepute. The Provider acknowledges that in any such circumstances the Council has the right to suspend the Provider, in addition to any other remedies available in this Contract.
- 3.14 The Provider acknowledges and agrees that the Provider alone shall at all times during the Term provide the Services and retain its registration with the CQC to provide the Services.

4. ORDER PROCEDURE

- 4.1 Where a Framework User elects to commission Services through the Framework it shall follow the procedure set out at Schedule 1. Each Framework User is solely responsible for determining whether an individual is eligible to receive Services in accordance with this Agreement.
- 4.2 If a Framework User decides to source Services through the Framework the Provider must enter into a Contract with the Framework User for the Services in accordance with the terms laid down in this Agreement.
- 4.3 Nothing in this Agreement shall oblige the Council or a Framework User to place any Instruction for Services, issue an Instruction Form or award a Contract to the Provider.
- 4.4 For the avoidance of doubt all Services delivered by the Provider are subject to Schedules 2, 3, 4, 5, 6, 7 and 8 of this Agreement,
- 4.5 The Provider acknowledges that each Framework User is independently responsible for the conduct of its award of Contracts under the Framework and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:
- (a) the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
 - (b) the performance or non-performance of any Contracts between the Provider and Other Contracting Bodies entered into pursuant to the Framework Agreement.

5. CONTRACT PERFORMANCE AND FUTURE REQUIREMENTS.

- 5.1 The Provider shall perform all Contracts entered into with the Council and a Framework User in accordance the terms and conditions of the respective Contracts and the requirements of this Agreement where directed.
- 5.2 The Provider shall exercise all reasonable skill care and diligence in the discharge of its obligations under this Agreement.
- 5.3 The Provider shall procure and maintain for the duration of this Agreement such professional qualifications or accreditation both for itself and its Staff as may be required by Law, or as required by the Framework Users in order to perform any Services. The lapse or cancellation of such qualification or accreditation shall be considered a material breach for the purposes of clause 15.1(a).
- 5.4 Where this Agreement requires the Provider to supply information to the Council the Provider shall update the Council of any changes to information provided. For the avoidance of doubt this also includes where the Provider has identified individuals as points of contact and such like and those individuals are no longer the correct points of contact.
- 5.5 The Provider shall supply the Council with the names of two identified individuals who will have access to the Portal (the "Portal Users"). The Portal Users shall accept and abide by the terms of the Councils Acceptable Use Policy.

6. PRICES FOR SERVICES

- 6.1 The prices to be paid under any Contracts shall be in accordance with the prices listed in Schedule 5 and as specified in each Contract and such prices shall be adjusted annually in accordance with the provisions of Schedule 5.
- 6.2 Payment for Services delivered by the Provider to the Council under Contracts shall be made in accordance with Schedule 4 and Schedule 6.
- 6.3 For the avoidance of doubt no payment is required by or due to the Provider under the Agreement.

7. WARRANTIES AND REPRESENTATIONS

- 7.1 The Provider warrants and represents to the Council that:

- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of a Parent Company) to enter into and to perform its obligations under this Agreement;
- (b) this Agreement is executed by a duly authorised representatives of the Provider;
- (c) in entering into this Agreement it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender are to the best of its knowledge and belief true, accurate and not misleading save as may have been specifically disclosed in writing to the Council before the execution of this Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (e) 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 that will or might affect its ability to perform its obligations under this Agreement or any Contract which may be entered into with the Council or Other Contracting Bodies;
- (f) 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 Agreement or any Contract; and
- (g) 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 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 Provider's assets or revenue.

8. SERVICE PRE-REQUISITES

- 8.1 The Provider shall be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Contract.
- 8.2 The Provider shall ensure at all times that its employees engaged in the performance of the Services have been verified by it to work in the UK including (in the case of foreign nationals) an appropriately endorsed passport or other confirmed immigration status (including a share code issued by the Home Office) permitting their right to work in the UK and understands that any failure in this regard shall be regarded as a Material Breach.

9. REPORTING AND MEETINGS

- 9.1 The Provider shall attend meetings with a Framework User as the relevant Framework User may request.
- 9.2 The Provider shall attend performance review meetings with the Council as the Council shall request.
- 9.3 The Provider shall submit the Management Information to the Council set out in Schedule 7 throughout the Term quarterly in respect of any Contract entered into with the Council. Failure to supply the Management Information shall constitute a Material Breach under clause 15.1(a).
- 9.4 The Council may share the Management Information supplied by the Provider with any Other Contracting Body.
- 9.5 The Council may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least thirty (30) calendar days written notice of any changes.
- 9.6 During the term of the Agreement the Provider shall look for and seek to achieve continuous improvement in the quality of the Services.
- 9.7 At no cost to the Council the Provider shall attend meetings in relation to the Services with the Council and/or with other providers engaged by the Council as the Council shall request.
- 9.8 The Provider shall provide to the Council written reports in such form as approved by the Council to capture performance details as prescribed in the Specification and or KPIs.
- 9.9 Notwithstanding the obligations in the Agreement the Provider shall send to the Council as and when requested to do so by the Council all correspondence and documents sent or received by the Provider, and of all minutes of meetings relating to the Contract.
- 9.10 The Provider shall provide annual service review reports, to be delivered on the date of each anniversary of the Commencement Date, and provide information detailing:
- (a) the Services undertaken;
 - (b) Service User satisfaction;
 - (c) emerging best practice;
 - (d) details of how the Contract and any partnership methods are working; and

- (e) recommendations for continuous improvement in both service delivery and contract operations.

9.11 At the request of a Framework User the Provider shall develop and comply with Quality Improvement Plan, in consultation with the Framework User, to improve the quality of the Service. Failure to comply with this clause 9.11 shall constitute a material breach under clause 15.1(a)

10. RECORDS AND AUDIT ACCESS

10.1 The Provider shall provide, within 7 Working Days of request or such other timescale as the Parties may agree (acting reasonably), such information to the Council or a Framework User as the Framework User shall reasonably request to assist the Framework User in its use of the Framework generally.

10.2 The Provider shall promptly provide such financial information as the Council may reasonably request in order to confirm the ongoing financial viability of the Provider in providing services under this Agreement.

10.3 The Council shall be entitled for any purpose to publish and share information on the Provider's performance in complying with any Contract and or the Agreement.

10.4 The Provider shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, the Contracts entered into with Framework Users and the amounts paid by each Framework User.

10.5 The Provider shall afford the Council or the Auditor (or both) such access to such records and accounts as may be required from time to time.

10.6 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six years after expiry of the Term to the Council (or relevant Framework User) and the Auditor.

10.7 The Framework User shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Framework User.

10.8 Subject to reasonable notice and the Framework User's rights of confidentiality, the Provider shall 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 sites controlled by the Provider and to equipment used in the provision of the Services; and
- (c) access to the Staff.

10.9 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 default by the Provider in which case the Provider shall reimburse the Framework User for the Framework User's reasonable costs incurred in relation to the Audit.

11. CONFIDENTIALITY

11.1 The Parties agree that this Agreement shall not be treated as Confidential Information and may be disclosed without restriction.

11.2 Clause 11.1 above shall not apply to information about to Service Users which shall be treated as Confidential Information.

11.3 Subject to clause 11.4, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

11.4 Clauses 11.2 and 11.3 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 13A shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Agreement;
- (c) that is shared with any industry regulators such as the CQC;
- (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11;
- (e) by the Council of any document to which it is a party and which the Parties to this Agreement have agreed contains no Confidential Information;

- (f) to enable a determination to be made under clause 21;
- (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information;
- (i) by the Council relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure; or
- (j) that is reasonably required by Other Contracting Bodies.

12. SAFEGUARDING

- 12.1 Insofar as they contain obligations relating to the Services, the Provider must comply with the Council's policy, guidance and procedures for the safeguarding of adults, details of which are available at [www.https://www.westmorlandandfurness.gov.uk/health-and-social-care/concerns-about-adult](https://www.westmorlandandfurness.gov.uk/health-and-social-care/concerns-about-adult) as are adopted during the Term of this Agreement and any Contract.
- 12.2 Where the Provider has a financial interest in supplies, (including medical supplies), equipment, or other introductions being made, or offered to Service Users the Council and other Framework Users shall be informed in writing as soon as is reasonably practicable. Where the Council and any other Framework User considers the conflict of interest to be substantial it may by notice require the Provider to take specified steps to minimise or remove the conflict. The Provider shall comply with the requirements of such a notice.
- 12.3 Neither the Provider nor its Staff shall purchase from an existing Service User, or any third party acting on behalf of the Service User any property, or personal effects owned by the Service User, either jointly or in their own right.
- 12.4 The Provider shall ensure all Services which are subject to the CQC regulation are registered with the CQC and any other Regulatory body as appropriate. The Provider shall ensure the Services comply with the Fundamental Standards of Quality and Safety across all regulated activities as set out in the Care Quality Commission (Registration) Regulations 2009 and Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. In so far as it is applicable to the Provider and to the provision of the Services the Provider shall comply with the Care Act 2014.
- 12.5 The Provider shall comply at all times with the requirements of the CQC where providing a service regulated by the CQC and shall provide to the Council details of any notice issued to them by the CQC. The Provider shall make available to the

Council copies of any regulatory reports or reviews including but not limited to those that have not been released to the public.

12.6 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006

12.7 The Provider shall:

- (a) ensure that Staff engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);
- (b) monitor the level and validity of the checks under this clause 12 for each member of Staff; and
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

12.8 The Provider warrants that at all times for the purposes of this Agreement and any Contracts awarded under it has no reason to believe that any of its Staff are barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

12.9 The Provider shall immediately notify the Council of any information that it requests to enable it to be satisfied that the obligations of this clause 12 have been met.

12.10 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users.

13. DATA PROTECTION

13.1 The Parties acknowledge that they are independent Data Controllers in respect of any Personal Data processed by them and agree to comply with their obligations under the Data Protection Legislation.

- 13.2 Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 13.3 The Provider shall and shall procure that any of the Provider's Personnel, Sub-Contractors and any other employees or third parties involved in the provision of the Services shall comply with their obligations under the Data Protection Legislation.
- 13.4 For the avoidance of doubt, it is stated here that neither Party is a Data Processor on behalf of the other Party in furtherance of their obligations under this Agreement. In the event it is established at any time during this Agreement that Personal Data is to be processed by the Provider under this Agreement on behalf of the Council then the Provider shall:
- (a) immediately enter into a data processing agreement with the Council on reasonable terms to be determined by the Council to ensure full compliance with Data Protection Legislation; and
 - (b) indemnify and keep the Council indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of the Provider's failure to comply with any of its obligations under this Clause 13.413.
- 13.5 Failure by the Provider to enter into a data processing agreement in accordance with Clause 13.4 shall be deemed a fundamental breach which shall entitle the Council to immediately terminate the Agreement without consequence or any liability under this Agreement.
- 13.6 Any clause in this Agreement limiting the Provider's liability in respect of any obligations, claims, losses, damages, liabilities, fines, penalties, interest or otherwise under the Data Protection Legislation and/or this Clause shall not apply.
- 13.7 Upon the termination or expiry of this Agreement the Provider shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of Services to the Council or a replacement provider or to a third party to be achieved then the Provider being the transferring Party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the Council or any replacement provider or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.
- 13.8 Historical personal data shall be retained by the Provider in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be

securely deleted in accordance with Data Protection Legislation and good industry practice.

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

13A FREEDOM OF INFORMATION

13A.1 The 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 Provider's expense) to enable them to comply with these information disclosure requirements.

13A.2 The Provider shall and shall procure that its Subcontractors shall:

- (a) transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two 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 Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
- (c) 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 FOIA or Environmental Information Regulations.

13A.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the relevant Service User.

13A.4 The Provider agrees the Council shall be responsible for determining at its absolute discretion whether any Information is exempt from disclosure or is to be disclosed in response to a Request for Information.

13A.5 The Provider acknowledges and accepts that the Council may under the FOIA or the Environmental Information Regulations disclose Information:

- (A) without consulting with the Provider; or
- (B) following consultation with the Provider and having taken its views into account.

13A.6 The Provider agrees that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 13A.

14. PUBLICITY

14.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this Agreement in any way without the Council's Approval.

14.2 The Council shall be entitled to publicise this Agreement in accordance with any legal obligation on the Council, including any examination of this Agreement by an Auditor or otherwise.

14.3 The Provider shall not do anything that may damage the reputation of the Council or bring the Council into disrepute. Failure by the Provider to comply with clause 14.3 shall constitute a material breach under clause 15.1(a).

15. PERFORMANCE, DEFAULT AND FAILURE TO SUPPLY

15.1 In the event that the Council or any Framework User is of the reasonable opinion that there has been a default which is a material breach of this Framework Agreement or any Contract by the Provider, then the Council or Framework User may, without prejudice to any other rights or remedies it may have under this Framework Agreement or any Contract consult with the Provider and then do any of the following:

- (a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Working Days or such other period of time as the Council or Framework User may direct;
- (b) without terminating this Framework Agreement or any Contract, suspend the affected Service in accordance with the process set out in clause 18
- (c) without terminating the Framework Agreement, terminate any Contract in respect of the affected part of the Services only in accordance with clause 17 (whereupon a corresponding reduction in the prices shall be made) and thereafter the Council or any Framework User may supply or procure a third party to supply such part of the Services;
- (d) terminate the Framework Agreement and/or any Contract for Services.

15.2 If the Authority exercises any of its rights under clause 15.1, the Provider must indemnify the Council and the Contracting Body for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Council or Contracting Body or

a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council or Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

16. KEY PERFORMANCE INDICATORS

- 16.1 Where any part of the Service is stated in Schedule 7 to be subject to a specific KPI the Provider shall provide the Service in such a manner as will ensure the Achieved KPI in respect of that element of the Services is equal to or higher than the specific Target KPI.
- 16.2 Where the Provider fails to meet any Target KPI for the Service the Council may issue a notice to the Provider notifying the Provider of its failure to meet the Target KPI. This notice shall be a Default Notice.
- 16.3 Due to the Measurement Period being different lengths for different Target KPIs the Council shall be entitled to issue Default Notices even if it is a number of months after the Measure Period the Default relates to.
- 16.4 For the avoidance of doubt the Council may elect not to issue a Default Notice where a Provider has failed to meet a Target KPI such an election is at the Council's absolute discretion and in no way does this prevent the Council from serving a Default Notice at a later date or for failure to meet the same Target KPI in a different Measurement Period.
- 16.5 The Council shall monitor the Provider's performance against each Target KPI and each Measurement Period the Provider shall give to the Council any and all information requested by the Council to assist with monitoring Target and Achieved KPIs.
- 16.6 The obligations of the Provider under the Agreement shall not be lessened or affected by:
- (a) any power or duty of the Council to grant or withhold approval of, or object to, any matter in connection with the Agreement or to inspect the Services; or
- 16.7 the grant, or failure to grant, such approval, or the making, or failure to make, such objection or any such inspection of, or failure to inspect, the Services.

17. TERMINATION

17.1 The Council may terminate the Agreement by serving written notice on the Provider with effect from the date specified in such notice (which may be with immediate effect):

- (a) where the Provider commits a material breach and:
 - (i) the Provider has not remedied the material breach to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (ii) the material breach is not, in the opinion of the Council (acting reasonably), capable of remedy;
- (b) where the Council has issued three Default Notices to the Provider under clause 15;
- (c) where any Framework User terminates a Contract awarded to the Provider under this Agreement as a consequence of default by the Provider;
- (d) where in the opinion of the Council the Provider or its Staff are responsible for subjecting a Service User or any person to, or putting a Service User or any person at risk of, injury and or abuse whether physical, sexual, psychological, financial, or combination of the same;
- (e) where the Provider sub-contracts the Agreement in whole or in part without the Council's prior written consent;
- (f) where the Agreement is novated or any part is assigned to a third party without the Council's prior written consent;
- (g) where the Provider in the Council's opinion (acting reasonably) has made a serious misrepresentation to the Council in the Tender and or during the Term;
- (h) where action is being taken by a third party regulatory body against the Provider including but not limited to being classified by the CQC as inadequate;
- (i) where any other agreement the Council has with the Provider is terminated;
- (j) any breach of clause 13;
- (k) any breach of clause 33; or
- (l) where in the Agreement in addition to this clause 16 termination by the Council is expressly permitted.

17.2 For the purposes of clause 16.1 (a), **Material Breach** means:

- (a) a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from a substantial portion of this Agreement; or

- (b) a persistent breach of any of the obligations set out in this Agreement, what is persistent shall be determined by the Council's reasonable opinion; or
- (c) a breach that is stated elsewhere in this Agreement as being material or subject to clause 16.1(a).

17.3 Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by giving written notice to the Provider if:

- (a) the 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the 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;
- (c) 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 Provider (being a company);
- (d) 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 Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) the Provider (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the 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 the Provider's assets and such attachment or process is not discharged within 7 days;
- (i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.3(a) to clause 17.3(h) (inclusive); or
- (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.4 The Provider shall notify the Council promptly if the Provider undergoes a Change of Control. The Council may terminate the Agreement by giving notice in writing of not less than thirty (30) calendar days to the Provider within six Months 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;

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

17.5 Either Party shall have the right to terminate this Agreement at any time by giving a minimum of ninety days written notice to the other Party.

18. SUSPENSION OF PROVIDER'S APPOINTMENT

18.1 Without prejudice to the Council's rights to terminate the Agreement in clause 17 above the Council may suspend with immediate effect the Provider's right to apply for and receive Instructions from Framework Users by giving notice in writing to the Provider upon the occurrence of:

- a. a right to terminate this Agreement in accordance with clause 17;
- b. an investigation into the Provider is being undertaken by a Framework User a regulatory body coroner police or other third party which the Council deems is relevant to the Services;
- c. a complaint has been received by a Framework User about the Provider's treatment of a Service User and or connected person;
- d. concerns have been raised in relation to safeguarding by any relevant person of body;
- e. a suspected or actual breach of the Provider's obligations under this Agreement coming to the attention of the Council; or
- f. where a Contract has been terminated or suspended

18.2 If the Council provides notice to the Provider under clause 18.1, the Provider's eligibility to apply for and receive Instructions and enter into Contracts shall be suspended for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time.

18.3 Neither the Council nor any other Framework User shall be liable for any Direct Loss or Indirect Loss to the Provider arising from a suspension under clause 18.1.

18.4 Notwithstanding a suspension under clause 18.1 any Contracts entered into by the Provider and a Framework User prior to the date of said suspension shall continue in accordance with their respective terms subject to the remainder of this clause 18.

18.5 A suspension event shall have occurred if:

- (a) the Council reasonably considers that a breach by the Provider of any obligation under any Contract:
 - i. may create an immediate and serious threat to the health or safety of any Service User; or
 - ii. may result in a material interruption in the provision of any one or more of the Services; or
 - iii. clause 18.5 does not apply, but the Council, acting reasonably, considers that the circumstances constitute an emergency affecting provision of a Service or Services; or
 - iv. the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any consent,

(each a **Suspension Event**).

18.6 Where a Suspension Event occurs the Council:

- (a) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to and will perform the suspended Service, to the required standard; and
- (b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

18.7 During the suspension of any Service under clause 18.6, the Provider must comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to clause 18.6 has been referred to dispute resolution under clause 21 (*Dispute Resolution*).

18.8 During the suspension of any Service under clause 18.6, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

- (a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause 18.6; and/or
 - (b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause 18.9.
- 18.9 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- 18.10 The Provider must indemnify the Council in respect of any Losses directly and reasonably incurred by the Council in respect of that suspension (including for the avoidance of doubt Direct Losses incurred in commissioning the suspended Service).
- 18.11 Following suspension of a Service the Provider must at the reasonable request of the Council and for a reasonable period:
 - (a) co-operate fully with the Council and any successor provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Council or members of the public; and
 - (b) at the cost of the Provider:
 - i. promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative successor provider; and
 - ii. deliver to the Council all materials, papers, documents and operating manuals owned by the Council and used by the Provider in the provision of the suspended Service.
- 18.12 As part of its compliance with clause 18.11 the Provider may be required by the Council to agree a transition plan with the Council and/or any alternative successor provider.
- 18.13 During any suspension of a Service the Provider where applicable will implement the relevant parts of the business continuity plan to ensure there is no interruption in the availability to the relevant Service.

19. CONSEQUENCES OF TERMINATION AND EXPIRY

- 19.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this clause 19.

- 19.2 The service of a notice to terminate the Agreement shall not operate as a notice to terminate any Contract. Termination or expiry of the Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 19.3 Within 30 Working Days of the date of termination or expiry of the Agreement, the Provider shall return at the request of the Council any data, personal information relating to the Council its personnel or Service Users or Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and 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 12 Months to comply with its obligations under the Agreement, or such period as is necessary for such compliance.
- 19.4 Subject to clause 19.3, in the event of termination of the Agreement by the Council neither the Council nor any other Framework User shall have liability to the Provider for any Direct Loss or Indirect Loss suffered by the Provider caused by such termination.
- 19.5 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement before termination or expiry.
- 19.6 Any provision which expressly or by implication is intended to survive or come into force on or after the termination or expiry of the Agreement shall remain in full force and effect.
- 19.7 For the avoidance of doubt where Contracts continue beyond the termination or expiry of the Agreement any provision in the Agreement which is either expressed to or by implication is intended to apply to a Contract shall survive until the Contract is terminated.
- 19.8 The Provider shall, at no cost to the Council, promptly provide such assistance and comply with such timetable as the Council, may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of the Framework Agreement. The Council shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of the Framework Agreement.

- 19.9 Such assistance may include (without limitation) the delivery of documents and data (either in its current format or in a format which nominated by the Council) including working information in relation to deliverables in the possession or control of the Provider which relate to the Framework Agreement.
- 19.10 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Council, to ensure an orderly transfer of responsibility.
- 19.11 The Provider shall take all reasonable steps and shall co-operate fully with the Council and any new provider so that any continuation in the Services is achieved with the minimum of disruption.

20. COMPLAINTS HANDLING AND RESOLUTION

- 20.1 The Provider shall notify the Council of any Complaint made by Other Contracting Bodies within two Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.
- 20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Agreement or a Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Agreement or a Contract, the Provider shall use its best endeavours to resolve the Complaint within 10 Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

21. DISPUTE RESOLUTION

- 21.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the Parties shall follow the procedure set out in this clause:
- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the relevant senior officer of the Council and a director or officer of similar authority of the Provider who shall attempt in good faith to resolve it.

21.2 In the event the senior officers identified above are unable to resolve the Dispute within 20 days of it being referred to them this dispute resolution process shall be deemed exhausted.

22. PREVENTION OF BRIBERY

22.1 The Provider:

- (a) shall not, and shall procure that the Staff and any Sub-Contractors and Sub-Contractors' personnel shall not, in connection with this Agreement and any Contract made under it commit a Prohibited Act; and
- (b) 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 Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

22.2 The Provider shall:

- (a) if requested, provide a Framework User with any reasonable assistance to enable a Framework User 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; and
- (b) within 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 Provider) compliance with this clause 22 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

22.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Framework User) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of clause 22.1 is suspected or known, the Provider must notify the Council promptly.

22.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 22, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents.

22.6 The Council may terminate this Agreement by written notice with immediate effect, and without incurring any liability to the Provider, if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 22.1.

22.7 Any notice of termination under clause 22.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

22.8 Despite clause 21, any dispute relating to:

- (a) the interpretation of this clause 22; 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.

22.9 Any termination under this clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

23. SUBCONTRACTING AND ASSIGNMENT

23.1 Subject to clauses 23.4 and 23.5 neither Party shall assign, novate or otherwise transfer any or all of its rights and or obligations under this Agreement without the prior written consent of the other Party.

23.2 The Provider shall not subcontract the whole or any part of this Agreement except with the express prior written consent of the Council.

23.3 In the event the Council permits the Provider under clause 23.2 to subcontract the Agreement or any part of it the Provider shall:

(a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

(b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; and

(c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

23.4 The Council shall be entitled to assign or novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

23.5 Where the prohibition of an assignment is caught by the Business Contract Terms (Assignment of Receivables) Regulations 2018 the Provider must notify the Council in writing where it assigns a receivable covered by this legislation.

23.6 For the avoidance of doubt the Contracts contain their own provisions to regulate assignment novation and sub-contracting of the Contracts and this clause 23 relates to the Agreement only.

24. INSURANCE INDEMNITY AND LIABILITY

24.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims; and
- (d) any other insurances relevant to the delivery of the Services including but not limited to medical based activities that form part of the Services at an appropriate and adequate level of cover.

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement and Contracts, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

24.2 The Provider shall give the Framework User, on request, copies of all insurance policies referred to in this clause **or** a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 24.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Framework User may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 24.4 The Council may require the minimum values of the Required Insurances to be increased for the remainder of the Term by notice to the Provider in writing. Such a notice shall not be sent more than once each calendar year.
- 24.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.
- 24.6 If for any period such insurance ceases to be available on commercially reasonable terms, the Provider shall forthwith inform the Framework User and shall obtain in respect of such period such reduced professional indemnity insurance cover as is available and as it would be fair and reasonable to expect the Provider to obtain and maintain in all the circumstances.
- 24.7 Any increased or additional premium required by insurers by reason of the Provider's own claims record or other acts, omissions, matters or things particular to the Provider shall be deemed to be within commercially reasonable rates.
- 24.8 The Provider shall be liable for, and shall indemnify the Framework User against, any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever and/or any loss, injury or damage whatsoever to any property real or personal arising out of or in connection with the Services, except to the extent that the same is due to any negligent act or neglect of the Framework User or of any officer or representative of the Framework User.
- 24.9 Without affecting any other clauses in this Agreement that limit or exclude liability the Provider's liability under or in connection with this Agreement shall be limited to £5 million pounds for each and every claim. This limit shall apply however that liability arises, including, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty. Provided that this clause 24.9 shall not exclude or limit the Provider's liability for:
- (a) death or personal injury caused by the Provider or its Staff or Sub Contractors negligence; or
 - (b) fraud or fraudulent misrepresentation
- 24.10 Without affecting any other clauses in this Agreement that limit or exclude liability the Council's liability under or in connection with this Agreement shall be limited to five thousand pounds in the aggregate. This limit shall apply however that liability arises, including, a liability arising by breach of contract, arising by tort (including the tort of negligence) or arising by breach of statutory duty. Provided that this clause 24.10 shall not exclude or limit the Council's liability for:
- (a) death or personal injury caused by the Council's negligence; or

(b) fraud or fraudulent misrepresentation

24.11 Where any Staff use private vehicles in the course of the provision of the Services the Provider shall ensure that such staff hold valid driving licences and have in place appropriate insurance cover.

25. VARIATIONS TO FRAMEWORK AGREEMENT

25.1 Except as set out in clause 25.2 no amendment or variation of the terms of this Agreement shall be effective unless made in writing and signed by both Parties.

25.2 The Council has a unilateral right to change the form set out in Schedule 3 provided it gives the Provider a minimum of 20 Working Days' notice.

26. THIRD PARTY RIGHTS

26.1 Except as explicitly stated in this Agreement a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

26.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

27. SEVERANCE

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Framework Agreement.

28. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

29. WAIVER

29.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No

single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29.2 Any waiver given by the Council must be in writing by the Authorised Representative of the Council and expressly state it is a waiver. Such a waiver will only apply to the event to which it is stated to relate and not to any other event whether past or futures. Only the Council may issue waivers in respect of this Agreement.

30. ENTIRE AGREEMENT

30.1 This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 30 shall operate to exclude any liability for fraud.

30.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

31. NOTICES

	Provider	The Council
Name		Procurement & Contract Manager
Address		Westmorland and Furness Council, Kendal County Hall, Busher Walk, Kendal LA9 4RQ;
Telephone Number		07825 202835
Fax Number		
E-mail address		procurement.adults@cumbria.gov.uk

- 31.1 Any notice given under this Agreement shall be in writing in the English language and delivered personally or by email or signed for post or recorded delivery post or prepaid first class post (or air mail post if to an address outside the United Kingdom) to the address set out above.
- 31.2 A notice shall be deemed to have been received:-
- (a) if delivered personally, at the time of delivery;
 - (b) if sent by signed for, recorded delivery or prepaid first class post, on the second Working Day after the date of posting;
 - (c) if sent by prepaid air mail post, on the fifth Working Day from the date of posting; or
 - (d) if sent by email, upon acknowledgement by the recipient or by the issue of a delivered receipt or similar by the recipient's system.
- 31.3 In proving service:-
- (a) by personal delivery, it shall be necessary only to produce a receipt for the notice signed by or on behalf of the Party due to receive it;
 - (b) by post, it shall be necessary only to prove that the notice was contained in an envelope which was duly addressed and posted in accordance with this clause 30; or
 - (c) by email, it shall be necessary only to produce a copy of the acknowledgement of the email from the recipient or the delivered receipt issued by the recipient's system.
- 31.4 Either Party may change its address for service by serving a notice in accordance with this clause.
- 31.5 This clause 31 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

32. AGENCY AND PARTNERSHIP

Nothing in this Agreement shall be deemed to constitute any Party the agent or partner of the other Party. No Party shall have any authority to make commitments on the other Party's behalf.

33. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)

- 33.1 Where TUPE does apply the Provider agree that it shall comply with all of its obligations under TUPE, the Acquired Rights Directive as applicable.
- 33.2 The Provider agrees to indemnify the Council against any claim howsoever arising from the application of TUPE or the Acquired Rights Directive.
- 33.3 During the term of this Agreement, the Provider shall, on request by the Council, provide the Council within 30 days, accurate and complete information (relating to all the Contracts the Provider has with the Council) as the Council deems is necessary to allow the Council or bidders to assess the application of TUPE and associated liabilities. The Provider shall warrant the accuracy of all the information provided to the Council and authorises the Council to use any and all of the information as it may consider necessary for the purposes of its business or as part of a relevant procurement exercise. The Provider shall indemnify the Council against any financial losses arising from any failure by the Provider to comply with this clause 33.3 or any differential between the information disclosed and the actual position.

34. DISCRIMINATION AND ANTI-SLAVERY

- 34.1 The Provider shall not unlawfully discriminate within the meaning and scope of any Law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age, marital status, pregnancy or maternity, gender reassignment or otherwise).
- 34.2 The Provider shall take all reasonable steps to ensure Staff and suppliers to the Provider do not unlawfully discriminate within the meaning and scope of any Law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age, marital status, pregnancy or maternity, gender reassignment or otherwise).
- 34.3 In performing its obligations under the Agreement, the Provider shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

- (c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 34;
- (d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement; and
- (e) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with this agreement; and permit the Council and its third party representatives to inspect the Provider's premises, records, and to meet the Provider's personnel to audit the Provider's compliance with its obligations under this clause 34.

34.4 The Provider represents and warrants that at the date of this Agreement it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

35. GOVERNING LAW AND JURISDICTION

35.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

35.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

EXECUTED AS A DEED by the parties on the date which first appears in this Agreement

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing the COMMON SEAL of WESTMORLAND & FURNESS COUNCIL in the presence of:-

Authorised Signatory

EXECUTED (but not delivered until the date hereof) AS A DEED by [PROVIDER] acting by:-

Director

Director/Secretary

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Schedule 1 - Order Procedure/Call Off Mechanism

Inclusion of additional providers on the Framework

- 1 This Framework is intended to be open which means that throughout the Term additional providers can be added to the current collection of providers signed up to the Framework.
- 2 The process will be as follows:
 - 2.1 The Council will offer all potential providers unrestricted, direct access by electronic means to all documents needed to apply to be added to the Framework and to any additional documents relating to the provision of the Services from the date of publication of the contract notice to the date when the Framework ends.
 - 2.2 Any potential providers will have the opportunity at any time during the Term to submit a 'request to participate' within the Framework via the Council's Portal to proceed through the Accreditation and Enrolment process. Admission into the Framework is subject to the prospective provider satisfying the Selection Criteria, passing the Council's review of the request to participate, and submitting a request to participate which complies the Council's requirements. The Selection Criteria and assessment shall be the same as those used to establish the Framework.
 - 2.3 The Council will endeavour to complete the evaluation of a request to join the Framework within 10 working days from the date of its submission or such longer period as the Council may determine

Call Off Mechanism

- 3 The Services are classified into type and geographic area. The classification of the Services is as set out in Table 1 (the Service Classification). The geographic area (as per administrative district within Westmorland & Furness) is as set out in Table 2. Providers will select which Service Classifications they are interested in delivering the Services via the Council's Portal during the enrolment stage.

Table 1 – Service Classifications (Type)

Category	Service Category	Service Template
Support at Home	Learning Difficulties	18-64
Support at Home	Learning Difficulties	65+
Support at Home	Memory	18-64
Support at Home	Memory	65+
Support at Home	Physical Issue	18-64
Support at Home	Physical Issue	65+
Support at Home	Sensory	18-64
Support at Home	Sensory	65+
Support at Home	Carer	18-64
Support at Home	Carer	65+
Support at Home	Substance Misuse	18-64
Support at Home	Substance Misuse	65+
ECT	ECT	ECT
Support at Home	Mental Health	18-64
Support at Home	Mental Health	65+

Table 2 – Service Classifications (Geographic Area)

<u>Eden</u>	<u>Furness</u>	<u>South Lakeland</u>
<u>Tier 1</u>	<u>Tier 1</u>	<u>Tier 1</u>
<u>Tier 2</u>	<u>Tier 2</u>	<u>Tier 2</u>
<u>Tier 3</u>	<u>Tier 3</u>	<u>Tier 3</u>

- 4 Where a Service User communicates to the Framework User they want a specific provider on the Framework the Framework User shall invite the identified provider to deliver the Services to the Service User. If the identified provider declines to deliver the Services or the Service User doesn't communicate a specific provider the process set out below shall be used.

- 4A Where a Framework User identifies a Requirement the Framework User may issue an invite to the Provider and to other providers on the Framework to apply to deliver the Requirement.
- 5 The Requirement will be sent via the Council's portal to all providers who notified the Council of their interest in the identified Service Classification and district area.
- 6 The Requirement will identify the time period within which providers need to submit their offer to deliver the Requirement.
- 7 If more than one provider submits an offer for the 'requirement' the Service User will be invited to select their preferred provider. In the event Service User has no preference the provider with the highest quality score will be awarded the Contract to deliver the Requirement. .
- 8 Subject to paragraph 9 below the quality score will be the score the Provider received when appointed to the Framework.
- 9 The quality score is the quality score the Provider received when applying to join the Framework. Part of this score includes points for the Provider's CQC rating. This element of the score will be adjusted during the Term to reflect any changes in the Provider's CQC rating. This score will be further modified by the KPIs in accordance with Schedule 7.
- 10 In the event that the Provider's status or compliance to any of the Selection Criteria changes throughout the Term of this Agreement, then the Provider shall inform the Council immediately and the Provider acknowledges that the Council reserves the right to, at its sole discretion, to terminate the Agreement.
- 11 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Agreement, and may perform audit checks of any such or existing Accreditation or Enrolment information.

Contract Mechanism

- 12 An Instruction Form issued by the Council shall be in the form attached as Schedule 3. Other Contracting Bodies may place an Instruction with the Provider by issuing an Instruction Form in substantially the form set out in Schedule 3 or such similar or analogous form agreed with the Provider.
- 13 Any and all Services provided by the Provider shall be subject to all the requirements, terms and conditions of Schedules 2, 4, 5 and 6 of the Agreement.

- 14 The Provider shall review the Instruction Form, alongside their offer, before either accepting/declining the Instruction. By accepting the Instruction the Provider enters into a Contract with the Framework User to deliver the Services as required by the Framework User in the Instruction Form.
- 15 For the avoidance of doubt a Contract between the Provider and Framework User is entered into once the Provider accepts the Instruction.
- 16 The price for the delivery of the Services by the Provider to the Service User shall be the hourly rate identified in the Instruction Form. This hourly rate shall match the rates given in Schedule 5 depending on whether the Service User is classified by the Framework User as being in an Tier 1, Tier 2 or Tier 3 location.
- 17 For the avoidance of doubt each Contract constitutes a standalone legal agreement between the Provider and the Framework User identified in it.
- 18 The Provider agrees and acknowledges that all transactions governed by the Contract will be processed via the Council's portal.
- 19 It is at all times the Council's sole discretion whether it will use the Framework for the provision of Services or seek provision off the Framework.

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Schedule 2 – Specification

Service Specification

Any Qualified Provider Framework Agreement for Home Care Services

**1 April 2024 to 31 March 2026
with the option of 1 extension up to a maximum of 12 months**

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1. CONTEXT

Overview

- 1.1. This Service Specification stipulates the required Service and standards of support. The specification is an integral part of the contractual arrangement and provides details of the access criteria, outcomes and performance standards by which the quality and effectiveness of the Service will be measured.
- 1.2. Westmorland & Furness Council (hereafter referred to as the Council) is committed to continue to improve home care and support services for adults with the ambition of achieving positive outcomes for all Users of the Service.

Values

- 1.3. The Council's vision is for Westmorland & Furness to be 'a great place to live, work and thrive'.

The Council's values are:

- Collaborative
- Ambitious
- Responsible
- Inclusive
- Needs-led
- Outcomes focused
- Ecologically aware

All care and support will:

- focus on improving wellbeing and quality of life;
- be person centred;
- focus on delivering the outcomes people require and maximising their independence and strengths for as long as possible;
- promote choice and control; and
- be flexible in response to people's wide ranging assessed needs. This should include forming local partnerships with families and friends, and in the statutory, independent, voluntary and community sectors.

- 1.4. **Providers are required to commit to:**

- As a priority and where appropriate to utilise the local supply chain;
- Address workforce training needs and service delivery improvements across the care sector;
- Demonstrate a positive approach to problem solving and pooling of resources to achieve common goals;
- Collaborate with the Council to promote a healthy workforce, prevent disease transmission and increase resilience across the care sector workforce and local communities.

Service User feedback

- 1.5. This Specification has been written to take account of the feedback received from Service Users and their families. Providers are required to be responsive to Service Users, as detailed in the co-production section of this Specification.

2. STATUTORY AND REGULATORY DUTIES

- 2.1. The Service provided under this contract must be provided in accordance with (but not limited to) the requirements of:
- a) The Care Act 2014
 - b) Care Standards Act 2000 (including any amendments, modifications or re-enactments)
 - c) The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, and 2022
 - d) CQC
 - e) Adult Social Care Outcomes Framework
 - f) The National Minimum Standards for Domiciliary Care
 - g) The Domiciliary Care Agencies Regulations 2002
 - h) Mental Capacity Act 2005 (Deprivation of Liberty Safeguards)
 - i) Equality Act 2010
 - j) Human Rights Act 1998
 - k) Autism Act 2009
 - l) Deprivation of Liberty Safeguards
 - m) Manual Handling Operations Regulations
 - n) Service Users' individual assessed needs and outcomes and any subsequent assessment, Care and Support Plan or review documentation
 - o) Any future legislative changes or changes to National Minimum Standards that determine the standard of care to be delivered.
- 2.2. The Provider will deliver the Services in compliance with the Care Act 2014 at all times. Further the Provider will deliver the Services in a manner that ensures the Council complies with its obligations under the Care Act 2014 so far as such obligations relate to the Services.
- 2.3. From time to time, the Councils may seek the Provider's agreement to comply with the standards and recommendations issued by any relevant professional or by the National Institute for Health and Social Care Excellence (or any other equivalent body).
- 2.4. The Provider is required to know and keep up to date with best practice in relation to the delivery of home care services.

3. SERVICE AIMS

- 3.1. A key Service aim is to support the Council's priorities identified in the Council Plan <https://www.westmorlandandfurness.gov.uk/your-council/council-documents/council-plan#priorities>.
- 3.2. The vision for the Service is to have a strong emphasis on maintaining and developing abilities and skills with a 'supporting to' rather than 'doing for' approach. There will be a focus on the principles of strengths-based practice, enablement, maintenance, recovery and self-care and on improving resilience to deal with potential health and social care needs in the future.

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4. **SERVICE REQUIREMENTS**

Minimum Provider Requirements

- 4.1. Providers who have a CQC rating of 'Inadequate' will not be accepted onto the Framework.

Cumbria based operating Office

- 4.2. Providers shall deliver the contracted home care service from an accessible full-time office which is based within a 25 miles radius of the county of Cumbria. The office must not be a residential address. Or the provider must demonstrate to the Council's satisfaction how they will support Service Users and Staff to ensure the delivery of high quality services.

On-boarding

- 4.3. Once the Provider has completed the accreditation and enrolment process (to be appointed to the Framework) , the Provider will be required to complete an on-boarding process before they may bid for packages of care.

Client Groups

- 4.4. The Service is available to adults assessed as having an eligible care and support need, including people with any or a combination of the following short or long-term conditions:

- frail / elderly
- mental health
- learning disability
- dementia
- physical disability
- sensory disability
- substance misuse
- end of life related needs
- and other people eligible for a service

Service availability

- 4.5. The Provider will ensure that the Service is available every day of the year operating from **07.00 hours to 23.00 hours.**

- 4.6. On occasions Providers may be requested to deliver care or waking night support between 23:00 and 0:00 hours, depending on the individual needs of a Service User (for example, to provide tracheostomy and ventilatory support). This will be discussed at the on-boarding meeting.

Service eligibility

- 4.7. The Service Users will be:

- adults (18 years or over); and
- on occasion young people aged 16 – 18 years as requested by the Council who are in transition from Children's Services to Adult Services.
- ordinarily resident and living in Westmorland & Furness, and identified by the Council as being eligible to receive part or all of the Services

Accessing the Service

- 4.8. The Service will be accessible by Service Users who have been referred to the Provider by the Council. Unless otherwise agreed in writing between the Council and the Provider, for a referral to be valid, it must have been made by either:

- a) An ASC Practitioner or other person within the Council, as notified to the Provider from time to time by the Council; or
- b) The Urgent Care Team
- c) Any other person authorised by the Council.

4.9. The Council will provide to the Provider with each referral:

- a) An Instruction Form
- b) Support Plan; and A Medication Order Form – where support with medication or health tasks is required.

4.10. Each Service User's SPO and Support Plan will include details of:

- a) any key contacts;
- b) the Service User's General Practitioner;
- c) any risk factors;
- d) the outcomes to be achieved specific to the Service User;
- e) a Personal Budget within which to meet the outcomes;
- f) any defined health related tasks required as having been assessed by a health professional;
- g) the nature and extent of support and/or assistance required by the Service User to manage their medication; and
- h) any arrangements in respect to the storage, collection or access to the Service User's medication in their home.

Support Plan

4.11. The Provider is required to develop a Support Plan with the Service User (and their family or Nominated Representative where necessary). The Service User should contribute to the Plan, which should take into account their personal preferences.

4.12. The Support Plan will provide in detail how the outcomes specified in the Support Plan will be met.

4.13. Whilst developing the Support Plan, the Provider will ensure that:

- a) the plan focusses on individual Service User strengths and directs support to prevent escalation. Providers must link with local community based services;
- b) the plan must take into account the personal preferences of the Service User (e.g. food and beverages, daily routines, activities)
- c) the plan is person centred and outcome focused and supports the Service User to be independent. The Service User must be in control of their own support.
- d) Support should be strengths based, promoting 'ability' not 'disability';
- e) Works with the individual to support their individual cultural needs and beliefs;
- f) the views and preferences of the Service User are taken into account and reflected appropriately;
- g) the Service User is easily able to find key contact details;
- h) the Service User knows how to raise a safeguarding concern;
- i) they support the Service User to consider a range of support to meet their outcomes, including the use of Assistive Technology and community prevention services, and other universal / mainstream local support.

- j) they provide a full range of activities to meet the outcomes specified;
 - k) any activities are flexible in order to meet the changing needs of a Service User on a day to day basis;
 - l) nutrition and hydration are adequately dealt with;
 - m) support with medication is carried out as stated on the SPO;
 - n) it is formulated in a manner that simultaneously seeks to manage any risks in the delivery of the Services;
 - o) it is responsive to contingency planning for the Service User as future need arises in working with the Council as requested; and
 - p) they consider the best use of resources.
- 4.14. The Provider will ensure that the Support Plan produced is signed by the Service User or their Nominated Representative and that the Service User is provided with a copy.
- 4.15. The Provider will work with the Council on Promoting Independence Reviews as identified in the Support Plan.
- 4.16. The Provider will have robust procedures for and will carry out reviews of the Service being delivered as the Service Users individual needs change and must notify the Councils front line staff, of any significant change in levels of need.
- 4.17. The Support Plan will be reviewed at least every 12 months.

Care Visits and Support Tasks

- 4.18. Typical care that Service Users receive includes, but is not limited to:
- support with personal care;
 - moving about
 - getting out of bed
 - washing
 - dressing
 - support with other essential daily living activities as required.
 - support to access and maintain
 - emotional health and wellbeing
 - physical health and wellbeing
 - nutrition and hydration
 - medication (medication support)
 - toileting/hygiene
 - safe habitable home environment
 - access to digital and assistive technology
 - maintain family and other personal relationships
 - engage in work, training or education
 - social and recreational activities stipulated in the Support Plan
 - assisting with shopping, including accompanying to the shops
 - attendance at day services and any appointments to support the Service Users health and wellbeing
 - making use of facilities or services including transport or recreational activities carrying out caring responsibilities the adult has for a child.

- accessing information on health related matters e.g.
 - encouraging uptake of influenza and pneumococcal vaccinations,
 - assistive technologies
 - other preventative treatments or schemes.
- 4.19. The Provider will use the Technology and/or another system as directed by the Council.
- 4.20. Care visits will be commissioned based on the assessed needs of the individual and will be recorded in multiples of 15 minutes. It is recognised that 15 minute visits may be appropriate in some instances, however, where possible these should only be delivered as part of a wider package of support.
- 4.21. Visit times will be negotiated and agreed with the Service User at commencement of the package.
- 4.22. Visit times may be changed at the request of and in agreement with the Service User.
- 4.23. The Provider will ensure that support is delivered at the time agreed with the Service User as set out in the Support Plan. The Provider will have systems in place to inform the Service User of any delay on the part of the Provider to deliver support regardless as to how minimal any such delay is regarded by the Provider.
- 4.24. The Provider will notify the Service User in advance, if there is a change to the usual Staff member providing the Service. If alternative Staff are assigned to a Service User they must be appropriately trained and briefed in full with respect to the care and support required by the Service User.
- 4.25. Visits made 30 minutes before/after the agreed time will be defined as an early or late call for monitoring purposes.
- 4.26. Non-attendance or visits made 90 minutes before/after the agreed time will be defined as missed visits for monitoring purposes.
- 4.27. Providers are expected to arrange care rotas to minimise travel time. Care staff must be given sufficient paid time on shift to travel to/from/between care calls. Any costs incurred travelling between visits are the responsibility of the employer

Urgent Notifications

- 4.28. With the occurrence of any of the following, the Provider will exercise an Urgent Notification Procedure:
- a) a significant event that affects the wellbeing of a Service User, such as an accident, personal injury, death of a partner or close family member;
 - b) any safeguarding concern arising;
 - c) a Service User's condition suddenly deteriorates, necessitating an urgent review;
 - d) the Service User displays any unusual or unexpected challenging behaviour, whether verbal, physical or sexual;
 - e) a Service User has an unplanned emergency admission to hospital;
 - f) circumstances where a Service User appears in need of medical attention but refuses to seek help;

- g) a Service User's condition deteriorates over a longer period necessitating the need for a review, for example, questionable mental capacity, diminishing mobility etc;
 - h) a Service User or Carer refuses to grant access or receive the Service in accordance with the Support Plan;
 - i) a Service User refuses to accept intervention;
 - j) risks are identified that do not stem from abuse, for example risk from fire, alcohol, self-neglect, increasing frailty; or
 - k) any other event which the Provider deems to constitute an emergency.
- 4.29. Following the occurrence of one of the matters listed above, the Provider will:
- a) contact the ASC Practitioner or Urgent Care Team (as appropriate in consideration of the operating hours) via telephone and / or the Care Portal on the same day, if the Provider deems that there is an urgent and/or immediate need for action to be taken in order to protect the Service User or remove them to a place of safety immediately or;
 - b) contact the ASC Practitioner by the Care Portal the next Working Day in all other cases.
- 4.30. The telephone number to be used to contact the Urgent Care Team (outside normal office hours) is 01228 526690.
- 4.31. ASC Practitioners should be contacted via the Local Adult Team during normal office hours, or as otherwise updated by the Council and published on the Council's Website. The Provider will be responsible for ensuring they are aware of and can easily access any updated number.
- 4.32. The Provider will ensure that any Urgent Notification is sent to the Council in writing via the Care Portal within 24 hours from the time that the ASC practitioner or Urgent Care Team was contacted by telephone, or when it was decided that the ASC Practitioner should be notified the next Working Day instead

Communication

- 4.33. Good communication is essential in ensuring the delivery of quality, safe, effective and well led care. Providers should tailor the nature and frequency of their communication when connecting with individuals. This will be key to establishing and maintaining good relationships, identifying preferences, recognising issues and arriving at solutions.
- 4.34. The Provider will:
- a) Discuss communication with Service Users at the outset of each new package of care and establish individual arrangements, which will be regularly reviewed and updated thereafter. Where a Service User lacks capacity, the Provider must work within the principles and guidance of current relevant legislation.
 - b) Where Providers consider additional time is required to meet the needs outlined in the Care Plan or if the needs change over time then the Provider should inform the relevant Social Work Team as appropriate.
 - c) Provide information and support to Carers about reporting incidents to supervisors, and how to seek advice on how to respond appropriately when incidents occur.
 - d) Inform the Council immediately where a Service User; refuses/cancels provision of the commissioned service, is admitted to hospital, dies.

- e) Inform the Council immediately where abuse or neglect is suspected.
 - f) Inform the identified commissioning lead immediately if they receive a CQC rating of Inadequate.
 - g) Where an existing provider is down-rated to 'Inadequate', the Provider must email an action plan to the identified commissioning lead within 5 working days, to assure that existing packages of care are safe.
 - h) If the Provider receives a CQC rating of 'requires improvement' or 'inadequate' the Provider will email an improvement plan to the identified commissioning lead within 5 working days of CQC notification.
 - i) As part of multi-agency – partnership working arrangements, raise concerns about a Service Users health (with consent of the Service User). This includes making referrals to GPs, Community Nursing Teams or other Allied Health Professionals and collaborating with other care providers
 - j) Work collaboratively with Assessing Professionals, Service Users and their representatives to resolve issues and prevent care packages from being handed back. The Provider must also refer to the Business Continuity and Business Failure sections of this Specification.
 - k) Foster and maintain positive relationships with the Council including Commissioners, Brokers, the Purchasing Team and others involved in delivering support to Service Users including, but not limited to: families/representatives; unpaid Carers; Social Work Teams; GP Neighbourhoods; Community Nursing Teams and Palliative Care Teams.
 - l) Work collaboratively offering appropriate levels of support to ensure effective safe and responsive day-to-day running of the Service in conjunction with the Council and will act, to reduce or remove obstacles that may arise in the course of delivering the Service.
- 4.35. Engage with other Providers to identify and address workforce needs and positively participate in joint service improvement planning and development with partner organisations; including but not limited to Provider Forums and the local Health and Social Care Academy.

Information to Service Users

- 4.36. The Provider will ensure Service Users and their Carers or Nominated Representative, are kept fully informed on issues relating to their care and support at all times.
- 4.37. From the outset of each new care package, Providers must agree appropriate methods of communication with individual Service Users and ensure they are kept informed, updated and are given clear information about:
- a) Arrangements for day to day communication between the Service User and the Care Provider
 - b) What to do if care doesn't happen as planned (including out of hours telephone contacts)
 - c) What to do if I am unhappy or have a question or concern about my care (including who to contact, address and telephone number)
 - d) Safeguarding and how to raise a safeguarding concern

- e) How to raise, complaints, comments and compliments

Flexible and person centred services

- 4.38. Person Centred Home Care is defined as practical, personal, social and emotional support associated with ordinary living that a person might usually perform him/herself or with support of a friend or relative.
- 4.39. The Provider will deliver Services which are person centred and work flexibly to address the needs of individual Service Users to ensure outcomes of Support Plans are met.
- 4.40. The Provider will address the needs of Service Users holistically, value difference and ensure the social, cultural and religious needs of Service Users are acknowledged and addressed. It will work to sustain the support offered to them by their Carers and Representatives and their local communities

Promoting Independence

The Provider will:

- 4.41. Work with Service Users to set individualised goals and targets, to enable them to manage their own care wherever possible. Individuals receiving care services must be supported to have greater control over their lives and supported to remain as independent as possible in their own homes.
- 4.42. Support adults to achieve their individual potential, maintain their resilience, health and independence and improve their quality of life. The Service will arrange to deliver support in accordance with the commissioned care plan to meet the eligible person's needs.
- 4.43. Work with the Council on Promoting Independence Reviews as identified in the Support Plan.
- 4.44. Work with Individual Service Users to support digital and assistive technologies to enhance care packages and to promote independence for individual Service Users.
- 4.45. Have robust procedures for and will carry out reviews of the Service being delivered as Service User's individual needs change and must notify the Council's front line staff of any significant change in levels of need.

Support Service Users' wellbeing

- 4.46. Wellbeing is defined as follows in line with Care Act guidance:
- personal dignity (including the way people are treated and helped)
 - physical and mental health and emotional wellbeing
 - protection from abuse and neglect
 - control over day to day life (including making choices about the way care and support is provided)
 - participation in work, education, training and recreation
 - social and economic wellbeing
 - domestic, family and personal relationships
 - suitability of living accommodation the individual's contribution to society

- 4.47. Where the Care Worker discovers that a Service User is absent from their home, or the Provider is unable to gain access to the home (for any reason) they are required to notify the SPA with immediate effect.

Safeguarding and Mental Capacity procedures

- 4.48. Providers will act to protect vulnerable adults and initiate appropriate Safeguarding and Mental Capacity procedures as necessary. Service Users must always be placed at the centre of all home care activities and decisions about how their care is delivered.
- 4.49. The Provider will have robust procedures in place for safeguarding Adults at Risk and responding to concerns (including “whistle-blowing”) of abuse/neglect to ensure the safety and protection of customers.
- 4.50. The Provider’s procedures will reflect the Cumbria Safeguarding Adults policy. The provider will ensure a copy of the Cumbria Safeguarding Adults policy and procedures is available and accessible to all staff.
- 4.51. The Provider’s employees will follow the procedure set out in the Cumbria Safeguarding Adults policy immediately if they suspect that a Service User or otherwise dependent person has suffered any form of abuse or is otherwise thought to be at risk.
- 4.52. The Provider will clearly display in formats accessible to all Service Users, staff and visitors what they should do to report any suspected abuse.
- 4.53. Preventative practice will be in place to support safeguarding, including employment, management and security of the environment.
- 4.54. The safety and wellbeing of the Service User will be paramount and in the event that the alleged abuser is a member of staff or a volunteer, action will be taken immediately to ensure the protection of Adults at risk(s) from the possibility of further abuse while an investigation is carried out.
- 4.55. The Provider will co-operate fully in any safeguarding enquiries and comply with any agreed requirements of a safeguarding/risk management plan which may include a referral by the provider to the Disclosure and Barring Service Failure to comply with procedures or outcomes/actions from safeguarding enquiries may be regarded as a fundamental breach of the Framework Agreement.
- 4.56. Training in Safeguarding, including whistleblowing, will be explicitly included in the induction and ongoing training for all staff employed by the provider and updated every three years.
- 4.57. The Registered Manager will attend specific and appropriate Manager’s safeguarding training to enable them to provide leadership and oversight.
- 4.58. The Provider will ensure that systems are in place protect Adults at Risk in accordance with the legal requirements of the Mental Capacity Act (2005).
- 4.59. The management practices of the Provider ensure controls will be instigated to protect victims of alleged abuse/neglect from alleged perpetrators during investigations.
- 4.60. The Provider will ensure whistle-blowers are protected from adverse treatment.

Co-production

- 4.61. The Council is committed to co-production and Providers will be a key partner.
- 4.62. Providers will support the Council so users of the Service have a say in the services that they receive and the support that they need.
- 4.63. Providers are required to ask Service Users, their families and representatives to complete a short, anonymised survey (which will be made available to Providers during the on-boarding process) to rate the quality of care delivered, at least every 6 months.
- 4.64. Providers will ensure the Service Users and their families have a voice in the development and running of the Service and Providers will produce evidence of co-production and subsequent service improvements at contract monitoring visits and the annual service review. Anonymised results must be made available to the Council.
- 4.65. The Council is committed to working closely with people who use home care services. The following requirements have been developed in line with feedback received in July 2023 from Service Users, their carers and families and are key measures of success in terms of service delivery. Providers must support Service Users to:
- Contribute to their care plan and have control over their care
 - Be independent in their own home
 - Build resilience and maintain their wellbeing at home
 - Feel safe and remain active for as long as possible
 - Give regular feedback.

In addition, Providers must:

- Treat Service Users and their carers and families with dignity and respect
- Treat each Service User as an individual
- Focus on strengths, not incapacity
- Deliver consistent high quality care
- Ensure continuity of carers
- Arrive on time as planned and inform Service Users and the Council in advance of any unplanned changes to their care
- Use fully trained staff.

Digital Records

- 4.66. The Council expects the Provider to work towards having digital social care records and to be compliant with the requirements set out by the Department of Health and Social Care in relation to Digital Records.

5. STAFFING REQUIREMENTS

Recruitment and selection

- 5.1. The provider must meet all CQC standards in relation to recruitment and selections.
- 5.2. The Provider will ensure that their staff recruitment and selection procedure as a minimum:
- 5.3. Takes all reasonable steps to ensure that individuals employed, including volunteers, those appointed through an agency and workers from other countries, are in all respects appropriate persons to work with vulnerable people.
- 5.4. Staff and volunteers will go through a full recruitment process including completion of an application form which provides complete employment history, and addresses any gaps in employment history.
- 5.5. Ensure staff who are required to obtain permission to work in the United Kingdom either directly or through an agency meet the legal entry requirements, that they have the necessary skills, expertise and qualifications required and all necessary and relevant documentation is available prior to employment, copies of which must be evidenced in their personal file for inspection and monitoring purposes.
- 5.6. When recruiting staff and volunteers, the Provider will ensure that at least two appropriate written references are taken up one of which must be from the individual's last employer, and will demonstrate the means by which the suitability of all staff has been assessed. Where the reference provided only gives dates of employment the Provider must demonstrate that all attempts have been undertaken to ensure a safe and robust system of recruitment. A written policy and procedure will be in place to reflect this practice.
- 5.7. Ensure that all staff and volunteers have a current Disclosure and Barring Service check at the appropriate level in accordance with the Safeguarding Vulnerable Groups Act 2006 requirements.

Induction, training and supervision

- 5.8. A manager will be appointed that is registered with the CQC or has applied to be registered with the Commission within three months of commencement of employment. The Manager will hold a qualification or be working towards QCF Level 5 Diploma in Leadership in Health and Social Care within three months of appointment and completed within two years.
- 5.9. Staff supporting the Service in a caring role will meet CQC minimum training standards.
- 5.10. Upon appointment all care staff must as a minimum successfully complete the following before delivering unsupervised care:
 - Induction training (including Code of Conduct)
 - Care Certificate
 - Manual handling training
 - Safeguarding training
 - Medication Policy training
 - All competency checks

5.11. All care staff must complete a 6 months' probation period

5.12. Care staff must complete the following mandatory competencies annually:

- IPC work book and questions
- Manual Handling in house training and competent checks.
- Medication competent checks annually signed off by a supervisor doing observations
- Safeguarding passport annual training in house by a supervisor.
- Emergency first aid training
- Food Safety training
- Oral health training
- Equality and diversity training
- Mental Capacity Act
- Appropriate record keeping
- Data Protection and information security

5.13. The Provider must ensure that all staff access learning and development opportunities which enable them to meet the needs of all those using the Service. The learning requirements of staff should therefore go beyond the level of induction and include (but not limited to):

- Dementia care
- Contenance care
- Communication
- Skin care
- Combating loneliness and isolation
- Dignity in care
- Safeguarding adults
- LGBTQ+ awareness
- The Mental Capacity Act 2005 and consequent deprivation of liberty safeguards
- End of life care
- Challenging behaviour
- Falls prevention
- Working with carers
- Strokes
- Assistive technology
- Faith and cultural awareness
- The Equality Act 2010

- 5.14. Providers must ensure that care staff have training to support Service Users who may be at risk of experiencing poor outcomes due to inequalities in access to and provision of services.
- 5.15. In order to provide personalised support, Providers must ensure that staff receive a personalised training plan which takes into account local culture, behaviours and beliefs and should include regional food and dishes, dialects, colloquialisms, customs and celebrations.
- 5.16. Providers and their staff must work in accordance with the Skills for Care Code of Conduct for Healthcare Support Workers and Adult Social Care Workers.
- 5.17. Staff attend regular supervision at a minimum of every 3 months, which should be recorded and evidenced. The staff member and supervisor should each have a copy of the supervision record.

Specific staff attributes

- 5.18. Staff must have the personal qualities and caring attitudes which enable them to relate well to Service Users and carers, and possess the required skills in spoken English, written literacy and numeracy to do the tasks required for caring for and supporting Service Users.
- 5.19. Staff must be professional at all times and should not engage in any activity or behaviour, which may be detrimental to the interests of the Service User or the Commissioning Council.
- 5.20. Staff should maintain confidentiality and must not accept gifts or gratuities or take/borrow money or other items from Service Users. Certain small gifts such as chocolates or a bunch of flowers may be permitted, however these MUST be recorded in the Service Users care record and reported to the Registered Manager on the same day/next working day.

Inclusivity and diversity

- 5.21. There is no restriction as to the sex, gender or ethnic group of home care support staff. The Council expects all care staff to be treated with kindness and respect and will not tolerate abuse of staff.

Agency staff

- 5.22. Providers employing agency staff will obtain a staff profile prior to commencement of the employment. This will include photographic ID, relevant skills and competencies for the position, qualifications, professional registration and an up to date training record.

Personnel files

- 5.23. Providers will maintain a personnel file for every employee which evidences all required documentation for inspection and monitoring purposes. Such documentation will include evidence of a written record of interview to demonstrate the applicant's suitability for the post, evidence of training and competency.
- 5.24. The Provider will ensure that identification is carried by Staff at all times and must show:
 - A photograph of the Staff member;
 - The name and signature of the Staff member;

- The name of the Provider and a telephone number that can be used to verify this information; and
- Expiry Date.

Planning and Management

- 5.25. The Provider is responsible for planning work rotas to ensure that sufficient time is allowed for Staff to travel in between calls.
- 5.26. The Provider must comply their responsibilities in relation to the Working Time Directive.
- 5.27. The Provider will ensure care staff do not work excessive hours and that shift patterns allow care staff to take adequate rest breaks.
- 5.28. Providers will take reasonable steps to understand whether staff are employed by another employer.
- 5.29. The Provider will ensure there is appropriate managerial and supervisory capacity to manage all packages of care. The Provider will provide evidence of this for contract monitoring purposes to the Council upon request.
- 5.30. The Provider will have appropriate staff and management resources available to deliver and manage the Service, and to meet changing needs of the Service User during the Service delivery hours.
- 5.31. The Provider will match the requirements of the Service User with the most suitable Staff and ensure there is continuity in relation to the Staff who provides the Service to each Service User.
- 5.32. The Provider will ensure a continuity of approach between day and night Service Delivery.
- 5.33. The Provider will advise the SPA team (or out of working hours, the Urgent Care Team) of any scheduled visits that are missed or cancelled by the Provider; or that are cancelled by a Service User including those where Staff are refused entry by a Service User.
- 5.34. The Provider will conduct regular reviews of staffing levels and resources especially at times of increased demand to include winter pressures, bank holidays and school holidays.

Provider monitoring and procedures

- 5.35. The Provider will implement and maintain a robust and auditable system to enable the Council to monitor the performance of the Provider. The Provider will supply the Council with accurate data regarding the actual delivery of ordered hours to the Service User(s). The Council may use this data for the purpose of charging or providing statements to Service Users and for payment or reconciliation of payment to Providers.
- 5.36. The Provider will have clear and robust procedures for dealing with emergencies. The Provider will ensure that Staff are aware of these procedures, in particular for summoning assistance in an emergency, including a medical emergency, and that any concern for the safety or well-being of the Service User is reported without delay to the Council.

- 5.37. The Provider will ensure that all Staff are issued with a 'Code of Conduct' which describes the standards of professional conduct and practice required of them. The Standards within the 'Code of Conduct' must adhere to the standards contained within the General Social Care Council's (GSCC) code of practice for social care workers.
- 5.38. Providers will notify the Adult Safeguarding team immediately if any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a criminal conviction or whose previous convictions become known to the Provider (or any employee of a sub-contractor involved in the provision of the Services).
- 5.39. The Council acting reasonably will be entitled to require the Provider to remove immediately from the provision of the Service a named member of Staff. The Provider will have the right to make representations to the Council concerning such person. After taking any representations into account, the Council will be entitled to confirm, revoke or vary its decision.
- 5.40. The Provider will pay for the cost of travel time, travel costs and essential equipment including; uniforms, protective gloves/aprons, mobile phones/apps or other essential items required to deliver care. All time at work will be paid time, including training.

Partnership working

- 5.41. The Provider will work in partnership with all Service Users, social care and health practitioners and family/friends that are important to Service Users.
- 5.42. The Council acknowledges Providers as equal stakeholders in the planning, delivery and monitoring of care and requires Providers to participate in multi-disciplinary and partnership meetings when necessary.
- 5.43. Providers will be required to develop strong partnerships and interdependencies with other Providers delivering Home Care.
- 5.44. Providers must be able to anticipate and respond effectively to emerging priorities and be prepared to work collaboratively with the Council, both North East and North Cumbria ICB and Lancashire and South Cumbria ICB and other local partners to deliver service improvements and drive positive transformation of care services.
- 5.45. The Provider will attend local meetings and forums as requested by the Council such as for contingency planning arrangements for winter resilience.
- 5.46. Provider will co-operate with the Council where contingency plans require a joint response to interruptions, including reasonable requests for information.
- 5.47. The Provider will be innovative and creative in developing partnerships with potential sources of support for Service Users including Carers, family and friends and their local and wider communities; and in the statutory, independent, voluntary and community sector organisations, for example GP surgeries, local hospices, District Nurses, physiotherapists.

Business Continuity

- 5.48. Where the Provider is temporarily unable to deliver care or needs to temporarily cancel planned care, for example due to extreme weather conditions or unexpected staff illness, the Provider must:
- a) make every effort to adjust their rotas to maintain service delivery;
 - b) report to the Council SPA contact as a priority (same day / next working day).
- 5.49. Where the Provider identifies emergency or temporary one off increases in care required to meet a specific urgent need, the Provider must report to the Council SPA contact as a priority (same day / next working day). An authorised Assessor will review the case and details of the change will be recorded for invoicing and payment purposes.
- 5.50. Providers are required to have robust business continuity plans which cover short and longer term losses (including; staff, business premises, information and communication technology) describing how service delivery will be maintained at all times. Contingency arrangements must:
- a) cover periods of increased demand, activity, absence, illness, recruitment pressures, inclement weather and any other operating risk;
 - b) Ensure continuity of support to individual Service Users.

Business Failure

- 5.51. The Provider will notify the Council SPA as a priority where they are at risk of “Business Failure” (meaning an event such as the appointment of an administrator, the appointment of a receiver or an administrative receiver). The Provider will cooperate fully with all parties identified by Council.
- 5.52. The Provider will notify the Council where there is a risk of “Service Interruption” to the whole of the regulated activity, meaning an imminent jeopardy and there is no likelihood of returning to a “business as usual” situation in the immediate future, leading to the need for joint action by the Council and the Provider. The Provider will cooperate fully all parties identified by Council.

Social Value

- 5.53. The Provider must ensure that travel is kept to a minimum within the zone(s) in which they operate, so reducing the carbon footprint.
- 5.54. The Provider must consider employment needs within their local community when recruiting and selecting staff and as such must give consideration to how their recruitment processes support the local economy.
- 5.55. The Council encourages Providers to pay the real Living Wage.
- 5.56. The Provider is encouraged to adopt work practices which improve staff wellbeing, support staff to maintain good health (both mental and physical) and reduce absenteeism due to ill health.

6. REFERRAL PATHWAY & ALLOCATION OF CARE HOURS REQUIREMENTS

Referrals

- 6.1. Providers may bid for packages of care via the Council's brokerage system. The Council will evaluate bids within 24 hours of the opportunity being advertised. If no suitable offers are received within this timeframe, the Council will evaluate subsequent offers in the order they have been received.
- 6.2. Once a Provider has been allocated a care package, the Council will forward appropriate information to enable the provider to develop their own holistic, person centred care plan to meet the individual's preferences and care needs.
- 6.3. The Provider will liaise with other stakeholders, e.g. GP surgery, hospital discharge services, Brokerage, ASC, District Nurses to support timing assessments and the safe discharge of Service Users from Hospital, to develop the individual's care plan.

Key Contacts

- 6.4. The Council will confirm relevant key contact information for each individual package of care.

Response Times & Prioritisation

- 6.5. Once a Provider has been allocated a care package, they are required to meet response times in relation to delivery as indicated by the Council's portal system.

Allocation of Care Hours

- 6.6. The Council will:
 - Allocate critical cases (for example; end of life care) swiftly
 - Provide details about the location (post code area), level of rurality, number of hours, number of carers required, priority level – Critical/Urgent/Planned of care packages / hours for allocation
 - Provide information from the Service User's Care Plan detailing the type and frequency of care required including relevant and proportionate information with the Care Provider
 - Work collaboratively with Providers to overcome obstacles to picking up care packages/hours for example; travel time, parking, allocated time, complex or challenging behaviours etc.
- 6.7. The Provider will:
 - Allocate critical cases (for example; end of life care) swiftly, by liaising with the Council
 - Promptly allocate referrals for care packages / hours in the allocated zone/s.
 - Provide responses in relation to all advertised care packages via the Website, prioritising critical and urgent cases
 - Maintain frequent and regular contacts with the Council indicating service capacity levels
 - Share relevant and proportionate info with the Council about the delivery of individual care services
 - Work collaboratively with the Council and other Providers to meet the needs of Service Users, overcome obstacles to picking up care packages/hours for example; capacity pressures, travel time, parking, allocated time, complex or challenging behaviours etc.

- 6.8. Care packages / hours will be offered to Providers appointed to the Framework and who have completed the on-boarding process. The Council reserves the right to source care hours via an alternative care Provider/s in the event that:
- The Service User exercises choice over their Provider (as defined by the Care Act 2014)
 - Provider/s cannot meet the identified needs
 - A care package cannot be allocated by the Provider/s within essential timeframes
 - Operational necessity to meet statutory requirements.
- 6.9. If a Provider has not delivered any care packages within a 6-month period, the Council will require the Provider to submit additional documentation to give assurance that provisions are in place to deliver a high quality service which meets the conditions of this Specification.

Increases / Decreases / Cancellations of Allocated Care Hours

- 6.10. The Provider may request an increase / decrease / cancellation in commissioned care hours by contacting the SPA.
- 6.11. However, the Provider should always discuss any proposed changes to planned care with the relevant Social Work Team. On such occasions, it may be necessary for an authorised assessor to carry out a review of the person's need/s, in discussion with the Service User and their family or representative. The Provider should request written confirmation before implementing a change to the care package, except in situations where there is an urgent need for care.
- 6.12. Where the Care Worker discovers that a Service User is absent from their home or the Provider is unable to gain access to the home (for any reason) they are required to notify the SPA with immediate effect.

Hospitalisation

- 6.13. Where a Service User is admitted to hospital, the Council may continue to pay the Provider for a period of up to 2 weeks while the Service User remains in hospital. This may be extended, in which case the Provider is required to work flexibly to support the Council to manage individual Service User circumstances.
- 6.14. The Provider will be required to invoice the Council for the hospitalisation payment.
- 6.15. The Provider will be required to support the hospital discharge process and participate in any care reviews.
- 6.16. The Provider will work in partnership with health and social care professionals to support the Service User to return home.
- 6.17. During the hospitalisation period, the Provider will work flexibly with the Council to address other priorities, including unmet need. This may include but is not limited to: temporarily reallocating resource elsewhere, undertaking assessment of the Service User prior to discharge from hospital, undertaking tasks in preparation for discharge e.g. shopping.
- 6.18. Where a Service User is discharged from hospital within 2 weeks of admission, the Council will notify the Provider when the care package is due to restart. The Provider will guarantee

to restart the existing care package within 24 hours of the Service User being discharged. The Council may recover hospitalisation payments made to the Provider where the Provider does not restart the package of care within 24 hours of the discharge.

- 6.19. If the Service User has identified additional needs following hospitalisation, the Provider will work with the Council to meet those needs.
- 6.20. Where an assessment identifies increased support, the Provider will continue to deliver the original care package until a new package is recommissioned.
- 6.21. Where an assessment identifies a reduction in support, the Provider will continue to deliver the original care package until a new package is recommissioned.
- 6.22. Where a care package is handed back, the Provider will work with the Council to ensure a smooth transition. The requirements and timeline for transition will be determined on a case by case basis.
- 6.23. The Council may give notice to the Provider that they will not make a hospitalisation payment.
- 6.24. If the Service User is admitted to hospital as a result of a serious incident meaning that they will remain for longer than 2 weeks, the Council will not make a hospitalisation payment. The provider may make a request to the SPA to transfer the resource to meet identified need elsewhere.

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7. QUALITY ASSURANCE & CONTRACT MANAGEMENT REQUIREMENTS

- 7.1. The Council reserves the right to use a range of resources to manage and understand the quality and standards of commissioned services including: Provider compliance with professional standards, Provider self-audit, performance information and outcomes measures.

Contract Management

- 7.2. The Council will monitor the performance of this Contract through:
- a) **Key Performance Indicators (KPIs)** as set out in Schedule 7. The Provider will provide such data and information as requested by the Council to assist with the monitoring of these KPIs;
 - b) **Management Information data** as requested by the Council
 - c) **Performance visits** by the Council's Officers;
 - d) **Service User outcomes**, which will be monitored through:
 - i. Service User questionnaires (at least every 6 months);
 - ii. care management reviews; and
 - iii. an evaluation of responses to questions asked in spot check visits to Service Users' homes.
 - e) Measurement by officers of the Council to support the achievement of statutory requirements, including but not limited to the Adult Social Care Outcomes Framework (ASCOF). This may include spot check visits, results of Service User/Staff survey, discussions with Staff and Service Users and sampling Service User files.
 - f) Any other method of performance monitoring.

Annual Service Review Day

- 7.3. All Providers will be required to attend an Annual Service Review Day as part of the continuous improvement process.

Quality Assurance by Self-Audit

- 7.4. The Council requires the Provider to ensure that performance monitoring and quality assurance systems and functions are managed effectively and used as a tool to inform ongoing service improvement across the service.
- 7.5. The Council requires the Provider to have:
- a) Policies and practice which reflect current legislation and statutory guidance
 - b) Clear governance and accountability structures
 - c) Clear financial management systems
 - d) Risk analysis, business continuity planning and exit strategies
 - e) Effective resource management
- 7.6. The Provider will undertake the following monthly audits as a minimum requirement:-
- Care records, Support Plans and record keeping
 - Medicines management
 - Training

- Infection prevention and control
- Nutritional screening and support
- Tissue, skin and pressure care
- Accidents, incidents and complaints
- Hospital Admissions
- Community Alarm responses.

The Council may require access to the Provider's audits and records to identify trends and training issues. Where the Council identifies issues or concerns, the Council will require the Provider to develop an action plan and to report on progress to achieve improved outcomes.

Policies and Procedures

7.7. Providers will have as a minimum the following policies and procedures and the point the Service commences:

- a) Health & Safety Policy
- b) Safeguarding Vulnerable Adults Policy
- c) Equality & Diversity Policy
- d) Anti-bribery Policy
- e) Modern Slavery & Human Trafficking Policy
- f) Privacy, Confidentiality & Consent Policy
- g) Data Protection Policy
- h) Information Sharing Policy
- i) Financial Management and Control Policy
- j) Whistleblowing Policy
- k) Compliment, Compliments & Complaints procedures

Comments, compliments and Complaints

7.8. Providers will ensure that a Comments, Compliments and Complaints Procedure is in place, which offer the complainant the opportunity to discuss their complain tin person with those responsible for dealing with it; and requires that the Provider responds to any complaints received in a prompt, efficient and courteous manner.

Care Quality Commission

- 7.9. The Provider will be registered with the CQC at all times and will comply with any resulting requirements or regulations. Providers who are not rated 'Outstanding' or 'Good' will be required to provide assurance that services are safe.
- 7.10. The Provider will inform the identified commissioning lead immediately if they receive a CQC rating of Inadequate. The Council may choose to not allocate any new packages of care to Providers who are rated inadequate.
- 7.11. Where an existing provider is down-rated to 'Inadequate', the Provider must forward an action plan to the identified commissioning lead within 5 working days, to assure that existing packages of care are safe.

- 7.12. If the Provider receives a CQC rating of 'requires improvement' or 'inadequate' the Provider will provide an improvement plan to the identified commissioning lead within 5 working days of CQC notification.
- 7.13. The Provider will employ a CQC Registered Care Manager, who can appropriately support services, in line with CQC requirements.
- 7.14. The Provider will comply with the Fundamental Standards across all its regulated activities as set out in the Care Quality Commission (Registration) Regulations 2009 and Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The Provider will supply the Council with details of any notices issued to them by the CQC within five Working Days and will provide the Council with copies of any regulatory reports or reviews as soon as practicable following receipt by the Provider, regardless of whether they have been released to the public.

- 7.15. The Provider will adhere to the latest CQC guidance and any subsequent guidance, which sets out how providers should consider people's relationship and sexuality needs.
<https://www.cqc.org.uk/news/stories/new-guidance-addresses-relationships-sexuality-among-people-using-adult-social-care>

Adult Social Care Framework

- 7.16. The Provider will deliver Services in a manner which helps the Council to achieve the Adult Social Care Outcomes Framework (ASCOF). The performance of the Council is monitored nationally within the ASCOF. The ASCOF consists of 4 key outcome domains [refer to Appendix A]:
- Enhancing quality of life for people with care and support needs;
 - Delaying and reducing the need for care and support;
 - Ensuring that people have a positive experience of care and support;
 - Safeguarding adults whose circumstances make them vulnerable and protecting them from avoidable harm.
- 7.17. The Provider is required to act in a way which is in line with the principles set out in 'Think Local Act Personal'.

NICE Guidelines

- 7.18. The Provider will comply with the NICE Guidelines and will incorporate these into their processes and practices. Adherence to NICE guidelines and quality standards will be monitored by the Council.

8. KEY PERFORMANCE INDICATORS

Requirement 1 - Staffing and Training

KPI #	KPI	Target	Evidence
1.	<p>Before staff deliver care unsupervised care staff must as a minimum successfully complete the:</p> <ul style="list-style-type: none"> • Induction training (including Code of Conduct) • Care Certificate • Manual handling training • Safeguarding training • Medication Policy training • All competency checks 	100%	Random dip sample of files (including training logs and competency assessments)
2.	Care staff must complete the mandatory competencies detailed in Specification, annually and receive a personalised training plan which takes into account local culture, behaviours and beliefs.	100%	Random dip sample of files (including training logs and competency assessments)
3.	Regular and appropriate supervision should be available to every support worker, which should include a 1:1 at a minimum of every 3 months, which should be recorded and evidenced.	100%	Random dip sample of files (including training logs and competency assessments)
4.	The Manager is registered with the CQC or has applied to be registered with the Commission within three months of commencement of employment. The Manager will hold a qualification or be working towards QCF Level 5 Diploma in Leadership in Health and Social Care within three months of appointment and completed within two years.	100%	Random dip sample of files (including training logs and competency assessments)

Requirement 2 – Meeting needs and outcomes

KPI #	KPI	Target	Evidence
5.	Each Service User has a personalised Support Plan that they (or their family or Nominated Representative) has contributed and signed.	100% of Service Users	Feedback from Service Users or their Nominated Representative
6.	Each Service User's ongoing health and social care needs are recorded and maintained in their Support Plan	100% of Service Users	Feedback from Service Users or their Nominated Representative
7.	Service Users report that the needs and outcomes specified in their Support Plan have been met.	100% of Service Users	Feedback from Service Users or their Nominated Representative

Requirement 3 – Delivery and continuity of care

KPI #	KPI	Target	Evidence
8.	All care visits are delivered within 45 minutes of the scheduled call (excluding calls refused or cancelled by Service Users)	100%	Random dip sample of files Feedback from Service Users

Requirement 4 – Service users are safe and protected from harm

KPI #	KPI	Target	Evidence
9.	Care staff are aware of all aspects of Safeguarding so Service Users are safe and protected from avoidable harm	All Safeguarding issues are reported	Providers will notify the Council of all serious incidents Providers will notify the Council of all Safeguarding incidents Random dip sample of files Feedback from Service Users

Requirement 5 – Providers co-produce services

KPI #	KPI	Target	Evidence
10.	Providers deliver a Service which is responsive to feedback and embeds continuous learning	Providers ask 100% Service Users, their families and representatives to complete a short survey to rate the quality of care delivered, at least every 6 months.	Survey results forwarded to Council Commissioners on a quarterly basis, with evidence to show continuous learning

APPENDIX 1 - DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation identified within the Framework Agreement and outlined in this clause below apply in this Service Specification.

ASC: means Adult Social Care.

Advocate: means someone who takes action to help Service Users say what they want, secure their rights, represent their interests and obtain services they need, on an independent, impartial, and confidential basis.

Aids to daily living: means self-help devices or equipment that assist people with disabilities in daily living activities such as dressing, personal hygiene, bathing, home maintenance, cooking, eating etc.

Assistive technology: means the broad heading for a range of assistive, adaptive and rehabilitative devices for people who live independently. This includes Telecare alarm systems.

Capacity: means the ability of individuals to make rational thoughts and decisions.

Carer: means a nominated representative or other person who provides care and or support to the Service User on an informal/unpaid basis; often a family member.

CQC: means the Care Quality Commission which is the regulatory body for home care agencies (and care homes) governing the provision of care services.

Direct Payment: means a payment made to a Service User to enable them to arrange their own care and support to meet their assessed needs and desired outcomes.

End of Life Care [EoLC]: means care and support that helps all those with advanced, progressive, incurable illness to live as well as possible until they die. It enables the supportive and palliative care needs of both Service User and family to be identified and met throughout the last phase of life and into bereavement.

Health Professional: means an individual, nominated and authorised to act on behalf of the Framework User, and registered with a professional body having completed a recognised course of study or accredited training programme in order to be registered to be able to practice. For the purposes of this Agreement this will usually be a District or Community Nurse, Physiotherapist, Occupational therapist, working within the services requesting the care and or support in the Agreement.

Individual Service Fund [ISF]: means a payment made to a Provider who will manage this on behalf of a Service User to arrange support to meet the Service Users assessed needs and desired outcomes. The Service User will choose how this fund is spent which will be on the Provider's own Services and, if the Service User requests this, on the Services of other Providers too.

NICE quality standards: means a concise set of prioritised statements designed by the National Institute for Clinical Excellence [NICE] to drive measurable quality improvements within a particular

area of health or care. NICE also develops guidance across a number of different areas and on a range of topics. <http://www.nice.org.uk/socialcare/>

Nominated Representative: means a person nominated by the Service User to support the decision making process.

Outcomes: means the impacts or end results of services on an individual's life. Outcomes-focused services aim to achieve the aspirations, goals and priorities identified by the Service User.

Personal Budget: means an indicative allocation of funding for a Service User based on an assessment of their need which may be taken via a direct payment or through care managed support.

Person Centred: means the process of putting the Service User and their Nominated Representative at the heart of the decision making process, ensuring personal outcomes for all Service Users.

Promoting Independence Review: means the Provider and Framework User will monitor and review progress towards identified goals and outcomes in partnership with the Service User. Each review will consider progress and reduction in support needs.

Quality of Life [QoL]: means the ASCOT (Adult Social Care Outcomes Toolkit) measure which is designed to capture information about an individual's social care related quality of life, and is applicable across a wide range of user groups and care and support settings.
<http://www.pssru.ac.uk/ascot/guidance.php>

Reablement Service: means the delivery of focused intensive short term interventions to maximise long-term independence and appropriately minimise the ongoing care and support required. It aims to help people regain their independence following an illness, injury, disability or loss of personal support network for up to six weeks to regain or develop independent living skills. Specialist rehabilitation for Service Users who have a clinical health need is provided by intermediate care services during a short term intervention of up to 6 weeks.

Strengths-based practice: is a collaborative process between the person supported by Services and those supporting them, allowing them to work together to determine an outcome that draws on the person's strengths and assets.

Support Plan: means the plan prepared by the Provider with the Service User, and developed from the Support Plan, showing in more detail how the specific outcomes of each Service User are to be met.

Telecare: 24/7 alarm service providing a combination of equipment and monitoring that can help individuals manage risks associated with independent living at home.

Urgent Care Team: means those persons acting in the capacity of Adult Social Care practitioners outside of Normal Business Hours to provide a service to meet the urgent social care and support needs of all adult Service Users.

Waking Night: the Care Worker is awake for the entire visit at the Service User's house as they will require attention throughout the night

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Schedule 3 – Instruction Form

The Instruction Form will combine the Requirement and the successful provider's Offer.

The Instruction Form, in conjunction with the Support Plan, will include the following information:

- (a) **Personal Details:** Title, Surname, Forename, Preferred Name, Gender and Marital Status
- (b) **Dates:** Date of Birth, Age and NI Number
- (c) **Address:** Primary Address
- (d) **Contact Methods:** Primary Contact No; Home Telephone, Mobile, Other
- (e) **Accommodation Details:** Type; Lives Alone; Household Composition
- (f) **GP Details**
- (g) **Relationships**
- (h) **Service Description:** Home Care; Day Care; Meals and Telecare
- (i) **Care Provision:** A summary of the type of care required.
- (j) **Care Requirements:**
 - i. Days and timings of when care is required.
 - ii. Specified Units (Hours per Week)
 - iii. Weekly Cost
 - iv. Start Date and Time
 - v. End Date and Time (if applicable)
 - vi. Comments
 - vii. Cost Details
- (k) **Other Information:**
 - i. Important Information
 - ii. Reason for Service
 - iii. Care Support Tasks Required
 - iv. Access / Transport / H & S issues
- (l) Special Conditions

Schedule 4 – Call Off Terms and Conditions

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in the Contract.

Approval: means the prior written consent of the Council.

Audit: means an audit carried out pursuant to clause 19.

Auditor: means person appointed to carry out an audit of the Council.

Authorised Representative: means the persons respectively designated as such by the Council and the Provider, the first such persons being set out in clause 34.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Commencement Date: means the date the Contract is entered into by the Council and the Provider by the Provider confirming its acceptance of the Instruction Form

Confidential Information: means any information which has been designated as confidential by either Party in writing including trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation. For the avoidance of doubt this includes all information relating to Service Users or their carers.

Contract: means a legally binding agreement for the provision of Services between the Council and the Provider comprising a completed Instruction Form, completed Support Plan, these terms and conditions (Schedule 4), Schedule 2 and its appendices, Schedule 5 and Schedule 6.

Contract Price: means the price listed in the Instruction Form which is inclusive of all the Provider's expenses and is exclusive of VAT.

Council: means the organisation identified in a completed Instruction Form who has ordered from the Provider Services for delivery to a Service User.

CQC: means the Care Quality Commission and any other government body or agency which is equivalent to or succeeds or replaces it, or is transferred any of the functions of the Care Quality Commission during the Term.

Data Controller: shall have the same meaning as set out in the Data Protection Legislation.

Data Processor: shall have the same meaning as set out in the Data Protection Legislation.

Data Protection Legislation: means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK General

Data Protection Regulation (UK GDPR), and the Data Protection Act 2018 (DPA 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 General Data Protection Regulation (EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.

Data Subject: shall have the same meaning as set out in the Data Protection Legislation

Direct Loss: means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Loss

Environmental Information Regulations: 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.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that 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.

Framework Agreement: means the open framework agreement between the Provider and the Council for provision of homecare and domiciliary care services and includes all Schedules to it.

Indirect Loss: means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any losses under any sub-contracts which are not of themselves Indirect Loss

Information: has the meaning given under section 84 of the FOIA.

Instruction Form: means a document setting out details of an Instruction in the form set out in Schedule 3 or as otherwise agreed in accordance with Schedule 1 or clause 24.2 of the Framework Agreement.

Intellectual Property Rights: means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off.

Law: 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, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Month: means a calendar month.

Party: means the Council and/or the Provider.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) committing any offence:
 - i. under the Bribery Act 2010;
 - ii. under legislation creating offences concerning fraudulent acts;
 - iii. at common law concerning fraudulent acts relating to the Contract or any other contract with the Council; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council.

Provider: means the organisation identified in an Instruction Form who has been instructed by the Council to provide Services to a Service User.

Quality Improvement Plan: means the plan to improve the quality of the Service and its delivery and outcomes for the Service Users.

Regulated Activity: in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies including the CQC, which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council or Provider.

Requests for Information: means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Schedule: means a schedule to the Framework Agreement.

Services: means the home care services as detailed in Schedule 2 as well as any additional specific requirements identified in a Support Plan and or Instruction Form

Service User: means any individual identified in an Instruction Form as requiring Services.

Specification: means the detailed elements of the Services which the Provider is to deliver as set out in Schedule 2

Staff: means any person or persons used by the Provider in the delivery of the Services or in the performance of the Provider's obligations under the Contract and for the avoidance of doubt shall include employees, consultants, agency personnel, directors, volunteers, sub- contractors or personnel used by subcontractors.

Subcontract: any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services and or any of the obligations in this Contract from that third party.

Subcontractor: the contractors or providers that enter into a Subcontract with the Provider.

Support Plan: means a document issued by the Council to the Provider setting out specific care requirements for a Service User in addition to the general care requirements set out in a completed Instruction Form and Schedule 2.

Termination Date: means the date of expiry or termination of this Contract.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 The interpretation and construction of the Contract 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 Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- (g) the Schedules referred to on this Contract form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract shall include the identified Schedules;
- (h) references in this Contract to any clause or sub-clause without further designation shall be construed as a reference to the clause or sub-clause or to this Contract so numbered;
- (i) references in this Contract to any Schedule shall be construed as a reference to the Schedule in the Framework Agreement so numbered;
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (k) any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
- (l) references to the Council shall be deemed to include its successors in title and assigns;
- (m) if any Party to this Contract is a partnership then provision of this Contract will bind each and every partner jointly and severally;
- (n) subject to clause 34.5 a reference to writing or written includes fax and email except where otherwise expressly stated in the Contract; and
- (o) any period regulating a notice period that the Council is required or empowered to give under this Contract shall be a minimum notice period and in the event a longer period of notice is given by the Council this shall not invalidate the notice

1.3 Nothing in this Contract shall limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

2. TERM OF CONTRACT

The Contract shall take effect on the Commencement Date and shall continue until it is terminated in accordance with the terms and conditions of the Contract.

3 THE SERVICES

3.1 The Provider shall provide the Services to the Council and the Service User in accordance with all the requirements set out in the Specification (Schedule 2) and elsewhere in this Contract.

3.2 In providing the Services the Provider shall;

3.2.1 exercise all the reasonable skill, care and diligence in the discharge of the Services to the standards which may be expected of a professional person experienced in carrying out such services for a service comparable in size, scope, complexity and nature to the Services;

3.2.2 comply where relevant with any legislation rule order regulation or bye-law from time to time in force and any professional body or accreditation regime which is applicable to the Services;

3.2.3 procure and maintain for the duration of this Contract such professional qualifications or accreditation both for itself and its Staff as may be required by Law, or as required by Council in order to perform any Services. The lapse or cancellation of such qualification or accreditation shall be considered a material breach for the purposes of clause 11.1.8(a).

3.2.4 comply with the Council's -agency policy guidance and procedures for the safeguarding of adults as are adopted and are relevant to the Services;

3.2.5 perform its duties so that the delivery of the Services will comply with all agreements, permissions and conditions and with all documents relating to the Services which the Council shall have brought to the attention of the Provider;

3.2.6 liaise and co-operate fully with the Council and all other providers who have been appointed or who may be appointed to provide alternative services to the Service User; and

3.2.7 comply with the reasonable requirements of the Council.

3.3 The Provider at no extra cost to the Council shall provide any other services reasonably incidental to the Services requested by the Council.

3.4 If the Provider becomes aware of circumstances which may prevent them from delivering the Services or any part thereof the Provider shall inform the Council without delay.

- 3.5 The Provider shall report to the Council in relation to any matter relevant to the Services in any manner reasonably requested by the Council. The Council reserves the right to request from the Provider all necessary supporting information in relation to such reports.
- 3.6 The Provider acknowledges that the Council is and will be relying upon the Provider's professional expertise and judgement to deliver the Services. No inspection, review or approval by the Council or by any person nor any omission to inspect, review or to disapprove shall negate or in any way diminish any duty or liability of the Provider under or in connection with this Contract.
- 3.7 The Provider shall be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of the Contract.

4. STAFF

- 4.1 The Provider shall ensure that the Staff used by the Provider shall be suitably qualified adequately trained and competent to carry out their respective duties and or responsibilities in the performance of the Services.
- 4.2 The Provider shall ensure that at all times there are a sufficient number of Staff available to perform the Service properly.
- 4.3 The Provider shall take all reasonable steps to satisfy itself and the Council that the Staff are suitable in all respects to perform the Services.
- 4.4 The Provider shall maintain up-to-date personnel records on the Staff and subject to the remainder of this clause the Provider shall allow access for the Council to the Staff files. The Provider must seek the permission of the Staff for their files to be inspected by representatives of the Council. All Staff must be informed that this is a requirement when delivering care to the Service User under the Contract. In the event that permission is refused by a member of Staff the Provider is required to show evidence that said Staff are suitable, competent and have received the appropriate levels of training.
- 4.5 The Provider shall use its best endeavours to ensure continuity of Staff and to ensure the turnover of Staff engaged in the Service is better than the prevailing industry norm for similar services locations and environments.
- 4.6 If at any time the Council requests the removal of any of the Staff from delivery of the Services for reasons of negligence, incompetence, misconduct or (in the Council's opinion) the best interests of the Service User the Provider shall promptly remove such Staff and replace them with persons acceptable to the Council.
- 4.7 The Provider:-
- 4.7.1 shall at all times observe a policy of equal opportunities in relation to employment and service provision;

- 4.7.2 shall not unlawfully discriminate in relation to race, disability, gender, marital status, religion or belief, sexual orientation, age, pregnancy or maternity, gender reassignment;
- 4.7.3 shall take all reasonable steps to ensure the observance of clauses 4.7.1 and 4.7.2 by its Staff; and
- 4.7.4 shall respond promptly to requests which the Council may make from time to time for monitoring information on the Provider's compliance with clauses 4.7.1 and 4.7.2 above
- 4.8 The Provider shall not be allowed to and shall ensure that their employee terms and conditions explicitly state that their Staff are not allowed to:
- 4.8.1 act as appointees;
- 4.8.2 act as executors or witness to a Service User's last will and testament or other legal documents relating to the Service User;
- 4.8.3 borrow from or loan money to the Service User;
- 4.8.4 receive any amount of money or any gifts from a Service User without informing his/her manager (as a guide it is acceptable for Staff to receive small token gifts from a Service User, eg at Christmas or where refusal would particularly offend). The reporting of any gifts is essential and must be recorded by the Provider.
- 4.8.5 use the Service User's telephone (mobile or landline) to make or receive calls except for urgent calls relating to the Service User's welfare or for the purpose of electronic recording;
- 4.8.6 take members of their own family or friends to the Service User's home;
- 4.8.7 take the Service User to the Staff's own, friends, or family home.
- 4.9 The Provider shall robustly monitor its Staff to ensure they adhere to the requirements of clause 4.8.
- 4.10 Where the Provider or their Staff are found to have breached the requirements of their terms and conditions in relation to clause 4.8, the Council may discuss the matter with the Provider and following an appropriate investigation may, at its discretion, elect to terminate the Contract under clause 11.
- 4.11 Nothing in the Contract shall create the relationship of employer and employee between the Council and or Service User and the Staff.
- 4.12 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons carrying out the Services.

- 4.13 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- 4.14 Except where sub-contracting is permitted in accordance with clause 22, or the use of agency workers are permitted in full accordance with the Specification, the Provider shall ensure that at all times the Staff used to deliver the Services are employed by the Provider.

5 SAFEGUARDING

- 5.1 Insofar as they contain obligations relating to the Services, the Provider must comply with such multi-agency policy guidance and procedures for the safeguarding of adults, details of which are at [www.https://www.westmorlandandfurness.gov.uk/health-and-social-care/concerns-about-adult](https://www.westmorlandandfurness.gov.uk/health-and-social-care/concerns-about-adult), as are adopted during the currency of the Contract.
- 5.2 Where the Provider has a financial interest in supplies, (including medical supplies), equipment, or other introductions being made, or offered to Service Users the Council shall be informed in writing as soon as is reasonably practicable. Where the Council considers the conflict of interest to be substantial it may by notice require the Provider to take specified steps to minimise or remove the conflict. The Provider shall comply with the requirements of such a notice.
- 5.3 The Provider, or any Staff, or any associated, or subsidiary business of the Provider, (whether, or not employed pursuant to a contract of employment), and any independent contractor, or volunteer engaged by the provider, or any subsidiary business of the Provider shall not purchase from an existing Service User, or any third party acting on behalf of the Service User any property, or personal effects owned by the Service User, either jointly or in their own right.
- 5.4 The Provider shall ensure all Services which are subject to the CQC regulation are registered with the CQC and any other Regulatory body as appropriate. The Provider shall ensure the Services comply with the Fundamental Standards of Quality and Safety across all regulated activities as set out in the Care Quality Commission (Registration) Regulations 2009 and Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. In so far as it is applicable to the Provider and to the provision of the Services the Provider shall comply with the Care Act 2014.
- 5.5 The Provider shall comply at all times with the requirements of the CQC where the Services are regulated by the CQC and shall provide to the Council details of any notice issued to them by the CQC. The Provider shall make available to the Council copies of any regulatory reports or reviews including but not limited to those that have not been released to the public.
- 5.6 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under the Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

5.7 The Provider shall:

5.7.1 ensure that all Staff engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and

5.7.2 monitor the level and validity of the checks under this clause 5 for each member of Staff;

5.7.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

5.8 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

5.9 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 5 have been met.

5.10 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users.

6 PRICES FOR SERVICES AND PAYMENT

6.1 The Provider shall comply with the requirements of this clause 6 and Schedule 6.

6.2 The Provider shall submit Service Receipts to the Council on the basis of units of delivered service to the Service User which should be identical to the hours ordered by the Council in the Instruction Form subject to any amendment agreed with the Council.

6.3 In consideration of the full and proper provision of the Service by the Provider in accordance with the terms and conditions of the Contract, the Council shall pay the Contract Price to the Provider in accordance with this clause 6 and Schedule 6.

- 6.4 The Contract Price may be adjusted annually at the Council's discretion in accordance with the provisions of Schedule 5.
- 6.5 Not Used
- 6.6 The Provider shall submit Service Receipts for payments as required in the Schedule 6.
- 6.7 Not Used
- 6.8 All costs fees and disbursements expressed to be payable or reimbursable to the Provider shall be deemed to be value added tax exclusive. Schedule 9 of the Group 7 Value Added Tax Act 1994 provides that supplies of welfare services and connected goods by charities, state regulated welfare institutions or agencies, or public bodies are exempt from VAT
- 6.9 The Council following consultation with the Provider reserves the right to change the invoicing requirements and to require the provision of any information reasonably required for the purpose of verifying invoices and making payments to the Provider.
- 6.10 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined between the Parties. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the Parties.
- 6.11 Subject to clause 6.10 above, interest not exceeding 2% over the Bank of England base rate on the date of the notification shall be payable on the late payment of any undisputed invoices submitted under the Contract.
- 6.12 If the Council is in default over payments of amounts properly due in respect of the Contract Price or part thereof, and no notice of intention to withhold such amounts has been given, the Provider may suspend delivery of any or all of the Services. This right is subject to the Provider first giving the Council not less than 30 days' notice in writing of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the Council makes payment of the amount due.
- 6.13 On the resumption of a suspended service previous payments shall be regarded solely as payments on account towards the Contract Price. The Provider shall not be entitled to any compensation under the Contract or otherwise arising out of any termination of the Contract or suspension of the Services.
- 6.14 Should the Provider receive sums that are not due from the Council any such overpayment shall be notified to the Council immediately upon discovery and repaid to the Framework User within 28 days of receipt of notification of the overpayment.

Should payment not be received by the Council within this time the Council shall have the right to claim against the Provider interest on the outstanding sums not exceeding 2% over the prevailing Bank of England base rate at the date of notification.

- 6.15 The Provider shall indemnify the Council on a continuing basis against any liability including any interest penalties or costs incurred which is levied demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause 6.15 shall be paid by the Provider not less than 5 Working Days before the date on which the tax or other liability is payable by the Council.

7 RECOVERY OF SUMS DUE

- 7.1 Wherever under the Contract 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 in respect of any breach of the Contract), 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 the Contract or under any other agreement or contract with the Council.
- 7.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 7.3 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.
- 7.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

8 WARRANTIES AND REPRESENTATIONS

- 8.1 The Provider warrants and represents to the Council that:
- 8.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of a parent company) to enter into and to perform its obligations under the Contract;
- 8.1.2 The Contract is executed by a duly authorised representative of the Provider;

- 8.1.3 in entering into the Contract it has not committed any Prohibited Act;
- 8.1.4 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 that will or might affect its ability to perform its obligations under the Contract;
- 8.1.5 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 the Contract; and
- 8.1.6 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 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 Provider's assets or revenue.
- 8.2 The Provider acknowledges and confirms that:
- 8.2.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of the Contract;
- 8.2.2 it has received all information requested by it from the Council pursuant to clause 8.2.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of the Contract;
- 8.2.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 8.2.2;
- 8.2.4 it has raised all relevant due diligence questions with the Council before the Commencement Date; and
- 8.2.5 it has entered into this agreement in reliance on its own due diligence.

9 INVESTIGATION AND SUSPENSION

- 9.1 If the Council reasonably considers that the Provider is, or may be, in breach of its obligations under the Contract it may investigate the breach.
- 9.2 Where appropriate the Council will give written notice of any investigation to the Provider as soon as possible. It will be the duty of the Provider to co-operate with the investigation.
- 9.3 At any time during the investigation the Council at its sole discretion may by written notice to the Provider immediately suspend the provision of part or all

of the Services by the Provider until such time as the investigation is concluded. The Council shall be entitled at its sole discretion to instruct a substitute Provider to provide the Services during the period of the investigation.

- 9.4 For the avoidance of doubt an investigation is concluded once the Council has notified the Provider of the outcome and any action required by the Provider as a result of the investigation has been completed.
- 9.5 The Council may where the CQC or any other regulator is conducting an investigation into any matter concerning the Provider suspend the provision of part or all of the Services by the Provider until such time as the investigation is concluded. The Council shall be entitled at its sole discretion to instruct a substitute Provider to provide the Services during the period of the investigation.
- 9.6 In the event the provision of the Services is suspended the Council may not pay the Contract Price to the Provider for the period of the suspension and in the event the suspension is lifted the Provider shall not be entitled to claim payment for the period of suspension.
- 9.8 The Council will give written notice to the Provider of the lifting of the suspension.
- 9.9 The Council shall not be liable to the Provider for any Direct Loss or Indirect Loss suffered by the Provider as a consequence of any period of suspension.

10 HOSPITALISATION AND NON INVESTIGATION SUSPENSION

- 10.1 During the life-time of the Contract, the Council may suspend the Contract and Services to the Service User due to hospitalisation, respite care or some other similar reason.
- 10.2 Such suspensions may be:-
 - 10.2.1 planned, the Provider will have been notified by the Council of the date from which care will not be required, the period of suspension and the date and time when care should recommence;
 - 10.2.2 unplanned for a period of less than 48 hours, when neither the Council or the Provider has had any prior warning that the care will not be required during that period; or
 - 10.2.3 unplanned for a period of more than 48 hours when the commencement date is not known at the time of suspension
- 10.3 The Council will end the suspension by:-

- 10.3.1 notifying the Provider in writing the suspension is ended and the Provider is to continue the care;
 - 10.3.2 agreeing a date in advance the Contract will recommence; or
 - 10.3.3 terminating the Contract in accordance with clause 11
- 10.4 In relation to suspension initiated under clause 10.1, the Provider shall be paid as follows:-
- 10.4.1 in relation to suspension under clause 10.2.1, the Provider shall be paid for Services provided until the date and time of the suspension;
 - 10.4.2 in relation to a suspension under clauses 10.2.2 or 10.2.3, the Provider shall be paid for Services provided or scheduled to be provided up until 23:59 hours on the date the written notice of the suspension is provided.
- 10.5 The Provider shall use best endeavours, where a suspension under this clause 10 ends and Services to the Service User are resumed, to use the same Staff in the delivery of the Services to the Service User who were delivering the care prior to the suspension.

11 TERMINATION

- 11.1 The Council may terminate the Contract by serving written notice on the Provider with effect from the date specified in such notice (which may be with immediate effect):
- 11.1.1 upon the death or relocation or hospitalisation of a Service User;
 - 11.1.2 where in the opinion of the Council the Provider or its Staff are responsible for subjecting a Service User or any person to, or putting a Service User or any person at risk of, injury and or abuse whether physical, sexual, psychological, financial, or combination of the same;
 - 11.1.3 where in the opinion of the Council there is a change in circumstances which means the Services being provided under the Contract are no longer suitable for the Service User;
 - 11.1.4 where the Provider sub-contracts the Contract in whole or in part without the Council's prior written consent;
 - 11.1.5 where the Contract is novated or any part is assigned to a 3rd party without the Council's prior written consent;
 - 11.1.6 where the Provider in the Council's opinion (acting reasonably) has made a serious misrepresentation to the Council during the Framework Agreement's tender process and or during the Contract;

- 11.1.7 where elsewhere in the Contract termination by the Council is explicitly permitted;
- 11.1.8 where action is being taken by a third party regulatory body against the Provider including but not limited to being classified by the CQC as inadequate;
- 11.1.9 where any other contract or agreement the Council has with the Provider is terminated;
- 11.1.10 any breach of clause 14;
- 11.1.11 any breach of clause 28; or
- 11.1.8 where the Provider commits a material breach and:
- (a) the Provider has not remedied the material breach to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (b) the material breach is not, in the reasonable opinion of the Council, capable of remedy.
- 11.2 The Council may terminate the Contract for convenience by serving a minimum of 7 days written notice on the Provider.
- 11.3 Should the Provider wish to terminate the Contract it must seek permission from the Council's Local Team for the relevant area where the Service User is located. The Provider shall continue to perform the Contract unless agreement to terminate is given in writing by the Council. Whether a termination of the Contract is agreed by the Council shall depend on whether the Council at its sole discretion determines the reasons given by the Provider are reasonable. If the Provider's request to terminate the Contract is refused by the Local Team the Provider may refer the decision to the Council's Authorised Officer for final determination. If the Authorised Officer upholds the refusal the Provider shall accept termination of the Contract by the Provider is not permitted.
- 11.4 For the purposes of clause 11.1.8, material breach means:
- 11.4.1 a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from a substantial portion of this agreement;

- 11.4.2 a persistent breach of any of the obligations set out in the Council, what is persistent shall be determined by the Council's reasonable opinion;
or
- 11.4.3 a breach that is stated elsewhere in this Contact as being material or subject to clause 11.1.8.
- 11.5 Without affecting any other right or remedy available to it, the Council may terminate the Contract with immediate effect by giving written notice to the Provider if:
- 11.5.1 the 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.5.2 the 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;
- 11.5.3 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 Provider (being a company);
- 11.5.4 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 Provider (being a company);
- 11.5.5 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 11.5.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- 11.5.7 the Provider (being an individual) is the subject of a bankruptcy petition or order;

11.5.8 a creditor or encumbrancer of the 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 the Provider's assets and such attachment or process is not discharged within 7 days;

11.5.9 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.5.1 to clause 11.5.7 (inclusive); or

11.5.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

11.6 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control.

11.7 The Council may terminate the Contract by giving notice in writing of not less than seven (7) days to the Provider within six Months of:

11.7.1 being notified that a Change of Control has occurred; or

11.7.2 where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

12 CONSEQUENCES OF TERMINATION AND EXPIRY

12.1 Notwithstanding the service of a notice to terminate the Contract, the Provider shall continue to fulfil its obligations under the Contract until the date of expiry or termination of the Contract or such other date as required under this clause 12.

12.2 The service of a notice to terminate the Contract shall not operate as a notice to terminate the Framework Agreement. Termination or expiry of the Contract shall not cause the Framework Agreement to terminate.

12.3 Within 5 Working Days of the date of termination or expiry of the Contract, the Provider shall at its own cost return to the Council any data, personal information relating to the Council, its personnel, Service Users or Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council, together with all training manuals and 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 12 Months to comply with its obligations under the Contract, or such period as is necessary for such compliance.

- 12.4 The Provider shall, at no cost to the Council, promptly provide such assistance and comply with such timetable as the Council, may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of the Contract. The Council shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of the Contract.
- 12.5 Such assistance may include (without limitation) the delivery of documents and data (either in its current format or in a format which nominated by the Council) including working information in relation to deliverables in the possession or control of the Provider which relate to the Contract.
- 12.6 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Council, to ensure an orderly transfer of responsibility.
- 12.7 The Provider shall take all reasonable steps and shall co-operate fully with the Council and any new provider so that any continuation in the Services is achieved with the minimum of disruption.
- 12.8 If the Contract is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
- 12.9 Subject to clause 1.3, in the event of termination of the Contract by the Council the Council shall have no liability to the Provider for any Direct Loss or Indirect Loss suffered by the Provider caused by such termination.
- 12.10 Termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Contract before termination or expiry.
- 12.11 Any provision which expressly or by implication is intended to survive or come into force on or after the termination or expiry of the Contract shall remain in full force and effect.

13 SUBSTITUTION OF PROVIDER

- 13.1 Where the Provider does not perform the Services (or part thereof) in accordance with the Contract the Council may (without prejudice to any other right or remedy) instruct and pay other persons on a temporary or permanent basis to carry out the Services (or part thereof) and to make good any faults caused by the Provider's failure to properly perform the Services or comply with their obligations under the Contract.
- 13.2 Where the Council has instructed an alternative provider pursuant to clause 13 the Provider shall indemnify the Council for any losses costs and expenses reasonably incurred by the Council.

14 DATA PROTECTION

- 14.1 The Parties acknowledge that they are independent Data Controllers in respect of any Personal Data processed by them and agree to comply with their obligations under the Data Protection Legislation.
- 14.2 Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 14.3 The Provider shall and shall procure that any of the Provider's Personnel, Sub-Contractors and any other employees or third parties involved in the provision of the Services shall comply with their obligations under the Data Protection Legislation.
- 14.4 For the avoidance of doubt, it is stated here that neither Party is a Data Processor on behalf of the other Party in furtherance of their obligations under this Agreement. In the event it is established at any time during this Agreement that Personal Data is to be processed by the Provider under this Agreement on behalf of the Council then the Provider shall:
- (a) immediately enter into a data processing agreement with the Council on reasonable terms to be determined by the Council to ensure full compliance with Data Protection Legislation; and
 - (b) indemnify and keep the Council indemnified in full for any and all consequences (including a Personal Data breach) arising as a result of the Provider's failure to comply with any of its obligations under this Clause 14.4.
- 14.5 Failure by the Provider to enter into a data processing agreement in accordance with Clause 14.4 shall be deemed a fundamental breach which shall entitle the Council to immediately terminate the Agreement without consequence or any liability under this Agreement.

- 14.6 Any clause in this Agreement limiting the Provider's liability in respect of any obligations, claims, losses, damages, liabilities, fines, penalties, interest or otherwise under the Data Protection Legislation and/or this Clause shall not apply.
- 14.7 Upon the termination or expiry of this Agreement the Provider shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of Services to the Council or a replacement provider or to a third party to be achieved then the Provider being the transferring Party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the Council or any replacement provider or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.
- 14.8 Historical personal data shall be retained by the Provider in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation and good industry practice.
- 14.9 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

14A FREEDOM OF INFORMATION

- 14A.1 The 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 Provider's expense) to enable them to comply with these information disclosure requirements.
- 14A.2 The Provider shall and shall procure that its Subcontractors shall:
- (a) transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two 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 Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) 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 FOIA or Environmental Information Regulations.
- 14A.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the relevant Service User.

- 14A.4 The Provider agrees the Council shall be responsible for determining at its absolute discretion whether any Information is exempt from disclosure or is to be disclosed in response to a Request for Information.
- 14A.5 The Provider acknowledges and accepts that the Council may under the FOIA or the Environmental Information Regulations disclose Information:
- (a) without consulting with the Provider; or
 - (b) following consultation with the Provider and having taken its views into account.
- 14A.6 The Provider agrees that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 14A.

15 PUBLICITY

- 15.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise the Contract in any way without the Council's prior written consent.
- 15.2 The Council shall be entitled to publicise the Contract in accordance with any legal obligation on the Council, including any examination of the Contract by the Auditor or otherwise.
- 15.3 The Provider shall not do anything that may damage the reputation of the Council or bring the Council into disrepute. Failure by the Provider to comply with clause 15.3 shall constitute a material breach under clause 11.1(a).

16. MONITORING PERFORMANCE AND MANAGEMENT INFORMATION

- 16.1 The performance of the Provider in relation to the Services shall be monitored by the Council against the requirements of the Specification and if in the opinion of the Council the Provider has failed to achieve such requirements the Council shall be entitled to withhold reasonable payment for the Services performed in accordance with the Contract.
- 16.2 The Provider shall provide, within 7 days of request or such other timescale as the Parties may agree (acting reasonably), such information to the Council as the Council shall reasonably request to assist the Council in its monitoring of the Contract and or Services.
- 16.3 The Provider shall promptly provide such financial information as the Council may reasonably request in order to confirm the ongoing financial viability of the Provider in providing services under the Contract.

- 16.4 The Council shall be entitled for any purpose to publish and share information on the Provider's performance in complying with the Contract.
- 16.5 The Provider must at all reasonable times upon reasonable notice (such notice not to be required where the Council reasonably considers that an un-announced visit is necessary) during the continuance of the Contract allow the Council, its officers or representatives access to:-
- 16.5.1 the Provider's offices for the purpose of monitoring the provision of the Services and the Provider's performance of its obligations under the Contract; and
- 16.5.2 the records and information referred to in the Contract.
- 16.6 The obligations of the Provider under the Contract shall not be lessened or affected by:
- (a) any power or duty of the Council to grant or withhold approval of, or object to, any matter in connection with the Contract or to inspect the Services; or
- (b) the grant, or failure to grant, such approval, or the making, or failure to make, such objection or any such inspection of, or failure to inspect, the Services.

17. CONTINUOUS IMPROVEMENT, CO-OPERATION AND REPORTING

- 17.1 During the term of the Contract the Provider shall look for and seek to achieve continuous improvement in the quality of the Services.
- 17.2 At no cost to the Council the Provider shall attend in meetings in relation to the Services with the Council and/or with other providers engaged by the Council as the Council shall request.
- 17.3 The Provider shall provide to the Council written reports in such form as approved by the Council to capture performance details as requested.
- 17.4 Notwithstanding the obligations in the Framework Agreement the Provider shall send to the Council as and when requested to do so by the Council all correspondence and documents sent or received by the Provider, and of all minutes of meetings relating to the Contract.

18. RECORDS

- 18.1 The Provider must keep accurate, full and up-to-date records and information in respect of all aspects of the provisions of the Services:-
- 18.1.1 relating to the references, qualifications and experience, training and supervision, hours of employment, rotas and details of attendances, of all Staff who are or will be engaged with the provision of the Services;
- 18.1.2 required to be kept by the Provider in accordance with the relevant applicable legislation;

18.1.3 relating to the implementation of the requirements of the Services; and

18.1.4 relating to comments, compliments and complaints made by or on behalf of Service Users.

18.2 Subject to the provisions of the Data Protection Legislation the Provider must as soon as reasonably practicable following a request by the Council make available to the Council any records or information referred to in this clause or provide the Council with copies of the same. The Council's powers under this clause shall not be exercised unreasonably or vexatiously.

18.3 Subject to the provisions of the Data Protection Act 2018 and the provisions of these terms and conditions the Provider shall permit all records referred to in this clause to be examined and copied from time to time by the Council's representatives, or its internal and external auditors.

18.4 The records referred to in this clause shall be retained for a period of at least 6 years after the period to which they relate or such longer period as may be required by law.

19 AUDIT

19.1 During the Contract and for a period of 6 years after termination of the Contract, the Council may conduct or be subject to an audit for the following purposes:

19.1.1 to verify the accuracy of invoices (and proposed or actual variations to the Price in accordance with the Contract) and/or the costs of all suppliers (including sub-contractors) of the Services;

19.1.2 to review the integrity, confidentiality and security of any data relating to the Council or any Service Users;

19.1.3 to review the Provider's compliance with the DPA, the FOIA, in accordance with clause 14 and any other legislation applicable to the Services;

19.1.4 to review any records created during the provision of the Services;

19.1.5 to review any books of account kept by the Provider in connection with the provision of the Services;

19.1.6 to carry out the audit and certification of the Council's accounts;

19.1.7 to carry out an examination as to the economy, efficiency and effectiveness with which the Council has used its resources;

19.1.8 to verify the accuracy and completeness of the reports delivered or required by this Contract.

19.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 19 more than twice in any calendar year.

- 19.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 19.4 Subject to the Council's obligations of confidentiality, the Provider shall provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 19.4.1 all information requested by the above persons within the permitted scope of the audit;
- 19.4.2 reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- 19.4.3 access to the Provider's Staff.
- 19.5 The Council shall endeavour to provide at least 7 days notice of its intention to conduct an audit.
- 19.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under the Contract in any material manner by the Provider in which case the Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 19.7 If an audit identifies that:
- 19.7.1 the Provider has failed to perform its obligations under the Contract in any material manner, the parties shall agree and implement an improvement plan. If the Provider's failure relates to a failure to provide any information to the Council about the invoices and or Contract Price or the Provider's costs, then the improvement plan shall include a requirement for the provision of all such information; and
- 19.7.2 the Council has made any over payments, the Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Contract Price if the Provider fails to make this payment.

20 CONFIDENTIALITY

- 20.1 The Parties agree that the Contract shall not be treated as Confidential Information and may be disclosed without restriction.
- 20.2 Clause 20.1 above shall not apply to information relating to Service Users, which shall be treated as Confidential Information.

21 PREVENTION OF BRIBERY

- 21.1 The Provider:

- 21.1.1 shall not, and shall procure that the Staff and any Sub-Contractors and Sub-Contractors' personnel shall not, in connection with the Contract made under it commit a Prohibited Act; and
- 21.1.2 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 the Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before commencement of the Contract.
- 21.2 The Provider shall:
- 21.2.1 if requested, provide the Council with any reasonable assistance 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; and
- 21.2.2 within 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 Provider) compliance with this clause 21 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 21.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 21.4 If any breach of clause 21 is suspected or known, the Provider must notify the Council immediately.
- 21.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 21, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents.
- 21.6 The Council may terminate the Contract by written notice with immediate effect and without incurring any liability to the Provider, if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 21.1.
- 21.7 Any notice of termination under clause 21.6 must specify:
- 21.7.1 the nature of the Prohibited Act;

21.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

21.7.3 the date on which the Contract will terminate.

21.8 Despite clause 27, any dispute relating to:

21.8.1 the interpretation of this clause 21; or

21.8.2 the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

21.9 Any termination under this clause 21 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

22 SUBCONTRACTING AND ASSIGNMENT

22.1 Subject to clause 22.2 and 22.4, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and or obligations under the Contract without the prior written consent of the other party, neither may the Provider subcontract the whole or any part of the Contract except with the express prior written consent of the Council.

22.2 In the event the Council permits the Provider to subcontract the Contract or any part of the Provider shall:

22.2.1 remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

22.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

22.2.3 provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

22.3 The Council shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Council.

22.4 Where the prohibition of an assignment is caught by the Business Contract Terms (Assignment of Receivables) Regulations 2018 the Provider must notify the Council in writing where it assigns a receivable covered by this legislation.

23 INSURANCE AND INDEMNITY

- 23.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
 - (c) professional indemnity insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims;
 - (d) adequate level of cover for any other insurances relevant to the delivery of the Services including but not limited to medical based activities that form part of the Services at an appropriate and adequate level of cover;
- (the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 23.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 23.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.
- 23.5 If for any period such insurance ceases to be available on commercially reasonable terms, the Provider shall forthwith inform the Council and shall obtain in respect of such period such reduced professional indemnity insurance cover as is available and as it would be fair and reasonable to expect the Provider to obtain and maintain in all the circumstances.
- 23.6 Any increased or additional premium required by insurers by reason of the Provider's own claims record or other acts, omissions, matters or things particular to the Provider shall be deemed to be within commercially reasonable rates.
- 23.7 The Provider shall liable for and shall indemnify the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of the Contract, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its Staff save to the extent that the same is directly caused

by or directly arises from the negligence, breach of the Contract or applicable law by the Council.

- 23.8 Without affecting any other clauses in the Contract that limit or exclude liability the Provider's liability under or in connection with the Contract shall be limited to £5 million pounds for each and every claim. This limit shall apply however that liability arises, including, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty. Provided that this clause 23.8 shall not exclude or limit the Provider's liability for:

23.8.1 death or personal injury caused by the Provider or its Staff or Sub Contractors negligence; or

23.8.2 fraud or fraudulent misrepresentation

- 23.9 Without affecting any other clauses in this Contract that limit or exclude liability the Council's liability under or in connection with this Contract shall be limited to the annual contract value in the aggregate. This limit shall apply however that liability arises, including, a liability arising by breach of contract, arising by tort (including the tort of negligence) or arising by breach of statutory duty. Provided that this clause 23.9 shall not exclude or limit the Council's liability for:

23.9.1 death or personal injury caused by the Council's negligence; or

23.9.2 fraud or fraudulent misrepresentation

- 23.10 Where any Staff use private vehicles in the course of the provision of the Services the Provider shall ensure that such staff hold valid driving licences and have in place appropriate insurance cover.

24 INTELLECTUAL PROPERTY

- 24.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any Staff:

24.1.1 in the course of performing the Services; or

24.1.2 exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

- 24.2 The Provider shall be liable to the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

25 CONFLICT OF INTEREST

- 25.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council and or Service User under the provisions of the Contract.
- 25.2 The Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 25.1 above arises or is reasonably foreseeable.
- 25.3 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council and or Service User under the provisions of the Contract. The actions of the Council under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

26 VARIATIONS TO CONTRACT

No amendment or variation of the terms of the Contract shall be effective unless made in writing and signed by the Parties.

27 DISPUTE RESOLUTION

27.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:

27.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

27.1.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the relevant senior officer of the Council and a director or officer of similar authority of the Provider who shall attempt in good faith to resolve it.

27.2 In the event the senior officers identified above are unable to resolve the Dispute within 20 days of it being referred to them this dispute resolution process shall be deemed exhausted.

28 HUMAN RIGHTS NON DISCRIMINATION AND ANTI SLAVERY

28.1 The Provider shall not unlawfully discriminate within the meaning and scope of any Law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age, marital status, pregnancy or maternity, gender reassignment or otherwise).

28.2 The Provider shall take all reasonable steps to ensure Staff and suppliers to the Provider do not unlawfully discriminate within the meaning and scope of any Law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age, marital status, pregnancy or maternity, gender reassignment or otherwise).

28.3 In performing its obligations under the Contract, the Provider shall:

(a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

(c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 28;

(d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract; and

(e) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with this agreement; and permit the Council and its third party representatives to inspect the Provider's premises, records, and to meet the Provider's personnel to audit the Provider's compliance with its obligations under this clause 28.

28.4 The Provider represents and warrants that at the date of this Contract it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

29 THIRD PARTY RIGHTS

29.1 Except as explicitly stated in the Contract a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

29.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

30 SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

31 RIGHTS AND REMEDIES

The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

32 WAIVER

32.1 No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

32.2 Any waiver given by the Council must be in writing by the Authorised Representative of the Council and expressly state it is a waiver. Such a waiver will only apply to the event to which it is stated to relate and not to any other event whether past or futures. Only the Council may issue waivers in respect of the Contract.

33 ENTIRE AGREEMENT

33.1 The Contract and the documents otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 33 shall operate to exclude any liability for fraud.

33.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is

not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

34 NOTICES

34.1 The Authorised Representatives and the contact details for any notices are as set out in clause 30 of the Framework Agreement. Any notice given under the Contract shall be in writing in the English language and delivered personally or sent by facsimile transmission or by email, or prepaid signed for, special delivery or first class post (or air mail post if to an address outside the United Kingdom) to the address set out above.

34.2 A notice shall be deemed to have been received:-

34.2.1 if delivered personally, at the time of delivery;

34.2.2 if sent by prepaid signed for, special delivery or first class post, on the second Working Day after the date of posting;

34.2.3 if sent by prepaid air mail post, on the fifth Working Day from the date of posting;

34.2.4 if sent by facsimile, on the date of completed transmission; or

34.2.5 if sent by email, upon acknowledgement by the recipient or by the issue of a delivered receipt or similar by the recipient's system.

34.3 In proving service:-

34.3.1 by personal delivery, it shall be necessary only to produce a receipt for the notice signed by or on behalf of the Party due to receive it;

34.3.2 by post, it shall be necessary only to prove that the notice was contained in an envelope which was duly addressed and posted in accordance with this clause 34;

34.3.3 by facsimile, it shall be necessary only to produce a transmission report from the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the facsimile number of the recipient; or

34.3.4 by email, it shall be necessary only to produce a copy of the acknowledgement of the email from the recipient or the delivered receipt issued by the recipient's system.

34.4 Either Party may change its address for service by serving a notice in accordance with this clause.

- 34.5 This clause 34 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

35 AGENCY AND PARTNERSHIP

Nothing in the Contract shall be deemed to constitute any Party the agent or partner of the other Party. No Party shall have any authority to make commitments on the other Party's behalf.

36 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)

- 36.1 Where TUPE does apply the Provider agree that it shall comply with all of its obligations under TUPE, the Acquired Rights Directive as applicable.
- 36.2 The Provider agrees to indemnify the Council against any claim howsoever arising from the application of TUPE or the Acquired Rights Directive.
- 36.3 The Provider shall, on request by the Council, provide the Council within thirty (30) days, accurate and complete information, (relating to all the Contracts the Provider has with the Council) as the Council deems is necessary to allow bidders to assess the application of TUPE. The Provider shall warrant the accuracy of all the information provided to the Council and authorises the Council to use any and all of the information as it may consider necessary for the purposes of its business or as part of the procurement exercise. The Provider shall indemnify the Council against any financial losses arising from any failure of the Provider to comply with clause 36.3 and or any differential between the information disclosed and the actual position should the Council suffer any extra cost or loss by relying on the information provided.

37 GOVERNING LAW AND JURISDICTION

- 37.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 37.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

Schedule 5 – Pricing Schedule

1

Hourly Rate Tier 1	Hourly Rate Tier 2	Hourly Rate Tier 3
£21.49	£23.82	£28.06

2 All Prices are the total price inclusive of all of the Provider’s charge to the Framework User including but not limited to costs expenses and disbursements. The Provider shall not be entitled to charge the Framework User any rate other than what is set out above.

3 Where the hours invoiced are not in complete hours the Council shall round the incomplete hour up or down to the nearest quarter hour. Payment shall be 25%, 50% or 75% of the hourly rate depending on the percentage of an hour the time has been rounded to. (for example if the time is rounded to 30 minutes 50% of the hourly rate will be paid).

4. Where the Council has ordered a 15 minute visit the pricing for the visit shall apply as per the table under paragraph 5 below. This price shall only apply where the Council has specifically ordered a 15-minute visit in accordance with the 15 min rate below except in circumstances under point 6.

5.

15 min Rate Tier 1	15 min Rate Tier 2	15 min Rate Tier 3
£6.18	£7.22	£9.15

6. If visits that have been ordered under the arrangement in paragraph 4 are invoiced for periods of longer than 15 minutes by the Provider then the rate in the table under paragraph 1 shall apply.

Price Uplift

4 Where the Provider provides evidence (as part of their Management Information outlined in Schedule 7 (KPIs)) to the satisfaction of the Council that the Provider pays the Real Living Wage, to staff engaged in the delivery of homecare to service users, the annual uplift set out at paragraphs 5 and 6 below will be applied. The Council may at its discretion review the prices contained in table 1 at paragraph 1 throughout the term of this Agreement and any Contract.

5 The prices contained in the table at paragraph 1 may be revised by the Council on an annual basis with effect from the first Monday in April each year of the Term using the following mechanism:

6 The price(s) for each rate (Tier1, Tier 2, Tier 3) will be split into 2 components, 20% and 80%:

6.1 20% component:

The 20% component will be subject to an increase based on the Consumer Price Index as measured in September in the previous year or any other measurement the Council's, in its discretion, may choose to use. The Council may at its discretion choose not to increase the rates or to increase the rates below the Consumer Price Index or any other measurement. The Provider agrees and understand that the Council is not under any obligation to increase the rates annually or at all.

6.2 80% component:

- The 80% component will be subject to an increase based on the % increase applied to the Living Wage based on the rate set by the Living Wage Foundation in the previous November

If the Provider does not provide evidence to the satisfaction of the Council that the Provider pays the Real Living Wage to the Staff delivering homecare to service users, no uplift shall be applied in relation to the 80% and the appropriate component of the prices in the table at paragraph 1 will not be increased.

7 When calculating any uplift figure the Council may give consideration to national policy changes such as changes to the employer's minimum contribution to auto enrolment pension.

8 The first such review shall take effect on the first anniversary of the Commencement Date and annually thereafter.

9 The Council may review the Price each financial year and may, notwithstanding the provisions of clause 24 unilaterally alter the Price in line with proposals approved by the Council from time to time. Such alterations of the Price shall take effect from the date that the Council notifies the Provider of the change.

Schedule 6 -
Payment Schedule

The detail set out in this Schedule only applies to Contracts between the Provider and the Council. Other Contracting Bodies will agree an alternative payment schedule with the Provider prior to entering into any Contract. Failure by the Provider to comply with the Council's requirements may result in delayed payment or in some circumstances prevent payment being made by the Council.

Payment will only be made where valid Contracts are in place and no payments are required or shall be made under the Agreement. All payments made by the Council to the Provider under any Contract shall be subject to this Schedule.

The terms and conditions set out in this Schedule 6 are in addition to those set out in Schedule 4.

Additional Definitions for this Schedule:

Self-Bill Invoice: the invoice produced by the Provider on behalf, through which the Council shall process payment.

Service Receipt: the agreed record of the completed delivery of Services as quantified and agreed between the Parties.

The payment and billing process shall operate as follows:

- a) The Provider shall submit weekly bills (Service Receipts) in a timely manner, which are evaluated and approved by the Council. Approved Service Receipts are then included in the weekly invoicing process.
- b) The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices.
- c) Each Wednesday morning, the invoicing process will run. This process will pick up all the Service Receipts approved between 00:00 on the previous Wednesday, and 23:59 on the Tuesday night directly before the invoice day.
- d) The invoice process will generate a Self-Bill on behalf of the Provider, this Self-Bill details to the Provider the value of the Services they have delivered as per their approved Service Receipts included in that week's invoice run. The Provider can download these Self-Bills.

The Council shall pay the Provider by BACS transmission within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.

If the Provider is recorded as a Small, Medium Enterprise (SME), the Council shall pay the Providers by BACS transmission with ten (10) days of the appropriate undisputed Self-Bill Invoice having been raised.

The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or annual balance sheet total not exceeding 43 million euro.

The Provider agrees and acknowledges that all transactions governed by the Contract will be processed as set out above. The Provider shall not endeavour to process Services commissioned under the Framework outside of the above.

The Provider agrees:

- i. to accept electronically delivered Self-Bill Invoices raised on its behalf by the Council in respect of all Contracts;
- ii. not to issue VAT invoices in respect of the Services;
- iii. where for internal compliance reasons it raises dummy invoices, the Provider will reconcile such dummy invoices to the Self-Bill Invoice.
- iv. to reconcile their account with any factoring company as may be applicable from time to time.
- v. not to submit paper-copy Service Receipts unless pre-agreed in writing with the Council;
- vi. subject to (v) above, to ensure the Service Receipt submission system is used to capture all hours worked in respect of the Services;
- vii. to ensure that rates, hours, hours types and expenses are verified prior to submission or on-line entry of Service Receipts;
- viii. to raise any discrepancies between a Self-Billing Invoice received from the Council and invoicing data in its internal records within seven (7) calendar days of receipt of such Self-Bill Invoice;

The Provider agrees and acknowledges that where there is any breach whatsoever of paragraph 1 above, the Council may at its sole discretion delay or not process payment of the sums due to the Provider from such Self-Bill Invoices that the breach pertains to.

The Council will not accept any liability for payment where the Provider does not hold a valid signed/approved Service Receipt, as applicable, or where the Service Receipt has not been authorised via the online Service Receipt system.

For the avoidance of doubt, any payment properly due to the Provider will be made in accordance with the Contract.

The Parties shall, without limitation to the foregoing, comply at all times with all conditions imposed by HM Revenue & Customs in respect of Self-Bill invoicing processes. <https://www.gov.uk/guidance/vat-self-billing-arrangements>

The Provider acknowledges and accepts that the Self-Bill process and payments made under this Agreement shall be performed via the Council's system acting as the Council's third-party, payment service provider, or such other body as may be appointed by the Council from time to time, and payment shall be dependent upon the system receiving cleared funds from the Council. For the avoidance of doubt, this arrangement shall not be construed as transferring to the system any debt that is owed by the Council to the Provider, and any disputes regarding the Contracts must be managed between the Provider and the Council directly.

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Schedule 7 – KPIs

1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in Schedule 7.

Achieved KPIs: means the standard of performance actually achieved by the Provider in the provision of the Service in each Measurement Period.

Instruction: means an order for Services issued by a Framework User to the Provider in accordance with the award procedures in clause 4 of the Framework Agreement.

KPI Score Value: means the score value allocated to the Provider upon the receipt of Key Performance Indicators (KPIs). This KPI Score Value in addition to the Provider's Quality Score will be used to determine which Providers will be awarded the Contract to deliver the Requirement.

Management Information: means the information the Council requires and or requests from the Provider either under this Framework Agreement and or any Contracts to monitor performance of the Provider under the framework and in delivering Services under Contracts.

Measurement Period: means the time period identified in **Schedule 7** within which the performance of a KPI is measured.

Month: means a calendar month.

Missed Scheduled Visits: means where a Provider does not deliver the scheduled visit or call to a Service User.

2. KEY PERFORMANCE INDICATORS (KPIs)

- 2.1. The Council shall monitor the performance of the Service against Key Performance Indicators (KPIs) set out in the table below.
- 2.2. The Provider's performance against KPIs shall be used in addition to their quality score to determine which Provider will be awarded the Contract to deliver the Requirement.
- 2.3. The Provider shall supply such information, using the Technology, in the specified format, as is requested by the Council to enable monitoring of the KPIs.
- 2.4. The Provider shall provide the Service in such a manner as will ensure the Achieved KPI in respect of that element of the Services is equal to or higher than the specific Target KPI.
- 2.5. Requests for KPI information will be sent to the Provider using the Technology each Quarter and will clearly specify the timeframes for completion. Failure to meet the specified timescales may impact on the Provider's KPI Score Value.

Table 1: Key Performance Indicators

Requirement 1 - Staffing and Training

KPI #	KPI	Target	Evidence
11.	<p>Before staff deliver care unsupervised care staff must as a minimum successfully complete the:</p> <ul style="list-style-type: none"> • Induction training (including Code of Conduct) • Care Certificate • Manual handling training • Safeguarding training • Medication Policy training • All competency checks 	100%	Random dip sample of files (including training logs and competency assessments)
12.	Care staff must complete the mandatory competencies detailed in Specification, annually and receive a personalised training plan which takes into account local culture, behaviours and beliefs.	100%	Random dip sample of files (including training logs and competency assessments)
13.	Regular and appropriate supervision should be available to every support worker, which should include a 1:1 at a minimum of every 3 months, which should be recorded and evidenced.	100%	Random dip sample of files (including training logs and competency assessments)
14.	The Manager is registered with the CQC or has applied to be registered with the Commission within three months of commencement of employment. The Manager will hold a qualification or be working towards QCF Level 5 Diploma in Leadership in Health and Social Care within three months of appointment and completed within two years.	100%	Random dip sample of files (including training logs and competency assessments)

Requirement 2 – Meeting needs and outcomes

KPI #	KPI	Target	Evidence
15.	Each Service User has a personalised Support Plan that they (or their family or Nominated Representative) has contributed and signed.	100% of Service Users	Feedback from Service Users or their Nominated Representative
16.	Each Service User's ongoing health and social care needs are recorded and maintained in their Support Plan	100% of Service Users	Feedback from Service Users or their Nominated Representative
17.	Service Users report that the needs and outcomes specified in their Support Plan have been met.	100% of Service Users	Feedback from Service Users or their Nominated Representative

Requirement 3 – Delivery and continuity of care

KPI #	KPI	Target	Evidence
18.	All care visits are delivered within 45 minutes of the scheduled call (excluding calls refused or cancelled by Service Users)	100%	Random dip sample of files Feedback from Service Users

Requirement 4 – Service users are safe and protected from harm

KPI #	KPI	Target	Evidence
19.	Care staff are aware of all aspects of Safeguarding so Service Users are safe and protected from avoidable harm	All Safeguarding issues are reported	Providers will notify the Council of all serious incidents Providers will notify the Council of all Safeguarding incidents Random dip sample of files Feedback from Service Users

Requirement 5 – Providers co-produce services

KPI #	KPI	Target	Evidence
20.	Providers deliver a Service which is responsive to feedback and embeds continuous learning	Providers ask 100% Service Users, their families and representatives to complete a short survey to rate the quality of care delivered, at least every 6 months.	Survey results forwarded to Council Commissioners on a quarterly basis, with evidence to show continuous learning

- 2.6. The Providers response to each KPI will be scored using the Scoring Mechanism outlined below and will be known as the Provider's KPI Score Value. This will be added to the Providers Quality Score and will be weighted at 33% of the Providers overall Quality Score.

Scoring Mechanism

Target	Scoring Mechanism					
	100%	90-99%	80-89%	70-79%	50-69%	<50%
100%	5pts	4pts	3pts	2pts	1pt	0pts

Where a KPI Measures (Target) is not to be recorded out of 100%, this will be allocated a score of 5pts if the target has been met and 0pts if the target has not been met.

- 2.7. In instances where the KPI value is recorded as a decimal number, this will be rounded, either up or down to the closest whole number before the score is applied.

3. MANAGEMENT INFORMATION

- 3.1. The Council will also monitor the performance of the Service against the Management Information set out in paragraph 3.4 below.
- 3.2. The Council may, at its discretion, require the Provider to submit additional information not included in paragraph 3.4 to assist with monitoring the performance of the Service.
- 3.3. The Provider shall supply the information as detailed in paragraph 3.4 on request and within the timescales specified by the Council.
- 3.4. Management information:

No.	Management Information
1.	Evidence that all staff receive planned and structured supervision and appraisal and that this includes observed practice of staff on a regular basis.
2.	Evidence that all staff have received training in the policy, procedures and administering of medication as part of their induction and that there is a formal procedure in place to assess that Staff are competent on medication administration.
3.	Number of written complaints received by the Provider.
4.	Number of complaints received by the Council

5.	Evidence that all care and support Staff have completed an appropriate induction and have a training plan prior to providing care and support without supervision / mentoring.
6.	Evidence that all new Staff, who are new to care, complete the Skills for Care, Care Certificate within 12 weeks (for full-time Staff) of starting employment.
7.	Service User Satisfaction Survey sent out annually and results shared with the Council
8.	Change to Registered Manager in reporting period
9.	% agency staff used to provide the service
10.	Number of staff on zero hour contracts
11.	Number of staff vacancies
12.	Number of new Care Staff
13.	Number of Care Staff leaving
14.	Number of Care Staff Hours vacant
15.	Evidence that the staff training plan is reviewed and updated on a regular basis
16.	Number of staff who have completed the Safeguarding, Basic Awareness training
17.	% of care staff who have achieved or working towards QCF level 2 or above
18.	Number of safeguarding alerts reported that lead to a strategy meeting
19.	Number strategy meetings that lead to a positive safeguarding outcome
20.	Number of medication errors
21.	Evidence the Provider does or does not pay its staff engaged in the delivery of homecare the Real Living Wage.
22.	Number of self-funders receiving care and support from the Provider

Schedule 8 – Tender

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