

DATED

2019

**OPEN FRAMEWORK AGREEMENT FOR THE PROVISION OF
HOMECARE SERVICES**

Between

CUMBRIA COUNTY COUNCIL

and

[PROVIDER]

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THIS AGREEMENT is dated

2019

PARTIES

- (1) Cumbria County Council whose principal place of business is at Cumbria House, 117 Botchergate, Carlisle, Cumbria, CA1 1RD (**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 **28 June 2019** in the Official Journal of the European Union seeking tenders from potential providers to establish an open framework for the provision of homecare 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 contract notice permits the receipt of tenders, and acceptance by the Council, until the Termination Date so other providers can be added to this Framework.
- (D) On the basis of the Provider's Tender, the Council and the Provider enter this Agreement to make the Provider eligible to bid to deliver Services.
- (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) The Council has contracted with the Technology Provider to provide a web-based software system to procure Services via the Framework
- (G) It is the Parties' intention that Framework Users have no obligation to place Instructions with the Provider under this Agreement or at all.

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 User.

Authorised Representative: means the persons respectively designated as such by the Council and the Provider, the first such persons being set out in clause 30.

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

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

Commencement Date: means 30 August 2019 / the date of this Agreement.

Complaint: means any formal complaint raised by any Framework User in relation to the performance under the Agreement or any Contract in accordance with clause 19.

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 his Framework Agreement) for the provision of Services between 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 the General Data Protection Regulation ((EU) 2016/679) (GDPR) for so long as it is directly applicable in the UK, the Data Protection Act 2018 (DPA) and any national Laws, regulations and secondary legislation, as

amended or updated from time to time, in the UK relating to the processing of personal data and privacy.

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.

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 person who uses the Framework to purchase Services from the Provider and who is either the Council or other contracting authority (as defined in the Regulations) described in the OJEU 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 24.2.

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 8.

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, 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 Rate (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 8 within which the performance of a KPI is measured.

Month: means a calendar month.

OJEU Notice: means the contract notice [Reference:] published on **28 June 2019** in the Official Journal of the European Union.

Other Contracting Bodies: 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 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.

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 8.

Technology: the proprietary web-based software, through which the Framework will operate and Instructions, Requirements, and Contracts are issued (which is owned and operated by the Technology Provider) currently called SProc.Net or such other technology as agreed between the Parties.

Technology Provider: the owner and provider of the Technology, adam HTT Limited (registered company #07718565), who also act as the Council's payment service provider under the Framework.

Tender: means the tender submitted by the Provider to the Council in order to be appointed to the Framework.

Term: means the period commencing on the Commencement Date and ending on 29 August 2023 or on earlier termination of this Agreement.

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 30.5 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

The Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term.

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 any of the Framework Users for the Services and that the 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 requires 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 neither subject the Council, the Technology Provider or the Technology, to derogatory or abusive treatment nor commit any act or omissions that would, bring the Council or the Technology Provider into disrepute. The Provider acknowledges that in any such circumstances the Council or Technology Provider has the right to suspend the Provider from activities within the Technology, in addition to any other remedies available in this Contract.

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 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 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 16.1(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.
- 5.4 The Provider shall supply the Council with the names of two identified individuals who will have access to the Care 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 the prices listed in Schedule 5 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

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

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.

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 8 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 16.1(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:
- 9.10.1 the Services undertaken;
 - 9.10.2 Service User satisfaction;
 - 9.10.3 emerging best practice;
 - 9.10.4 details of how the Contract and any partnership methods are working; and
 - 9.10.5 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 16.1(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 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 13 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 such pan Lancashire -Cumbria multi-agency policy guidance and procedures for the safeguarding of adults, details of which are available at www.cumbria.gov.uk/safe, as are adopted during the currency of this Agreement.

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 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Provider is the Data Processor. Schedule 7 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 13.3 Without prejudice to the generality of clause 13.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Agreement.
- 13.4 Without prejudice to the generality of clause 13.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Council (as set out in Schedule 7), unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union (**Applicable Laws**) applicable to the Provider to otherwise process the Personal Data. Where the Provider is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the applicable laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality,

integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - i. the Council or the Provider has provided appropriate safeguards in relation to the transfer;
 - ii. the Data Subject has enforceable rights and effective remedies;
 - iii. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council immediately if it receives:
 - i. a request from a Data Subject to have access to that person's Personal Data;
 - ii. a request to rectify, block or erase any Personal Data;
 - iii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Service User on termination or expiry of the agreement unless required by the applicable laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Council or the Council's designated auditor pursuant to clause 10;

- 13.5 The Provider shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Provider's obligations under this clause 13.
- 13.6 Where the Provider intends to engage a Sub-Contractor pursuant to clause 22 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 13.
- 13.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 13.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
- 13.9 Where Data Protection Legislation imposes an obligation on either party to include provisions in this agreement relating to Personal Data, those provisions shall be deemed to be included within this Agreement.

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 16.1(a).

15. PERFORMANCE AND DEFAULT

- 15.1 Where any part of the Service is stated in Schedule 8 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.

- 15.2 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.
- 15.3 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.
- 15.4 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.
- 15.5 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.
- 15.6 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
 - (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.

16. TERMINATION

- 16.1 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.

16.2 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).

16.3 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 16.3(a) to clause 16.3(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.

16.4 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.

16.5 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.

17. SUSPENSION OF PROVIDER'S APPOINTMENT

17.1 Without prejudice to the Council's rights to terminate the Agreement in clause 16 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 16;
- 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

17.2 If the Council provides notice to the Provider under clause 17.1, 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.

17.3 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 17.1.

17.4 Notwithstanding a suspension under clause 17.1 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.

18. CONSEQUENCES OF TERMINATION AND EXPIRY

18.1 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 18.

- 18.2 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.
- 18.3 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.
- 18.4 Subject to clause 1.3, 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.
- 18.5 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.
- 18.6 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.
- 18.7 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.
- 18.8 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.

- 18.9 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.
- 18.10 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.
- 18.11 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.

19. COMPLAINTS HANDLING AND RESOLUTION

- 19.1 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.
- 19.2 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.

20. DISPUTE RESOLUTION

- 20.1 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.

- 20.2 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.

21. PREVENTION OF BRIBERY

21.1 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.

21.2 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 21 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.

- 21.3 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.

- 21.4 If any breach of clause 21.1 is suspected or known, the Provider must notify the Council promptly.

- 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 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 21.1.
- 21.7 Any notice of termination under clause 21.6 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.
- 21.8 Despite clause 20, any dispute relating to:
- (a) the interpretation of this clause 21; 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.
- 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 clauses 22.4 and 22.5 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.
- 22.2 The Provider shall not subcontract the whole or any part of this Agreement except with the express prior written consent of the Council.
- 22.3 In the event the Council permits the Provider under clause 22.2 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.

22.4 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.

22.5 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.

22.6 For the avoidance of doubt the Contracts contain their own provisions to regulate assignment novation and sub-contracting of the Contracts and this clause 22 relates to the Agreement only.

23. INSURANCE INDEMNITY AND LIABILITY

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; 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.

23.2 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.

- 23.3 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.
- 23.4 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.
- 23.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this Contract.
- 23.6 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.
- 23.7 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.
- 23.8 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.
- 23.9 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 23.9 shall not exclude or limit the Provider's liability for:
- 23.9.1 death or personal injury caused by the Provider or its Staff or Sub Contractors negligence; or
- 23.9.2 fraud or fraudulent misrepresentation
- 23.10 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 23.10 shall not exclude or limit the Council's liability for:
- 23.10.1 death or personal injury caused by the Council's negligence; or

23.10.2 fraud or fraudulent misrepresentation

- 23.11 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.

24. VARIATIONS TO FRAMEWORK AGREEMENT

- 24.1 Except as set out in clause 24.2 no amendment or variation of the terms of this Agreement shall be effective unless made in writing and signed by both Parties.
- 24.2 The Council and Technology Provider have a unilateral right to change the form set out in Schedule 3 provided it gives the Provider a minimum of 20 Working Days' notice.

25. THIRD PARTY RIGHTS

- 25.1 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.
- 25.2 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.

26. 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.

27. 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.

28. WAIVER

- 28.1 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.

- 28.2 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.

29. ENTIRE AGREEMENT

- 29.1 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 29 shall operate to exclude any liability for fraud.
- 29.2 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.

30. NOTICES

	Provider	The Council
Name		Procurement & Contract Manager
Address		Cumbria County Council Cumbria House 117 Botchergate Carlisle CA1 1RZ
Telephone Number		07825 202835
Fax Number		
E-mail address		procurement.adults@cumbria.gov.uk

- 30.1 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.
- 30.2 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.
- 30.3 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.
- 30.4 Either Party may change its address for service by serving a notice in accordance with this clause.
- 30.5 This clause 30 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.

31. 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.

32. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)

- 32.1 Where TUPE does apply the Provider agree that it shall comply with all of its obligations under TUPE, the Acquired Rights Directive as applicable.
- 32.2 The Provider agrees to indemnify the Council against any claim howsoever arising from the application of TUPE or the Acquired Rights Directive.
- 32.3 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 32.3 or any differential between the information disclosed and the actual position.

33. DISCRIMINATION AND ANTI-SLAVERY

- 33.1 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).
- 33.2 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).
- 33.3 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 33;

(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 1.

- 33.4 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.

34. GOVERNING LAW AND JURISDICTION

- 34.1 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.

- 34.2 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 CUMBRIA COUNTY 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

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 Technology 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 Cumbria) is as set out in Table 2. Providers will select which Service Classifications they are interested in delivering the Services via the Technology 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)

Carlisle	Eden	Allerdale	Copeland	S.Lakes	Furness
Urban	Urban	Urban	Urban	Urban	Urban
Rural	Rural	Rural	Rural	Rural	Rural
Extra Rural	Extra Rural	Extra Rural	Extra Rural	Extra Rural	Extra Rural

- 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 Technology 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 8.
- 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 use the Technology to review the Instruction Form, alongside their offer, before either accepting/declining the Instruction using the Technology. By accepting the Instruction using the Technology, 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 through the Technology.

- 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 urban, rural or extra rural 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 Technology. The Provider shall not endeavour to process Services commissioned under the Framework outside of the Technology.
- 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.

The Provider shall submit all offers to deliver the Services within the Technology in accordance with the procedures detailed in the Operational Guide, and this Agreement. The Operational Guide is available through the Technology and will be updated throughout the term of the Agreement.

The Provider shall not be eligible to be notified of Requirements or awarded Contracts unless it registers on and then uses the Technology.

Schedule 2 - Specification

1. **INTRODUCTION**

- 1.1. This Service Specification describes the required service and expected standards of support. The Provider will evidence that their organisation and staff have the relevant skills, training and abilities to undertake activities described in the service specification. The specification is an integral part of the contractual arrangement and provides details of the access criteria, expected outcomes and performance standards by which the quality and effectiveness of the service will be measured.

All care and support shall:

- 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 shall include forming local partnerships with families and friends, and in the statutory, independent, voluntary and community sectors.
- 1.2. Cumbria County Council acknowledges Providers as equal stakeholders in the planning, delivery and monitoring of care and encourages participation in multi-disciplinary and partnership meetings. Providers will be required to develop strong partnerships and interdependencies with other Providers delivering Person Centred Home Care. Providers must be able to anticipate and respond effectively to emerging priorities and be prepared to work collaboratively with the Council, both North Cumbria and Morecambe Bay CCGs and other local partners to deliver service improvements and drive positive transformation of care services across Cumbria.
- 1.3. The Council's vision for the future of care and support is one of holistic, integrated and joined up provision. The Council shall promote improved health, emotional wellbeing, independence and social inclusion through the provision of social care and support services which enable people with care and support needs to achieve as full and independent a life as possible within their communities.

1.4. Cumbria's Offer to Social Care Providers

In order to support Providers with the delivery of Home Care Services, the Authority offers to:

- Review the hourly rate at least annually
- Make prompt payments to Providers
- Work in partnership with providers sharing challenges and co-producing solutions
- Collaborate with providers to promote a healthy workforce, prevent disease transmission and increase resilience across the care sector workforce and local communities

1.5. Providers are invited 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 Authority to promote a healthy workforce, prevent disease transmission and increase resilience across the care sector workforce and local communities

1.6. Cumbria County Council is committed to the Living Wage and encourages all Providers to pay the Living Wage Foundation's Real Living Wage to their staff engaged in the delivery of homecare Services to, and for the Council. Providers are invited to consider the following factors within their Services:

- Payment of the Real Living Wage
- Improved Terms and Conditions
- Appropriate remuneration for travel and fuel
- Investment in training and development

1.7. The Council reserves the right to revise the contract and service specification by agreement during the life of the contract. Any material changes to the service specification must be agreed with the responsible Commissioner prior to implementation.

2. 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 shall monitor and review progress towards identified goals and outcomes in partnership with the Service User. Each review shall 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 Delivery 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.

Urgent Notification Procedure: means the procedure to be followed by the Provider as set out in the Specification at Schedule 3, and in the circumstances as set out therein.

3. PURPOSE OF THE SERVICE

- 3.1. For the purposes of this service specification, 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.
- 3.2. Cumbria County Council will commission a person centred home care service, thereafter known as 'the Service'. The Provider will deliver the Service on behalf of the Council. The Provider shall ensure their organisation and staff have the relevant skills, training and abilities to undertake activities described in the service specification.
- 3.3. The aim of the Service is to enable Service Users receiving home care to lead a full qualitative life, maximising their independence, promoting their health and wellbeing and supporting them to remain safe and comfortable in their own homes for as long as possible whilst maintaining their individual dignity, privacy, freedom of choice and treating them with respect.
- 3.4. The Service shall 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.
- 3.5. The Service shall be flexible and person centred. It will implement effective, positive risk management and design Services which address the needs of individual Service Users and ensure outcomes of Support Plans are met.
- 3.6. The Service shall 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.
- 3.7. The Service shall seek and be responsive to Service Users' and Carers views and priorities and work collaboratively with other Service Providers and internal and external partners to ensure quality.

3.8. The Council is committed to working closely with people who use home care services. The following service user requirements have been developed in line with comments received from customers, their carers and families and are key measures of success in terms of service delivery.

1. Help me to build my resilience, maintain my independence health and wellbeing at home.
2. Arrive on time as planned and keep me informed of any unplanned changes to my care service.
3. Equality, diversity and human rights - treat me and my home with dignity and respect.
4. Don't harm me, and treat my carers fairly.

4. LEGAL REQUIREMENTS AND CONTEXT

- 4.1. The Agreement places an obligation on the Provider to comply with all legislation and regulations relevant to the provision of the services.
- 4.2. From the commencement of the contract and throughout the contracted period Providers must be registered with CQC and have a local office base from which they will operate the service. The Service will be safe, effective, caring, responsive and well led. It will treat every individual with dignity and respect and comply with local and national best practice guidance and policies.
- 4.3. The Care Act 2014 requires local authorities to help develop a market that delivers a wide range of sustainable high-quality care and support services that will be available to their communities.
- 4.4. 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. Providers will take a progressive approach when working with Service Users to maximise their independence enabling them to manage their own care wherever possible. Individuals receiving care services must be supported to have greater control over their lives and to remain as independent as possible in their own homes.

- 4.5. The Service User Focused Outcomes in the specification relate to how Service Users' wellbeing can be assured whilst supporting person-centred care and support. 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.
- 4.6. The Provider shall 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.
- 4.7. Active engagement and openness between the Councils and Providers is also important for meeting duties relating to potential "Business Failure" (meaning an event such as the appointment of an administrator, the appointment of a receiver or an administrative receiver) or "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. In these situations the Provider will cooperate fully all parties identified by Council.

- 4.8. The National Social Care Institute of Clinical Excellence (NICE) provides guidance on Managing medicines for adults receiving social care in the community
- 4.9. Public Health England provides guidance on matters such as infection control, Resuscitation Council UK and Royal Pharmaceutical Society Guidelines.
- 4.10. 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).
- 4.11. The Provider will comply with General Data Protection Regulations 2016 (GDPR) shown in Schedule 7
- 4.12. Whilst the Council aims to refer Providers to good practice guidance in this specification, the Provider is expected to know and keep up to date with best practice in relation to the delivery of home care services.
- 4.13. The Provider shall 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>

5. THE SERVICE

- 5.1. 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
 - dementia
 - physical disability
 - sensory disability
 - substance-misuse
 - end of life related needs
 - and other people eligible for a service.

5.2. The Service Users shall 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.

5.3. Service Users shall be ordinarily resident and living in Cumbria, and identified by the Council as being eligible to receive part or all of the Services.

5.4. The Provider shall ensure it delivers the Services at all times in compliance with the Care Act 2014. Further the Provider shall 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.

5.5. The Provider will support adults to achieve their individual potential, maintain their resilience, health and independence and improve their quality of life. Providing care for someone in their own home can prevent, reduce or delay admission to institutional care such as hospital settings and nursing homes. The Service will arrange to deliver support in accordance with the commissioned care plan to meet the eligible person's needs.

5.6. Typical care that people receive includes, but is not limited to:

- support with personal care;
 - moving about,
 - getting out of bed,
 - washing,
 - dressing, and
 - support with other essential daily living activities as required.
- support to access and maintain
 - nutrition and hydration,
 - medication (medication support),
 - toileting/hygiene,
 - safe habitable home environment,
 - maintain family and other personal relationships,
 - engage in work, training or education,
 - 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 and
 - other preventative treatments or schemes.
- 5.7. The Provider shall use the Technology and/or another system as directed by the Council.
- 5.8. The Provider shall develop strong day-to-day links with the Councils front line staff, and alert operational teams if a package of care and support needs to be reduced, increased or ended on a temporary or permanent basis.
- 5.9. The Provider must advise an ASC Practitioner or 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.
- 5.10. The Provider shall attend local meetings and forums as requested by the Council such as for contingency planning arrangements for winter resilience.
- 5.11. The Provider shall support the urgent care and hospital discharge pathways by responding in a timely way to requests for a 'rapid' need for home care

6. SERVICE DELIVERY

6.1. Service Delivery

- 6.1.1. The Provider shall ensure that the Service is available every day of the year operating from **07.00 hours to 23.00 hours**.
- 6.1.2. The Provider shall have a local office within Cumbria.
- 6.1.3. The Provider shall provide contact details of a named responsible representative who is available for contact by the Council and the Service User in relation to this contract and service delivery.
- 6.1.4. The Provider shall carry out Instructions for care and support visits as required by the Council.
- 6.1.5. The Provider shall ensure that Staff shall support the Service User to use any Aids to Daily Living as requested by the Council. Any defect or fault shall be reported to the Council as an Urgent Notification.
- 6.1.6. The Provider shall have sufficient 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.
- 6.1.7. The Provider shall conduct regular reviews of staffing levels and resources especially at times of increased demand to include winter pressures, bank holidays and school holidays.
- 6.1.8. The Provider must be able to deliver the Services at all hours between and including 07.00 hours to 23.00 hours every day of the year.
- 6.1.9. The Provider shall match the requirements of the Service User with the most suitable Staff, and shall ensure there is continuity in relation to the Staff who provides the Service to each Service User.
- 6.1.10. The Provider shall ensure a continuity of approach between day and night Service Delivery.
- 6.1.11. The Provider must report to the Council at the earliest opportunity (same day / next working day) any emergency / temporary one off increases in care required to meet a specific urgent need or cancellation of care services. An authorised Assessor will review the case and details of the change will be recorded for invoicing and payment purposes.

6.2. Care Visits

- 6.2.1. 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.
- 6.2.2. Visit times will be negotiated and agreed with the Service User at commencement of the package.
- 6.2.3. Visit times may be changed at the request of and in agreement with the Service User.
- 6.2.4. The Provider shall ensure that support is delivered at the time agreed with the Service User as set out in the Support Delivery Plan. The Provider shall 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.
- 6.2.5. The Provider shall 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.
- 6.2.6. Visits made 30 minutes before/after the agreed time will be defined as an early or late call for monitoring purposes.
- 6.2.7. Non-attendance or visits made 90 minutes before/after the agreed time will be defined as missed visits for monitoring purposes.
- 6.2.8. 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.

6.3. Accessing the Service

- 6.3.1. The Service shall 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 as notified to the Provider from time to time by the Council; or
 - b) The Urgent Care Team.
- 6.3.2. The Council shall 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.
- 6.3.3. Each Service User's SPO and Support Plan shall 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.

6.4. Monitoring and Procedures

- 6.4.1. The Provider is responsible for planning work rotas and capturing data in such a manner as to ensure that sufficient time is allowed for Staff to travel in between calls. Managerial/ supervisory capacity must be such as to enable the overall management of the Service. The Provider shall provide evidence of this for contract monitoring purposes to the Council upon request.

- 6.4.2. The Provider shall implement and maintain a robust and auditable system to enable the Council to monitor the performance of the Provider. The Provider, utilising such a system, shall supply the Council with accurate data regarding the actual delivery of ordered hours to the Service User(s). The Council will utilise such data for the purpose of charging/statements for Service Users and for payment / reconciliation of payment to Providers.
- 6.4.3. The Provider shall ensure that changes to the care and support needs of the Service User are monitored and recorded, and reported to the Council.
- 6.4.4. The Provider shall work in collaboration with other Providers and agencies to meet their obligations to deliver care and support.
- 6.4.5. The Provider shall have clear and robust procedures for dealing with emergencies. The Provider shall 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.
- 6.4.6. The Provider shall be innovative and creative in developing partnerships in Service Users local and wider communities with potential sources of support for Service Users including Carers, family and friends; and in the statutory, independent, voluntary and community sector organisations, for example GP surgeries, local hospices, District Nurses, physiotherapists etc.
- 6.4.7. The Provider shall ensure that the Service is provided in a sensitive way in order to retain dignity and respect, and that is not based on the Provider's assumptions.
- 6.4.8. The Provider shall ensure Service Users and their Carers or Nominated Representative, are kept fully informed on issues relating to their care and support at all times.

6.5. Support Delivery Plan

- 6.5.1. The Provider shall develop a Support Delivery Plan with the Service User.
- 6.5.2. The Support Delivery Plan shall provide in detail how the outcomes specified in the Support Plan will be met.
- 6.5.3. Whilst developing the Support Delivery Plan, the Provider shall ensure that:
 - a) it is person centred and outcome focused with the intention of giving the Service User a strong sense of being in control of their own support and highlighting the Service Users' strengths to promote 'ability' not 'disability';
 - b) the views and preferences of the Service User are taken into account and reflected appropriately;
 - c) 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.
 - d) they provide a full range of activities to meet the outcomes specified;
 - e) any activities are flexible in order to meet the changing needs of a Service User on a day to day basis;
 - f) nutrition and hydration are adequately dealt with;
 - g) support with medication is carried out as stated on the SPO;
 - h) it is formulated in a manner that simultaneously seeks to manage any risks in the delivery of the Services;
 - i) it is responsive to contingency planning for the Service User as future need arises in working with the Council as requested; and
 - j) they consider the best use of resources.
- 6.5.4. The Provider shall ensure that the Support Delivery Plan produced is signed by the Service User or their Nominated Representative and that the Service User is provided with a copy.
- 6.5.5. The Provider shall work with the Council on Promoting Independence Reviews as identified in the Support Plan.

- 6.5.6. The Provider shall have robust procedures for and shall 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 including but not limited to the range of support as provided for in 5.6.3.c).

6.6. Urgent Notifications

- 6.6.1. With the occurrence of any of the following, the Provider shall 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 Delivery 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.
- 6.6.2. Following the occurrence of one of the matters listed above, the Provider shall:
- 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.

6.6.3. The telephone number to be used to contact the Urgent Care Team (outside normal office hours) is 01228 526690.

6.6.4. 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 shall be responsible for ensuring they are aware of and can easily access any updated number.

6.6.5. The Provider shall 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.

6.7. Communication

6.7.1. 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.

6.7.2. 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) 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
- g) Work collaboratively with Assessing Professionals, Service Users and their representatives to: overcome barriers to success, achieve positive outcomes and resolve conflict. For example, working collaboratively on complex cases, positively challenging difficult behaviours and participating in 3-way planning discussions/visits as necessary.
- h) Foster and maintain positive relationships with the Council including Commissioners, 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.
- i) 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.
- j) 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.

6.8. Information to Customers

- 6.8.1. Ongoing communication with Service Users and their families and representatives is recognised as a key measure of quality and success in terms of service delivery. Service Providers must ensure robust arrangements are in place to communicate with and update individual Service Users in a timely fashion. (See 1.2 Customer Requirements).
- 6.8.2. 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) How to raise, complaints, comments and compliments

6.9. Business Continuity

- 6.9.1. Providers are required to have robust business continuity plans which covers 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 cover response to periods of increase demand, activity, absence, illness, recruitment pressures, inclement weather and any other operating risks.

7. OUTCOME BASED SERVICES

- 7.1. The aim of an outcome based approach is to shift the focus from tasks and processes to the impacts of these on Service Users. Success by achievement of individual outcomes will be evidenced primarily but not exclusively by the satisfaction levels of Service Users and their carers and their experiences in the service and the impact on their wellbeing.
- 7.2. Achievement of the individual outcomes identified in the Service User's support plan shall ensure that Service Users:-
- are valued – involved, more in control, listened to, told what is happening, given choices, at the centre of what is happening to them
 - retain their strengths and independence – ensuring that an individual's quality of life is maintained by keeping active and alert, maintaining mobility/physical health, maintaining hygiene, maintaining social contact and keeping safe and secure
 - are supported through change e.g. post-operatively, at the end of their lives and in situations where poor care or self care has resulted in a reduction in their independence

- are safe – services are well managed and provided by staff who work competently with Service Users because they are appropriately trained and supervised to take person centred approaches.

8. SERVICE STANDARDS, MONITORING AND QUALITY ASSURANCE

The Council is committed to ensuring that all Service Users receive the best possible care services; that are safe, effective, caring, responsive and well led all of the time.

8.1. Service Standards

- 8.1.1. The Provider shall comply with the NICE Guidelines and shall incorporate these into their processes and practices. Adherence to NICE guidelines and quality standards shall be monitored by the Council.
- 8.1.2. The Provider shall be registered with the CQC at all times and shall comply with any resulting requirements or regulations.
- 8.1.3. The Provider shall employ a CQC Registered Care Manager, who is based within the Cumbria area.
- 8.1.4. The Provider shall deliver the contracted care service from an accessible full-time local office that is registered with CQC and based in the Cumbria area.
- 8.1.5. The Provider shall 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.
- 8.1.6. The Provider shall supply the Council with details of any notices issued to them by the CQC within five Working Days and shall provide the Council with copies of any regulatory reports or reviews as soon as practicable following receipt by the Provider, regardless as to whether or not they have been released to the public.
- 8.1.7. The Provider shall ensure that the Service is fully compliant with the requirements of the Care Act 2014 and all subsequent legislation.

- 8.1.8. In the event that the Provider is in any doubt, or has any question concerning the scope or nature of any aspect of the Service, including clarification of any Service obligations, the Provider shall, without delay, notify the Council of such doubt and question, and will comply with any guidance given by the Council for the proper implementation of that or any other aspect of the Service.
- 8.1.9. 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
 - d) CQC
 - e) The National Minimum Standards for Domiciliary Care
 - f) The Domiciliary Care Agencies Regulations 2002
 - g) Mental Capacity Act 2005 (Deprivation of Liberty Safeguards)
 - h) Equality Act 2010
 - i) Human Rights Act 1998
 - j) Autism Act 2009
 - k) Deprivation of Liberty Safeguards
 - l) Manual Handling Operations Regulations
 - m) Service Users' individual assessed needs and outcomes and any subsequent assessment, Care and Support Plan or review documentation
 - n) Any future legislative changes or changes to National Minimum Standards that determine the standard of care to be delivered.
- 8.1.10. The Provider shall:
- a) 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

- b) Have reliable mechanisms and checks in place to ensure that staff have arrived on duty as expected and a rota is in place to deliver planned care services
- c) Apply rigorous monitoring, checks and control measures in all aspects of delivering the service
- d) Ensure monitoring and control measures are used as tools to manage all aspects of delivering the service. Performance activity data and service user feedback must be actively used by the Service as a tool to develop, improve and enhance service delivery.
- e) Ensure Service Users their families and representatives have the opportunity to rate their care and feedback comments.
- f) Engage positively in learning from issues and concerns and provide regular opportunities for Service Users, Care Staff and Managers to provide feedback and raise issues or concerns as they arise.
- g) Provide evidence demonstrating how the Service works with individuals; showing how learning is routinely shared with both carers and office based staff and successfully applied to day-to-day activities across the Service to improve performance and quality of care delivered.
- h) Gather, maintain, interpret and provide robust performance activity data.
- i) Permit access to the Providers premises and records for the purposes of monitoring or reviewing the Service

8.1.11. The Council shall:

- a) Undertake regular joint and collaborative quality monitoring checks with Service Users, their families and carers in line with the Customer Requirements described in this specification and with reference to CQC Key Lines of Enquiry (KLOE).
- b) Share relevant info with care Providers about the Provider's service performance
- c) Engage positively in learning from issues and concerns and provide regular opportunities for Service Users, Care Staff, Assessing Professionals and Managers to provide feedback and raise issues or concerns as they arise.
- d) Work together with the Provider to develop, improve and enhance care services based on feedback received

8.2. Guiding Principles

- 8.2.1. Our guiding principles for quality monitoring of person centred home care services are:

Transparency - Clear and pre-determined performance measures and interventions

Consistency - A uniform approach across different types of services

Proactivity - Underperformance is identified at an early stage so that it can be swiftly addressed

Proportionality - Intervention is related to risk and appropriate to the local circumstances

Focused On Recovery - Initial interventions focus on recovery and include action to address the root causes of issues

8.3. Quality Requirements

- 8.3.1. The Provider shall comply with 8.1 Service Standards.

- 8.3.2. The Council shall monitor the performance of this Contract through:

- a) **Key Performance Indicators (KPIs)** as set out in Schedule 9. The Provider shall provide such data and information as requested by the Council to assist with the monitoring of these KPIs;
- b) **Management Information data** and information provided by the Provider as requested by the Council
- c) Performance visits by the Council's Officers;
- d) **Service User outcomes**, which will be monitored through:
 - i. *care management reviews; and*
 - ii. *an evaluation of responses to questions asked in spot check visits to Service Users' homes.*
- e) Measurement by officers of the Council against the ASCOF. This may include, but shall in no way be limited to, 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.

- 8.3.3. The Provider shall provide all reasonable assistance to the Council during any monitoring process.

- 8.3.4. When the Council generates a performance visit report regarding the Provider's performance, a copy will be given to the Provider.
- 8.3.5. The Council reserves the right to directly obtain the views of both Service Users and the Providers Staff regarding the Provider's performance.
- 8.3.6. The Council reserves the right to directly observe the Service provided at the point of delivery without giving notice.
- 8.3.7. The Provider shall register with the Skills for Care NMDS-SC and complete the following:
- a) The NMDS-SC Organisational record and update this data at least once per financial year; and
 - b) Fully complete the NMDS-SC individual Staff records for a minimum of 90% of the Staff, including updating these records at least once per financial year.
- 8.3.8. The Provider shall retain records that ensure they can demonstrate their performance under this Contract. Records will show resource inputs, organisational processes and outcomes related to the Service and Service Users.
- 8.3.9. The Provider shall carry out periodic surveys of Service User levels of satisfaction. This will be done at least annually and results shall be shared with the Council as part of the quality monitoring process. The Council may from time to time specify a standardised set of questions that the Provider must include in such surveys, in order to facilitate County-wide benchmarking of Service User satisfaction.

9. **SERVICE USER FOCUSED OUTCOMES**

9.1. **SERVICE USER FOCUSED OUTCOME 1**

Customer Requirements

These 'I statements' underpin the contract quality monitoring process

- I want you to turn up at the time we agreed and give your best every visit.
- I want you to acknowledge that you are a visitor in my home, to be pleasant and friendly and help me to feel/be at ease.
- I want to feel in control of my care and support. I need to know who is supporting me and to have a say about whom and when this will be.
- I want you to keep me informed about any unexpected/planned changes to my planned care.
- I want you to take your time with me, be careful and patient, don't make me feel rushed.
- I want you to get to know me well and enjoy meaningful conversations with me, take in interest in my life, my family, my friends, my past and my future.
- I want you to focus on me when you are in my home, I don't want you to talk over me with another carer worker or be on your mobile phone.
- I want you to encourage and help me to be safe, happy and healthy in my home and community, using common sense and flexibility to make this happen.
- I want you to be well trained and able to support me safely, I want to trust and be confident in you when you are supporting me.
- I want you to respect my privacy, gender, sexual orientation, age, ability, race, religion, culture and lifestyle and keep information about me confidential.
- I want you to know me well enough to recognise when I am at risk or feeling unwell, acting early so that I have the best chance of avoiding harm and getting better quickly.
- I want you to support me to live a life beyond my home, maintaining friendships, making new relationships and sharing my skills and interests and activities with others.

9.2. SERVICE USER FOCUSED OUTCOME 2

Provider Service Information

Service Users have the information they need to understand the service which is available to them

- 9.2.1. Service Providers must ensure robust arrangements are in place to communicate with and update individual Service Users in a timely fashion.
- 9.2.2. 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:
- Arrangements for day to day communication between the Service User and the Care Provider
 - What to do if care doesn't happen as planned (including out of hours telephone contacts)
 - What to do if service users are unhappy or have a question or concern about the care (including who to contact, address and telephone number)
 - How to raise, complaints, comments and compliments
- 9.2.3. This Framework Agreement and Specification takes precedence over any information supplied to the service user on the services provided by the provider.

9.3. SERVICE USER FOCUSED OUTCOME 3

Care & Support Planning, Person Centred Care and Record Keeping
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Service Users' ongoing health and social care needs are set out in individual support delivery plans. Service Users' rights and best interests are safeguarded by the provider's record keeping policies and procedures.
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- 9.3.1. Service Users are supported in line with the agreed care plan to build resilience, maximise their independence and wellbeing.
- 9.3.2. Care packages are allocated promptly and the Provider maximises efficient allocation of care hours without call cramming, ensuring Service Users' needs are appropriately met.
- 9.3.3. Good, consistent, safe, effective and responsive person centred care is delivered on time every time
- 9.3.4. Service Users receive continuity from the same team of carers wherever possible. Where two carer (double up) visits are required carers arrive and attend together to deliver care. In instances where two carers are required, the Provider shall deliver care in the least intrusive way possible throughout the duration of the care period
- 9.3.5. The Service supports eligible Service Users in line with the agreed care plan and in a flexible and responsive way; recognising individuals' varying physical abilities, emotional capacity, cultural and spiritual beliefs, always treating individuals with dignity and respect.
- 9.3.6. The Provider shall enable the Service Users to feel empowered and be at the centre of decision making, supporting Service Users to have choice and control over who and how their support is provided. The Provider shall support the Service User to utilise their Personal Budget to meet their assessed outcomes and to contribute to a reduction in need for on-going care and support.
- 9.3.7. Service Users are well informed and appropriately supported. Any anticipated or unexpected changes to individuals' planned services are communicated effectively and as a matter of urgency to Service Users, their representatives and relevant care staff.

- 9.3.8. Where care visit tasks are completed earlier than anticipated, care staff will remain and engage positively with the client, unless it is requested (by the service user) and recorded that this is not required
- 9.3.9. Following a comprehensive assessment, individual risk assessments will be undertaken and person centred support delivery plans produced for all identified and potential needs (i.e. where there is a potential for the Service User's needs to change as a result of their condition changing or deteriorating). Where moving and handling plans are required, these will be part of the support plan and reviewed appropriately.
- 9.3.10. Care documentation will be clear, legible and up to date. Where possible, support delivery plans will not be hand-written, will be of a length that staff are able to read and process the information, and in a format that is appropriate to its content. Support delivery plans will be provided to the Local Authority on reasonable request within 7 days of the request having been made.
- 9.3.11. Support delivery plans will follow the process of assessment, planning, implementation and evaluation and provide clear, concise and directive information that reflects the care required to meet the Service User's individual needs. Support delivery plans shall include goals for independence and maintaining Service Users' abilities. Support delivery plans and risk assessments will be reviewed as a minimum on a monthly basis or as and when the Service User's needs change.
- 9.3.12. All records, including care records, daily records and charts must be made contemporaneously and chronologically and be legible to the reader.
- 9.3.13. Service Users and/or their representatives, including advocacy support, must be involved in the production of support delivery plans and invited to attend care review meetings. Service Users should agree:
- The time of schedule visits
 - To any changes to the time of scheduled visits
- 9.3.14. The Provider shall 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.
- 9.3.15. The Provider shall 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.

- 9.3.16. The Provider shall ensure that Staff shall support the Service User to use any Aids to Daily Living (equipment) as requested by the Council. Any defect or fault shall be reported to the Council or Housing Provider as appropriate.
- 9.3.17. The Provider shall work in collaboration with other Providers and agencies, to meet their obligations to deliver care and support.
- 9.3.18. Support delivery plans will explicitly identify whether the Service User has consented to the plan or whether they lack the capacity to do so. If this is the case, documented evidence will demonstrate how a best interest decision was made.
- 9.3.19. Service Users will have access to their records and information held about them by the provider.
- 9.3.20. All individual records will be stored in a secure place. Records will be up to date, adhere to professional record keeping standards and be constructed, maintained and used in accordance with the Data Protection Act 2018, the General Data Protection Regulation and other statutory requirements.
- 9.3.21. The provider will undertake monthly audits of support delivery planning and record keeping demonstrating the accuracy, quality and consistency of information, measure the outcomes of care and ensure that risks to Service Users are minimised.

9.4. SERVICE USER FOCUSED OUTCOME 4

Meeting Needs and Outcomes, Continual Evaluation and Review

Service Users and their representatives know that the service they enter will endeavour to meet and continue to meet their needs and agreed outcomes.

- 9.4.1. The Provider will be able to demonstrate the ability to manage and respond to the assessed needs and outcomes of Service Users to ensure they receive the appropriate care, support and treatment in a timely manner.
- 9.4.2. The Provider shall ensure that changes to the care and support needs of the Service User are monitored and recorded, and reported to the Council.
- 9.4.3. Documentation and measurable outcomes will be maintained to clearly evidence the continual evaluation and review of Service Users' needs.
- 9.4.4. With the occurrence of any of the following, the Provider shall notify the council:
- 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;
 - any safeguarding concern arising;
 - a Service User's condition suddenly deteriorates, necessitating an urgent review;
 - the Service User displays any unusual or unexpected challenging behaviour, whether verbal, physical or sexual;
 - a Service User has an unplanned emergency admission to hospital;
 - circumstances where a Service User appears in need of medical attention but refuses to seek help;
 - a Service User's condition deteriorates over a longer period necessitating the need for a review, for example, questionable mental capacity, diminishing mobility etc;
 - a Service User or Carer refuses to grant access or receive the service in accordance with the Support Delivery Plan;
 - a Service User refuses to accept intervention;

- risks are identified that do not stem from abuse, for example risk from fire, alcohol, self-neglect, increasing frailty; or
- any other event which the Provider deems to constitute an emergency.

9.4.5. Following the occurrence of one of the matters listed above, the Provider shall:

- contact the ASC Practitioner or Urgent Care Team (as appropriate in consideration of the operating hours) via telephone on the same day
- Confirm in writing to the Council 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

9.5. SERVICE USER FOCUSED OUTCOME 5

Access to Health and Social Care

Service Users receive appropriate evidence based health and social care and have access to community services and specialist input to meet their assessed needs and maximise their health, independence and wellbeing.

- 9.5.1. Service Users' health, independence and wellbeing will be promoted, monitored and maintained.
- 9.5.2. The Provider will work with Healthcare organisations, GPs, Community Nursing Teams, Allied Health Professionals to raise concerns about a Service Users health (with the consent of the Service User) or make referrals or appointments where required
- 9.5.3. Service Users' physical, psychological and mental health will be proactively monitored in order to improve health, promote independence and wellbeing and maintain their quality of life with any concerns reported to the Council.
- 9.5.4. Staff who support Service Users who have access to specialist health and social care aids and equipment (according to assessed needs) will be trained and assessed as competent in the safe usage of this equipment.
- 9.5.5. The Provider shall promote and facilitate, where appropriate, access to telecare and assistive technology solutions to achieve a wide range of responses to meeting Service User needs; supporting the use of Aids to Daily Living; and improving the functional ability of people with long term conditions and support them to manage their condition and promote independence.
- 9.5.6. The Provider shall inform the Council within one working day should a Service User be transferred in or out of hospital

9.6. SERVICE USER FOCUSED OUTCOME 6

Meeting Communication Needs

Communication with Service Users is conducted in a way that maximises their independence, choice, control, inclusion and enjoyment of rights.

- 9.6.1. Communication both verbal and written will be conducted in a way that is understandable to the Service User and in a way in which they can make themselves understood. Service Users say that the way they are communicated with makes them feel better about themselves.
- 9.6.2. The communication needs of each individual will be identified and include recognition of visual, hearing and cognitive difficulties. The Provider will ensure they find sources of information and advice and understand how to deal with any dilemma relating to communication.
- 9.6.3. Communicating in inclusive ways will be dependent upon:-
- An Individualised support delivery plan using accurate information on how to get communication right for each Service User. This may be in the form of a communication passport
 - Staff awareness and knowledge of a range of resources that support inclusive communication approaches, e.g. Total Communication, Intensive Interaction amongst others
 - Having and using a range of resources that support inclusive communication
 - Enabling the use of digital media eg. SKYPE or other similar communication method
 - Support from management and senior staff
 - Use of relevant external support when required, e.g. Speech and Language Therapy
 - Understanding primary language if English is not the individual's first language.
- 9.6.4. The Provider and staff will communicate and provide written information in a format that each Service User and/or their representative can understand.
- 9.6.5. Service Users will be supported to interact with others and express themselves.

- 9.6.6.** The Provider shall provide a Service User Handbook which sets out the Providers quality statement and the Providers commitment to any Service User.

9.7. SERVICE USER FOCUSED OUTCOME 7

Medication Management

Service Users are protected and supported by the provider's policies and procedures for the management and administration of medication.

- 9.7.1. Service Users are supported to manage their prescribed medication in accordance with the Care Plan, NICE guidance and the Care Provider's organisational policies and procedures.
- 9.7.2. The Provider will have clear policies and procedures which demonstrate recognised best practice in line with The National Social Care Institute of Clinical Excellence (NICE) guidance on Managing medicines for adults receiving social care in the community

<https://www.nice.org.uk/guidance/ng67>

- 9.7.3. The policies will make it clear who is accountable and responsible for using medicines safely and effectively. The policies will be evidence based and include the principles of:-
- Sharing information about a Service User's medicines including when they transfer to another care setting
 - Accurate and up to date recording keeping and MAR charts
 - Identifying, reporting and reviewing medicines-related problems
 - Keeping Service Users safe (safeguarding)
 - Accurately listing a Service User's medicines (medicines reconciliation)
 - Medication review
 - Safe handling of medicines and controlled drugs including ordering, storage and disposal
 - Self-administration
 - Care home staff administration of medicines including 'when required' medication
 - Staff training and competence requirements
 - Covert administration
 - Homely Remedies/Minor Aliments
 - Palliative care
 - Verbal orders
 - Administration via a feeding tube

- Correct use of infusions and injection devices in care homes with nursing
 - Monitored Dosage Systems and Compliance Aids.
- 9.7.4. All Registered Nurses and other relevant staff will complete a medicines management assessment as part of the induction process and provide evidence of ongoing continuing professional development in medicines management.
- 9.7.5. The Provider will regularly assess and provide documentary evidence of the competency of all Registered Nurses and other relevant staff in the management of medication to ensure that practices are compliant with the standards outlined in the policies and procedures.
- 9.7.6. Information and advice will be sought from the pharmacist, where appropriate, in relation to administering, monitoring and reviewing medication.
- 9.7.7. The Provider will ensure that they have an up to date list of past and present medications for each Service User immediately the service begins.
- 9.7.8. The Provider will support Service Users to take medicines independently or administer medicines when they are unable to do so.
- 9.7.9. Records should include details of any capacity assessments and Best Interest decisions made on behalf of any Service User lacking capacity to consent to medication.
- 9.7.10. Any arrangements for covert medication must be made in accordance with Mental Capacity Act guidance and NICE guidelines. Such arrangements will be clearly documented including medical recommendations, capacity assessment and best interests decision-making record. Where covert medication is given, this will clearly be recorded in the care/support plan and reviewed on a monthly basis.
- 9.7.11. Any self-administration of medication by Service Users will be undertaken within a risk management framework and suitable lockable facilities provided.
- 9.7.12. Service Users' medication will be reviewed with their General Practitioner six monthly or more frequently as required.

- 9.7.13. Medication Administration Records (MAR charts) will be audited monthly to provide an audit trail of stock control and storage of medicines including monitored dosage systems and evidence that correct procedures have been followed.
- 9.7.14. Additional audits will include monitoring the administration, recording and disposal of medicines. Audits should be robust and comprehensive and identify that measures are in place to ensure safe practice such as:-
- The use of photographs to identify that medicines are being administered to the right person
 - Specimens of staff signatures to identify care staff or the Registered Nurse responsible for the administration of medication
 - The correct and accurate completion of MAR charts
 - Satisfactory procedures for transcribing medication onto MAR charts and recording dosage changes onto MAR charts which include obtaining countersignatures from another registrant or competent health professional.
- 9.7.15. The Provider will monitor the effect of each Service User's medication and take action if their condition changes including side effects and adverse reactions. In addition to this requirement, the Provider will ensure Service Users taking anti-psychotic medication are reviewed to assess for benefit within four weeks of antipsychotic initiation.
- 9.7.16. The Provider shall have arrangements in place to record and report drug related incidents including findings of their service review and lessons learnt in order to reduce the risk of repetition.
- 9.7.17. Service Users will be notified of any errors in relation to the administration of their medication or their representative.
- 9.7.18. Records should be maintained to reflect the safe disposal of medication.
- 9.7.19. The Provider shall have in place policies and procedures relating to medication that protect Service Users and assist them to maintain responsibility for their own medication wherever possible.
- 9.7.20. Staff shall receive training in the policy, procedures and the administering of medication as part of their induction.
- 9.7.21. The Provider shall have in place a formal procedure to assess that Staff are sufficiently competent in medication administration.

- 9.7.22. The Provider shall only direct Staff to act in the administration of medication, that are assessed as being sufficiently competent.
- 9.7.23. The Provider shall ensure that in circumstances when they are not in receipt of sufficient documentation, they shall revert to the Council for rectification prior to providing any service relating to the administering of medication. The Provider may request written clarification from the Council.

9.8. SERVICE USER FOCUSED OUTCOME 8

Privacy, Dignity and Respect

Respect given to Service Users means they are supported and treated in a way that makes them feel better about themselves.

- 9.8.1. The Provider will promote a culture that reflects and demonstrates that Service User privacy, dignity and respect is embedded in the beliefs and values of the service. Service Users will say they exercise choice and control and feel better about themselves because of the way they are treated.
- 9.8.2. Care practices will enable modesty and protect privacy at times that are important to individuals and particularly when supporting them with their continence needs and when bathing and dressing.
- 9.8.3. Staff will uphold Service Users' right to confidentiality and the protection of personal information relating to communication (verbal and written) and recording.
- 9.8.4. Service Users will be cared for in a polite and courteous manner and agreement will be reached with them regarding how they would prefer to be addressed.
- 9.8.5. Care and support will aim to exercise choice and control and promote the Service User's self-confidence, self-esteem, sense of belonging and wellbeing, and maximise their individual abilities.
- 9.8.6. Service Users will be treated as individuals, receiving a personalised service encouraging choice and control. They will be listened to and supported to express their needs and wishes.
- 9.8.7. Staff will not make judgemental statements about the lifestyle or standards of any Service User, either in verbal or written communication.
- 9.8.8. The Provider shall ensure that there are appropriate arrangements for staff gaining access to Service User homes. The Provider shall ensure the security numbers of key safes shall be kept confidential and only disclosed to Staff who have a legitimate reason for holding the code. The Provider shall have a written policy around the confidentiality of key safe codes and Staff holding keys. In the event that there is a loss of keys by Staff the Provider is liable to reimburse the Service User for any associated cost incurred by the loss of keys.

- 9.8.9. Staff must not under any circumstances enter a Service User's property when they are in hospital, or otherwise away from the premises without the explicit written permission of the Service User, Carer or ASC Practitioner.

9.9. SERVICE USER FOCUSED OUTCOME 9

Autonomy, Choice, Independence and Fulfilment

Service Users are assisted to express informed choice and control over their daily lives and supported in maintaining their personal identity, individuality and independence.

- 9.9.1. Service Users shall be encouraged and promoted to make independent choices as individuals in order to determine their needs, beliefs, culture, preferences and values.
- 9.9.2. Service Users shall make their own decisions and be given all practicable help before anyone treats them as not being able to make their own decisions.
- 9.9.3. A Service User's ability to make their own decisions will be assumed unless demonstrated otherwise in accordance with the requirements of the Mental Capacity Act (2005) Service Users shall have the right to think and act without having to refer to others, including the right to say no to help.
- 9.9.4. The provider will ensure that all staff understand how the Service User's right to autonomy, choice, independence and fulfilment is maintained within the context of the Mental Capacity Act (2005)

9.10. SERVICE USER FOCUSED OUTCOME 10

Rights

Service Users' legal rights are respected, protected and upheld.
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- 9.10.1. Service Users are individuals, irrespective of their living situation. They retain all their legal rights and entitlements as individuals.

The Mental Capacity Act 2005 (the 'MCA')

- 9.10.2. The Provider, including its Staff, shall comply with the provisions set out in the MCA 2005 and its associated code of practice when delivering Services;
- 9.10.3. All Staff shall be trained at induction to follow the provisions set out in the MCA 2005 and its associated code of practice the and that training shall be updated at least annually;
- 9.10.4. The Provider shall notify the Council immediately where it has concerns regarding a Service Users ability to make decisions around their treatment and care due to a lack of capacity brought about by an impairment or disturbance in the Service Users functioning of their mind or brain; and
- 9.10.5. The Provider shall request the support of an Advocate via the Council where decisions are to be made and a Service User may lack capacity in a particular area.

9.11. SERVICE USER FOCUSED OUTCOME 11

Diversity, Equality and Individuality – Expression of Beliefs

Service Users live in an environment that is committed to promoting a culture which respects diversity, equality and individuality and their experiences reflect this commitment.

- 9.11.1. The Provider will understand and be committed to promoting a culture for both Service Users and staff which reflects and demonstrates that diversity, equality and individuality is embedded in the beliefs and values of the service adhering to the Equality Act 2010.
- 9.11.2. A strategic approach will be adopted by the Provider in delivering education to staff so that they understand the:-
- Organisation's aims and objectives
 - Relevant policy provisions
 - Difference between acceptable and unacceptable behaviour
 - How personal attitudes and values can affect behaviour
 - Role they play in making the management of diversity a reality
 - Meaning of cultural diversity
 - Meaning and impact of discrimination in the workplace.

9.12. SERVICE USER FOCUSED OUTCOME 12:

Dementia/Mental Health

Service Users whose emotional or mental wellbeing are affected by memory or cognitive impairment or similar condition are assured that the care and support they receive promotes their quality of life.

- 9.12.1. People with cognitive impairment or mental health problems frequently experience emotional and perceptual changes resulting in depression, anxiety and disorientation, which may also affect their normal pattern of behaviour and functional ability. People with a diagnosis of dementia, experience a progressive decline in multiple areas of functioning including memory, reasoning, communication skills and the skills needed to carry out daily activities. Some people may develop behavioural and psychological symptoms such as depression, psychosis, aggression, withdrawal and 'walking with purpose', which may complicate care and can occur at any stage of the illness. The Provider shall ensure staff are aware of difficulties experienced by Service Users relating to emotional and perceptual changes, depression, anxiety and disorientation, which may also affect their normal pattern of behaviour and functional ability.
- 9.12.2. Symptoms of aggression, confusion and disorientation may be the result of dementia or mental disorder or a delirium/toxic confusion state due to infection, dehydration, constipation or the side effects of medication. Providers shall monitor these aspects to assist with differentiating between symptoms and Service Users shall be referred to a General Practitioner for a specialist mental health assessment, diagnosis and treatment as necessary.
- 9.12.3. Support delivery planning shall take account of the impact of these symptoms and direct staff how to meet Service User outcomes and needs.
- 9.12.4. Staff shall consider Service Users' sense of reality from moment to moment and respond in a way that is meaningful to them and support them to safely express themselves.
- 9.12.5. Staff shall monitor for changes by Service Users and look for behavioural cues that may indicate a change being required in the way care and support is provided or a deterioration that may require a referral to the General Practitioner or mental health service.

- 9.12.6. The provider shall ensure staff work as part of any multi-agency team to support the Service Users to include effective liaison with primary mental health services and the Service Users' General Practitioner.
- 9.12.7. Providers shall recognise when their service may need additional support or a more specialised service to meet the needs of Service Users and refer this to the Council for a review to be instigated in a timely manner.
- 9.12.8. The Provider shall adapt the day to day routines and staff culture within their service so it allows for a suitably flexible and stimulating environment for each Service User and supports their individuality, their sense of reality, and their mental and emotional wellbeing.
- 9.12.9. The Provider shall differentiate between symptoms of aggression, confusion and disorientation which may be the result of a delirium/toxic confusional state due to infection, dehydration, constipation or the side effects of medication. This will rely medical advice being sought.
- 9.12.10. The Provider shall organise staffing to ensure that the following practices are carried out competently:-
- Interpersonal skills in communication including non-verbal
 - Adapting own behaviour to promote relationships
 - Build meaningful interactions to include promoting empathy and unconditional positive regard, maintaining Service Users' personal world, identity, personal boundaries and space
 - Recognise the signs of anxiety and distress resulting from confusion, frustration or unmet need and respond by understanding the events the Service User is experiencing and diffusing their anxiety with appropriate therapeutic responses
 - Monitoring and effectively reviewing the effects and side effects of anti-psychotic medication
 - Meaningful occupation/activities and stimulation as a part of effective therapeutic intervention and care and avoiding isolation. Understanding the changing nutritional care needs of those with dementia and providing services and support in a flexible, person-centred manner
 - Being flexible about routines
 - Effective management of behaviours that challenge and how agitation and aggression is a method of communicating unmet need

- Risk assessment and management, emphasising freedom of choice and reasonable risk taking
- Promoting social and community networks and relationships.

9.12.11. The Provider will ensure that staff have the necessary training, skills and knowledge of Service Users' individual needs and behaviour in order to deliver effective person-centred care. Dementia Awareness training, as a minimum, is included as part of staff induction.

9.12.12. The Provider has a lead, for example a Dementia Champion, to role model, coach and embed training into practice, and to monitor the quality of dementia care.

9.13. SERVICE USER FOCUSED OUTCOME 13

Managing Challenging Behaviour

Service Users who present behaviour that challenges services are supported in a way that helps them to communicate and to safely deal with situations they find difficult.

- 9.13.1. The Provider shall ensure the application of good practice that focuses on person-centred and positive support to Service Users whose behaviour challenge
- 9.13.2. The Provider shall have a policy and procedures in place for Service Users whose behaviour is challenging, and ensure that these are complied with by all Staff. The Provider shall ensure that Staff have specific training to meet the individual needs of the Service User. It is anticipated that case-by-case training for Staff shall be required to meet the needs and positively manage behaviour for some Service Users
- 9.13.3. The Provider shall ensure that a Risk Assessment is undertaken which forms part of the Support Delivery Plan, to be able to evaluate the potential for harm to Service Users and Staff. This shall be done in partnership with the Council and other relevant agencies, and shall take into account information in the Service User's SPO and/or Support Plan.
- 9.13.4. The Provider shall ensure that Staff have an understanding of each Service User's emotional and physical needs and be aware of warning signs and "trigger" points, which result in particular behaviour. Staff shall have skills in anticipating, diverting or diffusing challenging incidents. Staff shall have appropriate listening skills and be familiar with strategies which enable them to minimize challenging behaviour.
- 9.13.5. The Provider must maintain detailed records that evidence when any de-escalation techniques or interventions have been used.
- 9.13.6. The Provider shall consult with Clinicians working with the Service User for advice on the use of physical interventions and also in the risk assessment regarding restricting a Service User's freedom of movement.
- 9.13.7. The Provider shall ensure all planned physical interventions are:
 - Agreed by the multidisciplinary team, including consultation with others as appropriate;
 - Put in writing, together with a Behaviour Support Plan (they shall never be the only plan for managing behaviour);

- Supervised by appropriately trained staff; and
- Recorded, and feedback to the Framework User and CQC where appropriate so that the circumstances of any physical intervention and methods can be monitored

9.14. SERVICE USER FOCUSED OUTCOME 14

Pressure Area Care, Tissue Viability and Wound Management
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Service Users receive care that supports healthy tissue viability and wound management.

- 9.14.1. The Provider shall have up to date policies and procedures to support evidence based tissue viability and wound management practice.
- 9.14.2. The Provider shall ensure staff have up to date knowledge and skills in the promotion of good skincare, prevention and recognition of pressure ulcers, wounds and other skin deteriorations
- 9.14.3. Providers will liaise with the relevant health professional if they have any concerns in relation to skin injuries and pressure areas/pressure area care and will follow the guidance provided. This may include advice in relation to (but not exclusively) hygiene, repositioning regimes or appropriate equipment to be used. Such guidance will be clearly documented in the support delivery plan.
- 9.14.4. Robust assessment and proactive preventative care will be considered when applying moving and handling techniques to ensure individuals are not placed at risk of traumatic skin injuries.

9.15. SERVICE USER FOCUSED OUTCOME 15

Nutritional Care

Service Users have enjoyable meal time experiences that meet the individual's needs that mean they eat what they like when they want it

- 9.15.1. During induction training all care staff will be trained in the importance of good nutrition and hydration, how to recognise the signs of poor nutrition and hydration and how to promote adequate nutrition and hydration.
- 9.15.2. The Provider shall ensure that where Staff are involved in food preparation they are required to have basic food preparation skills and able to support Service Users to follow a healthy balanced diet that is relevant to them as an individual, taking account of their wishes and preferences.
- 9.15.3. All staff will be aware of the nutritional care requirements of adults in general and specifically the requirements of all Service Users.
- 9.15.4. All care staff will be trained in the special dietary requirements of older people, especially those with diabetes, dementia, chronic illness or with swallowing difficulties and specifically in the special dietary requirements of their Service Users.

Dietary Supplements and Thickeners

- 9.15.5. Prescribed dietary supplements and thickeners will be used in accordance with the medication policy and subject to the terms of the prescription.
- 9.15.6. If a diet is to be texture modified then care staff will be aware of the relevant descriptor required by the Speech and Language therapist.
- 9.15.7. Where required Care staff will receive training on the thickener to ensure it is used correctly.
- 9.15.8. Service Users will be supported in a way that their meals will reflect their ethnic, social, cultural and religious needs

9.16. SERVICE USER FOCUSED OUTCOME 16

Complaints

Service Users and their representatives are confident that their complaints and concerns will be listened to, taken seriously and acted upon effectively without any negative impact.

- 9.16.1. Service Users, Care Staff and Managers are able to share their views or concerns as they arise with the Provider
- 9.16.2. The Provider will ensure that there is a straightforward, transparent, well publicised and accessible policy and procedure to enable Service Users, their carers or advocates to make a complaint, raise concerns or appeal, and for complaints and concerns to be investigated within agreed timescales.
- 9.16.3. The Provider shall ensure that their Staff fully understand the complaints procedure and their responsibility to promote the right to complain
- 9.16.4. The Provider shall demonstrate a positive and open attitude to complaints and facilitate verbal or written complaints to be made or made on behalf of the Service User and shall not seek to obstruct, delay or interfere with the Service Users' rights in this regard.
- 9.16.5. Where Service Users lack capacity in a particular area or might struggle to make a representation of complaint without support, the Provider shall request the support of an Advocate
- 9.16.6. The Provider will ensure that all complaints are thoroughly investigated by a competent person and records are kept to demonstrate how they have been managed, a timescale for responses and how Service Users are informed of the outcome including their level of satisfaction.
- 9.16.7. The Provider shall co-operate with the Council to enable the Council to fully and properly deal with any representation or complaint made to the Council by or on behalf of a Service User about the Services and or the Provider.
- 9.16.8. The Provider shall supply the Council as soon practicable with any information it requires in order to investigate and deal with any representation or complaint from or on behalf of a Service User.

- 9.16.9. The Provider shall maintain a log of complaints, concerns, compliments and suggestions, which shall be available to the Council at any time. The log shall detail:
- The date the complaint/concern/compliment/suggestion is received;
 - The name and address of the Service User and / or complainant;
 - The equality profile of the Service User;
 - The nature of the complaint/concern/compliment or suggestion;
 - Outcome of any investigation into a complaint/concern; and
 - Details of any action taken to improve services.
- 9.16.10. The Provider shall make available to the Council as soon as practicable following request, a summary of the number and type of representations made, complaints and their resulting outcomes and/or the log of complaints.
- 9.16.11. Actions taken or changes made as a result of concerns, complaints or grievances to address problems and shortfalls will be identified in the public domain and within and across the organisation. Such action will also include learning and implemented improvements from complaints and concerns.
- 9.16.12. The Provider shall provide contact details for other relevant organisations for Service Users to escalate complaints outside of the Provider's organisation.
- 9.16.13. The Provider will record compliments and use them to learn from positive experiences.
- 9.16.14. Any untoward incidents or complaints about the service are reported to the Quality Care and Governance Team promptly via the Contracts Team mailbox: quality_caregovernance@cumbria.gov.uk and are responded to in line with best practice and guidance.

9.17. SERVICE USER FOCUSED OUTCOME 17

Safeguarding Adults

Service Users live in an environment where they are confident that the Provider will prevent harm from occurring and will safeguard them in a way that supports them in making choices and having control about how they want to live.

- 9.17.1. 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.
- 9.17.2. 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.
- 9.17.3. 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.
- 9.17.4. The Provider will clearly display in formats accessible to all service users, staff and visitors what they should do to report any suspected abuse.
- 9.17.5. Preventative practice will be in place to support safeguarding, including employment, management and security of the environment.
- 9.17.6. 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.
- 9.17.7. 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.
- 9.17.8. 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.

- 9.17.9. The Registered Manager will attend specific Manager's safeguarding training.
- 9.17.10. The Provider will ensure that systems in place protect Adults at Risk in accordance with the legal requirements of the Mental Capacity Act (2005).
- 9.17.11. The management practices of the Provider ensure controls will be instigated to protect victims of alleged abuse/neglect from alleged perpetrators during investigations.
- 9.17.12. The Provider will ensure whistle-blowers are protected from adverse treatment

9.18. SERVICE USER FOCUSED OUTCOME 18

Safe Working Practices/Health and Safety

The health, safety and welfare of Service Users and staff is promoted and protected. Procedures are in place to ensure the safety of people in the event of an emergency.

- 9.18.1. Staff will be provided with accredited risk management, health and safety, moving and handling and falls prevention training. Moving and handling training and refresher training will be provided yearly as a minimum and staff assessed as competent on a three monthly basis.
- 9.18.2. Where individual moving and handling risk assessments are undertaken, this will inform the safe handling plan and the number of carers required.
- 9.18.3. The provider will have clear processes in place for the prevention and management of falls.
- 9.18.4. Serious untoward accidents and incidents, COSHH and RIDDOR will be reported to the appropriate body, for example, Health & Safety Executive, Health Protection Agency and the Care Quality Commission.
- 9.18.5. All Service Users will have individual risk assessments and action plans completed where individual risks are identified using evidence based validated risk assessment tools.
- 9.18.6. The Provider will ensure the decontamination and maintenance of reusable equipment and appropriate use and disposal of single use equipment.
- 9.18.7. The Provider staff shall be aware of the procedures for dealing with medical emergencies and calling emergency services.
- 9.18.8. The Provider shall work with the Housing Provider to develop and maintain a business contingency plan which protects the people who use the service in the event of an emergency and which clearly designates roles and responsibilities of employees on duty. The Provider's staff shall be fully aware of their individual and collective roles in the procedures to adopt in the event of an emergency.
- 9.18.9. The Provider will have a written procedure for dealing with situations where a Service User is missing which includes informing the Police. The

Council and relatives (where appropriate) should be informed at the earliest opportunity, even if the Service User has subsequently returned.

- 9.18.10. The Provider will have a written statement of the policy and organisational arrangements for maintaining safe working practices which are evident and understood by Service Users and staff.
- 9.18.11. The physical environment will be safe for Service Users and Staff. Hazards will be identified, risk assessed, recorded and appropriately managed.

9.19. SERVICE USER FOCUSED OUTCOME 19

Infection Prevention and Control

Service Users reside in a clean environment where standard precautions and routine safe practice ensure the infection risks to Service Users, staff and visitors are minimised.

- 9.19.1. The Provider shall ensure that procedures and practices protect Service Users from infection which are accessible to all staff
- 9.19.2. Protective equipment will be available and worn for all aspects of care which involve contact or potential contact with blood or body fluids or where asepsis is required.
- 9.19.3. Health and social care waste will be managed safely and in accordance with legislation so as to minimise the risk of infection or injury to Service Users, staff and the public.
- 9.19.4. Infection control procedures will be explicitly included within all staff job descriptions, induction, development and on-going training for all staff.
- 9.19.5. An annual Infection Prevention and Control assessment will be completed and an action plan developed to address any areas of non-compliance.
- 9.19.6. Robust audits will be carried out to ensure staff follow correct infection prevention and control measures including an audit of the cleanliness of the environment.

9.20. SERVICE USER FOCUSED OUTCOME 20

Accident/Incident Reporting

The safety and wellbeing of Service Users is assured through the Provider's Accident and Incident Reporting processes. Lessons are learnt from accident/incident/near miss reporting processes.

- 9.20.1. The Provider's policies will reflect the procedures to be undertaken following an accident or incident and staff are fully aware of the processes. The Provider will have a policy around what actions should be taken following a head injury.
- 9.20.2. All accidents and incidents will be comprehensively and contemporaneously documented using a system that meets current Data Protection guidelines.
- 9.20.3. Details of accidents and incidents will also be recorded within Service Users' daily records together with information to reflect the Service Users' health, safety and wellbeing. Additional records, such as falls diaries and behavioural charts will be implemented and maintained where required to support ongoing monitoring and management.
- 9.20.4. Injuries, including bruises that are sustained following an accident or incident, shall be fully documented, using body maps where possible. Treatment required following an accident or incident will be clearly documented, including the precise treatment and support and any necessary health or social care professional input i.e. Paramedics, District Nurses, General Practitioner, Community Psychiatric Nurses.

9.21. SERVICE USER FOCUSED OUTCOME 21

End of Life Care/Dying and Death

Service Users are assured that staff will treat them and their family with care, sensitivity, dignity and respect at the end of their life and that they will receive, where possible, planned, measured and seamless care at the time of their death.

- 9.21.1. The Provider shall work in partnership with other agencies to promote the principles of End of Life Care as set out in One Chance to Get it Right, the NICE Clinical Guideline (NG31) and NICE Quality Standard (QS144) for the Care of the Dying Adult in the last days of life.
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/323188/One_chance_to_get_it_right.pdf
 - <https://www.nice.org.uk/guidance/ng31>
 - <https://www.nice.org.uk/guidance/qs144>
- 9.21.2. All deaths will be managed with dignity and propriety and Service Users' spiritual needs, rites and functions should be observed. There will be systems in place to ensure, when death is expected, that Service Users do not die alone unless it is their wish.
- 9.21.3. Staff will be appropriately trained to manage the processes and procedures sensitively, to ensure Service Users are treated with dignity and respect and receive appropriate care and symptom relief.
- 9.21.4. On-going supervision will be provided to staff to support them and to provide an opportunity to consider and reflect upon their own cultural beliefs, values and attitudes to death and dying and enable staff as a team to reflect on care and dying.
- 9.21.5. The Provider will notify the Council within 24 hours about the death of a person and inform the Care Quality Commission.

9.22. SERVICE USER FOCUSED OUTCOME 22

Staff Recruitment and Retention

Staffs employed are fit and competent to meet the health and welfare needs of Service Users.

- 9.22.1. The Provider shall operate a robust staff recruitment and selection procedure which 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. A written policy and procedure shall be in place to reflect this practice.
- 9.22.2. The provider shall adhere to all equal opportunities legislations and will be expected to embrace the principles of diversity.
- 9.22.3. These steps must include a Disclosure & Barring Service (DBS) check at the appropriate level in accordance with the Safeguarding Vulnerable Groups Act 2006 requirements.
- 9.22.4. Providers employing staff who are required to obtain permission to work in the United Kingdom either directly or through an agency must ensure that they 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.
- 9.22.5. When recruiting staff, the Provider shall ensure that at least two appropriate written references are taken up one of which must be from the individual's last employer, and shall 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 be able to demonstrate that all attempts have been undertaken to ensure a safe and robust system of recruitment.
- 9.22.6. Staff shall go through a full recruitment process including completion of an application form which provides complete employment history, and addresses any gaps in employment history.
- 9.22.7. Staff must have the personal qualities and caring attitudes which enable them to relate well to Service Users and carers, and poses the required

skills in spoken English, written literacy and numeracy to do the tasks required for caring for and supporting Service Users.

- 9.22.8. Providers shall 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.
- 9.22.9. Providers shall notify the Council immediately if any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Provider (or any employee of a sub-contractor involved in the provision of the Services
- 9.22.10. The Council acting reasonably shall be entitled to require the Provider to remove immediately from the provision of the Service a named member of Staff. The Provider shall have the right to make representations to the Council concerning such person. After taking any representations into account, the Council shall be entitled to confirm, revoke or vary its decision.
- 9.22.11. 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.
- 9.22.12. The Provider shall ensure that all Staff are issued with a 'Code of Conduct' that 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 Councils (GSCC) code of practice for social care workers.
- 9.22.13. The Provider shall 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.

- 9.22.14. 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 Authority.
- 9.22.15. 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.
- 9.22.16. 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.
- 9.22.17. The Provider shall 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.

9.23. SERVICE USER FOCUSED OUTCOME 23

Staffing Levels and Workforce Planning

Service Users are supported to achieve their maximum life potential and care needs by the provision of the appropriate level of professional expertise and skill mix.

- 9.23.1. The Provider's staffing levels will enable the Provider to meet all the service standard requirements as detailed in this specification, both day and night, with the right competency, skills and experience.
- 9.23.2. The Provider shall be able to fully evidence the method used for determining staffing levels in the service.
- 9.23.3. Staffing levels will be based on the dependency needs of all the Service Users, will be reviewed on a regular basis and written evidence made available to ensure and demonstrate that they reflect the changing needs of the Service Users.
- 9.23.4. Staff numbers and skill mix will be matched to all Service Users' needs and reflect a high quality of care provision.
- 9.23.5. The Provider will have contingency plans in place to cover staff absence, sickness, annual leave and succession planning.

9.24. SERVICE USER FOCUSED OUTCOME 24

Staff Induction and Training/Education

Service Users are cared for and supported by professionally inducted, trained, and competent staff, utilising best practice and this will be reflected in the standard of care that they receive.

- 9.24.1. The Provider will ensure that there is a staff induction, training and development programme, which will meet the Skills for Care standards. These expectations will be clearly included in written policies and procedures to reflect a commitment to a supportive working and learning environment.
- 9.24.2. The Provider will ensure that the induction is comprehensive, including full guidance on record keeping, note writing, medication support, assessing basic client wellbeing and how to make contact with supervisors and the completion of the Care Certificate.
- 9.24.3. The Provider will ensure that staff new to care achieve the Care Certificate within twelve weeks of commencing employment. All existing staff should be able to demonstrate that they also meet the standards of the Care Certificate.
- 9.24.4. The Provider will ensure that all staff working within the service are fully trained and assessed as competent to meet the individual needs of Service Users including all mandatory training and specialist education. Such training will be provided by accredited organisations and will be evidence based to reflect up to date specialist and social care and clinical guidance. This will be undertaken on commencement and completed within 12 weeks.
- 9.24.5. The Provider will undertake a training needs analysis for all staff which is reviewed regularly and updated and formulated into staff personal development plans.
- 9.24.6. The Provider will be able to demonstrate assessment of staff competency and performance management and documented evidence will be made available.
- 9.24.7. Where there is identified concerns related to social care practice, this will be effectively managed by the Provider with evidence of the provision of mentorship and supervision.

- 9.24.8. Providers will have a system in place to confirm new employees have successfully completed induction competencies prior to completion of the probationary period.
- 9.24.9. Staff will not commence duties unsupervised until they have been assessed as competent for the role.
- 9.24.10. The Provider will be responsible for determining that the training provider is suitably qualified and that the content of the courses meets the requirements of Adult Social Care Services.
- 9.24.11. Learning undertaken by individuals prior to employment with the provider shall not give automatic exemption to the training requirements. The Provider must demonstrate that the individual is fit to provide the services for which they are employed.
- 9.24.12. Casual staff/trainees and student workers will be subject to the same requirements of all permanent staff.
- 9.24.13. National Minimum Data Sets (NMDS) will be completed to provide a comprehensive workforce plan.

9.25. SERVICE USER FOCUSED OUTCOME 25

Staff Supervision and Appraisal

Service Users are cared for by staff who are suitably and regularly supervised, monitored, supported and appraised and this will be reflected in the standard of care that they receive.

- 9.25.1. All staff will receive formal supervision, at least six times per year, to include observed practice supervision. Supervision will be systematically used to guide the work of staff, to reflect upon their work practices and as a means of support for staff to facilitate good practice. Casual staff, trainees and student workers will receive proportionate support and review.
- 9.25.2. Robust appraisal systems will be in place and all staff receive an annual appraisal/personal development review.
- 9.25.3. A written policy and procedure will be in place to support the Provider's practice in regards to supervision and appraisal. Supervision and appraisal sessions will be documented.
- 9.25.4. Poor performance or staff conduct is identified, challenged and managed and documentary evidence made available to demonstrate that appropriate support has been provided and action taken.
- 9.25.5. The Provider must make a referral to DBS where the required conditions are met this applies even when a referral has also been made to a local authority safeguarding team or professional regulator and following dismissal/resignation during any investigations. Current guidance can be found on <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>

9.26. SERVICE USER FOCUSED OUTCOME 26

Management and Leadership

The service is led so that Service User outcomes are achieved and sustained

- 9.26.1. The Provider will take responsibility for the leadership through the Registered Manager
- 9.26.2. The philosophy within the service is person-centred and promotes the benefits of open, trusting and collaborative relationships between staff, Service Users and their social and professional networks.
- 9.26.3. The Provider shall ensure that the service is managed in such a way that it complies with all requirements under the Health and Social Care Act 2008 and the Care Quality Commission (Registration) Regulations 2010, or any amending legislation.
- 9.26.4. The Provider promotes a clear understanding of the organisations purpose, values and vision and encourages learning and innovation by rewarding reflection, creativity, flexibility and positive risk management.
- 9.26.5. Care promotes enablement and partnership working with all Service Users, social care and health practitioners and family/friends that are important to Service Users.
- 9.26.6. A manager shall be appointed that is registered with the Care Quality Commission or has applied to be registered with the Commission within three months of commencement of employment.
- 9.26.7. The Manager clearly demonstrates up to date knowledge and skills, leadership, competence and experience to effectively manage the service on a daily basis and shows a sound understanding of the requirements set out in the Framework Agreement and Service Specification.
- 9.26.8. 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.
- 9.26.9. The Manager maintains and demonstrates personal and professional competence and credibility in line with current practice and will ensure they delegate appropriately with clear lines of accountability.

- 9.26.10. The Manager is a self-directed role model, committed to practice development and improving the care of Service Users, providing formal support, coaching and mentoring of all staff.
- 9.26.11. Staff will work collaboratively as an effective team in a culture of openness, promoting mutual support and respect with an appreciation of each other's roles.
- 9.26.12. The Provider shall ensure the following are in place to effect the continuous and sustained delivery of the service:-
- Proactive and reactive support so that the manager is able to competently meet all requirements of the service
 - Contingency arrangements that plan for potential failure or service interruption
 - Business planning so that continuity of the service is ensured and to assure those who rely on the service that it will continue to be provided
- 9.26.13. The Provider shall co-operate with the Council in times where the contingency plans require a joint response to interruptions, including reasonable requests for information.

9.27. SERVICE USER FOCUSED OUTCOME 27

Quality Assurance

Continuous quality improvement systems are in place to ensure the service is run in the best interests of Service Users, demonstrates the quality and consistency of information, measures Service User outcomes and ensures that risks to Service Users are minimised.

9.27.1. The Provider will have quality assurance and monitoring systems in place which:-

- Periodically seek the views and experience of Service Users, relatives, friends and health and social care professionals.
- Enable realistic assessment of the services provided.

9.27.2. All staff will be actively involved in the quality assurance and monitoring processes. Quality services will be recognised as a motivating force and staff will strive for continuous improvement and best practice.

9.27.3. Quality Assurance will demonstrate:-

- Measurable organisational improvement
- Training that provides staff with the skills and tools to analyse problems and working processes
- Staff who are empowered and supported to make positive changes (analysing dilemmas/problems and suggesting solutions)
- Positive attitudes and working relationships
- Continuous building on good practice
- Introduction of new procedures.

9.27.4. Providers will be required to assist the Councils in evaluating the quality of effectiveness, not only of the care to the individual Service Users but also compliance with the Framework Agreement. Results of Quality Monitoring should be shared with the Council on request.

9.27.5. The following monthly audits will be undertaken as a minimum requirement:-

- Care records, support delivery 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.

9.27.6. Audits will identify trend analyses and training issues, and action plans will report action taken and outcomes.

9.27.7. Staff and Service User and/or representatives meetings will be used as a forum to identify, take stock and reflect on areas for improvement. Such forums demonstrate that the Provider is committed to involving and encouraging others to be included and listened to in the day to day running of the service.

9.27.8. A variety of feedback systems will be used which are suitable for the client group. These will be recorded, analysed objectively and published. Examples include:

- Verbal
- Written
- Observational tools
- Symbols/pictures
- Built into activities
- Group
- One to one (enables safe disclosure)
- External evaluation e.g. Health Watch Cumbria, or at least assessors that are not part of day to day services.

9.28. SERVICE USER FOCUSED OUTCOME 28

Financial Procedures/Personal Finances

Service Users are safeguarded by the accounting and financial procedures of the service. Service Users decide how to spend their money in the knowledge that personal finances are safeguarded by robust controls and audit procedures in place

- 9.28.1. The Provider shall have a Financial Protection Policy and Procedure in place.
- 9.28.2. The Provider shall ensure that Staff exercise due care in handling Service Users' money and clearly understand the procedure. Any money handled by Staff due to support with the collection of benefits, purchase of shopping or payment of bills must be accounted for with the Service User at the time. A record signed and dated by Staff must be kept to account to the Service User and/or their Carer.
- 9.28.3. The Provider will ensure that all staff understand how the Service User's right to autonomy, choice, independence and fulfilment is maintained within the context of the Mental Capacity Act (2005).

10. REFERRAL PATHWAY AND ALLOCATION OF CARE HOURS

10.1. Referrals

- 10.1.1. Referrals will be made to the Service following an assessment of need by authorised Assessors; including Cumbria Social Care Staff, Emergency Duty Team, or Out of Hours Team.
- 10.1.2. Care is initiated from the referrers Care Plan. The provider uses this to develop their own holistic person centred care plan to meet the individual's preferences and care needs.
- 10.1.3. The Provider shall liaise with other stakeholders, e.g. GP surgery, hospital discharge services, ASC, District Nurses to support timing assessments and the safe discharge of Service Users from Hospital.

10.2. Response Times & Prioritisation

- 10.2.1. Response times in relation to delivery of the Person Centred Home Care are separated into 3 delivery requirements depending on the nature and urgency of assessed need/s:
 - Critical, same day – Lowest number of referrals expected in this category, require most urgent responses for example less than 3 hours as agreed with the referrer (include end of life pathway and other very urgent cases).
 - Urgent, 48 hours or less - Moderate numbers of referrals expected in this category
 - Planned Standard, 7 days or less – highest proportion of referrals expected in this category

10.3. Allocation of Care Hours

- 10.3.1. The Allocation of Care Hours is outlined in Schedule 1 and Schedule 4 of the Framework Agreement.
- 10.3.2. Cumbria County Council shall:
 - 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 a Care Plan for the Service User 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.

10.3.3. The Provider shall:

- 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 jobs 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.

10.3.4. Care packages / hours will be offered to appointed Provider/s for allocation. The Council reserves the right to source care hours via an alternative care Provider/s in the event that Provider/s cannot meet the identified needs or a care package cannot be allocated by the Provider/s within essential timeframes.

10.4. Increases / Decreases / Cancellations of Allocated Care Hours

10.4.1. The Provider may request an increase / decrease / cancellation in commissioned care hours.

10.4.2. However, the Provider should always discuss any proposed changes to planned care with the Service User and their family/representative first, before requesting a change via 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. 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.

11. CONTRACT FINANCE AND PAYMENTS

For Payment and Invoicing details, please refer to the Schedule 5.

12. APPENDICES AND SCHEDULES

Appendix A – Adult Social Care Outcomes Framework (ASCOF)



Adult Social Care
Outcomes Framework

Appendix B – Care Act 2014



Appendix B - Care
Act.docx

Appendix C – Individual Service Funds (ISFs)



Appendix C -
Individual Service Fun

Appendix D – Quality Improvement Process



Appendix D -
Cumbria Quality and

Schedule 3 – Instruction Form

The Instruction Form will be created using the Technology and 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

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 via the Technology.

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, Schedule 6 and Schedule 7.

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 the General Data Protection Regulation ((EU) 2016/679) (GDPR) for so long as it is directly applicable in the UK, the Data Protection Act 2018 (DPA) and any national Laws, regulations and secondary legislation, as amended or updated from time to time, in the UK relating to the processing of personal data and privacy.

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 Cumbria County Council which ends on the 29 August 2023 for provision of homecare 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 requirement's set out in a completed Instruction Form and Schedule 2.

Technology: the proprietary web-based software, through which the Framework will operate and Instructions and Contracts are issued (which is owned and operated by the Technology Provider) currently called SProc.Net or such other technology as agreed between the Parties.

Technology Provider: the owner and provider of the Technology, adam HTT Limited (registered company #07718565), who also act as the Council's payment service provider.

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 such Pan Lancashire-Cumbria multi-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 pan Lancashire -Cumbria multi-agency policy guidance and procedures for the safeguarding of adults, details of which are at www.cumbria.gov.uk/safe, 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 shall be adjusted annually 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, Group 7 VATA 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 recommencement 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 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Provider is the Data Processor. Schedule 7 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 14.3 Without prejudice to the generality of clause 14.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Contract.
- 14.4 Without prejudice to the generality of clause 14.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this Contract:
- (a) process that Personal Data only on the written instructions of the Council (as set out in Schedule 7), unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union (Applicable Laws) applicable to the Provider to otherwise process the Personal Data. Where the Provider is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the applicable laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state

of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (i) the Council or the Provider has provided appropriate safeguards in relation to the transfer;
- (ii) the Data Subject has enforceable rights and effective remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) the Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(d) notify the Council immediately if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data;
- (ii) a request to rectify, block or erase any Personal Data;
- (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

(e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Council immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;

(g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Service User on termination or expiry of the agreement unless required by the applicable laws to store the Personal Data;

- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Council or the Council's designated auditor pursuant to clause 19;
- 14.5 The Provider shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Provider's obligations under this clause 14.
- 14.6 Where the Provider intends to engage a Sub-Contractor pursuant to clause 22 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
 - (a) notify the Council in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 13.
- 14.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 14.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
- 14.9 Where Data Protection Legislation imposes an obligation on either party to include provisions in this agreement relating to Personal Data, those provisions shall be deemed to be included within this Agreement.

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 be 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 Urban	Hourly Rate Rural	Hourly Rate Extra-Rural
£17.44	£19.39	£23.10

- 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).

Price Uplift

- 4 Where the Provider provides evidence (as part of their Management Information outlined in Schedule 8 (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.
- 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 (urban, rural, extra-rural) will be split into 2 components, 25% and 75%
- The 25% component will be subject to an increase based on the Consumer Price Index as measured at September the previous year
 - The 75% 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
- 7 In addition to paragraph 6 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 increase shall take effect in April 2020.
- 9 For the avoidance of doubt, 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 and the prices in the table at paragraph 1 will not be increased.

- 10 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 via the Technology on the Provider's behalf, through which the Technology Provider shall process payment.

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

The Provider shall use the Technology for all applications for payment. The payment and billing process shall operate as follows:

- a) The Provider shall submit weekly bills (Service Receipts) within the Technology 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 Technology Provider will run the invoicing process. 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 using the Technology.

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 via the Technology. The Provider shall not endeavour to process Services commissioned under the Framework outside of the Technology.

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 Technology's 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 Technology's 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 Technology Provider 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 Technology Provider receiving cleared funds from the Council. For the avoidance of doubt, this arrangement shall not be construed as transferring to the payment service provider 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.

Schedule 7 – Processing Personal Data and Data Subjects

Subject matter of the processing	Processing personal data for the delivery of Homecare Services for Service Users and their carers within Cumbria.	
Duration of the processing	As set out in the main body of the contract.	
Nature and purposes of the processing	<p>Processing:</p> <p>The obtaining, recording or holding the information or data or carrying out any operation on the information or data which include:</p> <ul style="list-style-type: none"> • organisation, structuring, storage, adaptation or alteration of the information or data • retrieval, consultation, or use of the information or data • disclosure of the information or data by transmission, dissemination or otherwise making available, • alignment, combination, blocking, erasure or destruction of the information or data (whether or not by automated means) <p>Purpose:</p> <ul style="list-style-type: none"> • To safely and effectively deliver the terms of the Contract and Specification • Statutory obligations • Employment processing directly linked to service delivery • Such other purposes as the Council/Customer may notify to the Provider from time to time • Awards and events <p>and such other purposes as the Council/Customer may notify to the Provider from time to time.</p>	
Type of Personal Data	<ul style="list-style-type: none"> • Name(s); • Date of birth; • Gender; • Disability; • Languages; • Ethnicity; • Sexuality; • Religion; • Employment/Education; • Marital Status; 	<ul style="list-style-type: none"> • Health & Medical information • Name, age, gender, contact details (dependants, siblings, other relationships, next of kin); • Advocates; Financial Agents / Information; • Emergency contacts; • Power of Attorney / Authorised representative;

	<ul style="list-style-type: none"> • Address (pre and current); • Telephone number; • NI / NHS numbers; • Professional Involvement (Council / Health / other); • Legal status; • Images; 	<ul style="list-style-type: none"> • Contextual information for care delivery / Plans & Reviews / Meeting Minutes; • Personal preferences; • Details of other agencies involved in providing care or support other than the provider under this contract
Categories of Data Subject	<ul style="list-style-type: none"> • Service users • People connected to service users (dependents, siblings, other relationships, next of kin) • Staff – internal / Council / other agencies (including volunteers, agents, and temporary workers) 	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	As per the provisions set out in the Contract. All data will be returned (and any copies permanently destroyed) or destroyed at the end of the term, at the Council's/Customer's option, in accordance with the Council's/Customer's requirements from time to time.	

Schedule 8 – KPIs

1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in Schedule 8.

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 8** 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

KPI Category	KPI No.	KPI Heading	KPI	KPI Measure (Target)
Quality and Safety	1	Meeting needs and outcomes, Continual Evaluation and Review	Service users and their representatives know that the service they enter will endeavour to meet and continue to meet their needs and agreed outcomes.	100% of the occurrences listed in Section 9.4.4 of the Service Specification are reported to the ASC Practitioner or Urgent Care Team within 24 hours of the situation occurring.
	2	Pressure Care, Tissue Viability and Wound Management	Service users receive care that supports healthy tissue viability and wound management.	100% of care staff engaged in the delivering homecare receive regular training and updates to ensure service users receive care that supports healthy tissue viability and wound management.
	3	Complaints	Service users and their representatives are confident that their complaints and concerns will be listened to, taken seriously and acted upon effectively without any negative impact.	100% of complaints are thoroughly investigated by a competent person and records are kept to demonstrate how they have been managed, a timescale for responses and how service users are informed of the outcome including their level of satisfaction
	4	Missed Visits	% of Missed Scheduled Visits by Care Staff (excluding calls refused or cancelled by Service Users)	100% of Scheduled Visits are delivered by Care Staff.
	5	Late Visits	% of home care visits that were delivered greater than 45 minutes before or after the identified time within the Instruction.	100% of Scheduled Visits are delivered within 45 minutes of the identified time within the Instruction
	6	Medication Errors	The number of medication errors reported	0 medication errors reported within quarter
	7	Serious Incidents	The number of serious incidents reported	0 serious incidents reported within quarter

KPI Category	KPI No.	KPI Heading	KPI	KPI Measure (Target)
Regulation	8	Rights	Service user's legal rights are respected, protected and upheld.	100% of staff engaged in the delivery of homecare are trained at induction in the MCA 2005 and its associated code of practice.
	9			100% of concerns regarding a Service user's ability to make decision around their treatment are notified to the Council within 24 hours.
	10	Safeguarding adults	Service users live in an environment where they are confident that the Provider will prevent harm from occurring and will safeguard them in a way that supports them in making choices and having control about how they want to live.	100% of staff receive training in safeguarding, including whistle blowing during the induction and updated training is provided as and when required but no longer than at 3 year intervals.
	11	Complaints	% of complaints received by the Provider that have been completed within timescales.	100% of complaints received by the Provider are completed within timescales.
Sustainability	12	Quality assurance	Continuous quality improvement systems are in place to ensure the service is run in the best interest of the service users, demonstrates the quality and the consistency of information, measures service user outcomes and ensures that risks to service users are minimised.	The Provider has quality assurance and monitoring systems in place that periodically seek the views of service users and their representatives.

KPI Category	KPI No.	KPI Heading	KPI	KPI Measure (Target)
Wellbeing and Experience	13	Care & Support Planning. Person Centred Care and Record Keeping	Service user's ongoing health and social care needs are set out in individual support delivery plans. Service user's rights and best interests are safeguarded by the Provider's record keeping policies and procedures.	100% of service users have support delivery plans.
	14			100% of service users or their representative were involved in the production of the support delivery plan.
	15	Access to health and social care	Service users receive appropriate evidence based health and social care and have access to community services and specialist input to meet their assessed needs and maximise their health, independence and wellbeing.	100% of staff who support service users who have access to specialist health and social care aids and equipment (according to assessed needs) have been trained and assessed as competent in the safe usage of this equipment.
	16	Meeting communication needs	Communication with service users is conducted in a way that maximises their independence, choice, control, inclusion and enjoyment rights.	The Provider and staff will communicate and provide written information in a format that is appropriate for each service user and/or their representative. The provider will have information in an assessable format for SU and representative.

KPI Category	KPI No.	KPI Heading	KPI	KPI Measure (Target)
Workforce	17	Staff recruitment and retention	Staff employed are fit and competent to meet the health and welfare needs of the service users.	100% of staff who have contact with Service Users have up to date DBS checks at the appropriate level.
	18			100% of staff provided at least two appropriate written references when they were recruited.
	19	Staffing levels and workforce planning	Service users are supported to achieve their maximum life potential and care needs by the provision of the appropriate level of professional expertise and skill mix.	The Provider will have contingency plans in place to cover staff absence, sickness, annual leave and succession planning.
	20	Staff induction and training/education	Service users are cared for and supported by professionally inducted, trained, and competent staff, utilising best practice and this will be reflected in the standard of care they receive.	100% of staff working within the service are fully trained and assessed as competent to meet the needs of the service users including all mandatory training and specialist education.
	21	Staff supervision and appraisal	Service users are cared for by staff who are suitably and regularly supervised, monitored, supported and appraised and this will be reflected in the standard of care they receive.	100% of staff receive supervision, at least four times per year, to include observed practice supervision.
	22	Management and Leadership	The service is led so that service user outcomes are achieved and sustained	A manager shall be appointed that is registered with the Care Quality Commission or has applied to be registered with the Commission within three months of the commencement of employment.
	23	Staff Training	% of care staff who hold or who are working towards a level 2 QCF (Qualifications and Credit Framework) qualification in Health & Social Care	100% of care staff hold or are working towards a level 2 QCF (Qualifications and Credit Framework).

- 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